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

CWP-27668-2018

Date of decision: 12.10.2020

Shashi Kant Mangla

.....Petitioner.

vs.

State of Haryana and another

.....Respondents.

CORAM: - HON'BLE MR. JUSTICE SANJAY KUMAR

Present: - Mr. K.K. Goel, Advocate, for the petitioner.

Mr. Rajesh Gaur, Additional Advocate General, Haryana,
with Mr. Minderjeet Yadav, Deputy Advocate General,
Haryana.

Mr. R.D. Bawa, Advocate, for respondent No. 2.

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Sanjay Kumar, J. (ORAL)

The petitioner, a Sub-Divisional Engineer, retired from the service of Haryana State Agricultural Marketing Board, Panchkula (for short, '*the Board*'), on 30.09.2016, upon attaining the age of superannuation. As he was not released his death-cum-retirement gratuity and other pensionary benefits, he approached this Court by way of CWP-20611-2018. The said writ petition was disposed of on 18.08.2018, directing the Chief Administrator of the Board to consider the petitioner's grievances, as set out in his legal notice dated 06.07.2018, and take a conscious decision thereon within a time frame.

Thereupon, the Chief Administrator of the Board passed order dated 21.09.2018 observing that disciplinary proceedings were pending against the petitioner for final decision and directed the Superintendent (C&E) to submit his case for final decision. He further directed that after a decision was taken on the charge-sheet, the Superintendent (Admn) should ensure release of the petitioner's pending dues. The Chief Administrator thereafter passed order dated 01.10.2018 imposing the punishment of '*Censure*' upon the petitioner and directing recovery of ₹ 1,48,925/- from his retirement benefits.

These orders are subjected to challenge in the present writ petition. The petitioner also seeks a consequential direction to the Board to pay him the sum of ₹ 1,48,925/- wrongly deducted from his gratuity amount along with interest on all the delayed payments made to him.

The admitted facts are to the following effect: The petitioner was issued a charge-sheet on 18.07.2013 under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 (for short, '*the Rules of 1987*'). By inquiry report dated 10.11.2014, the inquiry officer held that the charges levelled against the petitioner were not proved. However, no action was taken apropos this inquiry report till the retirement of the petitioner on 30.09.2016. It was only after the order dated 18.08.2018 was passed by this Court in CWP-20611-2018 that the Board issued a 'Dissenting Note' on 05.09.2018 in relation to this inquiry report, calling upon the petitioner to submit his objections/reply with regard to the proposed disagreement with the findings recorded in the said inquiry report.

The petitioner, perhaps vexed with the attitude of the Board and the continued deprivation of his retirement dues that impacted the care-taking of his handicapped son, stated before the Chief Administrator that he had nothing further to state and that the loss of ₹1,48,925/-, which had been worked out against him on proportionate basis, may be deducted from his dues and the balance may be released at the earliest possible. This was recorded by the Chief Administrator in his orders. By the later order dated 01.10.2018, the Chief Administrator noted that the petitioner's share of the loss actually worked out to ₹3,36,308/- on proportionate basis but the charge-sheet had been issued to the petitioner only for the loss of ₹1,48,925/-. He opined that it would take time to complete the whole procedure again as a fresh charge-sheet required to be issued and directed recovery of only ₹ 1,48,925/-, by taking a 'lenient view' in view of the petitioner's retirement.

It appears that the Board thereafter undertook further calculations and by order dated 01.10.2020, the Secretary and the Accounts Officer of the Board directed the Manager, HARCO Bank, Panchkula, to release a further amount of ₹ 89,355/- to the petitioner as the recovery of loss to be effected from him was wrongly calculated as ₹ 1,48,925/- instead of ₹ 59,570/-. In effect, the petitioner is now sought to be subjected to recovery only to the extent of ₹ 59,570/-.

