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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-12651-2017 (O&M)
Date of Decision: 09.02.2024

Surinder Kumar Wadhwa

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Lalit Rishi, Advocate
for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

Mr. Gaurav Jindal, Advocate,
for respondent No.2.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present is a writ petition filed under Articles 226/227 of the Constitution of India for issuance of a writ, order or directions especially in the nature of *certiorari* for quashing the impugned charge-sheet dated 11.02.2016 (Annexure P-9) and punishment order dated 22.03.2016/28.03.2016 (Annexure P-13) vide which the petitioner was dismissed from service and also the Appellate order dated 21.04.2017 (Annexure P-16) whereby the appeal filed by the petitioner against the aforesaid order was dismissed.

2. Learned counsel for the petitioner submitted that the petitioner was working as a Head Cashier with respondent No.2-Corporation and served the Corporation for more than 30 years. He further submitted that an FIR was registered against the petitioner under Section 13(1)(e) of the

Prevention of Corruption Act on 23.12.2001 and as a result of the same, the petitioner was convicted vide judgment and order dated 03.02.2006. Since there was an FIR against him, he was suspended and arrested on 23.12.2001, but thereafter he was reinstated in service vide order dated 20.06.2013 (Annexure P-2), subject to decision of criminal appeal pending before this Court impugning the order of conviction dated 03.02.2006. After the reinstatement of the petitioner, he started discharging his duties on the post of Rent Clerk and thereafter, he was to retired on attaining the age of superannuation, on 31.03.2016. However, before attaining the age of superannuation, another charge-sheet dated 11.02.2016 (Annexure P-9) was issued against him about 1½ months before attaining the age of superannuation on the ground that since he was convicted then why a punishment be not inflicted upon him. Thereafter, neither any inquiry was conducted nor the provisions of Article 311 of the Constitution of India were invoked to, but by way of impugned order dated 22.03.2016, he was dismissed from service on the ground that he was guilty of the charges framed against him and was unfit for Government service. Thereafter, he filed an appeal against the aforesaid punishment order, which was also dismissed vide judgment and order dated 21.04.2017 (Annexure P-16).

3. Learned counsel for the petitioner submitted that in the present case, so far as the allegations on the basis of which the FIR was registered are concerned, neither any separate disciplinary proceeding was conducted against the petitioner nor any charge-sheet was issued on the basis of the same charges. However, he was served with the charge-sheet dated 22.03.2016/28.02.2016 (Annexure P-13) on the ground of his conviction

order passed by the Criminal Court vide order dated 03.02.2006. Learned counsel further submitted that when the order of dismissal dated 31.12.2001 (Annexure P-1) was passed, neither the provisions of Article 311 of the Constitution of India were invoked nor were referred to in the aforesaid order. He further submitted that the petitioner was a regular employee and his services could have been dismissed or terminated either by holding a disciplinary inquiry in accordance with law or by dispensing with the inquiry under the provisions of Article 311 of the Constitution of India but in the present case none of the conditions was made applicable to the petitioner and therefore, the order itself is illegal and the petitioner could not have been dismissed from service without due process of law.

4. On the other hand, Mr. Gaurav Jindal, learned counsel appearing on behalf of respondent No.2-Corporation submitted that from the perusal of the record it is clear that neither any disciplinary proceedings were conducted against the petitioner pertaining to the same set of charges nor charge-sheet was issued to him with regard to the same. However, the charge-sheet was issued to the petitioner on the basis of his conviction. He further submitted that although in the punishment order there is no invoking or mentioning of Article 311 of the Constitution of India for the purpose of dispensation of the inquiry but it has been clarified by the Appellate Authority vide order dated 21.04.2017 (Annexure P-16) that an employee can be dismissed under Article 311 of the Constitution of India without conducting an inquiry and therefore, the action of the respondent No.2-Corporation was in accordance with law.

5. I have heard the learned counsel for the parties.

6. The undisputed position in the present case is that an FIR was registered against the petitioner earlier in which he suffered conviction regarding which an appeal is pending before this Court. At the time, when the petitioner was in service and was about to retire on 31.03.2016 then about 1½ months prior to attaining the age of superannuation, another charge-sheet was issued to him on account of his conviction vide judgment dated 03.02.2006. Admittedly, there is no disciplinary proceedings pertaining to the same set of charges, however, it appears that the punishing authority might have passed the order dated 22.03.2016 by invoking Article 311 of the Constitution of India. However, a perusal of the punishment order would show that neither the provisions of Article 311 of the Constitution of India had been invoked nor even referred to. When the Appellate Authority passed the order dated 21.04.2017 (Annexure P-16), then it has been so mentioned by the Appellate Authority that it is a settled proposition of law that if the delinquent has been convicted by a Criminal Court then the petitioner can be dismissed under Article 311 of the Constitution of India without conducting an inquiry. The argument, which has been raised by the learned counsel appearing on behalf of respondent No.2-Corporation that Article 311 has been referred to by the Appellate Authority and therefore, the order of dismissal is in accordance with law, cannot be sustained in view of the fact that firstly, the Appellate Authority cannot be substituted for the Punishing Authority and even otherwise, a bare reading of the order dated 21.04.2017 passed by the Appellate Authority would show that he has only mentioned the settled proposition of law but it does not say in any words that Article 311 of the Constitution of India has

been invoked at any stage even at the appellate stage.

7. In this way, neither Article 311 of the Constitution of India has been invoked in the present case nor any disciplinary department inquiry has been conducted on the same set of charges but the petitioner has been dismissed vide order dated 28.03.2016 (Annexure P-13). Therefore, the order of dismissal cannot be sustained.

8. Consequently, the present petition is allowed. The punishment order dated 22.03.2016/28.03.2016 (Annexure P-13) as well as the order dated 21.04.2017 (Annexure P-16) passed by the Appellate Authority are hereby set aside and quashed. Since the petitioner has already attained the age of superannuation, the respondent-Corporation is directed to calculate and pay all the consequential benefits to the petitioner along with interest @ 6% per annum from the date of its accrual till the date of its disbursement within a period of three months from today.

09.02.2024

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |