

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CM-4774-LPA-2016 in/and
LPA No.2305 of 2016 (O&M)**

Date of Decision: 03.02.2017

Vijay Kumar Hari

... Appellant

VS.

Director, Department of Rural
Development and Panchayats, Punjab & Ors.

... Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE SUDIP AHLUWALIA**

Present: Mr. Onkar Rai, Advocate for
Mr. Vijay Kumar Chaudhary, Advocate for the appellant

SURYA KANT, J. (Oral)

(1) The appellant was working as Junior Assistant in the Department of Rural Development and Panchayats. Departmental action was taken against him and having been found guilty of the charges, the disciplinary authority reduced him to the rank of Senior Clerk. The appellate authority took *suo motu* action as to why punishment be not enhanced and the appellant be not 'removed from service'. Eventually the appellant was removed from service vide order dated 16.03.1997 which was set aside by this Court in a writ petition with a direction to the appellate authority to pass fresh order after hearing the appellant. The appellate authority reiterated its decision to remove the appellant from service and passed the order dated 16.09.1998 to this effect.

(2) The appellant again challenged that order and as an interim relief this Court stayed the operation of impugned order of removal dated 16.09.1998. Resultantly the appellant continued to serve as Senior Clerk. During the pendency of the writ petition, the appellant attained the age of superannuation and he retired as Senior Clerk w.e.f. 31.12.2008.

(3) The writ petition challenging the order of removal from service was finally decided on 13.09.2013 whereby this Court set aside the order of removal and restored the order of disciplinary authority vide which the appellant was reduced in rank from the post of Junior Assistant to Senior Clerk. After the decision of this Court on 13.09.2013, the retiral benefits of the appellant were released mostly on 13.01.2014.

(4) The appellant filed writ petition claiming interest on the delayed payments of retiral benefits during from 2008 till 2014. Learned Single Judge has accepted the claim but in part granting interest to the appellant w.e.f. 13.09.2013 to the actual date of payment.

(5) Still aggrieved, the instant intra-court appeal has been filed.

(6) We have heard learned counsel for the appellant and gone through the record.

(7) It is undeniable that the question whether the appellant was liable to be treated to have been removed from service or stood retired from service was, *sub judice* before this Court in a writ petition till it was decided on 13.09.2013. Had this Court upheld the order of removal, the appellant would have been entitled to most of the retiral benefits. However, once that order was set aside, the authorities rightly released the retiral benefits though after some delay for which the interest has been duly awarded by learned Single Judge.

(8) The principle of *actus curiae neminem gravabit* applies with full force in the instant case. The respondents cannot be burdened with interest liability on the premise that this Court decided the case in September, 2013 i.e. five years after the appellant attained the age of superannuation. In these circumstances, the view taken by learned Single Judge is plausible and calls for no interference.

(9) The appellant's reliance on the decision dated 16.02.2012 in LPA No.1993 of 2011 (Ram Narian vs. State of Haryana & Anr.) is wholly misconceived as that was a case where criminal proceedings were pending and meanwhile the affected employee stood retired from service.

(10) It is well settled that a person is presumed innocent until found guilty. In the cited case, the employee was acquitted by the trial court and in those circumstances, this Court has held that he was entitled to interest. In the case in hand, the order of removal stood passed against the appellant way back in the year 1998 and the matter remained *sub judice* till September, 2013.

(11) No case to interfere with the order passed by learned Single Judge is made out.

(12) Dismissed.

(Surya Kant)
Judge

03.02.2017
vishal shonkar

(Sudip Ahluwalia)
Judge

1. Whether speaking/reasoned?
2. Whether reportable?

Yes
No