

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.4707 of 2014

Date of Decision:- 31.05.2016

R.N. Uppal

....Petitioner

Versus

Haryana State Federation of Consumer Coop. Wholesale Stores Ltd.
and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest? Yes

**Present: Mr. D.R. Sharma, Advocate
for the petitioner.**

**Mr. Aseem Rai, Advocate
for respondent No.1.**

RITU BAHRI, J. (Oral)

Petitioner is seeking quashing of order dated 07.02.2008 (Annexure P-7) passed by the Managing Director of Confed and order dated 18.09.2008 passed by the Board of Directors in appeal (communicated to petitioner by the M.D., vide order dated 24.10.2008) (Annexure P-10) and order dated 05.09.2013 (Annexure P-18) whereby the punishment of warning has been imposed and pay, gratuity, leave encashment, E.P.F., ACP and increments etc. for the suspension period 20.02.2002 to 26.04.2005

have been denied.

The facts not in dispute are that the petitioner joined the service of the Haryana State Federation of Consumers Co-operative Wholesale Stores Ltd. (for short “Confed”) as Accountant on 27.10.1975. He was promoted as Assistant Accounts Officer, vide order dated 05.06.1981 and he retired on 30.09.2012. He was placed under suspension by respondent No.1, vide order dated 22.04.2002 and was reinstated vide order dated 26.04.2005. A charge-sheet dated 28.05.2002 was issued to him for “Wilful insubordination/disobedience of any lawful and reasonable orders of superiors” which tantamount to gross misconduct under Rule 26.1 of the Staff Service Rules of Federation (SSR) and he committed various acts of omission and commission (i) by not attending the meeting on 22.04.2002 in place of Business Manager despite the verbal directions of M.D. and Business Manager, (ii) by attending the inspection of wooden crates at Sirsa after great pursuance and pressure and (iii) by not conducting special audit of medicine shop at Sector 7, Panchkula for settling accounts of Sh. K.C. Arora, Pharmacist, who was to retire on 31.03.2002. An inquiry officer was appointed, who gave his inquiry report dated 26.07.2005 (Annexure P-4). The disciplinary authority thereafter accepted the report and held the charges leveled against petitioner as proved. Thereafter, a show cause notice dated 12.05.2006 (Annexure P-5) was issued for **warning and to pay nothing beyond subsistence allowance already paid during suspension period**. The petitioner gave his reply dated 25.05.2006 to the show-cause notice. After giving him personal hearing, finally, vide order dated 07.02.2008 (Annexure P-7), the Managing Director has passed the punishment order, the relevant part of which is as under: -

pay nothing beyond subsistence allowance already paid to him for suspension period from 22.4.2002 to 26.5.2005 is confirmed. The suspension period shall not be treated as a period spent on duty for any other purpose.”

The petitioner filed an appeal on 03.03.2008 (Annexure P-8) and thereafter the Board of Directors of Confed dismissed the appeal, vide order dated 24.10.2008 (Annexure P-10). Hence, the present writ petition before this Court.

Upon notice, a written statement has been filed by respondent No.1 reiterating the allegations against the petitioner in the charge-sheet (Annexure P-5) that he refused to obey the orders of the superiors and did not attend the said meeting. This caused un-due delay in the commencement of meeting and also brought bad name to the organization. After issuing show-cause notice, an inquiry officer was appointed and after accepting the report of the inquiry officer, the proposed punishment has been imposed after perusing show cause notice and opportunity of hearing. The Board of Directors of Confed have given a personal hearing to the petitioner in the meeting held on 18.09.2008 and was chaired by the then Chairman Confed and was also attended by the then M.D. Confed as well as another member which constituted the necessary quorum. After hearing the petitioner the appeal was rightly dismissed.

In replication, the petitioner has placed on record letter dated 19.07.1992 (Annexure R-1/4), vide which the instructions for projects has been pointed out. The petitioner had pointed out the illegalities while making the purchase of wooden crates and other items. The petitioner has annoyed the respondent because he became a hurdle in achieving their wrongful acts. This fact is evident from letters dated 01.12.2002 (Annexure

R-1/2) and 11.04.2013 (Annexure R-1/3). The Committee along with a representative of the Forest Department i.e. D.F.O., who also participated in the meeting rejected the wooden crates because of low quality of wood. This decision has been recorded in the proceedings of the meeting (Annexure R-1/5), which was submitted to the petitioner. The request for demanding a technical expert was bona-fide and watching the interest of the department. Further, the Haryana Vigilance Bureau has reported in their report that during the year 2001-2002 the wooden crates of inferior quality was purchased from M/s Naveen, Sirsa, M/s Bansal, Sirsa causing huge financial dues to the department. A letter dated 31.01.2007 of ADFS, Haryana is Annexure P-1/6. Inquiry officer has further given wrong report in returning the finding against the petitioner with respect to the special audit of medicines shop at Panchkula on 22.02.2002. It was reported by the staff of the Panchkula office that Sh. K.C. Arora had already been retired on 28.02.2002 and he has disposed off all the medicines stock before his retirement. Petitioner also checked the accounts of the medicines shop and made signature on certain accounts book and found the nothing irregular. Petitioner made a report to the respondent on 11.03.2002.

