

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

CWP No.29277 of 2018
Date of decision: 03.03.2020

Jaswant Singh Petitioner

Versus

Haryana Warehousing Corporation, Panchkula Respondents

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

Present: Mr. Rakesh Nagpal, Advocate for the petitioner.
Mr. Padamkant Dwivedi, Advocate for respondent Nos.1 to 3.

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/5 dated 29.10.2018/31.10.2018 appointing respondent No.4 as Enquiry Officer to conduct enquiry in charge-sheet dated 18.08.2009.

[2] Brief facts of the case leading to the filing of the writ petition are that on 18.08.2009, petitioner was issued charge-sheet, Annexure P/1 of his having caused a loss of Rs.63,000/- to the Corporation. The enquiry resulted in order, Annexure R/1 dated 02.02.2010 dismissing the petitioner from service of the Corporation whereas the co-charged delinquents who were similarly situated as the petitioner were imposed punishment of down-grading of ACRs as also withholding of one annual increment with cumulative effect respectively. The petitioner filed civil suit No. 746 dated 15.02.2010 for declaration and mandatory injunction challenging the punishment order. The suit was partly decreed in favour of the petitioner

vide judgment and decree, Annexure P/2 dated 30.11.2013. Operative part of the same is reproduced as under:-

“23. In view of findings of the Court returned on issues under adjudication, the suit of the plaintiff succeeds and is hereby decreed with no order as to costs. The impugned order dated 02.02.2010 passed by the Enquiry Officer is declared illegal, null and void and against the principles of natural justice. It is observed that the plaintiff is liable to be reinstated and the department shall be at liberty to conduct fresh departmental enquiry, if so advised, in accordance with the principles of natural justice with further rider that if department initiates fresh enquiry, then that shall be conclude within three months from the passing the decree, otherwise, the plaintiff shall be entitled to get all service benefits by imposing the punishment as awarded to other co-employees namely Bhalle Ram and Gharsi Ram. Decree sheet be drawn accordingly. The file, after needful, be consigned to record-room. Pronounced in open court.”

[3] The aforementioned judgment and decree dated 30.11.2013 was challenged by the petitioner as well as the respondents. However, both appeals were dismissed and the judgment and decree dated Annexure P/2, dated 30.11.2013 was upheld by the learned Additional District Judge, Sirsa as well as by this Court vide judgment and decree Annexure P/3 dated 12.07.2017 and Annexure P/4 dated 20.09.2018.

[4] Short argument of learned counsel for the petitioner is that once the judgment and decree, Annexure P/2 dated 30.11.2013 permitted conduct of fresh departmental enquiry to be concluded within three months from the date of passing of the decree failing which the petitioner would be entitled to get all services benefits by imposing the same punishment as awarded to the

co-employees namely Bhalle Ram and Gharsi Ram and the said period having expired and enquiry not having been commenced, besides, the petitioner having been released the service benefits after imposing punishment as awarded to other co-employees namely Bhalle Ram and Gharsi Ram, the appointment of enquiry officer for conduct of enquiry proceedings is an *action coram non-judice*.

[5] Learned counsel for respondent Nos.1 to 3 has not been able to show that time for conducting enquiry was extended by either of the Superior Courts or that the petitioner was not released service benefits by imposing the same punishment as was awarded to the other co-employees namely Bhalle Ram and Gharsi Ram.

[6] Learned counsel the respondent Nos.1 to 3, however, contends that the enquiry was concluded within three months of the dismissal of the RSA.

[7] I have considered the submissions of learned counsel for the parties.

[8] Admittedly, the judgment and decree, Annexure P/2 dated 30.01.2013 passed by the learned Addl. Civil Judge (Sr. Div.) Sirsa was upheld by this Court without any modification whatsoever. The judgment and decree, Annexure P/2 dated 30.11.2013 granted liberty to the respondents to conduct a fresh departmental enquiry with the rider that if fresh departmental enquiry was initiated then the same was to be concluded within three months from the date of passing of the decree, otherwise, the petitioner was entitled to get all service benefits by imposing punishment as awarded to other co-employees namely Bhalle Ram and Gharsi Ram. In other words, decision to conduct a fresh enquiry as well as conduct of enquiry was to be within the time frame of three months from the date of

passing of the decree. The same was not done within the stipulated period of time. Instead of conducting enquiry within the stipulated period of time, the respondents imposed punishment on the petitioner as awarded to other co-employees namely Bhalle Ram and Gharsi Ram as per the judgment and decree, Annexure P/2 dated 30.11.2013 and released all service benefits to the petitioner as per his entitlement.

[9] The enquiry could not have been conducted *de hors* the judgment and decree, Annexure P/2 dated 30.11.2013 which had attained finality and to which judgment and decree, there was no modification. Instead of conducting the enquiry within the stipulated period of time, the petitioner was imposed punishment as was awarded to other co-employees namely Bhalle Ram and Gharsi Ram in accordance with the judgment and decree, Annexure P/2 dated 30.11.2013 and he was released all service benefits as per entitlement. In the circumstances, the plea of the respondents that an Enquiry Officer was appointed within three months from the date of dismissal of RSA is without any merit.

[10] In view of the position as noted above, the writ petition is allowed and impugned order, Annexure P/5 dated 29.10.2018/31.10.2018 is quashed.

(B.S. Walia)
Judge

03.03.2020
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Whether speaking/reasoned: Yes/No.
Whether reportable : Yes/No.