

CWP No. 15103 of 2014 (O/M)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 15103 of 2014 (O/M)

Date of decision : 18.4.2017

Gurmej Singh (since deceased) through LRs Petitioner (s)

Versus

State of Punjab and others Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Gurnam Singh, Advocate, for the petitioner.

Mr. Nikhil K. Chopra, Additional Advocate General, Punjab.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH J.

Gurmej Singh-petitioner (since deceased) and now represented through his LRs has filed this writ petition for quashing the order dated 19.4.2000 (Annexure-P-17), vide which his services were terminated and the salary and other benefits received by him for the period from 16.1.1993 to 16.3.1995 were ordered to be recovered. Also impugned in the present writ petition are the orders dated 25.1.2005, 16.2.2005 and 12.2.2014 (Annexures-P-20, P-21 and P-23 respectively), passed by the appellate authority and reviewing authority, dismissing the further appeal and review.

The petitioner had initially joined as a Conductor in Punjab Roadways on 1.7.1967. He was promoted as a Booking Clerk-cum-Sub Inspector in the year 1989. On 15.1.1993, vide Annexure-P-1, the petitioner submitted his resignation to the General Manager to be accepted with effect from 16.1.1993 and offered to deposit 3 months' salary under the rules on

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the ground that his family affairs are not good and he cannot perform his duty. The said resignation was accepted on the same day by the General Manager, Punjab Roadways, Tarn Taran Depot, vide order dated 15.1.1993 (Annexure-P-1), asking the petitioner to deposit 3 months' salary. Thereafter, according to the petitioner, on the request of the villagers, he contested the elections of Sarpanch of the Gram Panchayat Bhairawal and was elected as Sarpanch of village Bhairawal on 18.1.1993. However, according to the petitioner, due to group rivalry in the village, he was unable to perform the duty of Sarpanch. Therefore, he submitted an application dated 7.4.1993 (Annexure-P-2) to the Transport Minister, Punjab, requesting for withdrawal of his resignation. The then Transport Minister, Punjab, vide order dated 7.4.1993, on the said application directed the Divisional Manager, Ferozepur, that 'due to his request, his resignation may not be accepted'. Accordingly, the General Manager, Punjab Roadways, Tarn Taran Depot, vide order dated 23.7.1993 (Anenxure-P-3), informed the petitioner that his resignation is not accepted and he was directed to report for the duty in the office. The petitioner accordingly, vide application dated 7.10.1993 (Annexure-P-4), addressed to the General Manager, Punjab Roadways, Tarn Taran Depot, in response to the letter dated 1.10.1993 stated that as demanded, he has already submitted the resignation letter from the office of Sarpanch on 29.9.1993. Therefore, he may be allowed to join the duty. Accordingly, vide order endorsed on 7.10.1993 (Annexure-P-5), the petitioner was allowed to join the duty with immediate effect. The petitioner thereafter continued to work as a Booking Clerk-cum-Sub Inspector with respondent-department. It also comes out that, vide letter dated 5.10.1995 (Annexure-P-7), the petitioner requested

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that he may be refunded 3 months' salary amounting to Rs. 9,234/-, deposited by him while submitting his resignation. The same was also allowed to be refunded. His service from 16.1.1993 to 16.3.1995 was treated as leave of the kind due and he was paid the salary for the said period. Thereafter, on 22.7.1997, the petitioner was put under suspension and was served with a chargesheet on 1.9.1997 under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970. In the said chargesheet, it was alleged that his resignation was accepted by the General Manager, Punjab Roadways, Tarn Taran Depot. He deceived the office and contested the election of Sarpanch of village Bhairawal and was elected as such. Thereafter, he approached the Transport Minister, Punjab, and requested him for not accepting the resignation. The application was filed beyond 90 days of receipt of accepting the resignation. As required under Rule 7.5 (4) of the Punjab Civil Services Rules, Volume-I, Part-I, the authority concerned was required to make an inquiry as to whether any case is pending against him and further that the petitioner had directly approached the Transport Minister, Punjab, for withdrawal of the resignation. The application from the Transport Minister, Punjab, was received in the office of the General Manager, Punjab Roadways, Tarn Taran Depot on 16.4.1993 and that the petitioner had intentionally approached the Transport Minister, Punjab, to pressurize the General Manager, Punjab Roadways, Tarn Taran Depot, which is in violation of Rule 20 of the Government Employees Conduct Rules, 1966, and the instructions of the Government dated 8.12.1976 and 24.6.1977. It was further alleged that he had given in writing that he resigned from the office of Sarpanch of village Bhairawal on 29.9.1993 and annexed the photocopy

