

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

CWP No.26773 of 2019

Date of decision: 15.11.2019

Surinder Singh

...Petitioner

versus

State of Punjab and others

... Respondents

Before: Hon'ble Mr. Justice B.S. Walia.

Present: Mr. Surinder Garg, Advocate for the petitioner.

B.S. Walia, J.,

1. Prayer in the writ petition is for the issuance of a writ of Certiorari for quashing award Annexure P/8 dated 29.01.2019, passed by the learned Industrial Tribunal, Jalandhar, (hereinafter referred to as 'the Tribunal') deciding the reference against the petitioner. Prayer is also for setting aside order Annexure P/13 dated 10.03.1981, imposing punishment of withholding of five increments with cumulative effect as also to direct the respondents to re-fix the pay of the petitioner after awarding five increments to him along with arrears and consequential benefits along with interest @ 18% per annum.

2. Learned counsel contended that a demand notice was issued by the Punjab Roadways Conductors Union on 19.12.2011 to respondent Nos.1 to 3 on behalf of five conductors including the present petitioner against stoppage of increments with / without cumulative effect, where after the Punjab Government referred the matter to the Tribunal vide order dated 14.10.2004. The reference was rejected vide award Annexure P/8 dated

29.01.2019, inter alia on the ground of lapse of 23 years from the date of

passing of the order of punishment to the date of issuance of demand notice besides CWP No.16274 of 2012 filed by the petitioner had been dismissed vide order dated 24.04.2014. Likewise, application filed under Section 15(2) of the Payment of Wages Act, upholding order dated 10.03.1982, was dismissed vide order dated 24.07.1986 and even the said judgment dated 24.07.1986 was upheld by the learned Addl. District Judge, Jalandhar, vide order dated 29.10.1986 and Civil Revision No.1323 of 1987, filed by the State of Punjab against order dated 29.10.1986 was also dismissed by the High Court vide order dated 17.01.2007. Besides the petitioner had filed a civil suit in the year 1988. Learned counsel contends that the petitioner had also moved a representation before respondent No.1 on 05.02.2008 that he had filed statutory appeal against order dated 10.03.1981 and the same had not been decided and eventually came to be decided on 08.02.2018, as being time barred, vide order Annexure P/13. Learned counsel contends that the petitioner filed representation dated 18.05.2012, before respondent No.1 for reconsideration of his appeal on the ground that the appeal could not be rejected as time barred because he had already filed statutory appeal before respondent No.1 under postal cover on 22.04.1981. Learned counsel contended that it was apparent that his case has not been decided on merit etc.

3. I have considered the submissions of learned counsel for the petitioner.

4. Admittedly CWP No.16274 of 2012, filed by the petitioner was dismissed vide order date 24.04.2014 on the ground that he has challenged the order imposing punishment before different forums including by way of a civil suit, therefore, he could not be heard on merits in the writ petition.

Although civil suit is stated to have been filed in the year 1988, yet, as per

details given in paragraph No.18 of the writ petition, the same was withdrawn before its decision, however, neither the date of withdrawal of the aforesaid civil suit nor the order dismissing the civil suit as withdrawn has been placed on record so as to enable this Court to ascertain whether the suit was dismissed simplicitor as withdrawn or was dismissed as withdrawn with liberty to agitate the grievance raised therein before another forum in accordance with law.

5. The initial impugned order upholding inquiry report and rejecting the defence of the petitioner and imposing punishment is Annexure P/3 dated 10.03.1981. The said order was appealable within 45 days of the passing of the same under Rule 17 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970. The petitioners claims to have filed an appeal against the said order on 22.04.1981. However, perusal of order Annexure P/13 dated 08.02.2010, passed by Secretary, Punjab State Transport Department, dismissing the statutory appeal of the petitioner against order dated 10.03.1981 reveals that the appeal was dismissed as time barred as having been filed after 27 years from the date of order i.e. on 05.02.2007, hence, the same was beyond the period of 45 days within which the appeal could have been filed, as per Rule 17 of the rules *ibid*. It is the stand of the petitioner that he had filed representation Annexure P/14 dated 18.05.2012, raising the objection that appeal had been filed by him on 22.04.1981, therefore, the same could not have been dismissed as time barred. However, the aforesaid representation Annexure P/14 dated 18.05.2012 also met with the same result and was dismissed vide order dated 12.06.2012. The petitioner by way of the instant writ petition has challenged award Annexure P/8 dated 29.01.2019 deciding the reference against the petitioner as also order Annexure P/3 dated 10.03.1981. It is pertinent to note here that the

award dated 29.01.2019 is the culmination of reference No.114 of 2004 which was instituted on 13.12.2004. During the pendency of proceedings before the Tribunal, order dated 10.03.1981 had already been challenged by way of a statutory appeal which was dismissed vide order Annexure P/13 dated 08.02.2010. The petitioner also claims that he had filed representation Annexure P/14 dated 18.05.2012, raising objection that appeal had been filed by him on 22.04.1981, therefore, the same could not have been dismissed as time barred vide order Annexure P/13 dated 08.02.2010. However, the aforesaid representation Annexure P/14 dated 18.05.2012 also met with the same result and was dismissed vide order dated 12.06.2012. However, no challenge has been made to the said orders dismissing the appeal of the petitioner against order dated 10.03.1981 either before this Court in the present writ petition or before the Tribunal. In the circumstances, once, order of punishment has already been considered by an appellate authority and an order passed thereon, the order of the punishing authority merges with the order of the appellate authority and without there being a challenge to the order passed under the appellate jurisdiction by the Secretary, Punjab State Transport Department, which is an authority higher than the General Manager, Punjab Roadways, Nawanshahr, who passed the order of punishment dated 10.03.1981, the petitioner cannot maintain an isolated challenge to the order of punishing authority only, as once the order of the punishing authority merges with the order of the appellate authority, both orders need to be challenged. Moreover the appeal has been dismissed as being time barred by observing that the same was filed after 27 years of the order of punishment whereas the stand of the petitioner is that the appeal was filed on 22.04.1981 i.e. within limitation prescribed under the rules. It is settled law that limitation is a mixed question of fact and law, therefore this

court cannot decide the same in writ jurisdiction under Article 226 of the Constitution of India. Disputed questions of fact are to be proved by leading evidence before the appropriate forum. In the circumstances, no relief whatsoever can be granted in the present writ petition.

6. Accordingly, the writ petition being bereft of merit is dismissed in limine. Needless to mention the petitioner is at liberty to avail of appropriate remedy in accordance with law.

(B.S. Walia)
Judge

15.11.2019

rajesh.k.khurana

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| 1. Whether speaking/reasoned: | Yes/No. |
| 2. Whether reportable : | Yes/No. |