

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

2023:PHHC:166870

206

CWP-21816-2016 (O&M)
DECIDED ON: 01.12.2023

JAIVIND SINGH

... PETITIONER

VERSUS

HARYANA TOURISM CORPORATION LD. AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Supriya Garg, Advocate
for the petitioner.

Mr. Abhilaksh Grover, Advocate
for the respondents.

SANDEEP MOUDGIL, J.

1. The jurisdiction of this Court under Article 226 of the Constitution of India has been invoked for issuance of a writ in the nature of *Certiorari* seeking quashing of the order dated 08.07.2016 (Annexure P-17), vide which the petitioner's two years wages/increments have been stopped by the respondents on the alleged admittance of mistake by the petitioner with further prayer for issuance of a writ in the nature of *Mandamus* directing the respondents to reinstate the petitioner with full back wages and all the increments and benefits, which he has accrued since 23.03.2014.

2. It has been contended on behalf of the petitioner that no inquiry report was ever given to the petitioner. It is further contended that the petitioner is governed by certified Standing Orders Haryana Tourism Corporation Ltd and clause 21 of the Standing orders provide for disciplinary action for misconduct,

which provides for procedure of departmental inquiry. It is asserted that even when the employee is suspended during inquiry, subsistence allowance is paid to him, pending such inquiry and in the present case, though petitioner has not suspended yet he has not been paid any allowance by the respondents. It is pertinent to note that Clause 21 contemplates, that in a situation where the departmental proceedings take more than 180 days to conclude, the employee shall be paid subsistence allowance to the effect $\frac{3}{4}$ th of the basic wages, dearness allowance and other compensatory allowance but in the present case no such allowance has been paid to the petitioner and the entire departmental proceedings/inquiry is not in consonance with Clause 21 of the Standing orders. The assertion is that the procedure for imposing major penalty as laid down under Rule 7 of the Haryana Civil Services (Appeal and Punishment) Rules, 2016 has not been complied with, as reasonable opportunity has not been provided to the petitioner. Moreover, no documents were supplied to him in order to make a representation.

3. Learned counsel for the respondents has contended that the charge sheet dated 08.05.2014 has been served upon the petitioner for his willful absence from duty, who has shown his inability to file reply to the same. Even, he did not opt to file reply to the enquiry when he was called for personal hearing and he appeared before the Punishing Authority on 18.01.2016 and admitted his mistake. Thus, he was awarded punishment of stoppage of two increments with cumulative effect after taking a lenient view and adopting proper procedure as per law.

4. It is asserted on behalf of the respondents that the claim of the petitioner for re-instatement has been rendered infructuous, as he has joined his duties at Chandigarh we.f. 13.12.2018.

5. No other argument has been raised by either of the parties.
6. Heard learned counsel for the respective parties.
7. The petitioner was appointed as a Sweeper with Haryana Tourism on 01.12.2006 and is governed by the Haryana Tourism Certified Standing Orders (CSO), 1980 (for short 'Standing Orders'). Admittedly, vide letter No. 3A-IIHTC-2014/3799 dated 08.05.20214, the petitioner was notified by Haryana Tourism Corporation (HTC) Limited, respondent No.1 qua proposal to hold proceedings against the petitioner under the Standing Orders, Clause 21 and was asked to raise objections or to make a representation within 15 days of the receipt of the said charge sheet. From the reply to the said charge sheet, it is evident that he was asked to reply show cause notice dated 29.03.2014 by 31.03.2014, whereas, he received the notice only on 02.04.2014. The time given to the petitioner to reply to the afore-said notice clearly indicates his prejudice towards him. Though the petitioner was present on duty but did not mark his presence. Vide order dated 12.11.2014, the petitioner was asked to appear before the General Manager (Admn.), Haryana Tourism Corporation in her office at Chandigarh on 21.11.2014 at 12.00 Noon to explain the position in person. The respondents without going into the explanation furnished by the petitioner dated 26.05.2014 (Annexure P-9) informed him vide letter dated 18.07.2015 that enquiry officer was appointed on 19.05.2015 and the date of departmental enquiry against him is fixed for 26.07.2015 and he was directed to appear before the Enquiry Officer along-with documents and witnesses if any. The petitioner was informed with regard to the appointment of Enquiry Officer vide letter dated 19.11.2015 (Annexure P-13) i.e. more than one year after framing of the charges and was asked to furnish representation within one month. The petitioner submitted his reply dated 21.03.2016 submitting that

except questionnaire no other documents or enquiry report has been communicated to him along-with the said communication. The petitioner has been awarded charged sheet under Standing Orders Clause 21, which reads as under:-

21. DISCIPLINARY ACTION FOR MISCONDUCT.:

The services of a workman shall not be terminated on the grounds of misconduct, unless he has been adjudged guilty of misconduct, after a departmental enquiry held in the manner prescribed below:-

(a) Where a disciplinary proceeding against a workman is contemplated or is pending or where criminal proceedings against him in respect of any offence are under investigation or trial and the employer is satisfied that it is necessary or desirable to place the workman under suspension, he may, by order in writing suspend him with effect from such date as may be specified in the order. A charge sheet shall also be served on the workman within a month from the date of suspension by registered post by setting out the details of the alleged misconduct and shall contain the name of the Enquiry Officer and the place where the enquiry shall be held. The workman shall be given an opportunity for explaining the circumstances alleged against him. Such a workman may be assisted by any workman. If the workman refuses, to accept the charge sheet in the presence of another workman, it shall be pasted on the notice board and shall be deemed to have been served on him. If the workman fails to present himself at the proper place before the enquiry officer to participate in the enquiry, the enquiry shall be proceeded ex-parte.

