

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

CWP No. 2999 of 2014 (O&M)

Reserved on: May 8, 2023

Pronounced on: 26.05.2023

R.N Uppal

...Petitioner

Versus

**Haryana State Federation of Consumers Co-operative Wholesale Stores
Ltd. (Confed) and others**

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. R.N. Uppal, petitioner in person.

**Mr. Aseem Rai, Advocate,
for respondents No.1 and 3.**

Mr. Narinder Singh Beghal, AAG, Haryana.

JAISHREE THAKUR, J.

1. The present petition has been filed for issuance of a writ in the nature of Certiorari for quashing decision dated 31.01.2013 (Annexure P/21) to that extent the suspension period from 04.03.2008 to 20.02.2009 and dismissal period from 21.02.2009 to 28.12.2009 has been treated as duty period only for the purpose of calculation of gratuity and not for purpose of release of other benefits of leave encashment, EPF, ACP etc. and no financial benefit has been given for these periods; with a further prayer for issuance of a writ on the nature of Mandamus directing the respondents to treat the suspension period from 04.03.2008 to 20.02.2009 and dismissal period from 21.02.2009 to 28.12.2009 as duty period for all intents and purposes and grant full pay and allowances for the claimed period with all

consequential benefits including the revision of retiral benefits.

2. The facts of the case as set out are that the petitioner, who was appointed by CONFED on 27.10.1975, stood promoted to the post of Assistant Accounts Officer on 05.06.1981. On 29.11.2007, the Managing Director constituted a Committee of various officers to invite quotations and get the work done for improving the working environment of the office. As per purchase rules, if the work/purchase was more than ₹25,000/-, then tender should be invited. The Committee held its meeting on 10.12.2007 and decided to float tender notices through Director, Public Relations, Haryana, which was put up before the Managing Director. However, the Managing Director passed orders to carry out different activities of office improvement. In relation to preparation of the computer room, the petitioner did not sign the quotations due to glaring short-comings in the quotations and its method of collection. He informed the General Manager about the deficiencies in the quotations and requested for convening of a meeting of the Purchase Committee which was not convened. Quotations were neither collected nor opened in his presence, there were cutting/over-writings in the quotations and on account of such shortcomings, the petitioner refused to sign the quotations. The petitioner also questioned the purchase procedure, as approved by the Managing Director, for not following the method adopted to call the quotations. He was not permitted to record his dissent note on the quotations by the Managing Director.

3. The petitioner was suspended by the Managing Director on 04.02.2008 and a charge-sheet was issued to him on 19.05.2008. After

completion of the departmental proceedings, an order of punishment of dismissal was passed by the respondents and subsequently the petitioner was dismissed from service on 20.02.2009 for the following charges—

“Willful insubordination/disobedience of any lawful and reasonable orders of superiors/doing an act prejudicial to the interest of the Federation”.

Further it was stated—

“He will not be paid anything more for the suspension period beyond subsistence allowance. The suspension period will not be treated as duty period for any other purpose.”

4. Against the order of punishment of dismissal, the petitioner filed an appeal before the Board of Directors, which was accepted on 16.12.2009 and the punishment of major penalty of dismissal was modified to a minor penalty of warning. Thereby the petitioner was reinstated into service and he joined on 29.12.2009. The order of Board of Directors stated as follows—

“The Board noted that no misappropriation of funds is involved and integrity of employee is not in question in this case. During the hearing Shri Uppal also undertakes not to commit any disobedience/insubordination in future. Taking a lenient view, the Board orders that the employee may be reinstated in service and penalty be reduced to warning with a copy on the personal file of the employee. He shall not however claim any payments over and above the dues already paid as subsistence allowance.”

Subsequently, the petitioner represented for grant of financial benefits for the period of suspension and dismissal but he retired before any decision

could be taken on the same. On 07.11.2012, the petitioner served a legal notice on respondents seeking grant of retiral dues. The matter was placed before the Board of Directors and the petitioner was informed that suspension and dismissal period was to be treated as duty period only for the purpose of gratuity and no financial benefit be given for these periods. Hence, the present writ petition.

5. Learned counsel for the petitioner would urge that the charge sheet was issued to him only on account of the fact he being a member of the Purchase Committee had raised questions regarding purchase procedure approved by the Managing Director, whereas a proper method was to call for quotations. This act of his has been held to be in-subordination. It is submitted that the petitioner has been harassed at no end, as the inquiry was held by a person inimical to him, and despite a request for change of Inquiry Officer pending before the Chairman, the inquiry was completed in haste without giving him due opportunity. It is also argued that the attempt of the petitioner was to ensure that no loss was caused to CONFED and to ensure proper procedure was followed while inviting quotations for the work done. It is also argued that once the punishment of dismissal has been reduced to a mere warning, the order directing that the petitioner would not be entitled to any payments over and above the dues already paid as subsistence allowance was unjustifiable.

6. Per contra, learned counsel for the respondents urged that the petitioner was insubordinate and was creating hurdles in the completion of a project which led to a charge sheet being issued. All Committee members

signed the work order other than the petitioner which delayed the implementation of the project. He was given ample opportunities to raise his defence and on completion of the inquiry, he was issued a show cause notice and eventually his services were terminated. On appeal, he has been taken back in service with a condition that '*He shall not however claim any payments over and above the dues already paid as subsistence allowance.*'

It is further submitted that the petitioner vide letter dated 16.12.2009 specifically undertook that he would not claim any arrears of suspension period as well as dismissal period and will not disobey any lawful order of his superior officers. Once his reinstatement was conditional, then how can he now claim arrears?

