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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-6592-2021
Date of decision: 04.03.2024

SATVIR SINGH

...Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. R. P. Dangi, Advocate for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

None for respondents No.2 and 3.

JASGURPREET SINGH PURI, J. (Oral)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing orders dated 13.05.2016 (Annexure P-3), dated 22.06.2017 (Annexure P-6) and dated 13.07.2017 (Annexure P-8) and further to issue a writ in the nature of *mandamus* directing the respondent-Nigam for summoning the record of the case and to count the past military service of the petitioner in the length of service for the purpose of compounding earned leave/casual leave.
2. Nobody has caused appearance on behalf of respondents No.2 and 3-Nigam, although reply has been filed on behalf of respondents No.1 to 3.
3. Since the learned counsel for respondents No.2 and 3-Nigam is not present, this Court would therefore proceed on the basis of the reply which has been filed on behalf of respondents No.1 to 3.

4. Learned counsel for the petitioner submitted that it is a case where the petitioner was working as Shift Attendant with effect from 18.06.2012 and while he was working on the aforesaid post, he was suspended on 13.05.2016 and thereafter, he was reinstated on 06.07.2016 but there was neither any charge-sheet contemplated nor the same has been issued to him even till date. He further submitted that in this way, no disciplinary proceedings have been initiated against the petitioner and he remained under suspension for a period of about 50 days. He further submitted that as per the Uttar Haryana Bijli Vitran Nigam Employees (Punishment and Appeal) Regulations, 2018, which are applicable to the respondent-Nigam and which have been attached along with the replication as Annexure P-14, it has been specifically provided under the topic of suspension and withholding of emoluments in Rule No.5 that in case the Nigam employee against whom any disciplinary proceedings are contemplated is suspended, then such suspension shall not be valid, where the disciplinary proceedings are not initiated against him before the expiry of a period of 90 days from the date from which the employee was suspended. The relevant portion of aforesaid Rule No.5 is reproduced as under:-

5. Suspension and withholding of emoluments –

(1) The appointing authority or any other authority to which it is subordinate or the punishing authority or any other authority empowered in that behalf by the Nigam, by general or special order, may place a Nigam employee under suspension where –

(a) a disciplinary proceeding against him is contemplated or is pending, or

(b) a case against him in respect of any criminal offence is under investigation, inquiry or trial, or

(c) in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the Nigam;

Provided that where a Nigam employee against whom disciplinary proceedings are contemplated is suspended, such suspension shall not be valid, where the disciplinary proceedings are not initiated against him before the expiry of a period of ninety days from the date from which the employee was suspended.

Provided further that the competent authority in the matter may, at any time before the expiry of the said period of ninety days and after considering the special circumstances for not initiating disciplinary proceedings, to be recorded in writing and after seeking the approval of next higher authority allow continuance of the suspension beyond ninety days but not beyond one hundred eighty days without the disciplinary proceedings being initiated;

5. Learned counsel for the petitioner also submitted that in the present case, the petitioner was only suspended for the aforesaid period but neither any disciplinary proceedings were initiated against him at all nor any charge-sheet was issued against him and in this way, as per the aforesaid Rule No.5, such a suspension was not a valid suspension. He further submitted that however vide impugned order dated 22.06.2017 (Annexure P-6), the Superintending Engineer (OP) Circle, UHBVN, Rohtak had passed an order by which it has been so observed that in view of the representation filed by the petitioner, it has been decided that the suspension period may be treated as leave of kind due with a letter of advise to be more careful in future. He further submitted that before passing of the aforesaid impugned order, even show cause notice was not issued

to the petitioner and rather the petitioner had made a representation to the aforesaid authority pertaining to the suspension, which was not in accordance with law. He further submitted that although in the aforesaid order it has been so directed that an advise was given to the petitioner to be more careful in future but that does not constitute a punishment of censure and even the aforesaid punishment of censure, as per Rule No.4 of the Uttar Haryana Bijli Vitran Nigam Employees (Punishment and Appeal) Regulations, 2018, is a minor punishment. He further submitted that it is not a case where the petitioner has been censured but it is a case where an advise has been given to him and it would fall in the clause (a)(i) of aforesaid Rule No.4.

