

(236) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.17889 of 2017

Date of decision: 25.02.2020

Jai Kishan Ranga

... Petitioner

Versus

MDU, Rohtak and anr.

.... Respondents

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

Present: Mr. Vijay Pal, Advocate and Mr. Ishaan Bhardwaj, Advocate
for the petitioner.

Mr. Amit Rao, Advocate and Mr. Anurag Goyal, Advocate for
the respondents.

B.S. Walia, J. (Oral),

[1] Prayer in the petition under Article 226/227 of the Constitution of India is for the issuance of a writ of certiorari for quashing order, Annexure P/6 dated 30.12.2016 imposing punishment of dismissal upon the petitioner w.e.f. retrospective date i.e. 03.06.2016 etc.

[2] Learned counsel contends that the petitioner was convicted in criminal complaint No.161 of 2010 under Section 138 of the Negotiable Instruments Act and sentenced to imprisonment for a period of one year vide order, Annexure P/3 dated 09.01.2014 and subsequently for an offence under Section 13 (2) read with Section 7 of the Prevention of Corruption Act, 1988 and Section 420 IPC vide judgment and order of sentence dated 07.12.2016 and 08.12.2016.

[3] Criminal Revision No.2532 of 2016 filed against the conviction under Section 138 of the Negotiable Instruments Act was dismissed by this Court vide order dated 03.08.2016 whereas the appeal filed against conviction under the Prevention of Corruption Act was admitted vide order, Annexure P/2 and is stated to be pending adjudication.

[4] Respondents vide order Annexure P/6 dated 30.12.2016 dismissed the petitioner from service w.e.f. 03.06.2016 i.e. the date of dismissal of the appeal filed by the petitioner against his conviction under the Negotiable Instruments Act.

[5] Learned counsel for the petitioner contends that not only is the impugned order (i.e. Annexure P/6) unsustainable on the ground of violation of Rule 7 Sub-Rule 16 of the Haryana Civil Services (Punishment and Appeal) Rules, 2016 as the same is on account of conviction alone and not on account of conduct which led to conviction but also in view of the fact that the impugned order dismisses the petitioner from service with retrospective effect which is impermissible in the eyes of law in view of the decision of a Division Bench of this Court in **Rajinder Singh vs Board of School Education, Haryana and another, 1996 (4) RSJ 417**. Relevant extract of the same is reproduced as under:-

“11. In addition to what the Full Bench has held, we may observe that in cases involving moral turpitude, the employer may be justified in taking the view that the employee has lost his right to remain in service but in such cases the employer may choose to impose a comparatively lesser punishment. However, that will depend on an objective application of mind by the employer to the facts of a given case. What has happened in this case is that the conviction simplicitor has been made basis for dismissing

the petitioner from service. There is nothing on the record to show that respondent No.1 considered the conduct of the petitioner, which led to his conviction. There is also nothing on the record to show that the employer applied its mind to the service record of the petitioner and the nature of the crime committed by him with particular reference of its impact on the service of the petitioner. Thus, the present one is a clear case of non-application of mind and, therefore, on this ground alone, the impugned order is liable to be quashed.

12. *We also find merit in the contention of Shri Walia that respondent No.1 was not entitled to dismiss the petitioner from service with retrospective effect. Relationship of master and servant can be brought to an end from the date of order or from a subsequent date but not with effect from an earlier date. The employee earns some benefits during the period of service and he cannot be deprived of those benefits by termination of his service with retrospective effect. In this case, the petitioner has acquired a right to get subsistence allowance because he was under suspension till the passing of the impugned order. By retrospective dismissal from service, he has been deprived of this right and that respondent No.1 was not entitled to do.*

13. *In the result, the writ petition is allowed. Order Annexure P1 is quashed. Petitioner shall be deemed to be continuing under suspension and shall be entitled to get subsistence allowance payable to him with effect from 17.12.1993. We, however, make it clear that it shall be open to respondent No.1 to reconsider the case of the petitioner and pass a fresh order in accordance with law. Costs made easy.*

Petition allowed.”

[6] Learned counsel for respondents does not dispute the proposition of law as per decision in Rajinder Singh's case (Supra) and states that in the circumstances, he has no objection if the impugned order, Annexure P/6 is set aside while granting liberty to the respondents to pass fresh orders in accordance with law.

[7] The same satisfies learned counsel for the petitioner.

[8] Accordingly, impugned order, Annexure P/6 dated 30.12.2016 is quashed. Petitioner shall be deemed to be under suspension and shall be entitled to subsistence allowance w.e.f. 30.12.2016. However, it shall be open to the respondents to reconsider the case of the petitioner and pass a fresh order in accordance with law.

[9] Writ petition allowed in the aforementioned terms.

(B.S. Walia)
Judge

25.02.2020
amit

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