

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 5747 of 2014(O&M)

Date of Decision: 16.05.2019

Lakhbir Singh

... Petitioner

versus

State of Punjab & Ors.

... Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Argued by : Mr. Bikramjit Singh Bajwa, Advocate
for the petitioner.

Mr. Abhaypal Singh Gill, AAG Punjab.

Mr. Vikas Chatrath, Advocate
for respondents No.2 to 4.

ARUN MONGA, J.

1. Petitioner herein, *inter alia*, seeks quashing of his termination from service vide order dated 16.03.2012(Annexure P-3) as upheld vide appellate order dated 25.07.2012 (Annexure P-4).

2. The facts of the case, in a nutshell, are that the petitioner was enrolled as daily wager with respondents No.2 to 4 on 01.09.1995 and worked as such till 1999, when he was given promotion as Work Charge T-mate. On a complaint filed against the petitioner, it was found that on the basis of alleged forged entries in the service record, he had managed to get promoted to the post of Work Charge T-mate. An enquiry was conducted, which culminated into passing of impugned termination order dated 16.03.2012(Annexure P-3) by respondent No.3. Dissatisfied therewith, the petitioner filed an appeal before respondent No.4, which, as noted above, was also dismissed vide impugned order dated 25.07.2012 (Annexure P-4), leading to the filing of the instant writ petition, *inter alia*, on the ground that

he has been discriminated against, while inflicting the punishment of termination of his services, whereas similarly situated employees were awarded minor punishment of stoppage of increments or recovery of the difference of pay.

3. Respondents No.2 to 4 in their joint return submitted that the petitioner was work charge employee and his case is distinguishable from the employees, whose reference is made in the petition, as they are regular employees. It is averred that petitioner forged his service record and the gravity of wrong committed by him was of such an extent that he cannot claim equity. Termination order was thus rightly passed and his appeal was also validly rejected.

4. Learned counsel for the petitioner vehemently insists that the respondents adopted pick and choose method in terminating the services of the petitioner, while similarly situated other employees were inflicted lesser punishment of stoppage of increments or recovery of difference of salary as referred to office orders Annexures P-6 to P-10.

5. Learned counsel for the petitioner particularly drew my attention to punishment order dated 07.06.1996 (Annexure P-10) passed qua similarly situated 19 other employees. They were all held delinquent in forging their service record in order to become work charge employees from being daily wagers. All those nineteen persons were awarded a lesser punishment i.e. recovery of excess amount paid to them as work charge for the period for which they were not entitled for that level of salary.

6. Learned counsel for the petitioner further contended that the petitioner was appointed as daily wager on 01.09.1995. On the basis of a complaint, an enquiry was conducted and service record of the petitioner

was allegedly found forged one and order of termination of services was passed. But while passing the impugned order, the disciplinary authority failed to appreciate the fact that the petitioner had 14 years of unblemished service to his credit and he was a regular employee.

7. Similarly, in addition to Annexure P-10, he relies on the punishment order dated 16.12.2004 (Annexure P-7) relating to same delinquency against other employees, but where the punishment of stoppage of two annual increments with cumulative effect was awarded to the delinquent employee, whereas the punishment of removal from service has been awarded to the petitioner in a discriminatory way.

8. Per contra, learned counsel appearing for respondents No.2 to 4 argued that a wrong doer cannot claim equity as a matter of right. Even otherwise, according to him, the case of the petitioner is not at par with the employees, referred to in Annexures P-6 to P-10.

9. Having heard the learned counsel for the parties and on perusal of record, I am of the opinion that impugned punishment order as also the appellate order upholding the same, are not sustainable in the eyes of law.

10. The impugned order dated 16.03.2012 (Annexure P-3) notices that the enquiry officer vide letter dated 16.06.2011 had furnished his enquiry report to the Senior Executive Engineer. In the enquiry report, the charges levelled against the petitioner, as per charge-sheet, were not treated as correct. The said enquiry report has though not been produced in the present proceedings, however, it is obvious from the impugned order (Annexure P-3) itself that definite findings/ conclusions have been recorded by the enquiry officer to the effect that charges against the petitioner, as levelled in the charge-sheet, were not proved (sic.).

11. To my opinion, in the face of the above conclusion of the enquiry officer, it was incumbent upon the punishing authority, before inflicting the penalty of termination from service, to record justifiable reasons for discarding the findings (charges not proved), as returned by the enquiry officer. No doubt, the punishing authority is empowered/ entitled to have a contrary view on the findings returned by the enquiry officer, but for taking a contrary view reasonable rationale ought to have been provided to hold that the charges against the petitioner had been proved, before awarding the punishment. Whereas, in the present case, impugned punishment order does not even formally mention that the punishing authority had decided to discard the findings of the enquiry officer, which as stated, were to the effect that charges were not treated as correct (not proved).

12. This, in my view, by itself is fatal to the impugned punishment order, as upheld by the appellate authority. On this short ground alone, impugned orders are, thus, liable to be set aside, irrespective of and without adjudicating upon the aforesaid other contentions as put forth by learned counsel for the petitioner. Though, in the passing, it would, however, not be out of place to state that on the face of it, the treatment meted out to the petitioner is discriminatory qua the other similarly situated employees, even if it is assumed that the petitioner was/ is delinquent of forging the service record, as charged.

13. Awarding of major punishment of dismissal from service is akin to economic death penalty for a delinquent employee and it has to be resorted with extra caution. Not only it is loss of livelihood for the employee, but the entire family is reduced to live in penury and made to

suffer consequences for rest of their lives. Reliance can be placed on **Union of India & Ors. Vs. Sri Sankar Prosad Ghosh & Anr. 2008(5) SLR 170**, wherein it has been held as 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.”

14. As a result of the above discussion and the reasons contained therein, the impugned punishment order dated 16.03.2012 (Annexure P-3) as also the appellate order dated 25.07.2012(Annexure P-4) are hereby set aside. Consequently, the respondents are directed to reinstate the petitioner with continuity of service and other ancillary benefits. However, the petitioner shall not be entitled for back wages during the period he remained out of service.

15. Disposed of accordingly.

(ARUN MONGA)
JUDGE

May 16, 2019

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