

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 7047 of 2015
Date of Decision: April 26, 2017

Rohtas Singh

... Petitioner

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Ashwani Prashar, Advocate,
for the petitioner.

Mr. Suvir Sehgal, Advocate,
for the respondents.

P.B. Bajanthri, J. (Oral)

1. In the instant writ petition, petitioner has questioned the validity of order dated 15.09.2014 (Annexure P/26) and further sought for directions to the respondents to consider name of the petitioner for promotion to the post of Deputy Superintendent w.e.f. 05.10.2007, from the date petitioner's juniors were promoted and also for regulating the intervening period from 11.07.2012 to 17.09.2012.

2. Petitioner was subjected to the disciplinary proceedings and it was concluded in imposing the penalty of dismissal from service on 25.06.2012. Feeling aggrieved by the order of disciplinary authority, petitioner had preferred an appeal. In appeal, petitioner's appeal was partly allowed by modifying the penalty of dismissal to that reduction of pay. Further, petitioner had questioned the validity of appellate authority's order dated 12.09.2012 in a writ petition and the writ petition was dismissed in

limine. Thereafter, he had filed an L.P.A. and the same was disposed of on 22.05.2014 directing the appellate authority to pass a fresh order on the petitioner's appeal. In this backdrop, the appellate authority passed an order on 15.09.2014. While modifying the earlier order to the extent salary of the petitioner, Assistant is reduced to Rs.9300/- + Grade Pay 3200/- per month i.e. initial start of time scale of the Assistant which he will draw for a period of five years without any annual increment and after expiry of this period of five years, he will start earning annual increments afresh i.e. the reduction will have the effect of postponing the future increments of his pay as applicable at that time. Said order is under challenge in the present petition.

3. Learned counsel for the petitioner submitted that before passing order dated 15.09.2014 (Annexure P/26), petitioner has not been heard in the matter for the reason that earlier order of appellate authority is being modified at the behest of L.P.A. Bench's decision. Any modification of penalty order has a civil consequence, therefore, petitioner is entitled for notice, the same has not been complied by the appellate authority. Further it was contended that modified penalty dated 15.09.2014 is impracticable to implement the same for the reason that petitioner has attained the age of superannuation and retired from service on 29.02.2016, whereas the punishment is for a period of five years from the date of 12.09.2012. Thus, there is a total non-application of mind by the appellate authority. Consequently, order dated 15.09.2014 (Annexure P/26) is liable to be set aside.

4. Per contra, learned counsel for the respondents submitted that in the L.P.A decision, there is no direction for issuance of show cause notice to the petitioner before passing a fresh order in appeal. Consequently,

contention of the petitioner that he has not been heard in the matter before passing order dated 15.09.2014 (Annexure P/26) is not tenable. Learned counsel for the respondents has no say insofar as impracticability of implementation of order dated 15.09.2014 for the admitted reason that order dated 15.09.2014 cannot be implemented on the count that petitioner has attained the age of superannuation and retired from service on 29.02.2016.

5. Heard learned counsel for the parties.

6. Short question for consideration in the present petition is whether order dated 15.09.2014 (Annexure P/26) is in accordance with law or not?

7. Appellate authority while implementing the LPA decision modified certain penalty. By imposing such penalty, petitioner's right is likely to be affected and he has civil consequences, thus he is entitled for notice. Even assuming LPA Bench has not given directions to the appellate authority for issuance of show cause notice, it is deemed that afresh order is required to be passed in accordance with law. In other words, while passing modified order, likely to be affected person is entitled for notice. Therefore, on the ground of not issuing notice to the petitioner before passing order dated 15.09.2014 (Annexure P/26) is liable to be set aside. Further impracticability of implementation of order dated 15.09.2014 (Annexure P/26) is evident from the fact that petitioner has attained the age of superannuation and retired from service on 29.02.2016, therefore, question of penalty imposed vide order dated 15.09.2014 could not be enforced for five years which would be beyond the age of retirement of the petitioner. Thus, order dated 15.09.2014 issued by the appellate authority is without application of mind.

8. Accordingly, order dated 15.09.2014 (Annexure P/26) is set aside. Concerned respondent/appellate authority is directed to re-examine the matter having regard to the fact that petitioner has attained the age of superannuation and retired from service on 29.02.2016 and pass an appropriate order within a period of three months from today.

9. Instant writ petition stands allowed.

April 26, 2017
vkd

[P.B. Bajanthri]
Judge

Whether speaking / reasoned : Yes

Whether reportable : Yes