7. The issue in the present petition is, as to whether the petitioner is entitled to pay and back wages for the period of suspension and dismissal when factually his punishment of dismissal was modified from a major penalty of dismissal to a minor penalty of warning? Also, whether the period of suspension and dismissal can be treated as '*duty period*' only for the purposes of gratuity and not for any other financial benefits?

8. In **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya and others**, 2013 (10) SCC 324, the Supreme Court, while highlighting the need to adopt an equitable approach, when a court has to consider whether to reinstate an employee and if so, the extent to which back wages is to be ordered, held as under:-

“38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.2. *The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.*

38.3. *Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.*

38.4. *The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any*

misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

38.5. The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimising the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrong doings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

38.6. In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalisation of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The courts should bear in mind that in most of these cases, the employer is in an advantageous

position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer i.e. the employee or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin Works (P) Ltd. v. Employees 1979 (2) SCC 80.

38.7. The observation made in J.K. Synthetics Ltd. v. K.P. Agrawal 2007 (2) SCC 433 that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three-Judge Benches referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman.”

9. The judgment as rendered in **Deepali Gundu Surwase** (supra) has been subsequently been followed in **Allahabad Bank v. Avtar Bhushan Bhartiya 2022 (2) S.C.T. 632, Jeetubha Khansangji Jadeja Versus Kutchh District Panchayat, Civil Appeal No. 6890 of 2022, Punjab National Bank Vs Karma Devi, LPA No 2379 of 2017 decided on 14.5.2023.**

10. A reading of the pleadings would reflect that the petitioner had asked for a change of the Inquiry Officer on the ground that the Inquiry Officer so appointed had been issued a charge sheet on the report made by the petitioner in the past, but no action was taken thereon. Denial of legal assistance apart for the ground of rejection of request for change of Inquiry Officer in the instance case, would itself be against the principles of natural justice. The petitioner was suspended on 04.02.2008 and consequent to

charge sheet issued, the petitioner was dismissed from service on 20.02.2009. He filed a detailed appeal taking up the pleas of not causing any loss to CONFED, bias of Inquiry Officer and request for changing him, which was denied by the Managing Director and that despite appeal pending against this decision the inquiry was concluded. Apart from that, he alleged that the record was not supplied to him, biasness of the management witnesses, who were already facing esquires, one by the Vigilance and the other by Food and Supplies Department, which enquires were initiated on a complaint by the petitioner. Instead of any decision on the appeal, the Board of Directors reinstated him by taking into account that there were no allegations of misappropriation of funds and integrity of employee is not in question in this case. The termination was set aside and a minor penalty of warning was issued. The rider was that other than the suspension allowance given, the petitioner would not be entitled to any other benefits.

11. It would appear that the petitioner was made to face disciplinary proceedings on account of the fact that petitioner refused to sign on quotations, as he was of the opinion that the proper procedure was not followed. The matter was considered by the Managing Director who then noted :*“Is white wash a renovation? Why club different activities, why can they be done separately? Great for white wash a tender is to be given in national daily! This is nothing but a way out not to work and defy MD’s order. This I viewed seriously.”* The petitioner was charged under Rule 26.1 of the Staff Services Rules for CONFED with *“Willful insubordination/disobedience of any lawful and reasonable orders of*

superiors/doing an act prejudicial to the interest of the Federation”. In the opinion of the court, if a member of the Committee does not approve of quotations for allotment of work on the ground that procedure has not been followed, it cannot be said that such an act amounts to insubordination/disobedience resulting in prejudice being caused to the Federation. The stand of the petitioner is that he was never permitted to give a dissent to the quotations as the same were never shown to him, which issue has also not been dealt with. It must be borne in mind that the integrity of the petitioner was never in doubt, as noticed by the Board of Directors. The employer, who is always in a dominant position, wielding power and authority, is expected to act with utmost fairness.

12. The termination order being replaced by the Board of Directors with a minor punishment of warning would tantamount to the appeal being accepted on the basis of grounds taken in the appeal, which for the sake of brevity are not repeated in this para and aforesaid para 10 can be referred to. The disciplinary proceedings that were initiated appears to be motivated on account of the petitioner not signing/approving the quotations. Therefore the ratio of the judgment rendered in **Deepali Gundu Surwase** (supra) would be fully applicable in the present case.

13. The argument as raised that the petitioner had agreed to his reinstatement by submitting an undertaking that he would not claim any other benefit, would have no merit as this court is of the opinion that the employer is in a dominant position to get such an undertaking in lieu of reinstatement. Any such undertaking given under duress can not be

considered.

14. Therefore, the instant writ petition is allowed, the impugned order treating suspension period from 04.03.2008 to 20.02.2009 and dismissal period from 21.02.2009 to 28.12.2009 as duty period only for the purpose of calculation of gratuity and not for the purpose of release of other benefit of leave encashment, EPF, ACP, increments etc., is set aside. As a consequence thereof, the petitioner would be entitled to all financial benefits i.e. leave encashment, EPF, ACP etc., as admissible under the relevant rules.

May 26, 2023
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No