

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

**CWP-24687 of 2014 (O&M)
DATE OF DECISION : 07.01.2021**

Baldev Singh

...Petitioner

Versus

Punjab Mandi Board &Ors.

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Argued by : Mr. Manu K. Bhandari, Advocate,
For the petitioner.

Mr.C.S. Sharma, Advocate
For respondents.
(Presence marked through video conference)

ARUN MONGA, J.

1. Petitioner, inter alia, seeks issuance of a writ in the nature of certiorari for quashing resolution and order dated 07.03.2008 Annexure P/14 and Annexure P/15, respectively whereby he was dismissed from service, retrospectively, with effect from 07.10.1992. Further prayer is to quash an appellate order dated 22.08.2012 (Annexure P/19), rejecting his appeal against order of dismissal from service. A consequent direction to the respondents is also sought to disburse his pension and retiral benefits from date of retirement along with interest.

2. Facts are not disputed. Briefly, petitioner was appointed in January, 1967 as Fee Collector in a Market Committee under Punjab Mandi Board. He was arrested in a criminal case on 25.08.1988 which led to his suspension from same date. After Sessions trial, the petitioner was convicted and sentenced by the Court on 07.10.1992 for offences under sections 302, 302/34, 307, 307/34, 326 and 326/34 IPC. His appeal against conviction was

dismissed on 06.07.1995 by High Court. An SLP before the Supreme Court against judgments of conviction and sentence was also dismissed on 26.11.1996. While under suspension, on attaining superannuation the petitioner retired on 31.07.1996. Later, vide impugned resolution and order, both dated 07.03.2008, petitioner was retrospectively dismissed with effect from 07.10.1992, the date of initial conviction.

3. I have heard the learned counsel for the parties and perused the record. In my opinion, the writ petition merits acceptance, partly though, for the reasons as elaborated hereinafter.

4. In the case in hand, record does not show if any disciplinary proceedings, either because of his involvement/conviction/sentence in criminal case, and/or for any other charge- were commenced or pending at the time of petitioner's retirement on 31.07.1996. Upon his retirement from service on 31.07.1996, the employer-employee relation had thus ceased. Petitioner could not, therefore, have been 'retrospectively' dismissed with effect from 07.10.1992 vide the impugned orders dated 07.03.2008 (Annexure P/14 and P/15) as upheld vide appellate order dated 22.08.2013 (Annexure P/19). Petitioner's status as a retired person would not be negated merely on the ground of withholding pension/retiral benefits, despite his retirement on 31.07.1996.

5. Issue herein is not *res integra*. Legal position in this respect has been enunciated by Apex Court in **High Court of Punjab and Haryana v. Amrik Singh 1995(29) ATC 311=1996(Sup) JT 644**. The employee therein was a Selection Grade Superintendent and on his superannuation at the age of 58 years on 31.08.1980, the competent authority had extended his tenure by two years and thereby he was to retire after expiry of re-employment on

31.08.1992. During his re-employment it came to the knowledge of the competent authority that the respondent had committed misconduct of embezzling the funds. Therefore, he was placed under suspension on 17.08.1981 and charge-sheeted. On expiry of two years of his extended service, he was allowed to retire. On receipt of the report of inquiry and after complying with clause 2 of Article 311 of the Constitution of India and the relevant rules, the competent authority-Chief Justice of the High Court- on the administrative side dismissed the respondent from service with immediate effect. On the administrative side the respondent's appeal was dismissed. However, on judicial side, a Division Bench of this Court quashed the initiation of disciplinary proceedings and imposition of penalty of dismissal from service against the official. While disposing of the appeal, the Supreme Court observed/held as under in para 3 of the judgment *ibid*:

