

CWP-26099-2016

1

206

2023:PHHC:166378

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

CWP-26099-2016

Date of decision : 17.08.2023

Gurmukh Singh

...Petitioner

Vs.

**PEPSU Road Transport Corporation,
Patiala and others**

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Karan Jund, Advocate
for the petitioner.

Mr. Vishal Moudgil, Advocate
for the respondents.

DEEPAK MANCHANDA, J.(Oral)

1. Petitioner has filed this writ petition under Article 226/227 of Constitution of India for issuance of a writ in the nature of certiorari for quashing the order dated 05.01.2016 (Annexure P-12) passed by respondent No.3, whereby one annual grade increment (promotion) has been withheld/stopped temporarily and his wages, except for the wages payable under suspension have also been withheld as well as the order dated 29.04.2016 (Annexure P-14), whereby appeal against the aforesaid order dated 05.01.2016 has been dismissed by respondent No.2.

2. In compliance of the order dated 03.08.2023, additional affidavit dated 16.08.2023 has been filed on behalf of respondents and the same is taken on record.

3. The facts in brief leading to the filing of the present case are that

the petitioner was appointed as Conductor with the respondent-corporation. The respondent-corporation was not making payment of overtime to the conductors and drivers due to shortage of funds, therefore, petitioner along with some other conductors approached this Court by way of filing CWP-1315-2007 for issuance of directions to the respondent-corporation for release of their overtime payments and the same was disposed of vide order dated 29.01.2007 (Annexure P-1) with a direction to the respondents to take decision on the representations (Annexure P-1 and P-2 therein) by passing a speaking order within a period of two months. In compliance of the above said order, respondent/corporation passed the orders that the payment will be made when the financial position of the corporation improves, therefore, petitioner again filed CWP-6523-2007, which was disposed of vide order dated 28.05.2008 (Annexure P-2) with direction to respondents to pay the amount of overtime as per the calculations done by the financial officials of respondent No.1 within a period of six months. Due to filing of the writ petitions, respondents got annoyed and started harassing the petitioner. He was posted in Booking Branch Office vide order dated 07.02.2014 (Annexure P-3) by respondent No.4 and was also assigned the duty of Court Clerk. Thereafter, Azad Union PRTC called a strike, but petitioner did not participate in the strike and performed his duties, but on the same day, he was placed under suspension vide order dated 05.03.2014 (Annexure P-4) on the ground that he did not perform his duties assigned for 05.03.2014 on route from Chandigarh to Fatehabad at 5.30 a.m., however, the petitioner was reinstated vide order dated 19.03.2014 (Annexure P-5) into service subject to the outcome of pending inquiry against him and was posted in PRTC, Patiala Depot. On 29.04.2014, petitioner was issued

charge-sheet (Annexure P-6) levelling allegations of misconduct, willful and un-authorized absence from duty, non-compliance of orders of senior officers and violation of rules, creating indiscipline and negligence in duty. Petitioner submitted his reply dated 28.01.2015 (Annexure P-7) denying all the allegations. The respondents did not order inquiry into the charge sheet issued to the petitioner intentionally for about nine months as he was going to retire on 31.03.2015. However, on 26.02.2015, vide office No.597/PRTC/Admin dated 26.02.2015, Sh.Dharam Pal Sharma, Division Officer was appointed as Inquiry officer to look into the charges levelled against the petitioner. On 31.03.2015, petitioner attained the age of superannuation and was retired from service. After the retirement of the petitioner, new inquiry officer was appointed on 07.04.2015 and he submitted inquiry report dated 03.07.2015 (Annexure P-9), wherein all the allegations levelled against him were proved. Thereafter, respondent No.3 issued a show cause notice dated 24.09.2015 (Annexure P-10) to the petitioner with direction to submit his reply within three days to which petitioner filed reply dated 29.09.2015 (Annexure P-11), wherein he stated that inquiry report is a biased one, which is prepared by ignoring various facts and documents brought to the notice of Inquiry officer during inquiry and prayed for withdrawal of the show cause notice. Thereafter, respondent No.4 passed the impugned order dated 05.01.2016 (Annexure P-12) on the basis of inquiry report, whereby one annual increment of the petitioner has been stopped temporarily and was not given any other benefit except the wages payable to him during suspension period.