(b) A workman who is placed under suspension under clause (a) shall during the period of such suspension be paid subsistence allowance at the following rates, namely.

(i) Where the enquiry contemplated or pending is departmental, subsistence allowance shall, for the first 180 days from the date of suspension, be equal to half of the basic wages, dearness allowance and other compensatory allowances to which the

workman would have been entitled if he was on leave with wages. If the departmental enquiry gets prolonged and if the workman continued to be suspended for a period exceeding 180 days, the subsistence allowance shall for such period be equal to $\frac{3}{4}$ th of such basic wages, dearness allowance and other compensatory allowance. Provided that where such enquiry prolonged beyond the period of 180 days for reasons directly attributable to the workman the subsistence allowance shall for the period exceeding 180 days be reduced to $\frac{1}{4}$ th of such basic wages, dearness allowance and other compensatory allowance.

(ii) Where the enquiry is by an outside agency where criminal proceedings against the workman are under investigation or trial, the subsistence allowance shall, for the first 180 days from the date of suspension, be equal to half of his basic wages, dearness allowance and other compensatory allowance which the workman would have been entitled to if he was on leave. If such enquiry or criminal proceedings get prolonged and workman continues to be under suspension for a period exceeding 180 days, the subsistence allowance shall for such period be equal to $\frac{3}{4}$ th of such wages. Provided that where such enquiry or criminal proceedings is prolonged beyond the period of 180 days, for reasons directly attributable to the workman, the subsistence allowance shall for the period exceeding 180 days be reduced to $\frac{1}{4}$ of such basic wages.

(c) if on the conclusion of the enquiry or of the criminal proceedings, the workman has been found guilty of the charges framed against him and it is considered after giving the workman concerned a reasonable opportunity of making representation on the penalty proposed, that an order of stoppage of annual increment or composition of fine or reduction in rank or dismissal/removal from service would meet the ends of justice, the employer shall pass an order accordingly.

Provided that when an order of dismissal/removal from service or reduction in rank is passed under this clause, the workman shall be deemed to have been absent from duty during the period of

suspension and shall not be entitled to any remuneration for such period and the subsistence allowance already paid to him shall not be recovered. Provided further that if an order imposing fine or stoppage of annual increment is passed under this clause and then the competent authority (as declared by the management) shall decide as to whether or not the workman concerned shall be treated on duty for the period of suspension.

Provided further that if a workman is acquitted by court giving him a benefit of doubt, the Competent Authority as declared by the management, shall decide as to whether or not he shall be treated on duty for the period of suspension or proceeded against departmentally.

Provided further that in the case of a workman to whom the provisions of clause (2) of the Article 311 of the constitution apply, the provisions of that article shall be complied with,

(d) If a workman is found guilty under clause (c) above and it is considered that the period of suspension upto the conclusion of the enquiry was sufficient punishment, orders shall be passed to reinstate the workman and treating the period of suspension as punishment without any further payment for the period excepting the suspension allowance admissible provided that this period of suspension shall not exceed 90 days.

(e) If on the conclusion of the enquiry of the criminal proceedings the workman has been found to be not guilty of any of the charges framed against him, he shall be deemed to have been on duty during the period of suspension and shall be entitled to the same wages as he would have received, if he had not been placed under suspension after deducting the subsistence allowance paid to him for such period.

(f) The payment of subsistence allowance under this standing order shall be subject to the workman concerned not taking up any employment during the period of suspension.

(g) In awarding punishment under this standing orders, the Management shall take into account the gravity of the mis-conduct,

the previous record, if any, of the workman and any other extenuating of aggravating circumstances that may exist.

(h) A copy of the orders passed by the competent authority (as declared by the management) shall be supplied to the workman concerned, whereupon the order shall become operative, if he makes an application, a copy of the enquiry proceedings shall be supplied to him without delay.”

8. From the afore-said clause, it is evident that even if the employee is suspended he is entitled for subsistence allowance during enquiry and where the departmental proceedings take more than 180 days to conclude, the employee shall be paid subsistence allowance to the effect 3/4th of the basic wages, dearness allowance and other compensatory allowance but in the case in hand no such allowance has been paid to the petitioner, which is sufficient for this Court to infer that the enquiry held by the respondent is not in consonance with Clause 21 of the Standing Orders and on this Court alone the order dated 08.07.2016 deserves to be quashed.

9. In view of the discussions made hereinabove, the present petition is allowed and the order dated 08.07.2016 (Annexure P-17) to the extent vide which the increment of the petitioner for two years were stopped is set aside and the petitioner shall be entitled to all other consequential benefits along-with interest @ 6% per annum from the date it became due till its actual realization.

10. Ordered accordingly.

01.12.2023
sham

(SANDEEP MOUDGIL)
JUDGE

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