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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

-.-

CWP-20366-2021

Date of decision: 24.11.2022

Darshan Kumar

.....Petitioner

Versus

*The Presiding Officer Industrial Tribunal-cum-Additional District Judge,
Jalandhar and others*

...Respondent

Coram: Hon'ble Mr. Justice Rajbir Sehrawat

Present: Mr. Vijay Lath, Advocate with
Mr. Naveen Sharma, Advocate
for the petitioner

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RAJBIR SEHRAWAT, J.(ORAL)

The present writ petition has been filed under Articles 226 and 227 of the Constitution of India, praying for issuance of a writ in the nature of certiorari, quashing the impugned award dated 30.05.2018 (Annexure P-10) passed by respondent No. 1 and the order dated 17.03.2011 (Annexure P-4) passed by respondent No. 2. Further, prayer has been made for issuance of a writ in the nature of mandamus, directing respondents No. 2 to 4, to notionally re-instate the petitioner in service and pay him the retiral benefit; as the petitioner has attained the age of superannuation on 31.08.2005.

The facts as reflected in the writ petition are that the petitioner was serving as Conductor in the Punjab Roadways. While the petitioner was on duty as Conductor on Bus No. 9813 enroute Jalandhar – Chandigarh; on 20.11.2000, he was found not having issued tickets worth

Rs.42/- each to two passengers, who were travelling from Nawanshahar to Kharar. Therefore, there was an allegation that the petitioner embezzled an amount of Rs.84/-. With this allegation, the petitioner was issued a charge sheet. The Enquiry Officer was appointed to conduct the disciplinary inquiry into the matter. The Enquiry Officer held the petitioner to be guilty of the misconduct. Accordingly, the punishing authority had passed the order dated 15.06.2004 (Annexure P-1) terminating service of the petitioner. The said order was endorsed to the petitioner on 23.06.2004. Feeling aggrieved, the petitioner preferred an appeal against the aforesaid order before the appellate authority. However, the appellate authority; vide order dated 18.10.2006 (Annexure P-2), dismissed the appeal of the petitioner.

Challenging the said order, the petitioner had filed a civil suit before the Additional Civil Judge, S.B.S.Nagar. The civil Court, vide judgment and decree dated 25.02.2010, set aside the impugned order dated 23.06.2004 and directed the respondents to pass a fresh order after hearing the petitioner. However, the enquiry proceedings conducted by the department against the petitioner were upheld by the Court. It was only for re-consideration on the order of punishment that the matter was remanded to the authority. Thereafter, the petitioner preferred an appeal against the judgment and decree passed by the civil Court before the District Judge; which culminated into dismissal on 22.03.2011. Aggrieved against the action of the department, the petitioner raised an industrial dispute. The matter was referred to the Labour Court. However, even the Labour Court has answered the reference against the petitioner. Hence, the present writ

petition.

Arguing the case, learned counsel for the petitioner has submitted that the civil Court had earlier set aside the termination order passed against the petitioner and the respondents were directed to reconsider the matter; with a direction to the punishing authority to deal with the objections raised by the petitioner against the punishment order. However, the respondent authority has again not considered the aspect of quantum of punishment. The punishing authority has not furnished any explanation in the punishment order; as to why the lesser punishment could not be imposed upon the petitioner. Secondly, counsel for the petitioner has argued that the petitioner has already attained the age of superannuation on 31.08.2005. Since the petitioner already stood superannuated, the respondents could not have passed the order of termination. The service of superannuated person cannot be terminated. Moreover, no termination order can be passed with retrospective effect. Hence, action of the respondents is totally illegal and not sustainable. Therefore, the same deserves to be set aside.

Having heard counsel for the petitioner and having perused the case file, this Court does not find any substance in the arguments raised by counsel for the petitioner. Perusal of the judgment and decree passed by the civil Court; in the first instance; shows that the Court had already upheld the inquiry and its findings against the petitioner. The said judgment and decree of the Court was upheld even in the appeal filed by the petitioner. Therefore, there could not have been any dispute qua misconduct of the petitioner having been established by the respondent-department. The only

aspect qua which the matter was remanded by the civil Court to the respondent authority was that the petitioner should be granted an opportunity of hearing before inflicting any punishment upon him. The record shows that pursuant to that decree, the respondent authority had written several letters, informing the petitioner to file his objections. However, no such objections were even filed by the petitioner. Not only that, the respondent-department had even served a show cause notice upon the petitioner and had his acknowledgment of the same, whereby the petitioner was granted an opportunity to raise his objections, if any. However, again the petitioner did not avail that opportunity. Therefore, there were no objections ever raised by the petitioner before the punishing authority; against the punishment which was under contemplation of the punishing authority. The punishing authority, otherwise also, has the discretion to choose the punishment, prescribed under the service Rules; once the charge framed against the delinquent employee stands proved. The Labour Court has rightly upheld the said action of the respondents after granting full opportunity to the parties. This Court does not find any illegality or perversity in the findings recorded by the Labour Court in that regard.

The second argument of counsel for the petitioner is that since the petitioner stood retired on 31.08.2005, therefore, no termination order could have been passed on 17.03.2011. However, this argument of counsel for the petitioner is also devoid of merit and is liable to be rejected. Needless to say that the initial order of termination of service of the petitioner was passed on 23.06.2004 and that order has been in continuous

litigation pending before the Court; and in continuation of the said proceedings only, the authority has re-considered the matter in compliance of the judgment and decree; which was passed by the civil Court passed on 25.02.2010. Hence, the order dated 17.03.2011 passed by the punishing authority is to be seen and considered in continuation of the order dated 23.06.2004 *i.e.* initial order of punishment. Moreover, even if the argument of the petitioner is to be taken into consideration, then also, undisputedly, the petitioner had attained the age of superannuation when his suit was pending before the Court. Therefore, this argument itself is discounted by the doctrine of *lis pendence*. If the petitioner had any claim in that regard, he was free to raise before the same civil Court. However, the petitioner did not even raise this issue before that Court. Therefore, the Court itself had directed the respondents to pass the fresh order. The order dated 17.03.2011 passed by the punishing authority is in continuation of the earlier proceedings and in compliance of the court decree relating to the order dated 23.06.2004, therefore, neither this order can be said to be retrospective in nature nor can it be said an order passed after superannuation of the petitioner.

Although counsel for the petitioner has also submitted that the punishment imposed upon the petitioner is on the higher side, however, this Court does not find any substance even in this assertion of counsel for the petitioner. This is no gain saying that it is discretion of the punishing authority to choose any one of the prescribed punishments, to be inflicted upon the petitioner. The Court is not supposed to interfere into the aspect of the punishment unless the punishment is so disproportionate to the

misconduct as to shock the conscience of the Court. In the present case, the allegation against the petitioner was of embezzlement of the government money while he was on duty as Conductor. Embezzlement on the part of a person, who is entrusted with the government money through-out the day, cannot be belittled by any means. Therefore, this Court does not find any ground to interfere with the punishment inflicted upon the petitioner.

In view of the above, finding no merits, the present writ petition is dismissed.

(Rajbir Sehrawat)
Judge

November 24, 2022
mohan bimbura

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No