After hearing the learned counsel for the parties, reliance, at this stage, can now be made to a judgment of Division Bench of this Court in Dalip Singh Vs. State of Haryana and another, 2003(4) S.C.T. 261 whereby an order of punishment was passed after enquiry, and two annual increments with cumulative effect were stopped restricting to the subsistence allowance already drawn and on appeal the authority reduced the punishment to warning only. The petitioner was claiming the benefit of salary for the suspension period. The claim of the petitioner for salary for

the said period was allowed on the ground that once the authority had taken a decision to impose a minor penalty, the salary for the suspension period could not be withheld. In paragraph 5 the Division Bench has held as under:-

“In the aforesaid decision of this court in Y.P. Sehgal’s case, relied upon by the petitioner, it has been held that it is neither permissible in law nor fair to deny salary and allowances for the period of suspension if the delinquent has been awarded minor punishment of censure. In the instant case, it is merely a warning issued to the petitioner. Even otherwise, if on the basis of the order of the Transport Commissioner, the salary of the petitioner for the suspension period was to be with-held, he was required to have been issued a notice and given opportunity and in the absence of which action, the order on the face of it becomes arbitrary and violative of the principles of natural justice. In the absence of any specific order in respect of withholding the salary of the petitioner for the suspension period as is the case set out by him. The direction of the punishing authority for treating the suspension period of the petitioner as leave of the kind due is against law.

In view of the above, the writ petition is allowed. The respondents are directed to release the salary and other allowances in respect of the suspension period of the petitioner forthwith.”

In case **Dr. M.L. Kamra and others Vs. State of Haryana and others, 2009(6) SLR 577** whereby the petitioners were doctors and on account of their conduct leading to death of a patient. They were awarded the punishment of warning. Therefore, in the case of minor punishment while passing the order under Rule 7(3) of the Punjab Civil Service Rules Volume I Part II, the petitioners could not be denied the benefit of payment of salary. Moreover, by imposing a minor punishment there was no justification for placing the petitioners under suspension.

In **Swaranjit Singh Vs. Haryana State Electricity Board and another, 2015(3) PLR 538**, while dealing with the case of minor punishment, the Division Bench of this Court has held that the benefit of

increments during suspension period cannot be stopped. The petitioner was held entitled the benefit of increments as per the judgment of Division Bench of this Court in case **C.B. Bhatnager v. The Food Corporation of India, 1993(2) SCT 35**. The service conditions of the petitioner are governed by the Haryana Civil Services (Punishment & Appeal) Rules and under the Rule 4, the minor penalty has been prescribed as under: -

“4. Penalties – (1) *The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government employee namely: -*

Minor Penalties:

- (i) *Warning with a copy in the personal file (character roll;*
- (ii) *censure:*
- (iii) *withholding of promotion’*
- (iv) *recovery from pay of the whole or part of the pecuniary loss caused by negligence or breach of orders, to the Central Government or a State Government or to a Company and association or a body of individuals whether incorporated or not, which is wholly or substantially owned or controlled by the Government or to a local authority or University set up by an Act of Parliament or of the legislature of a State: and*
- (v) *withholding of increments of pay.”*

In the facts of the present case, the petitioner while issuing a show-cause notice (Annexure P-5) for imposing the punishment of warning and after considering his reply, vide impugned order dated 07.02.2008 (Annexure P-7), the punishment of warning has been affirmed, however, a further decision has been taken that to pay nothing beyond subsistence allowance already paid to him for the suspension period and this period is not to be treated as period spent on duty for any other purpose.

As per the judgment referred to above, there was no necessity to suspend the petitioner, hence, he could not be denied the benefit of salary, increments for the period of suspension. Accordingly, the present

petition is allowed and the directions to the respondents to consider the period of suspension w.e.f. 22.02.2002 to 26.04.2005 as period spent on duty and give all consequential benefits to the petitioner, within a period of three months, from the date of receipt of certified copy of this order.

May 31, 2016
naresh.k

(RITU BAHRI)
JUDGE7