

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-4535-2021 (O&M)

Date of Order:25.02.2021

ARIHANTA DEVI

..Petitioner

Versus

STATE OF PUNJAB AND OTHERS

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Pankaj Jain, Advocate,
for the petitioner.

Ms. Ambika Bedi, Assistant Advocate General, Punjab.

ANIL KSHETARPAL, J(Oral)

Through this writ petition, the petitioner, who is at present settled in the United States of America, prays for issuances of a writ in the nature of certiorari to quash the inquiry report dated 04.01.2008, order of punishment dated 25.04.2014 and subsequent order of punishment dated 16.01.2017/22.09.2018 and an order dated 27.12.2019 passed while dismissing the appeal. The petitioner also prays for direction to take a decision on the request of the petitioner for voluntary retirement and settlement of pensionary relief.

The petitioner has been dismissed from service on account of her unauthorized absence as she left the country on more than one occasion.

Some facts are required to be noticed.

She was appointed as SS Mistress on ad hoc basis on 22.12.1981. She claims that her services were regularized on 01.04.1985 and thereafter, confirmed on 31.01.1995. She, after the grant of Ex-India

Leave without pay from 12.03.2005 to 11.09.2005 and sanction thereof, left the country. She claims to have submitted various applications seeking extension of leave between 2005 to 2007.

The Disciplinary Authority on coming to know that the petitioner has not come back, issued a charge-sheet on 04.10.2006 for unauthorized absence. She replied on 04.07.2007. In between she was permitted to rejoin the duty on 12.04.2007. Within five days of rejoining i.e. 17.04.2017, she applied for voluntary retirement by giving three month's notice. Thereafter, she left the charge on 25.07.2007 and once again, left the country.

Pursuant to the charge-sheet issued on 04.10.2006, an Inquiry Officer was appointed but the petitioner in spite of being served with notice multiple times, did not come forward to defend herself in the inquiry. The Inquiry Officer submitted a report on 04.01.2008. The petitioner, thereafter, filed a suit for declaration which was decreed on the ground that the petitioner would be deemed to have voluntarily retired on lapse of a period of three months (notice period). However, a settlement was arrived at before the Lok Adalat during the pendency of an appeal and the department undertook to conclude the inquiry within a period of six months. Thereafter, the disciplinary authority gave an opportunity of personal hearing to the petitioner through public notice. The petitioner again did not enter appearance and hence, the Disciplinary Authority on 25.04.2014, passed an order dismissing her from the service.

Since the appeal filed by the petitioner was not decided for quite some time, in Civil Writ Petition No.22016 of 2017, directions were issued to decide the pending appeal. Pursuant thereto, the order in question

has been passed.

Heard learned counsel for the petitioner at length and with his able assistance perused the paper book.

Learned counsel representing the petitioner contends that on 17.04.2017, she submitted a request for voluntary retirement which has never been rejected. Hence, subsequent orders passed by the authorities are perverse. As per the statement given before the Lok Adalat, the inquiry proceeding was required to be concluded within a period of six months, failing which the judgment of the trial Court was to come in operation. He submits that once the ultimate order dismissing the petitioner from service was passed after a period of more than six months, therefore, the petitioner would be deemed to have been retired voluntarily. In support thereof, learned counsel relies upon the judgment in Surinder Singh vs. State of Punjab and others, 2010(8) SLR 658 and DAV College Trust and Management Society vs. State of Punjab, 2010(4) SCT 636.

These facts have been noticed from the pleadings of the writ petition. It is apparent that the petitioner was never interested in employment after she went to USA in the year 2005. Firstly, she did not come back after the period of sanction of Ex-India Leave came to an end. Thereafter, when the inquiry proceedings were initiated she came back in April, 2007, but applied for voluntary retirement within 5 days i.e. on 17.04.2007 and left the charge on 25.04.2007. Thus, the petitioner is nowonly interested in the money.

Still further, the petitioner even after having been given an opportunity to appear before the Inquiry Officer as well as before the disciplinary authority, did not choose to enter appearance and contest. In

these circumstances, the disciplinary authority was left with no other choice but to pass an order. It is significant to note that as per the statement of the official given before the Lok Adalat which resulted in disposal of the appeal, the petitioner cannot claim that she has no knowledge. Still further, the public notice was published in various newspapers.

The petitioner seeks issuance of a writ of certiorari which is a discretionary relief. It can only be granted in appropriate cases. The scope of jurisdiction while hearing petitions seeking the issuance of writ of certiorari, has been explained by 5 judges bench of the Supreme Court in ***T.C. Basappa Vs. T. Nagappa & Anr. AIR 1954 Supreme Court 440***, in the following manner:-

“6. The language used in Articles 32 and 226 of our Constitution is very wide and the powers of the Supreme Court as well as of all the High Courts in India extend to issuing of orders, writs or directions including writs in the nature of habeas corpus, mandamus, quo warranto, prohibition and certiorari as may be considered necessary for enforcement of the fundamental rights and in the case of the High Courts, for other purposes as well. In view of the express provisions in our Constitution we need not now look back to the early history or the procedural technicalities of these writs in English law, nor feel oppressed by any difference or change of opinion expressed in particular cases by English Judges. We can make an order or issue a writ in the nature of certiorari in all appropriate cases and in appropriate manner, so long as we keep to the broad and fundamental principles that regulate the exercise of jurisdiction in the matter of granting such writs in English law.