6. He further submitted that even if assumingly for the sake of arguments the aforesaid is to be treated as a censure, the same is liable to be set aside in view of the fact that even for a minor punishment at least notice has to be given. He further submitted that may be for inflicting major punishment, a detailed departmental inquiry is required which is not required for a minor punishment but the principles of natural justice are required to be fulfilled which has not been done in the present case and therefore, even assumingly if it was a censure, the same was liable to be set aside for being violative of the principles of natural justice. He further submitted that so far as it was directed vide impugned order Annexure P-6 that the suspension period may be treated as leave of kind due is concerned, the same is also liable to be set aside in view of Rule No.5, expressly provided in the form of a proviso that in case any disciplinary proceedings are even contemplated, then the same has to be done within a period of 90 days but in the present case, till date neither the charge-sheet has been issued nor any charge-sheet was even contemplated nor any

disciplinary proceedings have been initiated against the petitioner and therefore, the aforesaid impugned order is in total violation of aforesaid Rule No.5 of the Uttar Haryana Bijli Vitran Nigam Employees (Punishment and Appeal) Regulations, 2018.

7. I have heard the learned counsel for the petitioner as well as the learned State counsel.

8. The only issue involved in the present case is that as to whether the authority i.e. the Superintending Engineer (OP) Circle, UHBVN, Rohtak vide Annexure P-6 could have decided that the suspension period of the petitioner be treated as leave of kind due. A perusal of the reply filed on behalf of respondent-Nigam would show that focus has been made on the maintainability of the present writ petition that an alternative remedy of appeal exists against the aforesaid impugned order. A perusal of aforesaid Rule No.5 of the Uttar Haryana Bijli Vitran Nigam Employees (Punishment and Appeal) Regulations, 2018 as reproduced above would show that when an employee is suspended and charge-sheet or disciplinary proceedings are contemplated, then the same are to be done within a period of 90 days but in the present case nothing has been done as per the learned counsel for the petitioner. Therefore, the aforesaid impugned order Annexure P-6, by which it was directed that the suspension period of the petitioner may be treated as leave of kind due cannot sustain being violative of aforesaid Rule No.5, which are the Statutory Rules.

9. Apart from the above, so far as letter of advice which has been given to the petitioner to be more careful in future is concerned, the same is of no consequence in view of the fact that it cannot be construed to be a minor

punishment and therefore, the aforesaid order Annexure P-6 is liable to be set aside.

10. In the aforesaid reply, which has been filed by the respondent-Nigam, in the preliminary submissions, focus has been made on the maintainability of the present writ petition on the ground of alternative remedy. However, a perusal of the order would show that no punishment has been awarded to the petitioner under Rule No.4 of the Uttar Haryana Bijli Vitran Nigam Employees (Punishment and Appeal) Regulations, 2018. A perusal of Rule No.9, which provides for right to appeal would show that the appeal would lie only against imposing of any penalty under specified Rule No.4 and on some other grounds. The other grounds are not applicable to the present petitioner and the respondent-Nigam is only relying upon the Rule No.9(a) that right of appeal is available upon imposing of any penalty. However, the impugned order Annexure P-6 would suggest that it is not an order of penalty and therefore, there was no question of the petitioner to have filed an appeal under Rule No.9. A perusal of the aforesaid reply would show that a preliminary objection has been taken by the respondent-Nigam that the present petition is a gross abuse of the process of law and is entirely predicated upon false and concocted facts and that the petitioner has deliberately concealed the material facts. It is also so stated in para No.4 of the reply filed on behalf of respondent-Nigam that the petitioner is trying to mislead the Court. Para Nos.3 and 4 of the preliminary submissions are reproduced as under:-

3. That, at the outset, it is humbly submitted that the present Writ Petition is a gross abuse of the process of law. The Writ Petition is entirely predicated upon false and concocted facts

and the Petitioner has no case either in law or on facts for grant of any of the reliefs either prayed vide the present Writ Petition or otherwise. Moreover, the Petitioner has deliberately concealed material facts from this Hon'ble Court, which will be disclosed in the following paragraphs of the present reply, and thus, the present Writ Petition is liable to be dismissed on this score alone.