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of the letter with the General Manager, Punjab Roadways, Tarn Taran Depot and the General Manager, Punjab Roadways, Tarn Taran Depot allowed the petitioner to resume the duty without verifying the resignation letter from the office of Sarpanch of village Bhairawal. This was also done under pressure of the Transport Minister, Punjab. His resignation from the post of Sarpanch of village Bhairawal was accepted on 16.3.1995. He wrongly received the salary for the period from 16.1.1993 to 16.3.1995. On the basis of said allegations, an inquiry was conducted. Vide the inquiry report dated 27.1.2000 (Annexure-P-12), the petitioner was held guilty of the charges. Vide order dated 19/28.4.2000 (Annexure-P-17), his services were terminated with immediate effect and the salary received by him for the period from 16.1.1993 to 16.3.1995 was also ordered to be recovered. An appeal against the said order was filed on 5.6.2003, which was dismissed, vide order dated 25.1.2005 (Annexure-P-20). The petitioner was directed to deposit the salary for the period from 16.1.1993 to 16.3.1995, vide order dated 16.2.2005 (Annexure-P-21). Thereafter, the petitioner approached this Court by way of CWP No. 6746 of 2005, titled as Gurmej Singh Versus State of Punjab and others, (Annexure-P-22), which was decided on 26.9.2013, whereby the impugned order passed by the appellate authority was set aside and the appellate authority was directed to consider the matter afresh and pass a speaking order within three months from the date of receipt of certified copy of the order. The appellate authority again passed the order dated 12.2.2014 (Annexure-P-23), vide which the appeal was again dismissed.

In the written statement, respondents have taken the stand that the petitioner resigned from service on 16.1.1993 to contest the election of

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Sarpanch of village Bhairawal. He was elected as a Sarpanch of village Bhairawal on 18.1.1993. Thereafter, he put pressure of the then Transport Minister, Punjab, on the General Manager, Punjab Roadways, Tarn Taran Depot and got the order of withdrawal of his resignation against the rules. It was stated that thereafter some unions made complaint to the General Manager and the General Manager, Punjab Roadways, Tarn Taran Depot made inquiry from the District Development Panchayat Officer, Amritsar, vide letter dated 23.11.1993, 5.1.1994 and another letter dated 25.2.1994 to the Divisional Deputy Director Panchayati Raj and Development Department, Jalandhar, requesting them to inform regarding the resignation of the petitioner from the post of Sarpanch of village Bhairawal. The District Development Panchayat Officer, Amritsar, vide letter dated 17.1.1994, informed that no application for resignation from the post of Sarpanch of village Bhairawal was received. Thereafter, he was asked to submit fresh application for resignation from the post of Sarpanch of village Bhairawal. The resignation of the petitioner from the post of Sarpanch of village Bhairawal was accepted with effect from 16.3.1995. The petitioner after putting pressure through the Transport Minister, Punjab, succeeded in joining the duty on 7.10.1993 against the rules. Respondents justified their action.

I have heard the learned counsels for both the parties and have also carefully gone through the file.

The admitted facts are that the petitioner submitted the resignation on 15.1.1993 and deposited 3 months' salary in lieu of notice. The resignation was accepted on 15.1.1993 with effect from 16.1.1993. It is also not disputed that thereafter the petitioner contested the election and was

