

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 11938 of 2016 (O&M)
DATE OF DECISION : 01.04.2019

Dalbir Singh

...Petitioner

versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. J.S. Maanipur, Advocate with
Mr. Pala Ram, Advocate for the petitioner.

Mr. Gurinder Singh Brar, Advocate,
for respondents No. 2 to 4.

ARUN MONGA, J.

The present writ petition has been filed, *inter alia*, for issuance of writ in the nature of certiorari seeking quashing of order dated 08.04.2016 (Annexure P-6), whereby, the petitioner has been dismissed from service by respondent No.3-Punjab Mandi Board. Further prayer has been made to direct respondent No.2 to release the pension and pensionary benefits due to the petitioner on attaining the age of superannuation.

2. Succinctly, the facts of the case are that in 2011, while the petitioner was serving as Secretary, Market Committee, Balachaur, FIR was registered against the petitioner under Section 7 read with Section 13 (2) of the Prevention of Corruption Act, 1988 by the Vigilance Bureau, Punjab. During the course of the trial, the petitioner retired from service on 30.09.2014. On superannuation, he was only given the benefit of pension and leave encashment and other pensionary benefits were withheld.

Repeated representations were made for release of the same.

3. On 07.10.2015, the petitioner was convicted by the Court of Additional Sessions Judge, SBS Nagar in the above said case and was awarded sentence of 4 years and to pay a fine of Rs.25,000/- each under Section 7 r/w 13(2) of PC Act, 1988. All the sentences were ordered to run concurrently. He filed an appeal against the said conviction which is pending in this Court vide Criminal Appeal No.S-4702-SB of 2015.

4. It is the case of the petitioner, as mentioned in the pleadings, that the sentence awarded to him by the Ld. Additional Sessions Judge, SBS Nagar, was suspended by the this Court vide order dated 04.05.2016 (Annexure P-5). Yet, the respondent-Board has vide impugned order dated 08.04.2016 (Annexure P-6), ordered the dismissal of the petitioner from service from back date i.e. 30.09.2014. It is contended that the said order is illegal as the petitioner could not have been dismissed, after he had already superannuated on 30.09.2014, vide order dated 23.09.2014 (Annexure P-2). It is further stated that as no opportunity of being heard was granted to the petitioner while issuing the impugned order, the same was against the principles of natural justice. Even otherwise, the sentence awarded to the petitioner had been suspended by the Appellate Court and the same could not have been made the grounds for his dismissal from service. Hence, the present writ petition.

5. In the reply filed on behalf of respondents No.2 to 4, it has been averred that the stand taken by the petitioner in his pleading that there was no alternate remedy available to him, is completely false. Section 42 of the Punjab Agricultural Produce Markets Act, 1961, clearly provides remedy of appeal to the petitioner to be made to the State Government. It is also stated

that the petitioner was convicted for the charges of corruption and the offence is one of moral turpitude. In such cases it is the Policy of the Government to dismiss the convicted employee. In case, the conviction is set aside by the Appellate Court, the aggrieved person can file for review of the order of dismissal. Another contention raised is that the conviction of the petitioner has not been stayed and only the sentence has been suspended and main appeal is admitted vide order dated 02.11.2015.

6. By way of replication, the petitioner has vehemently controverted the stand of the respondents. He avers that the relationship of employer and employee ended on his retirement. He had not been convicted at the time of his retirement. He relies on the judgment of this Court in ***“Tarsem Singh vs. Punjab Scheduled Castes Land Development and Finance Corporation”*** reported as ***2013 (4) RSJ 367*** (Annexure P-8), by which it has been held that on retirement of an employee the relationship of employer-employee comes to an end. Thus no order of dismissal from service could have been passed once the petitioner had retired. He also relies on the decision of a Coordinate Bench of this Court in case titled as ***“Dr. Sohan Lal Arora vs. State of Punjab”***, bearing ***CWP No. 10490 of 2007***, decided on 04.08.2016 (Annexure P-10), whereby, it has been held that no order of dismissal can be passed after retirement of the employee. He states that in view of the same, the impugned order deserves to be set aside.

7. In regard to the stand taken by the respondents that an alternate remedy was available to the petitioner under Section 42 of the Punjab Agricultural Produce Markets Act, 1961, the petitioner states that the same is before a Revisional Authority and not an Appellate Authority as

envisaged by the Act. Section 42 is reproduced herein below:-

“42. Revision- Notwithstanding anything in this Act, the State Government shall have the power of reversing or modifying any order of the Board or any of its officers passed or purporting to have been passed under this Act, if it considers it to be not in accordance with this Act or the rules or bye-laws made thereunder.”

8. I have gone through the pleadings with the able assistance of the learned counsels for both the parties and have heard their contentions.

9. Admittedly, the petitioner had retired from service on attaining the age of superannuation on 30.09.2014. This being the position, the relation of employer-employee between the parties came to an end on 30.09.2014. I find merit in the contention of the learned counsel for the petitioner that once the petitioner had retired from service on attaining the age of superannuation and thereby relation of employer-employee between the parties came to an end on 30.09.2014, the respondents could not, thereafter, pass the impugned order on 08.04.2016 for his retrospective dismissal from service. I am in respectful agreement with the view to this effect taken by this Court in *Tarsem Singh's case (supra)* and the co-ordinate Bench in CWP No.10490 of 2007 (*supra*). It follows that the impugned order dated 08.04.2016 is not sustainable in law and is liable to be set aside.

10. No doubt, under Rule 2.2(a) of the Punjab Civil Services Rules, future good conduct is an implied condition of every grant of pension. Thereunder, the Government has the right of withholding or withdrawing a pension or any part of it, if the pensioner is convicted of serious crime or be guilty of misconduct. That provision, however, does not empower the respondents to pass the impugned order on 08.04.2016 for the petitioner's

retrospective dismissal from service with effect from 30.09.2014, after he had retired from service and relation of employer and employee had come to an end on 30.09.2014.

11. In view of my discussion above and the reasons contained therein, the impugned order dated 08.04.2016 (Annexure P-6), is set aside with liberty to the respondents to pass fresh orders as per Rule 2.2 (a) of Punjab Civil Services Rules, in accordance with law.

12. In case the respondents decide to proceed afresh against the petitioner, let the same be done within a period of two months failing which the petitioner shall be granted all the consequential retiral benefits.

13. In view of the above-said observations, the present writ petition is disposed of.

(ARUN MONGA)
JUDGE

01.04.2019
vandana

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No