4. Aggrieved against the said order, petitioner filed an appeal on 15.01.2016 (Annexure P-13) before the respondent No.2, however, the same

was also dismissed vide order dated 29.04.2016 (Annexure P-14). Hence the present writ petition has been filed for quashing of the orders dated 05.01.2016 (Annexure P-12) and 29.04.2016 (Annexure P-14).

5. Learned counsel for the petitioner contends that while passing the impugned order dated 05.01.2016, respondent No.4 has concluded that the charges against the petitioner regarding disobedience of orders is proved on the basis of suspicion, therefore, benefit of doubt should have been granted to the petitioner, and the order is liable to be quashed. He further submits that on 04.03.2014, petitioner performed his duties from 09.00 a.m. to 5.00 a.m. at the place of posting, as assigned to him vide order dated 07.02.2014 (Annexure P-3) and he was never served with any order dated 04.03.2014 in writing nor the alleged duty roster was got noted from him about his new assignment for performing duty on 05.03.2014 at 5.30 a.m. on route from Chandigarh to Fatehabad. He argued that during inquiry, no management representative proved that on 04.03.2014, petitioner was handed over any order regarding new assignment for 05.03.2014 and he was served with suspension orders on 05.03.2014 at about 12.30, which was already planned by the management. He further argued that during the strike, many other conductors, who were assigned route duty did not perform their duty, but none of them have been placed under suspension except the petitioner, therefore, he prays for quashing of the impugned orders.

6. Vide order dated 16.12.2016, notice of motion was issued in the present writ petition and pursuant to the same, reply dated 14.11.2018 has been filed on behalf of respondents.

7. Learned counsel representing the respondents while referring to

the reply submits that in the enquiry report of the petitioner, it is clearly specified that he was intimated on 04.03.2014 about his duty for 05.03.2014, but petitioner intentionally and wilfully evaded to join the same. In this regard, statement of then Duty Clerk, who was posted at PRTC Depot Chandigarh was sought, who stated that on 05.03.2014, Azad Union had given a call for strike, therefore, available conductors including the petitioner were asked to take up the duties on route No.539 of the bus plying from Chandigarh to Fatehabad. As petitioner was deputed on accounts branch, therefore, Incharge of the Accounts Branch, namely, Sh.Nirmal Singh, Sub-Inspector was asked to inform petitioner about his duty, who orally informed the same to petitioner. He submits that the petitioner was informed well in time, therefore, there is no ground that petitioner was not aware about his duties on 05.03.2014. He prays for dismissal of the petition.

8. I have heard learned counsel for the parties and have gone through the case file.

On 18.02.2020, the following order was passed:-

*“The actual recorded statement of Nirmal Singh, SI, during the inquiry proceedings along with record pertaining to presence of the petitioner at the Accounts Branch on 5.3.2014 viz., the attendance register shall be produced by Mr. Vishal Moudgil, learned counsel for the respondents, by the next date of hearing.
Post on 18.3.2020.”*

9. In compliance of the above order, learned counsel for the respondents has produced the record pertaining to the presence of the petitioner at Accounts Branch and also filed an affidavit dated 16.08.2023 of the General Manager, Pepsu Road Transport Corporation, Chandigarh.

10. A perusal of the record as well as affidavit dated 16.08.2023

shows that the petitioner was present in the Account Branch on 05.03.2014, where he was deputed but the enquiry report of the petitioner clearly specified that he was intimated about his assigned duty on route No.539 of the bus plying from Chandigarh to Fatehabad by the Incharge of the Accounts Branch on the said date.

