

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

CWP No. 6486 of 2019

Date of Decision: 11.03.2019

Harbans Lal

...Petitioner

Vs.

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. Maninder Singh Bajwa, Advocate
for the petitioner.

RAJIV NARAIN RAINA, J. (Oral)

1. Petitioner has approached this Court by way of the present petition filed under Article 226 of the Constitution challenging the impugned order of dismissal from service based on conviction on a criminal charge. He was a subordinate court employee in Sessions Division Amritsar.

2. The brief facts of the case are that petitioner joined service in the staff of the subordinate courts at Amritsar on 15.01.1977. He earned promotions till the post of Reader. While working as Reader in the Court of a Judge he was arrested on an employment related criminal charge in FIR No. 16 dated 18.02.2005 under Sections 7, 13(2), 12 of the Prevention of Corruption Act, 1988 registered at Police State Vigilance Bureau, Amritsar. Upon a trial before the Special Court, Amritsar, he was convicted and sentenced on 14.09.2009 to undergo rigorous imprisonment for a period of 2 years and to pay a fine of

Rs.2,500/- under Section 13(1) (a) of the Act. Aggrieved, petitioner filed Criminal Appeal before this Court bearing No. CRA-2356-SB of 2009, which was dismissed by judgment and order dated 06.09.2011 maintaining the conviction. Learned counsel for the petitioner submits that the appeal SLP No.2300 of 2012 filed by the petitioner before the Supreme Court was also dismissed and subsequently Curative Petition (Criminal) No.35 of 2014 in Review Petition (Criminal) No.223 of 2014 in SLP No.2300 of 2012 was also dismissed by the Supreme Court on 25.09.2014. Thus, the conviction has been upheld till the Supreme Court.

3. On the basis of the conviction and sentence recorded on 14.09.2009 by the Special Court, Amritsar, the petitioner was dismissed from service after considering the conduct which led to his conviction on the charge of corruption. The dismissal order was passed by the District and Sessions Judge, Amritsar on 07.10.2009 acting in exercise of power conferred by Rule 13(1) of the Punjab Civil Services (Punishment & Appeal) Rules, 1970 as the punishing authority by forming opinion that the conviction had rendered the petitioner's further retention in public service undesirable. It was further ordered that dismissal will be a disqualification for employment in Government service in future. It was further ordered that the official concerned shall not be entitled to any other amount except what was already paid to him during his suspension period and till the date of dismissal from service.

4. It may be recorded that on the administrative side the service appeal filed by the petitioner against the order of dismissal from service was carried before the Hon'ble Administrative Judge of Amritsar Sessions Division who rejected the appeal by order dated 23.04.2010. Learned counsel for the petitioner submits that an application for review of the order dated 23.04.2010 filed by the petitioner was also dismissed by this Court and upheld by the Supreme Court (though the fact is pleaded in the petition but the orders have not been appended with the petition).

5. The conviction and sentence has attained finality both on the judicial and administrative side. Hence, there is no scope left for interference in this matter. The impugned order is maintained. The petition is ordered to stand dismissed.

6. Learned counsel for the petitioner submits that notwithstanding the above, the petitioner is yet entitled to retiral benefits for service spent for over 28 years rendered by him prior to the incident. He urges that the benefits such as amounts in the General Provident Fund and Leave Encashment to his credit cannot be withheld on account of dismissal of an employee. He relies on the judgment of this Court rendered in Dhir Chand Vs. State of Haryana and others, 2019 (1) S.C.T. 134.

7. In Dhir Chand's case I held in paragraph 5 of the judgment as under:-

“5. The Full Bench in Pyare Lal case ruled that leave encashment is payable to a retiring employee notwithstanding pendency of departmental inquiry or criminal proceedings. The only distinction in this case is that it is not one of a retiring employee as this is a case of dismissal from service. However, this difference, to my mind, will not tilt the balance in favour of the State as still the settled legal position remains that leave encashment is part of salary and salary, like credit in General Provident Fund account of an employee, cannot be withheld in the event of dismissal because it represents money saved/earned for unutilized leave as a matter of right for work performed and duties discharged while in service.”

8. However, there is no prayer in this regard in the petition for payment of leave encashment. Hence, the issue is left open for the petitioner to agitate. In case the petitioner has any subsisting and demonstrable right to any leftover financial benefit available to him in law, he would be at liberty to seek remedy, both, administrative and judicial, pointing out to the proper forum the subsistence of such a right, which may include claim for leave encashment.

(RAJIV NARAIN RAINA)
JUDGE

11.03.2019

kv

Whether speaking/reasoned : *Yes*
Whether reportable : *Yes/No*