

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

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**LPA No.1618 of 2017 (O&M)
Decided on : 10.03.2022**

Mohan Singh

... Appellant

Versus

State of Punjab and others

... Respondents

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE VIKAS SURI**

Present: Mr. M.K. Dhot, Advocate for the appellant.

Ms. Monica Chhibber Sharma, Sr. DAG, Punjab.

G.S. Sandhawalia, J. (Oral)

CM-3465-LPA-2017

Application for condoning the delay of 120 days in filing the appeal has been filed.

For the reasons mentioned in the application duly supported by affidavit of the applicant, the same is allowed. Delay of 120 days in filing the appeal is condoned.

CM stands disposed of.

Main case

Present letters patent appeal is directed against the order of the learned Single Judge dated 28.03.2017 passed in CWP Nos.6391 of 2017 'Mohan Singh Vs. State of Punjab and others', whereby the writ petitioner was relegated for availing the remedy before the Civil Court by recording a finding that to adjudicate the inquiry report and the punishment order, evidence is required to be led.

A perusal of the paper-book would go on to show that

challenge as such is to the inquiry report dated 27.10.2006 (Annexure P-3) and the order dated 18.06.2012 (Annexure P-5) and the order dated 06.02.2017/13.02.2017 (Annexure P-8).

It is to be noticed that on an earlier occasion, the writ petitioner had approached this Court in CWP No.17419 of 2009, wherein it had been argued that the writ petitioner had more than 20 years of service to his credit and, therefore, his claim for pension had not been considered while punishing him. A finding having been recorded by the Inquiry Officer that there was only a delay in depositing the amounts and he had not used the amount for his personal use or cheated the Government, which led to the orders of dismissal and upheld in appeal being set aside on 02.04.2012, with liberty to pass fresh orders.

Thereafter, the dismissal order had been passed by the Excise & Taxation Officer on 18.06.2012 (Annexure P-5). The second writ had then been filed bearing CWP No.7626 of 2013, which was decided on 30.08.2016 (Annexure P-7), whereby the order passed by the Appellate Authority dated 25.01.2013 was set aside on account of the fact that the statutory appeal filed by the writ petitioner against the order of the Punishing Authority was heard by the same officer, who had been promoted to the higher post and the appeal was directed to be heard afresh.

The Financial Commissioner, thereafter, dismissed the appeal as such that the trust of the department had been breached,

while noticing that the appellant had served the department for more than 20 years. It was in such circumstances, the petitioner apparently approached the writ Court again. The impugned order of the learned Single Judge dated 28.03.2017 passed in CWP No.6391 of 2017 reads as under:-

“The petitioner has challenged the inquiry report dated 27.10.2006 (Annexure P-3), order dated 18.06.2012 (Annexure P-5) and order dated 06.02.2017/13.02.2017 (Annexure P-8), vide which he has been dismissed from service.

After hearing learned counsel for the petitioner for some time, I am of the view that in order to adjudicate the inquiry report and the punishment order, the evidence is required to be led and findings are to be recorded.

Therefore, the petitioner is relegated to avail the remedy before the civil court.

Disposed of.”

In the considered opinion of this Court keeping in view the background of the case as such and the limited issue which the appellant had agitated, the reasoning which had been recorded by the learned Single Judge cannot be held to be acceptable. The issue as such was more on the quantum of punishment, rather than the adjudication upon the inquiry report. As noticed above that the appellant had served the department for more than 20 years and on the basis of the inquiry report and the fact that there was no allegation of mis-appropriation against him, he had only asked for lessor punishment. It has further been pointed out that even otherwise, now the appellant has reached the age where he cannot be

reinstated in service as he is over 65 years of age.

In such circumstances, the very limited aspect which was to be examined by the learned Single Judge was the issue whether the punishment awarded shocks the conscience of the Court. Reliance in this regard can be placed upon the judgment passed by the Apex Court in '**Union of India and others Vs. P. Gunasekaran**', (2015) 2 SCC 610. This exercise was thus to be carried out, as noticed only by the writ Court, since the appellant had already come to this Court on two occasions earlier. Therefore, to drive him to yet another round of litigation before a different forum in the evening of his life, as such, in the considered opinion of this Court would not be just and fair.

Resultantly, the impugned order dated 28.03.2017 cannot be held to be justified, whereby the writ petition was dismissed in limine without calling for the reply. Accordingly, the appeal is allowed and the said order is set aside. Matter is remanded to the learned Single Judge. The State shall file response before the learned Single Judge.

(G.S. SANDHAWALIA)
JUDGE

(VIKAS SURI)
JUDGE

March 10, 2022

Naveen

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No