

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-23248-2014

Date of Decision: 19.08.2019.

Girdhari Lal

... Petitioner

vs.

Food Corporation of India & Ors

.. Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Kamal Gupta, Advocate and
Mr. Sparsh Gupta, Advocate
for the petitioner.

Mr. Atul Gaur, Advocate for
Mr. Sumeet Gupta, Advocate
for respondent No.4.

Mr. K.K.Gupta, Advocate
for respondents No. 5 and 6.

ARUN MONGA, J.(ORAL)

Learned counsel for the petitioner has strenuously argued that it is well established that in the event of non-communication of punishment order to a delinquent employee, the same would be rendered totally ineffective in view of the ratio rendered by Constitution Bench of Hon'ble the Supreme Court of India in State of Punjab vs. Amar Singh Harika, reported as AIR 1966 SC, 1313 as later followed by catena of judgments, more particularly, in case titled as Dulu Devi vs. State of Assam and others, reported as 2015 (9) JT, 341, wherein it has been held as below:

“The Constitution Bench Judgment of this Court in the case of State of Punjab vs. Amar Singh Harika, AIR 1966 SC page 1313, considered this aspect of the matter. Writing the judgment, His Lordship (Gajendragadkar,C.J.) held that mere passing of an order of dismissal or termination would not be effective unless it is published and communicated to the officer concerned. If the appointing authority passes an order of dismissal, but does not

communicate it to the officer concerned, theoretically it is possible that unlike in the case on a judicial order pronounced in Court, the authority may change its mind and decide to modify its order. The order of dismissal passed by the appropriate authority and kept with itself, cannot be said to take effect unless the officer concerned knows about the said order and it is otherwise communicated to all the parties concerned. If it is held that mere passing of order of dismissal has the effect of terminating the services of the officer concerned, various complications may arise.

*Similar view has been taken by this Court in the case of **Union of India vs. Dinanath Shantaram Karekar, 1999 (1) S.C.T. 667 : (1998) 7 SCC 569**, where this Court observed:*

“9. Where the services are terminated, the status of the delinquent as a Government servant comes to an end and nothing further remains to be done in the matter. But if the order is passed and merely kept in the file, it would not be treated to be an order terminating services nor shall the said order be deemed to have been communicated.”

2. In view of the aforesaid background, what emerges from the conjoint perusal of the pleadings is that the petitioner concededly superannuated on 30.04.2007. What was communicated to the petitioner on 28.04.2007 was the inquiry report dated 27.04.2007 served upon him at 5:30 PM in order to invite his comments on the same. Whether or not the comments were furnished, is of no significance, as the petitioner retired on 30.04.2007 and till that date, he was not communicated the punishment order. The same, in any case, could not have been possible in view of the punishment order for the first time having been faxed by the respondent-FCI to its Jammu Office on 01.05.2007. The said communication was also concededly not sent to the petitioner and could not have been possibly sent as he had retired on 30.04.2007 and was, therefore, not available in Jammu Office.

3. Subsequently, vide registered post letter dated 20.05.2007, punishment order was communicated at his residence at Dhuri (District Sangrur) by the Jammu Office of respondent-FCI. Admittedly, the punishment order was thus not communicated prior to his superannuation.

4. In the premise, applying the ratio rendered by Hon'ble the Constitution Bench of Supreme Court of India, the writ petition is partly allowed to the extent that the impugned punishment order withholding the gratuity of the petitioner is held to be legally not sustainable and is, therefore, set aside. As regards the compulsory retirement, the relief, by sheer efflux of time, has been rendered infructuous and, therefore, cannot be granted at this stage.

5. The respondents are directed to release the gratuity amount of the petitioner alongwith interest @ 8% per annum within a period two months from the date of receipt of certified copy of this order

19.08.2019.
smriti

(ARUN MONGA)
JUDGE

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