

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

207

RSA No.3771 of 2012 (O&M)

Date of Decision : 08.11.2017

Sukhdev Singh Conductor

..... Appellant

Versus

Pepsu Road Transport Corporation, Patiala
and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Rajesh Sehgal, Advocate
for the appellant.

Mr. Harsh Aggarwal, Advocate
for the respondent.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the concurrent judgments of the Courts below dismissing the suit of the appellant challenging the order of his dismissal.

On 21.01.2013, the following order was passed :-

“CM No.10148-C of 2012

Application is allowed as prayed for.

RSA No.3771 of 2012

Learned counsel for the appellant has limited his prayer to the extent that removal of the appellant may be treated as discharge and his service period of 20 years may be considered towards pension.

Notice of motion for 12.03.2013.”

Today I put it to the learned counsel for the respondents whether at the time of passing the order of dismissal the period of service which had been rendered by the appellant was taken into consideration.

Learned counsel for the respondents has fairly accepted that no such consideration is apparent from the punishment order.

Learned counsel for the appellant has accepted that the only thing which has to be done is that a fresh order has to be passed since his reply to the show cause notice etc. is already on the record. He has relied upon *Sushila Sharma Vs. State of Haryana, 2011(2) S.C.T. 745* and *State of Punjab and others Vs. Pehla Singh, Ex.ASI, 2012 (22) S.C.T. 572*. He has also relied upon the judgment of this Court in the matter of *Virender Singh Vs. State of Haryana and others, 2014(1) S.C.T. 561* to contend that while giving punishment the length of service of the appellant should also be taken into consideration. Relevant paras of the same reads as follows :-

“4. The argument of learned senior counsel for the petitioner is that now on two occasions this Court had held that though the petitioner did not deserve to be continued in service yet it had also set aside the dismissal order passed by the authorities since the only misconduct against the petitioner was of absence of 7 months and this misconduct cannot be termed to be gravest act of misconduct so as to justify dismissal. On two occasions the respondents had declined the claim of the petitioner for the grant of pension only on the ground that the petitioner did not have 20 years service. Learned senior counsel for the petitioner has further argued that the period of 20 years service is important only for the purpose of seeking voluntary retirement but would have no relevance in the case like the present, more so since this Court

*had repeatedly indicated that it would be for the respondents to consider the gravity of the single misconduct of 7 months' absence against the previous record of the petitioner as also the fact that he had enough service to have earned the pension. In his submission, the respondents have repeatedly misdirected themselves in considering the case of the petitioner for pension only against the parameters provided for voluntary retirement. Learned senior counsel for the petitioner has relied upon the judgment of this Court in the matter of **Dhan Singh v. State of Haryana and others, 2009(2) SLR 40**, wherein the following observations have been made:-*

“17.....However, the authorities have not applied their mind and not taken into consideration the length of service of the petitioner and his right to pension while awarding the punishment. It has been stated by the petitioner in ground of this petition that he has rendered 11 years 9 months service. No rule has been brought to our notice that the petitioner is not entitled to any pensionary benefits for rendering about 12 years of service. Giving consideration to the length of service, the right to pension is inherent under Rule 16.2 itself and thus it cannot be ignored.”

*5. He has further relied upon the judgment of this Court in the matter of **Rajinder Kumar v. State of Haryana and others**, passed in C.W.P. No.16511 of 1997, decided on 26.05.2009, where also in a similar circumstances this Court had set aside the order whereby the employee had been dismissed without considering his case for pension.”*

In the circumstances, I set aside the order of punishment and remand the matter back to the punishing authority to pass a fresh order after considering the length of service of the appellant. Let the necessary order be passed in accordance with law within a period of three months from the date of receipt of certified copy of this judgment. It is made clear that in case the order is not passed within the aforesaid time the appellant will be

entitled to Rs.10,000/- per month as damages from the respondents till the order is passed.

Appeal is allowed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

08.11.2017

Pooja sharma-I

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No