Mr. K.K. Goel, learned counsel for the petitioner, would contend that others who were subjected to disciplinary proceedings in relation to the very same issue were granted all benefits but the petitioner alone was singled out for discriminatory treatment. He would state that the

Board recovered all its dues from the contractor concerned, pursuant to an arbitration award, and that the petitioner ought not to have been visited with any recovery at all. He would further state that no disciplinary proceedings were pending as on the date of retirement of the petitioner as the inquiry report gave him a clean chit and argue that revival of the disciplinary proceedings four years after the inquiry report and two years after such retirement was illegal.

Per contra, Mr. R.D. Bawa, learned counsel for the Board, would contend that, as the petitioner is provided the remedy of appeal, he cannot be allowed to maintain this writ petition before this Court in the first instance. He would argue that as the petitioner himself conceded before the Chief Administrator of the Board that the amount could be deducted from his dues, he cannot be allowed to change his version at this stage and challenge the recovery effected from him.

As regards the issue of maintainability of this writ petition, it is well settled that the rule of alternative remedy is not a straight-jacket formula which can be uniformly applied across the board to each and every such case. It would be within the discretion of this Court to decide on the individual facts of each case as to whether the petitioner therein should be relegated to such an alternative remedy or not. In the event this Court finds that the impugned exercise of power by the authority is arbitrary and unsustainable in law, it would not be necessary to drive the person aggrieved to go through a long-winded process of statutory remedies. In such cases, this Court would be justified in exercising the extraordinary writ jurisdiction vesting in it. On facts, this Court finds the case on hand to

be a prime example of arbitrary and colorable exercise of power, warranting exercise of writ jurisdiction under Article 226 of the Constitution.

As rightly pointed out by Mr. K.K. Goel, learned counsel, the delay on the part of the authorities in taking appropriate action upon the inquiry report dated 10.11.2014 cannot be countenanced. It is always open to a disciplinary authority to disagree with the findings recorded by an inquiry officer but such power has to be exercised expeditiously or at least within a reasonable time. In this regard, it may be noted that the Government of Haryana issued instructions as long back as on 28.01.2009 requiring its authorities to complete disciplinary proceedings under Rules 7 and 8 of *the Rules of 1987* expeditiously. The outer time limit fixed for such completion was six months. No doubt, these instructions would not be binding on the Board but the spirit underlying the instructions has universal appeal. It is not open to disciplinary authorities to drag on departmental proceedings indefinitely without end and even beyond the retirement of the employee concerned, as in the case on hand. Admittedly, when the petitioner retired on 30.09.2016, the inquiry report that returned findings in his favour held the field as the Board had not even chosen to disagree with the same. In effect, there were no disciplinary proceedings pending against him as on that date.

That apart the lack of clarity on the part of the Board in dealing with his case is writ large. The Chief Administrator noted in his order dated 01.10.2018 that the actual loss to be recovered from the petitioner stood at ₹3,36,308/- and it was only because the charge-sheet

issued to him mentioned a lower figure that he limited the recovery to ₹ 1,48,925/-. Now, on its own accord, the Board reduced this amount to ₹59,570/- due to wrong calculation on its part. This clearly reflects the level of application of mind by the Board at each stage.

On the above analysis, this Court finds that the action of the Board is wholly unsustainable on facts and in law. The orders of recovery passed against the petitioner constitute an arbitrary and untrammelled exercise of power that cannot be accepted.

The writ petition is accordingly allowed directing the release of ₹59,570/- withheld from the gratuity amount of the petitioner. Further, as the petitioner was illegally denied his retirement benefits and the orders of recovery came to be passed only after he approached this Court, clearly indicating the colorable nature of such exercise of power by the Board, he would be entitled to interest. As the processing of his retirement benefits would have started prior to his retirement in the ordinary course, resulting in release thereof within a month of his retirement, there shall be a direction to the Board to pay interest @ 6% per annum on all such retirement benefits, from 01.11.2016 till the date of actual payment. The amount due and payable to the petitioner in terms of this order shall be released expeditiously and, in any event, not later than one month from the date of receipt of a copy of this order.

Though eminently deserving, there shall be no order as to costs.

(SANJAY KUMAR)
JUDGE

12.10.2020

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I attest to the accuracy and
integrity of this document

whether speaking/non speaking

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