

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

**CWP NO. 22036 OF 2014
DATE OF DECISION : 30.04.2019**

Khushi Ram

...Petitioner

versus

The State of Haryana and another

...Respondent

Present : Mr. Ashok Bakshi, Advocate,
for the petitioner.

Mr. S. K. Vashisth, DAG, Haryana.

Mr. R. D. Bawa, Advocate with
Mr. Randhir Bawa, Advocate,
for respondent No.2-HUDA.

ARUN MONGA, J. (ORAL)

1. The petitioner, inter-alia, seeks quashing of punishment order dated 13.02.2014 (Annexure P-7) as upheld by appellate order dated 14.07.2014 (Annexure P-9), whereby he has been dismissed from service.

2. Brief facts. Petitioner joined Haryana Urban Development Authority (hereinafter referred to as HUDA") as Clerk in the year 1995. He was subsequently transferred to Rewari Office in the year 2001. It is alleged by the respondent-HUDA that while the petitioner was working as Office Associate, it was within his knowledge that plot No.11-P, Sector 6, Dharuhera, Rewari was in the process of being surrendered. Litigation too was going on regarding refund amount, but notwithstanding, the petitioner accepted the payment of balance installment and

enhanced price, without any approval of the higher authorities. Owing to the said delinquency, the petitioner was served with memorandum of charges (Annexure P-1).

3. The petitioner in his reply thereto stated that the plot in question was allotted initially to one Smt.Daulat Bai Bhateja which she surrendered in the year 1992 and demanded refund. Her request remained pending up till her death in year 1993. Thereafter, her son, Shri Ram Lal Bhateja, applied for transfer of the plot in his name. The plot was consequently transferred in his name vide memo dated 09.01.1995 and he was issued re-allotment letter on the ground that his mother had passed away. Since Shri Ram Lal Bhateja was in possession of the re-allotment letter, the petitioner, therefore, marked the voucher for payment as the voucher contained a certificate that the plot had not been resumed or surrendered.

4. The stand of petitioner is that, at the most, he made an inadvertent error by accepting the payment and there was no collusion or intentional misconduct on his part. Neither any loss was caused to the respondent-Department nor any special benefit was ever given to the subsequent allottee. Yet, petitioner was wrongly held guilty by the Inquiry Officer in his report dated 03.05.2011 (Annexure P-3). He filed objections to the findings recorded in the inquiry report, but the same were ignored and Show Cause Notice dated 26.11.2013 (Annexure P-5) was issued to the petitioner. He filed a detailed reply but without considering

contentions therein, vide impugned order dated 13.02.2014 (Annexure P-7), the petitioner was dismissed from service.

5. Aggrieved against the order dated 13.02.2014 (Annexure P-7), the petitioner preferred appeal and the same was rejected vide order dated 14.07.2014 (Annexure P-9) passed by respondent No.1, upholding the dismissal of petitioner. Hence, the present writ petition.

6. The respondent-Department, in its return filed herein, has averred that even though the plot in question had admittedly been transferred in the name of son of the original allottee in the year 1995, but he sought refund of his deposit and surrendered his plot, vide application dated 26.08.1997 (Annexure R-2/1) owing to the litigation between the said allottee and the respondent.

7. Due to acts of petitioner, the State Consumers Disputes Redressal Commission, Haryana had ordered refund of the deposit amount vide order dated 22.07.2005 (Annexure R-2/2). This order was upheld by the National Consumer Disputes Redressal Commission, New Delhi vide order dated 11.11.2005 (Annexure R-2/3). The order passed by the State Consumers Disputes Redressal Commission, as upheld vide appellate order of the National Consumer Disputes Redressal Commission, resulted in acceptance of request of the re-allottee to surrender the plot. A petition for execution of the order was also pending before the District Consumer Disputes Redressal

Forum but the petitioner accepted the installment without disclosing all these facts to the superior authority.