4. That the Petitioner is trying to mislead this Hon'ble Court by stating in Paragraph No.22 that he has no other efficacious remedy of appeal or revision except to approach this Hon'ble High Court by filing the present Petition against the Order dated 13.05.2016, 22.06.2017 and 13.07.2017. In this regard, attention is invited to the provisions contained under regulation 9 of the Uttar Haryana Bijli Vitran Nigam employees (punishment and Appeal) Regulations-2018 according to which an appeal against the decision of the Superintendent./F For SE 'OP' Circle, UHBVNL, Rohtak is maintainable before such superior authority as may be prescribed by Nigam. Regulation 9 of the Uttar Haryana Bijli Vitran Nigam employees (punishment and Appeal) Regulations-2018 is reproduced hereunder for the kind perusal and ready reference of this Hon'ble Court:-

9. Right of appeal –

Every person to whom these rules apply, shall be entitled to appeal, as hereinafter provided, to such superior authority as may be prescribed by Nigam in the rules regulating his conditions of services against an order, not being an order of Nigam –

(a) Imposing upon him any of the penalties specified in rule 4

(b) Discharging him in accordance with the term of his contract, if he has been engaged on a contract for a definite, or for an indefinite periods and has rendered, under either form of contract, continuous service for a period exceeding five years at the time when his services are terminated;

(c) Reducing or withholding the amount of pension admissible under the rules governing pension;

(d) Termination of service;

(e) an order which denies or varies to his disadvantage his pay, allowances, pension or other conditions of service as regulated by rules or by agreement.

(f) Premature retirement from service in public interest before attaining the age of superannuation.

It is settled law that as a self-imposed rule, Writ courts normally refrain from exercising their extraordinary power if the petitioner has an alternative efficacious remedy. Since the Petitioner has failed to spell out any extraordinary circumstance for invocation of this extraordinary jurisdiction of the Hon'ble High Court, the present Writ Petition is liable to be dismissed on this score alone.

11. However, totality of the aforesaid circumstances would show that there was no question of any gross abuse of the process of law nor the present petition is predicated upon false and concocted facts either in law or on facts and there is nothing on the record to show that how the petitioner has tried to mislead the Court. It appears that the officer who has filed the aforesaid reply on behalf of the respondent-Nigam has unnecessarily taken the aforesaid preliminary objections, which are totally frivolous objections. Even otherwise also, it is not understood as to how the reply has been filed by the officer on

behalf of respondents No.1 to 3, whereas respondent-UHBVNL is impleaded as only respondents No.2 and 3 and respondent No.1 is the State of Haryana. The aforesaid reply has been filed absolutely in a casual manner.

12. In view of the aforesaid facts and circumstances of the present case, the present writ petition is allowed. The impugned order dated 22.06.2017 (Annexure P-6) is hereby set aside. It is directed that the petitioner will be entitled for all the benefits which are due to him by treating him to be on duty on full salary with regard to the aforesaid period of suspension i.e. from 13.05.2016 to 06.07.2016 along with interest @ 6% per annum (simple) within three months from today.

13. Considering the aforesaid language used in the aforesaid reply filed by the concerned officer on behalf of the respondent-Nigam and purported to be filed on behalf of respondents No.1 to 3, this Court deems it fit and proper to impose costs upon the officer, who has filed the aforesaid reply. The costs are assessed as Rs.25,000/-, which shall be paid to the petitioner by way of a demand draft in his name by the officer, who has filed the aforesaid reply within three months from today. The aforesaid costs shall be paid by the concerned officer from his own pocket and not from the State Exchequer.

14. A copy of this order be sent to the respondents No.2 and 3 through registered post as well.

15. List for compliance purposes only on 02.07.2024.

04.03.2024
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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