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elected as Sarpanch of village Bhairawal. However, thereafter, the petitioner moved an application on 7.4.1993 (Annexure-P-2) before the then Transport Minister, Punjab, requesting him that earlier his domestic affairs were not good and now the family circumstances are good, therefore, he may be permitted to withdraw his resignation within three months. The then Transport Minister, Punjab, passed the order to the Divisional Manager, Ferozepur, that his resignation may not be accepted. Consequently, he was informed, vide letter 23.7.1993 (Annexure-P-3) that his resignation is not accepted. The perusal of letter dated 7.10.1993 (Annexure-P-4) shows that probably, the General Manager, Punjab Roadways, Tarn Taran Depot, first asked the petitioner to resign from the office of Sarpanch. Therefore, the petitioner informed the General Manager, Punjab Roadways, Tarn Taran Depot that he has already submitted the resignation from the post of Sarpanch of village Bhairawal, as demanded by you. He also annexed the copy of the resignation letter and requested the General Manager, Punjab Roadways, Tarn Taran Depot, to allow him to join the duty. The General Manager, Punjab Roadways, Tarn Taran Depot accordingly, vide letter dated 23.7.1993 (Annexure-P-3), allowed the petitioner to join the duty. The charges mainly shows that the withdrawal of resignation of the petitioner by the General Manager, Punjab Roadways, Tarn Taran Depot was against the rules and that he put pressure of the then Transport Minister, Punjab on the General Manager, Punjab Roadways, Tarn Taran Depot for allowing him to withdraw the same. Further that his resignation from the post of Sarpanch of village Bhairawal was infact accepted on 16.3.1995 and that the petitioner could not hold the post of Sarpanch while in service. It is also alleged against the petitioner that the petitioner cheated the

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department by resigning the post to contest the elections for Sarpanch of village Bhairawal and then put the pressure of the then Transport Minister, Punjab and got his resignation withdrawn and also received salary for the period from 16.1.1993 to 16.3.1995. The perusal of the abovenoted letters shows that though at the time of resuming the duty in the office of the General Manager, Punjab Roadways, Tarn Taran Depot, the petitioner had not resigned from the post of Sarpanch of village Bhairawal, but when it was demanded by the office of the General Manager, Punjab Roadways, Tarn Taran Depot, he submitted the resignation on 29.9.1993 and annexed the copy of the same alongwith the letter dated 7.10.1993 (Annexure-P-4). In this way, the petitioner did not conceal the fact that he was elected as a Sarpanch of village Bhairawal and that he has now resigned from the said post. Thereafter, it was the duty of the General Manager, Punjab Roadways, Tarn Taran Depot to verify before allowing the petitioner to join the duty as to whether the resignation of the petitioner from the post of Sarpanch has been accepted or not and whether pending the acceptance of the resignation, the petitioner should be allowed to join or not. However, the General Manager, Punjab Roadways, Tarn Taran Depot in his wisdom passed the order on 7.10.1993 (Annexure-P-4), allowing the petitioner to join the service, which the petitioner did. It appears that the resignation of the petitioner from the post of Sarpanch of village Bhairawal remained pending before the District Development Panchayat Officer, Amritsar, and was not accepted and was ultimately accepted on 16.3.1995. The inquiry report dated 27.1.2000 (Annexure-P-12) does not show that from 7.10.1993, when the petitioner joined the service till the acceptance of resignation with effect from 16.3.1995, the petitioner had performed any

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duty of Sarpanch. It appears that after submitting the resignation, the petitioner did not perform the duty of Sarpanch and started attending the office. In this way, the petitioner did not deceive respondents, as claimed in the chargesheet. If the General Manager, Punjab Roadways, Tarn Taran Depot failed to perform his duty, the petitioner is not to be blamed for the same.

Further, it comes out that under Rule 7.5 (4) of the Punjab Civil Services Rules, Volume-I, Part-I, an employee can be allowed to withdraw the resignation provided that the absence between the date on which the resignation became effective and the date on which the person is allowed to resume duty as a result of permission to withdraw the resignation is not more than 90 days. The application for withdrawal has to be filed within two months of being relieved and the same should be processed within a period of one month. The relevant extract from the said rule is reproduced as under :-

“(4) The appointing authority may permit a person to withdraw his resignation in public interest on the following conditions, namely :-

- (i) that the resignation was tendered by the Government employee for some compelling reasons which did not involve any reflection on his integrity, efficiency or conduct and the request for withdrawal of the resignation has been made as a result of a material change in the circumstances which originally compelled him to tender the resignation;
- (ii) that during the period intervening between the date on which the resignation became effective and the date from which the request for withdrawal was made, the conduct of the person concerned was in no way improper;

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- (iii) that the period of absence from duty between the date on which the resignation became effective and the date on which the person is allowed to resume duty as a result of permission to withdraw the resignation is not more than ninety days ;
- (iv) that the aforementioned period of ninety days shall be observed in the manner that the employee concerned should put in his application for withdrawal of resignation within two months of being relieved and the same should as far as possible be processed within a period of one month; and
- (v) that the post, which was vacated by the Government employee on the acceptance of his resignation or any other comparable post, is available.”

