

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP No.12270 of 2016
Date of Decision: 31.10.2018**

BHIRA SINGH

.....Petitioner.

**VS.
STATE OF PUNJAB AND OTHERS**

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Mr. Rakesh Kumar, Advocate
for the petitioner.

Ms. Deepali Puri, Addl. Advocate General, Punjab.

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TEJINDER SINGH DHINDSA,J.(ORAL)

Notice of motion in the instant petition was issued on 01.08.2016, for 02.12.2016. Order-sheet reveal that repeated adjournments were sought for and granted to the State for filing the reply. During the course of hearing today, yet another opportunity was sought for filing reply. There would be no justification to afford any further time to State to file response to the writ petition which had been instituted in the year 2016.

Petitioner was serving as Chowkidar and had filed the instant petition assailing his termination order. Accordingly, this Court is constrained to proceed further in the matter.

Facts of the case lie in a narrow compass. Petitioner was appointed as Chowkidar in Village Ghuman, Teshil Batala, District Gurdaspur. Vide order dated 20.07.2009, passed by the Sub Divisional Magistrate his services were terminated. Petitioner preferred an appeal against the order of termination before the Deputy Commissioner, Gurdaspur. Earlier in point of time, petitioner preferred CWP No.10604 of 2010 before this Court assailing the order of termination dated 20.07.2009 passed by the Sub Divisional Magistrate, Batala. However, such writ

petition was dismissed on 27.11.2012 only on account of pendency of the appeal. The order dated 27.11.2012 passed by this Court in CWP No.10604 of 2010 specifically states that since the appeal filed by the petitioner is still pending, let petitioner pursue his appeal. It would be apposite to reproduce the order passed by the Writ Court on 27.11.2012 while dismissing CWP No.10604 of 2010:-

“The appeal filed by the petitioner is still pending. In this view of the fact, the order dismissing this writ petition for non-prosecution on 06.09.2012 is recalled and the writ petition is restored to its original position and is taken up for hearing.

Since the appeal filed by the petitioner is still pending, let the petitioner pursue his appeal.

The writ petition is dismissed at this stage in view of the pendency of the appeal.”

It so transpires that the appeal which was preferred by the petitioner has been dismissed by the Additional Deputy Commissioner, Gurdaspur vide order dated 12.03.2015 (Annexure P-11).

It is against such brief factual backdrop that the instant writ petition has been filed assailing the order of termination dated 21.07.2009 passed by the Sub Divisional Magistrate, Gurdaspur (Annexure P-4) as also the order passed by the Appellate Authority dated 12.03.2015 (Annexure P-11).

Having heard counsel for the parties at length, this Court is of the considered view that the order passed by the Appellate Authority dated 12.03.2015 cannot sustain. The operative part of the order passed by the Appellate Authority and the reasoning furnished therein is to the

following effect:-

“The after receiving the appeal, and the record of Lower court, was summoned, the counsel of the appellant also submitted the written argument, which is taken on record, and same has been perused, and the counsel for the appellant repeated the earlier stand, the record was examined, in which it has been found that the CWP No.10604 of 2010, filed by the appellant in the Hon'ble Punjab and Haryana High Court, which has been dismissed, and in view of that, no case is made, out to interfere in the order dated 20.07.2009 passed by the Sub Divisional Magistrate, Batala, the order passed dated 20.07.2009, is upheld, and the appeal is dismissed, the lower court record be sent alongwith order, to them, and the file of this court, be consigned to record room.”

Dated :12.03.2015

Sd/-
Additional Deputy Commissioner
Gurdaspur

Learned State counsel does not dispute that the only basis for dismissal of the appeal by the Additional Deputy Commissioner, Gurdaspur is that Writ Petition No.10604 of 2010 filed by the petitioner earlier in point of time had been dismissed.

Such reasoning is clearly misconceived.

The order dated 27.11.2012 passed by the writ Court while dismissing CWP No.10604 of 2010 and which has been reproduced hereinabove would clearly show that this Court had not examined the validity of the order of termination on merits and proceeded to dismiss the petition to enable the petitioner to pursue his remedy of appeal. The Appellate Authority as such was obligated to examine the appeal, grounds mentioned therein and thereafter to pass a reasoned and speaking order. It is such obligation that the Appellate Authority has not discharged.

In view of the above, order dated 12.03.2015 passed by the Additional Deputy Commissioner, Gurdaspur at Annexure P-11 cannot sustain and is set aside.

The matter is remanded back to the Deputy Commissioner, Gurdaspur to take decision afresh on the appeal dated 30.04.2010 (Annexure P-8) that the petitioner had preferred against his order of termination. The exercise of fresh consideration and passing of final order would be taken within a period of four months from today and after affording an opportunity of personal hearing to the petitioner.

Writ petition is allowed in the aforesaid terms.

31.10.2018

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(TEJINDER SINGH DHINDSA)

JUDGE

Whether speaking/reasoned?

Yes/No

Whether reportable?

Yes/No