

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

204)

RA-CW-229 of 2020 in/and
CWP no.11395 of 2020 (O&M)
Date of Decision: 21.01.2021

Bikramjit Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Pardeep Singh Bajwa, Addl. Advocate General, Punjab
for the review-applicant-State.
Mr. R.K. Arora, Advocate
for the non-applicant-petitoenr.

Amol Rattan Singh, J. (Oral)

Case heard by video conferencing.

This review application has been filed by the State of Punjab
qua the order of this court dated 23.09.2020 in CWP no.11395 of 2020, with
that order, as also the orders passed thereafter in that writ petition, reading as
follows:-

Order passed on 23.09.2020:-

*“All cases listed today have been taken up for hearing by
way of video conferencing because of the situation existing due to the
Covid-19 pandemic.*

*Learned State counsel submits that she had duly conveyed
the order dated 31.08.2020, vide a demi-official (DO) letter dated
02.09.2020, addressed to the Additional Chief Secretary to the
Government of Punjab, Department of Home, with a copy thereof sent to
the DGP, Punjab.*

However, no reply has still not been filed to the petition.

*That being so, in terms of the order dated 31.08.2020 and
especially looking at the instructions issued by the Chief Secretary to the
Government of Punjab, on July 02, 1980 (copy Annexure P14, reference
clause 6 (iii) thereof), the petitioner is ordered to be reinstated in service*

with immediate effect.

However, whether he should be placed on any duty dealing with the public or not, shall be the discretion of the competent authority.

If the reply on behalf of the Government is still not filed on the next date of hearing, the Special Chief Secretary/Additional Chief Secretary to the Government of Punjab, Department of Home, shall be summoned to remain personally present in court.

Adjourned to 30.10.2020.”

Order passed on 30.10.2020:-

“All the cases listed today have been taken up for hearing by way of video conferencing because of the situation existing due to the Covid-19 pandemic.

On 31.08.2020, the following order had been passed (reproducing therein the order dated 07.08.2020):-

“All cases listed today have been taken up for hearing by way of video conferencing because of the situation existing due to the COVID-19 pandemic.

On 07.08.2020, the following order had been passed:-

“All cases listed today have been taken up for hearing by way of video conferencing because of the situation existing due to the Covid-19 pandemic.

By this petition, the petitioner seeks issuance of a writ in the nature of 'certiorari' quashing the impugned order dated 20.03.2019 (Annexure P-7); and further, a writ of 'mandamus' directing that his statutory appeal-cumrepresentation dated 05.04.2019 (Annexure P-8) be decided, {followed by reminders dated 26.06.2019 (Annexure P-9), 19.02.2020 (Annexure P-10) and 28.04.2020 (Annexure P-11)}. He further seeks a direction to the respondents to reinstate the petitioner in service forthwith and to “decide his reply to the charge sheet” and to also grant him all consequential benefits.

Learned counsel for the petitioner refers to the instructions Annexure P-14, to submit that if an employee is placed under suspension and disciplinary proceedings are not concluded within one year, he is to be reinstated in service.

He submits that the services of the petitioner having

been suspended in January, 2019, obviously one year expired in January, 2020, which is well before the Covid-19 epidemic set in and hence, the petitioner deserves to be reinstated.

Notice of motion.

Mr.Charanpreet Singh, learned AAG, Punjab, accepts notice on behalf respondents no.1 and 2, at the asking of the court.

He seeks time to take instructions.

Adjourned to 31.08.2020.

In the meanwhile, a written statement be filed and if the appeal filed by the petitioner can be decided, it would be decided by the competent authority.”

Today, learned State counsel seeks further time to file a reply to the petition, with her submitting that in fact the question of reinstatement of the petitioner in service is also under consideration of the Government.

Adjourned to 23.09.2020.

It is made clear that if a reply to the petition is not placed on record at least one week before that date, answering specifically the contention raised by learned counsel for the petitioner on the last date of hearing, as regards reinstatement in service after one year if disciplinary proceedings are not concluded within that period, then this court may have no choice but to reinstate the petitioner in service, subject of course to disciplinary proceedings continuing against him.”

Thereafter, on 23.09.2020, with no reply having been filed on behalf of the State, it was directed that in terms of the instructions issued by the Chief Secretary to the Government of Punjab, on July 02, 1980 (copy Annexure P-14), the petitioner be reinstated in service with immediate effect.

Though a reply dated 01.10.2020 is on record, the order dated 23.09.2020 has not been complied with, thereby with the respondents being in contempt of the said order.

Mr. Bajwa submits that as a matter of fact an application seeking modification of the said order had been sent to the office of the Advocate General, Punjab, this month but an objection having been raised, it could not be filed on time.