7. One of the fundamental principles in regard to the issuing of a writ of certiorari, is, that the writ can be availed of only to remove or adjudicate on the validity of judicial acts. The expression “judicial acts” includes the exercise of quasijudicial functions by administrative bodies or other authorities or persons obliged to exercise such functions and is used in contrast with what are purely ministerial acts. Atkin, L.J. Thus summed up the law on this point in Rex v. Electricity Commissioners:

“Whenever anybody or persons having legal

authority to determine questions affecting the rights of subjects and having the duty to act judicially act in excess of their legal authority, they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs."

The second essential feature of a writ of certiorari is that the control which is exercised through it over judicial or quasijudicial tribunals or bodies is not in an appellate but supervisory capacity. In granting a writ of certiorari the superior court does not exercise the powers of an appellate tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The offending order or proceeding so to say is put out of the way as one which should not be used to the detriment of any person.

8. The supervision of the superior court exercised through writs of certiorari goes on two points, as has been expressed by Lord Sumner in King v. Nat Bell Liquors Limited. One is the area of inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance of law in the course of its exercise. These two heads normally cover all the grounds on which a writ of certiorari could be demanded. In fact there is little difficulty in the enunciation of the principles; the difficulty really arises in applying the principles to the facts of a particular case.

9. Certiorari may lie and is generally granted when a court has acted without or in excess of its jurisdiction. The want of jurisdiction may arise from the nature of the subject-matter of the proceeding or from the absence of some preliminary proceeding or the court itself may not be legally constituted or suffer from certain disability by reason of extraneous circumstances. When the jurisdiction of the court depends upon the existence of some collateral fact, it is well settled that the court cannot by a wrong decision of the fact give it jurisdiction which it would not otherwise possess.

10. A tribunal may be competent to enter upon an enquiry but in making the enquiry it may act in flagrant disregard of the rules of procedure or where no particular procedure is prescribed, it may violate the principles of natural justice. A writ of certiorari may be available in such cases. An error in the decision or determination itself may also be amenable to a writ of certiorari but it must be a manifest error apparent on the face of the proceedings, e.g. when it is based on clear

ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by certiorari but not a mere wrong decision. The essential features of the remedy by way of certiorari have been stated with remarkable brevity and clearness by Morris, L.J. in the recent case of Rex v. Northumberland Compensation Appellate Tribunal. The Lord Justice says:

“It is plain that certiorari will not issue as the cloak of an appeal in disguise. It does not lie in order to bring up an order or decision for re-hearing of the issue raised in the proceedings. It exists to correct error of law when revealed on the face of an order or decision or irregularity or absence of or excess of jurisdiction when shown.”

11. In dealing with the powers of the High Court under Article 226 of the Constitution, this Court has expressed itself in almost similar terms and said:

“Such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error or excess has resulted in manifest injustice. However extensive the jurisdiction may be, it seems to us that it is not so wide or large as to enable the High Court to convert itself into a court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or the order to be made.”

These passages indicate with sufficient fullness the general principles that govern the exercise of jurisdiction in the matter of granting writs of certiorari under Article 226 of the Constitution.”

Now let's examine the judgments relied upon by learned counsel for the petitioner.

In **Surinder Singh's** case (supra), the Court held that if the decision of rejection on the application for pre-mature retirement is not communicated within time, the same would be deemed to have been accepted. However, it may be noticed that in the aforesaid judgment, the

court was not considering the case where the employee is already facing disciplinary proceedings. Further, it is apparent from the reading of paragraph 13 of the judgment that the court decided the case in the facts and circumstances of that case. Hence, such judgment, with greatest respect, cannot be treated as binding precedent.

In DAV College Trust and Management Society's case (supra), the Hon'ble Division Bench while dismissing the appeal in limine, did not find it appropriate to interfere with the judgment passed by the Educational Tribunal and the learned Single Judge. Hence, this judgment will also not come to the rescue of the petitioner.

In the present case, no doubt, the petitioner submitted an application for voluntary retirement on 17.04.2007, but at that time, the disciplinary proceedings were pending. Still further, when the petitioner entered into a settlement before the Lok Adalat in 2013, the petitioner had accepted the fact that the competent authority is entitled to complete the disciplinary proceedings. She never insisted that she be considered as deemed to have voluntarily retired. In view of the aforesaid order of the Lok Adalat, the petitioner, at this stage, cannot be allowed to submit that her request for voluntary retirement would be deemed to have been accepted in the year 2007.

Further, as regards the argument of learned counsel that the enquiry proceedings were undertaken to be concluded within a period of 6 months, it may be noted that the enquiry proceedings stood concluded before the period of 6 months. The enquiry report was submitted on 04.01.2008. Learned counsel contends that the enquiry proceedings should be interpreted to hold that the final order was also required to be passed

within the given time. This Bench is afraid that such interpretation cannot be taken in view of the specific words used.

Keeping in view the aforesaid facts and principles of law laid down by the five Judge Bench explaining the scope of the jurisdiction of the High Court while issuing writ in the nature of certiorari, this court does not find it apporpaite to issue the writ.

Hence, dismissed.

February 25, 2021
Ayub/nt

(ANIL KSHETARPAL)
JUDGE

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