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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-26286-2015

Date of Decision : July 13, 2018

Gian Chand

.... Petitioner.

Versus

Union of India and others.

.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. Somnath Saini, Advocate
for the petitioner.

Ms. Ranjana Shahi, Advocate,
for the respondent-UOI.

SHEKHER DHAWAN, J.

Present writ petition under Article 226/ 227 of the Constitution of India is for issuance of a writ in the nature of certiorari to quash order dated 21.12.2006 (Annexure P/8) passed by the Punishing Authority, respondent no.2 and order dated 17.1.2014 (Annexure P/10) passed by Appellate Authority, respondent No.3 with a further prayer to direct the respondents to reinstate the petitioner to the post from which his services were terminated with all consequential benefits including full back wages with 12% interest per annum.

2. The petitioner was working as a Safai Karamchari (Sweeper) in the Cantonment Board, Ambala w.e.f. 17.04.1987 and he served the

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Board till 30.09.2006, when he was dismissed from service vide order, annexure P/8 after following disciplinary proceedings, i.e., issuance of charge sheet, holding of regular enquiry and issuance of show cause notice and personal hearing.

3. Learned counsel for the petitioner, while assailing the impugned orders, Annexure P/8 and P/10 passed by the Punishing Authority and Appellate Authority respectively mainly took the plea that the allegations against the petitioner were those of absence from duty for short period and even the enquiry proceedings were conducted which were not fair. Rather, the same were biased as the petitioner was a union leader and respondents wanted to get rid off him. The disciplinary proceedings were just formality. More so, the punishment awarded to the petitioner is disproportionate keeping in view the length of service rendered by the petitioner with the respondents. So, the impugned orders, Annexure P/8 and P/10 are liable to be set-aside.

4. While arguing on these points, learned counsel representing the respondents contended that the disciplinary proceeding were initiated against the present petitioner and he was given opportunity to file reply to the charge sheet and thereafter, he was duly associated in the enquiry proceedings and on the basis of the enquiry report, show cause notice was issued to him and thereafter punishment of dismissal was initially awarded to him. However, on an appeal filed by the petitioner, the said punishment was reduced to that of compulsory retirement and now, the petitioner is entitled to receive pensionary benefits. Otherwise, there are no grounds to set-aside the well reasoned orders, Annexure P/8 and P/10

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and the present writ petition is without any merit and deserves to be dismissed.

5. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that most of the facts are not disputed that the petitioner was appointed as Sweeper on 17.4.1987 and he remained in the employment with the respondents till 30.09.2006. He was issued a charge sheet for certain lapses and disciplinary proceedings were initiated against him for major penalty. Regular enquiry was conducted in which the petitioner was duly associated. On the basis of enquiry report, a show cause notice was issued to the petitioner and thereafter, respondent No. 2 (Punishing Authority) passed the impugned order Annexure P/8 dismissing the petitioner from service. In the appeal proceedings, the punishment of dismissal from service has been reduced to compulsory retirement by respondent No. 3 vide order Annexure P/10.

6. Learned counsel for the petitioner could not point out any irregularity in the enquiry proceedings. Law on the point is settled that in such like cases of disciplinary proceedings, the role of the Courts is restricted because it is for the employer to decide the issue and the Court is to see that the employee/workman has been given due opportunity to defend his case and proper enquiry has been conducted. As there is no illegality in the enquiry proceedings and the charges levelled against the petitioner have been proved during the enquiry proceedings, the punishment of compulsory retirement awarded to the petitioner calls for no interference.

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7. In **Tata Oil Mills Co. Ltd. v. Workmen and Anr., 1964 (2) SCR 125**, the Hon`ble Apex Court observed that in the matter of order of discharge of an employee, the form of the order is not decisive. It further observed that an Industrial Tribunal has jurisdiction to examine the substance of the matter and decide whether the termination is in fact discharge simpliciter or it amounts to dismissal which has put on the cloak of discharge simpliciter. It was further observed that the test always has to be whether the act of the employer is bona fide or whether it is a mala fide and colourable exercise of the powers conferred by the terms of contract or by the standing orders. However, in some cases, the termination of the employee's services may appear to the Industrial Court to be capricious or so unreasonably severe that an interference may legitimately and reasonably be drawn that in terminating services, the employer was not acting bona fide and the test always has to be whether the act of the employer is bona fide or not. The same test has been reiterated in **Tata Engineering & Locomotive Company Ltd. Vs. S.C. Prasad, (1969) 2 LLJ 799** ; **L. Michael Ltd. v. Johnson Pumps Ltd., AIR 1975 SC 661**; and **Gujarat Steel Tubes v. Gujarat Steel Tubes Mazdoor Sangh (1980) 1 LLJ 137 (SC)**.

8. In **L.K. Verma v. H.M.T. Ltd. (2006) LLR 296 (SC)**, Hon`ble Apex Court observed as under :-

“..as regards the quantum of the punishment is concerned suffice it to say that verbal abuse has been held to be sufficient for inflicting a punishment of dismissal. Once the appellant accepted that he had made utterances which admittedly lack civility and he also threatened a superior officer it was for him

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to show that he later on felt remorse therefore and should have tendered an apology.”

9. Applying the same principle of law to the present set of facts, it is crystal clear that the general trend of judicial decisions is to minimize the interference when the punishment is not harsh and definitely for charges that are leveled against the respondent and in the instant matter, punishment of compulsory retirement is absolutely not shocking to the conscience of the Court. There is nothing available on the file that the respondents were biased or not acted bona fide while initiating disciplinary proceedings against the petitioner.

10. In view of the above, there are no grounds to interfere or set-aside the impugned orders, Annexure P/8 and P/10, and the present writ petition stands dismissed being devoid of any merit.

(SHEKHER DHAWAN)
JUDGE

July 13, 2018.
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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes