

Sr. No.213

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

CWP No.12004 of 2015 (O&M)

Date of Decision: 07.05.2019

Ram Singh

... Petitioner

Versus

United India Insurance Company Limited and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Ravinder Malik (Ravi), Advocate
for the petitioner.

Mr. D.R.Bansal, Advocate,
for the respondents.

ARUN MONGA, J.(ORAL)

Petitioner herein seeks issuance of a writ in the nature of certiorari to quash the impugned memorial order dated 10.02.2015 (Annexure P-8) sustaining the appellate order dated 04.11.2013 (Annexure P-7) vide which punishment order dated 05.04.2013 (Annexure P-6) awarding punishment of dismissal from service was confirmed.

2. Learned counsel for the petitioner, at the threshold, submits that petitioner was removed from service vide impugned punishment order dated 05.04.2013 (Annexure P-6) passed under Rule 23 (g) of the General Insurance (Conduct, Discipline and Appeal) Rules, 1975 but the said Rules are not applicable to the petitioner. The punishment order was later upheld vide appellate order dated 04.11.2013 (Annexure P-7), with modification,

whereby compassionate allowance equivalent to 50% of the pension which would have been admissible to the petitioner for the qualifying service up to the date of removal from service was sanctioned. The appellate order was upheld vide impugned memorial order dated 10.02.2015 (Annexure P-8).

3. Learned counsel for the petitioner submits that the above said Rules, 1975 being not gazetted till today are not enforceable or applicable. He relies on the Apex Court's judgment in case titled as ***State of Karnataka CBI, ACB Bangalore Vs. K.T. Uthappa and another*** bearing SLP Nos.8630-31 of 2012, decided on 03.11.2015. For ready reference, the relevant part of the judgment is extracted hereinbelow:-

“We have further seen that it is a fact that the respondents herein who were officers of the Insurance Company have already been dismissed from the service on account of the disciplinary action taken by the United India Insurance Company Limited. We also keep on record that the General Insurance (Conduct, Discipline and Appeal) Rules, 1975 not even gazetted at any point of time and made applicable to the employees of the said Insurance Company.”

4. On a query posed by the Court, learned counsel for the respondents submits that 1975 Rules, *ibid*, are yet to be notified by way of gazette notification. Concededly, the petitioner was removed from service under these Rules. These Rules have not been gazetted till today, despite the above observations of the Hon'ble Supreme Court.

5. I am in agreement with the argument canvassed by the learned counsel for the petitioner, therefore, hold that the said 1975 Rules, *ibid*, could not have been applied in the case of the petitioner as they lack the sanction of law in the absence of having been duly gazetted.

6. Learned counsel for the petitioner also submits that punishment awarded is discriminatory as would be borne out from the illustrations of other employees. He contends that in the past some of the employees of the Insurance company who were awarded the punishment of termination of services, as has been awarded to the present petitioner, were dealt with sympathetically. In their cases, the punishment of termination from service awarded by the Disciplinary Authority was reduced by the Appellate Authority to that of withholding of one or more increments either permanently or for a specified period. Learned counsel cites two such examples as below:-

i) Mr. R.K.Gulati Scale-II AM, Divisional Office, Sangrur and Regional Office, Chandigarh

The services of the said officer were terminated. He was later reinstated into service by withholding 2/3 increments i.e. major penalty was reduced to that of minor penalty.

ii) Mr. D.P.Loharia, Development Officer (Administration) Rayya Mandi, Regional Office, Ludhiana.

The officer was initially removed from the service by imposing major penalty. Major penalty was converted into minor penalty by imposing the punishment of withholding 3 increments permanently.

7. Learned counsel for the petitioner contends that the petitioner has been treated unequal amongst the equals and discriminated in violation of his rights vested under Articles 14 and 16 of the Constitution of India. The petitioner also deserves similar kindness particularly, in the light of the fact that no loss has been caused to the company/organization due to alleged mistake on the part of the petitioner. Resultantly, the impugned orders (Annexure P-6 to P-8) passed by the respondent authorities are liable to be set aside on this score alone, so argues the learned counsel for the petitioner.

8. I have heard the learned counsel for the parties and perused the record. The Inquiry Officer, in his report throughout appreciated the petitioner. He observed that petitioner had rendered 28 years of unblemished service and his integrity had never been in doubt. It was further observed that he was extremely hardworking and sincere employee. By virtue of his excellent work, dedication and integrity, he was rewarded with promotion to the Cadre of 'Assistant Administrative Officer' (Class-I Cadre) from Class-III Cadre.