11. As per Annexure P-9 i.e. enquiry report wherein it is mentioned that on 05.05.2015, Parveen, Traffic Manager got recorded his statement that on 05.03.2014 the duty of the petitioner was recorded in duty roster for 05.25. On 04/03/2014, Nirmal Singh SI asked the petitioner to collect the box when he was deputed at Account Branch as due to strike the other conductors were also assigned on such duties. On 05.03.2014 the petitioner was noticed absented from his duty. It was also mentioned that the petitioner had questioned the Traffic Manager-Parveen Kumar, whether one day prior to strike did he meet him and apprise him about his duty, but he replied that he is not sure as the petitioner was not directly informed, but the D.I and Branch In-charge were informed. The perusal of the enquiry proceedings shows that the throughout stand of the petitioner was that he was never informed about the assigned duty en route No. 539 for 5:30 AM from Chandigarh to Fatehabad. Keeping in view the strike called by Azad Union PRTC and he performed his duties as assigned by the GM in compliance of order No. 1100 dated 07.02.2014. The stand of the petitioner taken during the enquiry proceedings seems to be justified as nowhere in the enquiry it is proved that any such communication with regard to the signing of the duty en route No. 539 for 5:30 AM from Chandigarh to Fatehabad was ever communicated in writing to the petitioner. In absence of such a record showing the valid communication to the

petitioner the stand taken by the respondents during the enquiry proceedings stands falsified. Moreover, it is also mentioned in the enquiry report that the suspension order was communicated to the petitioner, when he was discharging his duty in the Account Branch which shows that the allegation made against the petitioner with regard to his absence from duty is factually incorrect and while concluding the enquiry, nothing as such has been recorded about communicating the decision for the assignment of duty on 05.03.2014 except the statement of Nirmal Singh, Branch In-charge as well as of duty In-charge that they informed the Branch In-charge Nirmal Singh to send petitioner on route duty, except those statements there is no other record to establish that petitioner violated the alleged directions to perform his duty on route.

12. During the pendency of the proceedings this Court vide order dated 18.02.2020 directed to produce the original record pertaining to presence the petitioner at the Accounts Branch on 05.03.2014. In compliance of the said order the original record was produced before this Court, which shows that the petitioner was present in the Accounts Branch on 05.03.2014 and accordingly, learned counsel for the respondents was directed to file an affidavit to this effect which has been filed along with a certified copy dated 02.08.2023 of the Attendance Register of Booking Branch, where he was deputed. Once it is established that neither the written communication was ever sent to the petitioner for the assignment of his duty on route on 05.03.2014 and as petitioner performed his duties in compliance of the office order No. 1100 dated 07.02.2014, vide which he was directed to look after the Accounts Branch and as per record petitioner has succeeded to establish his presence on the day of absence as recorded in the enquiry proceedings, this Court is of the

view that the suspension order dated 05.03.2014 was illegally passed.

13. Further the perusal of material as well as record shows that vide order dated 19.03.2014 (Annexure P-5), the petitioner was reinstated subject to outcome of the enquiry proceedings. This Court fails to understand that once the suspension order was passed dealing with the absence of the petitioner, then on what ground the petitioner was reinstated in service as no other reason for reinstatement has been mentioned while passing the order dated 19.03.2014, which itself is self-explanatory and supports the stand taken by the petitioner with regard to his alleged absence. Even as per stand taken in the reply dated 14.11.2018, the respondents have admitted that all such instructions which were communicated to the petitioner were oral owing to the shortage of time. The order dated 05.01.2016 (Annexure P-12) passed by the respondent No. 4 vide which it was ordered to withhold his wages for one year as well as stoppage of one annual increment and he was deprived from all other benefits except the wages payable during suspension, the same has been passed only on the basis of suspicion which is not sustainable. Moreover, the appeal filed by the petitioner was also rejected vide order dated 29.04.2016 (Annexure P-14), where no such reasoning has been given nor the stand taken by the petitioner was considered.

14. In light of the facts and circumstances as discussed above, this Court does not find any justification while passing the impugned orders dated 05.01.2016 (Annexure P 12) and 29.04.2016 (Annexure P-14) on the basis of enquiry report, whereby wages of the petitioner were withheld and he was deprived of one year annual promotion and other benefits, only on the basis of suspicion, therefore, same are hereby quashed.

15. The present petition is allowed and respondents are directed to release the one annual increment, which was temporarily stopped along with the wages which were otherwise payable to him except the wages already paid to him during the suspension period. Further, it is directed that an order to this effect be also issued and accordingly the benefits payable to him be re-calculated in accordance with law and the same shall be paid to the petitioner within three months from the receipt of the certified copy of this order.

(DEEPAK MANCHANDA)
JUDGE

17.08.2023
vanita

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No