

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

CWP-21794-2015

Date of Decision:29.10.2018

Charan Singh

... Petitioner

Vs.

Presiding Officer and another

... Respondents

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

Present : Ms. Amanpreet Kaur, Advocate for the petitioner.

Mr. Madan Gupta, Advocate for respondent No.2.

P.B. BAJANTHRI J. (Oral)

On 26.7.2018, following order was passed:

“Pursuant to the order dated 21.03.2018, respondent-Bank is not in a position to apprise this Court relating to proposal of dismissal from service to that of compulsory retirement or not. Therefore, matter is required to be heard on merit. At this stage, learned counsel for the respondent-Bank submitted that Branch Manager is empowered with reference to bi-partite settlement among the parties read with the circular where Branch Manager is empowered to initiate inquiry against the petitioner with reference to the circular. Therefore, there is no infirmity in respect of initiation of inquiry proceedings read with circular which is outcome of bi-partite settlement. Circular cannot over-ride the statutory rules in respect of identifying disciplinary authority/appointing authority. Therefore, aforesaid contention is hereby dismissed.

At this stage, learned counsel for the respondent seeks time to verify the date of superannuation. If the petitioner is in service having regard to the statement made by learned counsel for the petitioner that if he is in service he would have attained age of superannuation and retired from service on 02.02.2004. Whereas order of dismissal is dated 01.06.2004. In this background, whether disciplinary rules are applicable against retired employee or not is required to be examined. Therefore, learned counsel for the respondent-bank is directed to produce

*complete regulation relating to disciplinary proceedings.
List this matter on 16.08.2018”*

2. Thereafter, on 16.8.2018, following order was passed:

“Learned counsel for the respondents-Bank today furnished order of appointment of the petitioner. Persual of the same, it is evident that petitioner has been appointed by the Chief Manager, who is undisputedly higher than the Branch Manager, who has initiated proceedings against the petitioner. Therefore, initiation of inquiry by the Branch Manager which would go to the root of the matter to the extent that it was without jurisdiction. Consequently, all the proceedings drawn by the respondents-Bank and Labour Court would vitiate. In view of these facts and circumstances and the fact that if petitioner's date of birth is taken as 02.02.1945 even in that event petitioner would be retiring on 28.02.2005. In order to give quietus to the litigation, respondents have to come with a proposal that petitioner is entitled to certain benefits with reference date of dismissal i.e. 01.06.2004 read with the date of age of superannuation on 28.02.2005 had be been in service.

List this matter on 18.09.2018.”

3. Today, learned counsel for the respondent-Bank submitted that matter could be decided on merit.

4. Learned counsel for the respondent-bank submitted that by virtue of circular, Branch Manager has been entrusted power of appointment to the post of Security Guard. Therefore, Branch Manager has acted upon the circular in terms of the bi-partite settlement.

5. The aforesaid contention cannot be appreciated for the reasons that petitioner/security guard has been appointed under specific regulation and circular cannot over-ride regulation. If regulation read with petitioner's appointment is taken into consideration, in that event, Branch Manager is

not the appointing authority or disciplinary authority for the purpose of taking action against security guard. Chief Manager who had appointed the petitioner would be the disciplinary/appointing authority. Further in the absence of amendment to the regulation by means of circular, respondent-bank cannot identify the disciplinary/appointing authority in respect of particular post. Therefore, in the present petition appointing authority/disciplinary authority to the post of security guard would be Chief Manager and not the Branch Manager who has taken all the proceedings like initiation of inquiry till dismissal from service.

4. Short question for consideration in the present petition which would go to the root of the matter relating to taking disciplinary action by the competent authority or not?

5. Respondent-Bank have not apprise this Court whether Senior Divisional Manager who has appointed the petitioner has initiated the proceedings or not? On the other hand, it is evident that Annexure P-2 by which inquiry has been initiated by Branch Manager. If very initiation of inquiry is without jurisdiction, all further proceedings would vitiate as held by the Supreme Court in the case of **Chairman-cum-Managing Director, Coal India Limited and others** v. **Ananta Saha and others**; (2011) 5 SCC

142. Paras 32 and 33 reads under:

*“32. It is a settled legal proposition that if initial action is not in consonance with law, subsequent proceedings would not sanctify the same. In such a fact situation, the legal maxim *sublato fundamento cadit opus* is applicable, meaning thereby, in case a foundation is removed, the superstructure falls.*

33. In Badrinath v. Govt. of T.N this Court observed that once the basis of a proceeding is gone, all consequential acts, actions orders, would fall to the ground automatically and this

principle of consequential order which is applicable to judicial and quasi-judicial proceedings is equally applicable to administrative orders. (See also State of Kerala v. Puthenkava N.s.S. Karayogam and Kalabharati Advertising v. Hemant Vimalnath Narichania)."

6. Having regard to the principles laid by the Supreme Court in the aforesaid decision from the initiation of proceedings till passing of dismissal from service would vitiate. Therefore, question of reinstating the petitioner do not arise having regard to the fact that petitioner has already aged about 72 years. Therefore, petitioner is entitled to only monetary benefits as if he is in service from the date of dismissal till he attains the age of superannuation and retired from service. He is not entitled to interest on arrears for the reasons that there is a marginal delay in approaching Court. Whereas delay would not be hurdle to quash proceedings as it was without authority of law.

7. Thus, petitioner has made out a case for quashing award dated 16.3.2015, 18.12.2004 and 1.6.2004 and orders/decisions are set aside. Petition stands allowed accordingly. Concerned respondent is hereby directed to calculate the monetary benefits which is due to the petitioner if he had been in service from the date of dismissal till the date of retirement. Monetary benefits shall be disbursed within a period of four months from today. Failing which petitioner is entitled to interest @ 9% per annum after four months from today.

29.10.2018
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**