9. The Inquiry Officer further observed that not only the petitioner had impeccable service record but also had immense flair for the market functions, where he had proved his mettle. However, the Inquiry Officer felt that the petitioner had committed a mistake in delaying the deposit of the amount of 1,00,500/- (Rs. One lakh five hundred only) qua the premium of the insurance policies and, therefore, he indicted the petitioner.

10. Based on the same finding of delay in depositing of the premium collected by the petitioner, the disciplinary authority awarded the punishment of removal from service to the petitioner, which was modified by the appellate authority as mentioned above vide order dated 05.04.2013 (Annexure P-6) and upheld vide memorial order dated 04.11.2013 (Annexure P-7).

11. I am of the view that punishment awarded is highly disproportionate to the delinquency attributed to the petitioner. Assuming 1975 Rules to be applicable, under which the respondents have proceeded, the major penalties prescribed therein are extracted hereinbelow:-

“Major Penalties:-

- d) withholding of one or more increments permanently;*
- e) reduction to a lower service or post or to a lower time scale, or to a lower stage in a time-scale;*
- f) compulsory retirement;*
- g) removal from service which shall not be a disqualification for future employment;*
- h) dismissal.”*

12. A perusal of the above shows that removal of service is one of the harshest punishment prescribed therein. Both, on both grounds of parity with illustrations cited, supra, and also on proportionality, the petitioner ought to have been awarded a lesser punishment proportionate to the delinquency attributed to him.

13. Awarding of punishment of removal of service is akin to economic death penalty. It not only takes away the livelihood of the delinquent employee with no future prospects due to the

stigma but the entire family is also reduced to live in penury and suffers consequences for rest of their life. Lenient view ought to have been taken especially when the petitioner had put in 28 years of unblemished service as observed by the Inquiry Officer. His integrity too was impeccable and had only 4 years of service left.

14. Reliance may be placed on a judgment rendered by Division Bench of Calcutta High Court in case titled as ***Union of India and others Vs. Sri Sankar Prosad Ghosh and another, 2008***

(5) ***SLR 170***. Relevant whereof is reproduced hereinbelow:-

*“13. It would be naïve to say as on today, that livelihood is not a part of right to life. By this time, by a large number of decisions, it has been held by the Hon'ble Supreme Court as well as High Courts in this country that livelihood is an integral facet of right to life. In this connection, a decision of the Hon'ble Supreme Court rendered in the case of **State of Himachal Pradesh Vs. Raja Mahendra, reported in AIR 1999 SC 1786**, may be remembered.*

14. Dismissal from services undoubtedly is taking away the livelihood of a person at an advanced stage because at that stage, it is impossible for a person to get any employment elsewhere as the order of dismissal will be treated as a disqualification. Loosing a job in an establishment amounts to a civil death, as the concerned person will not be in a position to earn livelihood at the advanced stage, when all his energies and endeavours have almost come to a diminishing stage.”

15. The appellate authority though up to the date of removal, allowed compassionate allowance to the petitioner but

still maintained the punishment of his removal from service. Appellate Authority ignored the fact that there is no finding of either causing loss to Insurance Company or any embezzlement owing to attributed act of delinquency of petitioner, assuming the alleged delinquency to be a gospel truth. Delay in deposit of the premium collected by the petitioner by keeping the money with him for temporary period did not warrant the petitioner's removal from service. This Court in its judgment rendered in CWP No.633 of 2011 dated 03.08.2012 titled as 'Ravinder Kumar Vs. Punjab and Haryana High Court and another' (Annexure A-2) has held that there cannot be distinction between embezzlement and temporary embezzlement i.e. a mere late deposit of the premium of the policy by the petitioner. This Court while reducing the punishment of the petitioner therein, *inter alia*, took into consideration long period of 33 years of service of the petitioner. Learned counsel for the petitioner rightly relies on the Ravinder Kumar's judgment, *supra*.

16. In the premise, the impugned order dated 05.04.2013 (Annexure P-6) passed by the disciplinary authority as well as the appellate order dated 04.11.2013 (Annexure P-7) modifying the same and upheld vide memorandum dated 10.02.2015 (Annexure P-8) are set aside.

17. Respondent-Insurance Company is, however, at liberty to pass fresh orders awarding appropriate punishment except the punishment of removal from service by way of dismissal or removal or compulsory retirement.

18. Writ petition is allowed in the aforesaid terms.

07.05.2019
vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No