

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-10581-2017 (O&M)
Date of decision: 02.04.2024

Jiwan Lal

...Petitioner

Versus

State of Punjab and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Sanjiv Gupta, Advocate for the petitioner

Mr. Swapan Shorey, DAG Punjab

AMAN CHAUDHARY, J.

1. The prayer in the present civil writ petition has been made for quashing the impugned order dated 20.07.2015, Annexure P-1, vide which the petitioner has been dismissed from service with retrospective date and order dated 08.05.2017, Annexure P-3, rejecting the appeal/representation preferred by him. A further prayer for directing the grant of retiral dues along with interest @ 12% per annum w.e.f. 31.05.2013, date of his superannuation.
2. Learned counsel submits that the petitioner had retired on attaining the age of superannuation on 31.05.2013, however, he was dismissed from service vide order dated 20.07.2015, Annexure P-11, retrospectively from 25.01.2013, which is impermissible in law, in view of the judgments in **Bahadur Singh vs. State of Punjab and Others**, CWP-17474-2012, decided on 26.04.2013 and **Ram Pat vs. State of Haryana and Others**, CWP-20564-2013, decided on 18.10.2016.

3. The issue of dismissing an employee post-retirement, with retrospective effect, is no longer res integra, as settled by Hon'ble the Supreme Court in **High Court of Punjab & Haryana vs. Amrik Singh**, 1995 Supp (1) SCC 321, where, on a challenge raised against the validity of the dismissal order passed after the retirement of the employee, it was observed that the same was rendered ineffective as the individual had already retired. The complexity arose from the timing of the dismissal in relation to his retirement, leading to the order being set aside and the need for further action under the Pension Rules. The relevant paras whereof read thus:

“3. The respective contentions give rise to the question whether the orders of dismissal is valid in law or what would be the appropriate orders that could be passed in the circumstances of the case. In *D.V. Kapoor v. Union of India* [(1990) 4 SCC 314 : 1990 SCC (L&S) 696 : (1990) 14 ATC 906] considering Rule 9 of the Central Pension Rules, this Court held that the initiation of the disciplinary proceedings against the delinquent must be deemed to be proceedings under the Pension Rules and shall be continued and concluded by the authority by which the proceedings have been commenced in the same manner as if the government servant had been continued in service. In that case, since the prior approval of the President was required to be obtained, it was held that the requirement has been complied with. Accordingly, it was held that the proceedings validly initiated against the delinquent officer should be continued till the appropriate orders are passed by the competent authority, though the delinquent had retired, during the pendency of the enquiry and the proceedings were not abated, consequent on the retirement. The same ratio would apply to the facts of this case. Several options are open to the appointing authority and in case the disciplinary authority also happens to be the appointing authority. Before the delinquent reaches superannuation, the enquiry should be got expedited and appropriate order passed on the basis of the findings reached by the disciplinary authority. In case the delinquent attempts to drag the proceedings or he does not cooperate in the completion of the enquiry, after giving necessary warning in writing, suitable course appropriate to the facts is required to be adopted. In case it is not possible to complete the enquiry or to pass the final order, the suspension should be extended and re-employment ordered or the latter extended and to pass appropriate orders during extended period. In case it is found that either of those courses, is neither feasible nor possible and

allowed the delinquent to retire from service, it would be open to the disciplinary authority to record in its order that “but for the retirement he would have passed on order of dismissal or removal from service”. Since the delinquent had retired the disciplinary authority would record in the order that the delinquent “committed grave misconduct of the proved charge” and suitable order be made.

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5. It is seen that the learned Chief Justice of the High Court, on the administrative side, while passing the order of dismissal agreed with the enquiry officer's finding that the respondent committed embezzlement and mentioned that the order of dismissal would come into immediate effect from the date of the order. In other words, he appears to have intended to say that the order of dismissal will be operative from the date of the order of the dismissal. But it would appear that the Chief Justice was not apprised that the delinquent had already been retired from service on completion of two years' period of extended service of re-employment with effect from 31-8-1982. Therefore, the order of giving effect to the order of dismissal from the date of its order was of no consequence and became superfluous as he was no longer in service as on that date. However, it would be clear that he has the power either under Rule 2.2 of the Punjab and Haryana Civil Services Manual, Vol. II or Rule 9 of the Central Civil Services Pension Rules to take appropriate action as was made applicable to the staff of the High Court of Punjab and Haryana as the case may be. Therefore, it would be open to him to take such action as is open to him under law. The impugned order of the High Court is set aside, and the writs are issued with the above modification. The appeals are allowed. No costs.”

4. A reference can be gainfully made to **UCO Bank vs. Rajendra Shankar Shukla**, 2018(14) SCC 92, wherein Hon’ble the Supreme Court observed that punishment of dismissal from service after superannuation is improper and during the pendency of an inquiry, the employee is entitled to pension, on account of retirement, it was observed thus:

“16. Finally, we may also draw attention to an unreported decision of this Court in **UCO Bank and Ors. v. Prabhakar Sadashiv Karvade**, C.A. No. 4725 of 2010 decided on 20th May, 2010. In this decision, the Court considered the provisions of the Regulations that we are concerned with and held :

"The sum and substance of these Regulations is that even though a departmental inquiry instituted against an

officer employee before his retirement can continue even after his retirement, none of the substantive penalties specified in Regulation 4 of 1979 Regulations, which include dismissal from service, can be imposed on an officer employee after his retirement on attaining the age of superannuation. Therefore, we have no hesitation to hold that order dated 12.10.2004 passed by the disciplinary authority dismissing the respondent from service, who had superannuated on 31.12.1993 was ex facie illegal and without jurisdiction and the High Court did not commit any error by setting aside the same."

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19. Under the circumstances, we have no hesitation in dismissing the appeal filed by the Bank also on the ground that the punishment of dismissal could not have been imposed on Shukla after his superannuation."

5. Similarly, this Court in **Bahadur Singh** (supra), wherein the petitioner stood retired on 31.10.2006 and it was vide order dated 25.01.2010 that he was dismissed from service, set aside the same with the observations that, "In my considered view, the claim of the petitioner as has been asserted by him in the present writ petition is covered in his favour by the ratio of the judgment passed by the Hon'ble Supreme Court in the case of Amrik Singh (supra) wherein it has been held that the competent authority is not entitled to pass an order of dismissal from service with effect from a later date from the date of retirement of the delinquent employee. Such an order would be a superfluous order. However, the competent authority would be entitled to pass appropriate orders as per the statutory rules which could include withholding, forfeiture or recovery of amount of pension etc. if the rules so provide. The issue is also decided in favour of the petitioner by the Division Bench of this Court in Tarsem Singh's case (supra) which also supports his claim."

6. Learned State counsel despite his best efforts was unable to controvert the factual position and draw out any distinctive aspects in the aforementioned judgment or cite any contrary law.

7. In view of the aforesaid, the present petition is disposed of in terms of the judgments passed in **Amrik Singh** and **Bahadur Singh** (supra).

(AMAN CHAUDHARY)
JUDGE

02.04.2024
M.Kamra

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