Even if that is so, very obviously with the order dated 23.09.2020 having been uploaded on the website of this court on 26.09.2020, at least one month went by without implementation of that order, and with no application even attempted to be filed seeking any modification thereof.

Be that as it may, in view of what has been contended by Mr. Bajwa as regards the merits of the case (with him referring to the reply filed by the respondents), presently at least no notice is being issued to any of the respondents under the provisions of the Contempt of Courts Act, 1971, but if no application is filed within a week seeking modification of the order, giving therein a detailed explanation as to why the order was not implemented and why no such application was filed within a reasonable time, this court will have no choice but to issue notice of contempt to the Addl. Chief Secretary, Government of Punjab, Department of Home.

Adjourned to 09.11.2020.

In the meanwhile the decision taken on the appeal filed by the petitioner against his suspension order be also placed on record; and since learned State counsel has informed this court that with the petitioner was served with a second chargesheet issued on 02.03.2020, the decision on whether he has been considered to be under suspension in the context of that chargesheet also or not, shall also be placed on record with the affidavit of the Addl. Chief Secretary.

At this stage, Mr. Arora submits that two other officials, namely Charanjit Sharma, SSP and Pradeep Singh, Inspector, who were also initially arraigned as accused in the same FIR, have also been reinstated.

Naturally, the reply to be filed by the Addl. Chief Secretary will take into consideration that aspect also.”

Order passed on November 09, 2020:-

“Learned counsel for the State has submitted that an application for recalling/review of the order dated 23.09.2020 has already been filed, though not listed by the Registry. It is further submitted that written statement has also been filed by the respondents.

The State has also filed an affidavit, along with an order, allegedly dealing with the appeal filed by the petitioner against his suspension. However, a perusal of the order shows that instead of deciding the statutory appeal, the said order has only ordered to file the same by treating it as a representation on behalf of the petitioner.

Learned counsel for the State submits that he will seek instructions from the concerned authorities in this regard.

Learned counsel for the petitioner also seeks time to file reply to the application filed by the respondents.

An adjournment is prayed for. Adjourned to 07.12.2020.”

Order passed on December 18, 2020:-

“All cases listed today have been taken up for hearing by way of video conferencing because of the situation existing due to the COVID-19 pandemic.

The turn of the case having come up well after court time, with affidavits having been filed on behalf of the respondent-State, adjourned to 21.01.2021.

The interim order passed on the last date of hearing, staying operation of the order of this court earlier passed on 23.09.2020, shall continue to remain in operation till then.”

Thereafter, two affidavits of the Additional Chief Secretary to the Government of Punjab, Department of Home, have been filed (dated 03.11.2020 and 14.12.2020), by the first of which he tenders an apology for the order of this court not having been implemented and in fact seemingly a deliberate contempt having been committed, which however Mr. Bajwa submits was wholly unintentional and it is stated that during the pendency of this review application a misconception arose in the mind of the person concerned.

With the aforesaid explanation given the apology is accepted, with therefore no need arising in the mind of this court to issue any notice under the provisions of the Contempt of Courts Act, 1971.

As regards the order challenged in the accompanying writ petition itself, Mr. Bajwa submits that the appeal of the petitioner against the order of suspension dated 20.03.2019 (by which his services were suspended) has been decided by the Government vide an order dated 20.11.2020.

That being so, Mr. Arora, learned counsel for the non-applicant (petitioner in the petition) submits that the petitioner would like to withdraw the petition itself, with liberty to file a fresh petition challenging therein the aforesaid order passed in the appeal filed by the petitioner.

That being so, the accompanying petition is ordered to be dismissed (as withdrawn) with liberty to the petitioner to challenge the aforesaid order dated 20.11.2020, as also the orders impugned in the accompanying writ petition itself, with any such petition naturally to be considered wholly on its own merit after it is listed as per roster, with any observation made by this court in the present petition/application to not hamper either side as regards the merits of the contentions to be raised in that petition (if filed).

It is also clarified that since the order of suspension as was subject matter of the present writ petition has now also been confirmed in the order passed in appeal, both orders would need to be considered on merits in any petition filed by the petitioner, and therefore even the order passed by this court as is subject matter of the review application, would not

hamper either the petitioner or the respondent State, in raising their arguments qua both orders; i.e. the one suspending the services of the petitioner and the order passed in the appeal thereafter.

The writ petition is ordered to be dismissed as withdrawn as aforesaid and in view of what has been observed hereinabove, the review application is rendered infructuous, as no order passed in the present petition would come in the way of either the petitioner or the State to raise arguments as per their respective stands, qua the orders impugned in the present petition.

21.01.2021
vcgarg

(AMOL RATTAN SINGH)
JUDGE

Whether reasoned/speaking: Yes
Whether reportable: No