

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-9961-2007 (O&M)
Date of decision: 05.04.2017

Harnek Singh

.....Petitioner

versus

The State of Punjab and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Chaman Lal Goyal, Advocate for the petitioner
Mr.R.S.Pathania, DAG Punjab

- 1. Whether Reporters of Local Newspapers 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?*

Kuldip Singh, J. (Oral)

Petitioner Harnek Singh was working as a Head Warder, Sub Jail, Muktsar. He started making complaints against Bhajan Singh, Superintendent Jail, Ferozepur – respondent no.5 regarding his misconduct. On 5.8.2001, it was Sunday and petitioner was off duty. Respondent No.5, Superintendent visited Sub Jail, Muktsar and asked the petitioner to come present. However, according to the petitioner, he was ill and did not appear. Consequently, he was suspended vide order dated 6.8.2001 (Annexure P1). However, later on he was reinstated on 27.3.2002 vide Annexure P4. It also comes out that thereafter, regular inquiry was conducted and the petitioner was prematurely retired on 31.3.2002. The said order was quashed by this Court vide order dated 8.5.2003 (Annexure P7) passed by a Division Bench in CWP No.14081 of 2002 titled as Harnek Singh vs. State of Punjab and others on the ground that neither any notice nor pay in lieu of notice as

contemplated under the Rules was given to the petitioner. However, respondents were given liberty to proceed in accordance with law.

It comes out that during pendency of the said writ petition, respondent no.5, Superintendent passed two orders dated 30.4.2003 (Annexures P5 and P6). Vide order Annexure P5, while referring to charge issued vide letter No.6043 dated 18.9.2001, regarding acceptance of money from the wards of the prisoners and finding that the inquiry officer has held that charges against the employee are not proved, punishment of Censure was passed on the ground that the report says that the convict Darshan Singh son of Kundan Singh has levelled allegations against him. On the same day, another order was passed wherein it was stated that a show cause notice was issued regarding absence from duty and he was placed under suspension on 5.8.2001. It was also observed that the inquiry officer has opined that the petitioner has uttered filthy words against the Superintendent of the Headquarters Jail and refused to come on duty which shows that he is ridiculous against the senior officer. He has not given any valid proof of defence and defied the protocol. It is also mentioned that the petitioner is a President of Warder's Union and making false complaints against the officers on the letter Pads of Union. Petitioner was retired on 31.3.2002. Therefore, it was held that the petitioner will not be paid anything during the period which he remained under suspension. However, said period shall be considered as duty period for pensionary benefits only.

In the reply, the factual position regarding pre-mature retirement and thereafter quashing of the said order by this Court are not disputed. Passing of the orders dated 30.4.2003 (Annexures P5 and P6) has been justified on the ground that even after his reinstatement from service

and after the order passed by this Court on 8.5.2003, the petitioner never claimed his pay and salary for the period from 6.8.2001 to 27.3.2002.

It further comes out that, the petitioner filed statutory appeal against the orders dated 30.4.2003 (Annexure P5 and P6) on 14/15.1.2003 (Annexure P9). The appeal was not decided. Therefore, he issued reminder dated 3.1.2005 (Annexure P10) and when the appeal was still not decided, he issued a legal notice dated 9.10.2006 (Annexure P11). In response to which, the Additional Director General of Police, Jails Punjab addressed a communication dated 19.10.2006, informing that the appeal filed by the petitioner has been rejected vide letter dated 9.9.2005 (Annexure P13).

I have heard learned counsel for both the parties and have also perused the record.

Admittedly, the petitioner was charge sheeted on account of misconduct and absence from duty on 5.8.2001. After the inquiry, he was pre-maturely retired from service. It is also not disputed that the said order was set aside by this Court vide order dated 8.5.2003 (Annexure P7). The department was given liberty to proceed in accordance with law. However, there is nothing on file to show that thereafter, the department proceeded against the petitioner in accordance with law. Thereafter, it appears that in the meantime the petitioner retired on attaining the age of superannuation. It also comes out that the impugned orders Annexures P5 and P6 were passed on 30.4.2003 i.e. during pendency of the said CWP No.14081 of 2002, in which he had challenged his pre-mature retirement. Both the orders have been passed by respondent No.5 Superintendent Jail, Ferozepur.

I am of the view that both the orders followed by the order of the appellate authority are illegal and liable to be quashed. In the order

dated 30.4.2003 (Annexure P5), it is stated that the inquiry officer has opined that the charges against the delinquent official are not proved. However, no dissent note was prepared or sent to the petitioner. Thereafter, no show cause notice was issued to the petitioner proposing the punishment. Therefore, the punishment of Censure passed merely on the ground that the convict Darshan Singh son of Kundan Singh has levelled allegations against him is nothing but misuse of powers and patently illegal and hereby is quashed.

So far as second order dated 30.4.2003 (Annexure P6) is concerned, the order has been passed on the ground that the petitioner has been prematurely retired on 31.3.2002 and vide this order, the decision has been taken regarding the suspension period of the petitioner.

I am of the view that since order dated 31.3.2002, compulsorily retiring the petitioner has been quashed and thereafter, the department has not taken any step, therefore, the suspension period of the petitioner from 6.8.2001 to 27.3.2002 is to be treated as duty period and the petitioner is entitled to full salary for the said period along with interest @ 9% per annum from the date it became due till the date of payment. Since interest has been granted, therefore, no damages are payable on account of alleged harassment and mental agony.

Petition is allowed accordingly.

05.04.2017

gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:

Yes

Whether Reportable:

No