8. It is further stated that the petitioner acted in collusion with the said allottee and tried to defraud the department, as the allottee once having surrendered the plot was trying to take possession of the same again. Due to the acts of the petitioner, the respondent-Department had to pay huge litigation costs and incur unnecessary expenditure and was embarrassed by the actions of the petitioner. All this cannot be stated to be inadvertent error by the petitioner but is an act of serious misconduct and the punishment of dismissal from service is commensurate with the charges leveled against him.

9. The petitioner reiterated his stand in the replication stating therein that there was no misconduct or collusion on his part. He had only acted in routine manner as the voucher presented by the re-allottee contained a certificate stating that the plot was neither resumed nor surrendered. It is stated that the petitioner joined Rewari Branch only in 2001 and could not be blamed for the incidents which occurred prior to his joining. It is further stated that no concrete evidence, proving guilt of the petitioner, was placed before the Inquiry Officer.

10. It is submitted that Sh. Kartar Singh and Sh. Dalbir Singh were the concerned dealing hands at the relevant time. They were the ones in collusion with the allottee. They kept the file pending and also got prepared the account-statement on the

basis of which the petitioner had accepted the payment from him. Intriguingly, these direct dealing hands were not even charged for any delinquency whatsoever. Petitioner served the department for about 20 years and has unblemished service record. For the entire service period he earned above average ACRs.

11. I have heard learned counsels for the parties and have gone through the pleadings with their able assistance.

12. I am of the opinion that awarding of punishment of dismissal from service is akin to economic death penalty and should be resorted to with extra caution by the punishing authority. The present case does not fall in the category of such serious misconduct and negligence which calls for imposing as harsh a punishment as has been awarded to the petitioner.

13. I am in agreement with the argument of learned counsel for the petitioner that given the length of service rendered by the petitioner, particularly in view of unblemished service record, wherein the petitioner has earned all above average ACRs, he ought to have been dealt with by awarding a lesser punishment proportionate to the delinquency attributed to him.

14. Learned counsel for the petitioner has also relied on a Division Bench judgment rendered by this Court in case titled as "*Narinder Kumar v. State of Haryana and others*" 1995 (4) SCT 222. Relevant part thereof is extracted herein below :

"11. If we examine the impugned order of punishment in the light of the principle laid down by the Supreme Court and this Court. It becomes clear that though the disciplinary authority has held the petitioner guilty of gravest act of misconduct, it has not adverted to the service record of the petitioner before imposing the extreme penalty of dismissal from service. The disciplinary authority has also not considered the question as to whether the petitioner could be awarded a lesser penalty like compulsory retirement. It is not altogether insignificant to note that by the time order of dismissal was passed against the petitioner, he had completed almost 12 years of service and it is his specific case that during the period of 12 years, no punishment had been awarded to him and no adverse report had been made against him. Clean record of 12 years of service could not have altogether been ignored by the disciplinary authority while imposing the extreme penalty of dismissal from service".

15. He has also relied on Division Bench judgment of Calcutta High Court in case titled as "*Union of India and others v. Sri Sankar Prosad Ghosh and Anr.*" 2008 (5) SLR 170. Relevant part of the same is reproduced here under :

"13. It would be naive 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 v. 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”.*

16. Further more, there is substance in the argument of learned counsel for the petitioner that no pecuniary loss has been caused to the respondent-HUDA in the present case. In the cases where pecuniary loss was caused to HUDA, as cited by the petitioner vide Annexures P-10, P-11 and P-12, the delinquent employees who were ascribed with much more serious charges were awarded lesser punishment than the petitioner.

17. In the premise, I am of the opinion that awarding of punishment of dismissal from service vide impugned order dated 13.02.2014 (Annexure P-7) and the Appellate Order dated 14.07.2014 (Annexure P-9), does not stand judicial scrutiny as it is too harsh and disproportionate to the delinquency attributed. The same is, therefore, not tenable.

18. In view of my above discussion, the writ petition is partly allowed and the interim orders dated 13.02.2014

(Annexure P-7) and 14.07.2014 (Annexure P-9) are modified and the punishment of dismissal from service is converted into compulsory retirement. The petitioner shall be entitled for all consequential benefits. However, no order as to costs.

(ARUN MONGA)
JUDGE

APRIL 30, 2019
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No