- “3. *The respective contentions give rise to the question whether the order of dismissal is valid in law or what would be the appropriate orders that could be passed in the circumstances of the case. In D.V.Kapoor v. Union of India and others, 1990(4)SCC 314 considering Rule 9 of the Central Pension Rules, this Court held that the initiation of the disciplinary proceedings against the delinquent must be deemed to be proceedings under the Pension Rules and shall be continued and concluded by the authority by which the proceedings have been commenced in the same manner as if the Government servant had been continued in service. In that case, since the prior approval of the President was required to be obtained, it was held that the requirement had been complied with. Accordingly, it was held that the proceedings validly initiated against the delinquent officer should be continued till the appropriate orders are passed by the competent authority, though the delinquent had retired during the pendency of the enquiry and the proceedings were not abated, consequent on the retirement. The same ratio would apply to the facts of this case. Several options are open to the appointing authority and in case the disciplinary authority also happens to be the same appointing authority. Before the delinquent reaches superannuation, the enquiry should be got expedited and appropriate order passed on the basis of the findings reached by the disciplinary authority. In case the delinquent attempts to drag the proceedings or he does not co-operate in the completion of the enquiry, after giving necessary warning in writing, suitable course appropriate to the facts is*

required to be adopted. In case it is not possible to complete the enquiry or to pass the final order, the suspension should be extended and to pass appropriate orders during extended period. In case it is found that either of these courses, neither is feasible nor possible and allowed the delinquent to retire from service, it would be open to the disciplinary authority to record in its order that but for the retirement he would have passed an order of dismissal or removal from service. Since the delinquent had retired, the disciplinary authority would record in the order that the delinquent “ committed grave misconduct of the proved charge “ and suitable order be made.

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5. *It is seen that the learned Chief Justice of the High Court, on the administrative side, while passing the order of dismissal agreed with the enquiry officer's finding that the respondent committed embezzlement and mentioned that the order of dismissal would come into immediate effect from the date of the order. In other word, he appears to have intended to say that the order of dismissal would be operative from the date of the order of dismissal. But it would appear that the Chief Justice was not apprised that the delinquent had already been retired from service on completion of two years period of extended service of re-employment with effect from August 31, 1982. Therefore, the order of giving effect to the order of dismissal from the date of its order was of no consequence and became superfluous as he was not longer in service as on that date. However, it would be clear that he has the power either under Rule 2.2 of Punjab and Haryana Civil Services Manual Vol. II or Rule 9 of the Central Civil Services Pension Rules to take appropriate action as was made applicable to the staff of the High Court of Punjab and Haryana as the case may be. Therefore, it would be open to him to take such action as is open to him under the law. The impugned order of the High Court is set aside and the writs are issued with the above modification. Appeals are allowed. No costs.”*

6. **In Tarsem Singh v. The Punjab Scheduled Castes Land Development and Finance Corporation CWP No. 1256 of 2012 (O&M)** decided by this High Court on 30.1.2012, petitioner retired from service on 30.09.2008. Consequently, he was dismissed from service vide order dated 21.11.2011 with retrospective effect from 30.09.2008. A co-ordinate bench of this Court, while allowing the writ held that an employee cannot be dismissed from service with retrospective effect, there being no relationship of master and servant on the date of such order. Similar view was taken by another co-ordinate bench of this Court in **Ajaib Singh Versus The Punjab Water**

Resources Management and Development Corporation Limited & others
CWP No. 2689/2014(O&M) decided on 04.08.2016.

7. Qua retiral benefits of the petitioner, the same are governed under Rule 2.2 of the Punjab Civil Services Rules Volume II. For ready reference relevant of same is as below:-

“2.2(a) recoveries from pension: Future good conduct is an implied condition of every grant of pension. The Government, however, reserves to themselves the right of withholding or withdrawing a pension or any part of it if the pensioners is convicted of serious crime or be guilty of grave misconduct. In a case where a pensioner is convicted of a serious crime, action shall be taken in the light of the judgment of the court relating to such conviction.”

Perusal of above reflects that future good conduct is in an implied condition for every grant of a pension. Government has a right, by following the prescribed procedure, of withholding or withdrawing pension or any part of it if the pensioner is convicted of a serious crime or be guilty of serious misconduct.

8. As an upshot of aforesaid position, the impugned resolution and order dated 07.03.2008 (Annexure P/14 and Annexure P/15) dismissing petitioner from service with ‘retrospective’ effect from 07.10.1992 and the appellate order dated 22.08.2012 (Annexure P/19) are set aside. Regarding pension, it would be open to the competent authority, if it so desires, to take a call in accordance with law.

9. Writ petition is thus disposed of. Pending applications, if any, also stand disposed of.

January 07, 2021
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(ARUN MONGA)
JUDGE

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