Rule 20 of the Government Employees (Conduct) Rules, 1966, is reproduced as under :-

“Rule 20 - No Government employee shall bring or attempt to bring any political or other influence to bear upon any superior authority to further his interests in respect of matter pertaining to his service under the Government.”

It is argued on behalf of the State that the permission to allow the withdrawal of the resignation was not as per Rule 7.5 (4) of the Punjab Civil Services Rules, Volume-I, Part-I, reproduced above.

I am of the view that the petitioner had moved the application within less than three months before the Transport Minister, Punjab. It is usual practice of the public to approach the highest officer for their problem. Therefore, the application was filed before the Transport Minister, Punjab. The General Manager, Punjab Roadways, Tarn Taran Depot was not bound to pass any order against the rules. If the rules have been violated, then for the same, the General Manager, Punjab Roadways, Tarn Taran Depot, who

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allowed the withdrawal of the resignation and allowed the petitioner to join the duty, is responsible for the lapse. However, the petitioner did not deceive the office. The chargesheet was served on 1.9.1997, i.e. nearly four years after the petitioner was allowed to join the duty.

So far as the political influence is concerned, the perusal of the inquiry report does not show that the said allegations were proved. The concerned General Manager Harjinder Singh Hind, while appearing as PW3, did not admit that he acted under the political pressure. Rather, he stated that for the political pressure, case file may be perused. The mere fact that the application was marked by the then Transport Minister, Punjab, to the General Manager, Punjab Roadways, Tarn Taran Depot does not mean that the General Manager was bound not to follow the rules. The directions of the then Transport Minister, Punjab, were in the form of request, asking that the resignation may not be accepted. In this case, the resignation was already accepted and the General Manager, Punjab Roadways, Tarn Taran Depot could easily deal with application, stating that the resignation has already been accepted. There was no direction from the then Transport Minister, Punjab, that the petitioner should be allowed to withdraw the resignation. Therefore, the fault, if any, was on the part of the then General Manager, Punjab Roadways, Tarn Taran Depot, who allowed the withdrawal of the resignation and allowed the petitioner to join the duty. The said General Manager during the inquiry did not assert that he acted under the political pressure. Though, generally the Courts do not interfere in the findings. However, in exceptional cases, where the findings are against record and against the principles of natural justice, the Courts can always interfere in the same to set the things right. Here, there is no

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evidence of the political pressure. The fault, if any, was on the part of the then General Manager, Punjab Roadways, Tarn Taran Depot, who allowed the petitioner to withdraw the resignation and allowed him to join the duty without verifying the resignation of petitioner from the post of Sarpanch of village Bhairawal. The petitioner cannot be blamed for the same.

Hence, the impugned inquiry report dated 27.1.2000 (Annexure-P-12) alongwith impugned order dated 19/28.4.2000 (Annexure-P-17), terminating the services of the petitioner and ordering the recovery of salary for the period from 16.1.1993 to 16.3.1995, followed by the orders of the appellate authority dated 25.1.2005, 16.2.2005 and 12.2.2014 (Annexures-P-20, P-21 and P-23) are hereby quashed and consequently, the termination of service of the petitioner and the order of recovery of salary is held to be illegal. In this case, the petitioner had already attained the age of superannuation and died during the pendency of the present writ petition. Therefore, it is ordered that the petitioner shall be deemed to have retired from service on attaining the age of superannuation. Consequently, he shall be entitled to pension and other pensionary benefits, now to be paid to his legal heirs. Further, the legal heirs of the petitioner shall also be entitled to the family pension on account of death of the petitioner. The recovery, if any, made from the petitioner in pursuance to the impugned order shall also be refunded with interest at the rate of 9% per annum.

In view of the matter, the present writ petition is allowed.

(KULDIP SINGH)
JUDGE

18.4.2017

sjks

Whether speaking / reasoned	:	Yes
Whether Reportable	:	No