

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

213

CWP-20270-2014

Reserved on : January 11, 2024

Pronounced on : January 30, 2024

GOBINDER SINGH

..... Petitioner

Versus

**MANAGING DIRECTOR PEPSU ROAD TRANSPORT CORPORATION
AND OTHERS**

..... Respondents

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Ms. Kulwant Kaur, Advocate
for the petitioner.

Mr. Anupam Singla, Advocate
for the respondents.

NAMIT KUMAR, J. (Oral)

1. The petitioner has approached this Court by way of filing the instant petition under Article 226/227 of the Constitution of India for issuance of a writ in the nature of *mandamus* seeking directions to the respondents to comply with the order dated 06.11.2009 in CWP No.15541 of 1999 and CWP No.5734 of 1997 (Annexure P-2) in letter and spirit i.e. by reinstating the petitioner in service by setting aside the award dated 17.04.1996 (Annexure P-1) passed by the Labour Court, U.T. Chandigarh.

2. The brief facts leading to the filing of the present petition, as have been pleaded in the petition, are that the petitioner was working as Assistant Store Keeper in PEPSU Road Transport Corporation Ltd. (for short here-in-after referred to as 'PRTC'). Five employees namely S/Sh. Satinder Pal Singh

(Assistant Store Keeper), Tarwinder Singh (Assistant Store Keeper), Lakhmir Singh (Store Keeper), Gobinder Singh (Assistant Store Keeper/Petitioner) and Kanwaljit Singh (Store Keeper) were found to be negligent for causing loss of Rs.1,19,294.59/- due to shortage of stocks/store articles and therefore, the Corporation initiated joint departmental inquiry proceedings against them by issuing charge-sheet(s) dated 19.07.1998 and all the five delinquent officials were removed from service vide order dated 15.05.1989.

3. Thereafter, all the aggrieved officials raised an industrial dispute except Mr. Kanwaljit Singh before the Labour Court, Union Territory, Chandigarh and the Labour Court vide its Award dated 28.02.1996 answered the reference in negative in the cases of the petitioner-Gobinder Singh and Lakhmir Singh. However, the reference was answered in affirmation in the case of Mr. Satinder Pal Singh and Tarwinder Singh vide separate award passed by in the Labour reference No.187 & 194 of 1991. Thereafter, four separate writ petitions i.e. two writ petitions by the workmen and two writ petitions by the PRTC were preferred before this Court. The details of the said Writ Petitions are as under:-

CWP 15541/1999	Filed by Gobinder Singh-Petitioner
CWP 5734/1997	Filed by Lakhmir Singh.
CWP 1418/1997	Filed by PRTC against Award passed in the case of Satinder Pal Singh.
CWP 2336/1997	Filed by PRTC against Award passed in the case of Tarvinder Singh.

All the aforesaid Writ Petitions were ordered to be heard together and this Court disposed of all the writ petitions, vide common Judgement dated 06.11.2009 (Annexure P-2). The operative part of said Judgement reads as under:-

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“ In sum, C.W.P. No.5734 of 1997 and C.W.P. No.15541 of 1999 are partly allowed setting aside the respective orders of removal from service passed by the Labour Court. They shall be modified relating to punishment and the competent authority under the relevant rules shall re-examine the quantum of punishment set out in Regulation 20 which is less than removal from service within six weeks from the date of receipt of the copy of this order. Consequently, the respective orders of removal from service are set aside. C.W.P. Nos.1418 and 2336 of 1997 are dismissed confirming the order passed already by the Labour Court. There shall be, however, no direction as to costs. ”

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4. Aggrieved by the aforesaid common Judgement, four separate LPAs i.e. LPA Nos.204, 205, 206 and 207 of 2010 were preferred by the PRTC, which were disposed of by the Division Bench of this Court vide Judgement dated 16.10.2012. The Operative para of the aforesaid Judgement is as under:-

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“ Learned counsel for the appellant has pointed out typographic mistake in the impugned order. According to him, the loss caused to the management should have been recorded as Rs.29,797/-, whereas it has been recorded as Rs.29,297/-. This factual mistake has not been disputed by learned counsel for the workmen. To that extent, the order of the learned Single Judge is also corrected.

During the course of arguments, learned counsel for the workmen pointed out that in case of Lakhmir Singh, i.e. LPA No. 207 of 2010, fresh order of punishment has already been passed by the management on 16.4.2010, and seeks liberty to assail the said order in accordance with law.

In view of the above, LPA Nos. 204 and 207 of 2010 are dismissed with the aforesaid liberty, whereas LPA Nos. 205 and 206 of 2010 are partly allowed, to the extent that the order dated

6.11.2009, passed by the learned Single Judge, is modified to the extent that in cases of Satinder Pal Singh and Tarwinder Singh, it will be open for the appellant – management to pass fresh order regarding awarding of lighter punishment in terms of Regulation 20 of the PEPSU Road Transport Corporation.

Sd/-
(SATISH KUMAR MITTAL)
JUDGE
Sd/-
(INDERJIT SINGH)
JUDGE ”
xxx xxx xxx xxx

October 16, 2012

5. A perusal of the reproduction made above would show that in LPA No.204 of 2010 preferred by the PRTC against the petitioner-Gobinder Singh, against the Judgement dated 06.11.2019 passed by learned Single Judge, has been dismissed.

6. Thereafter, in compliance to the directions issued by this Court vide Judgement dated 06.11.2009 passed by learned Single Judge, which was upheld by Division Bench of this Court vide Judgement dated 16.10.2012, the respondent-Corporation passed the order dated 03.06.2014 (Annexure P-4), whereby the punishment of removal from service, which was awarded vide order dated 15.05.1989 was reduced to that of reduction to the lower stage in time scale of Assistant Store Keeper and proportionate recovery of Rs.23,858.90/-, was ordered to be made from the petitioner and the petitioner-Gobinder Singh was ordered to be deemed to have been reinstated in service and retired as such on 31.01.2004 and it was further ordered that he will not be entitled to back wages or any other service benefit for the period he remained out of service of the Corporation in terms of the Judgement dated 06.11.2009 of learned Single Judge. The aforesaid order dated 03.06.2014 (Annexure P-14) has attained finality, as the same has never been challenged by the petitioner.

7. Learned counsel for the petitioner has argued that the respondent – Corporation has not implemented the Judgement dated 06.11.2009 (Annexure P-1), passed by learned Single Judge in CWP No.5347 of 1997 and CWP No.15541 of 1999 in its letter and spirit as the petitioner has neither been reinstated in service nor back wages have been granted to him and, therefore, the appropriate directions may be issued to the respondent – Corporation (PRTC) to reinstate the petitioner, with all consequential benefits.

8. On the other hand learned counsel for the respondent – Corporation (PRTC) submits that the Judgement dated 06.11.2009 (Annexure P-1), passed by learned Single Judge in CWP No.5347 of 1997 and CWP No.15541 of 1999, has been implemented in its letter and spirit and due benefits have already been released to the petitioner-Gobinder Singh. He further submits that since the petitioner had already attained the age of superannuation on 31.01.2004, therefore, vide order dated 03.06.2014 (Annexure P-4), he has been ordered to be deemed to have been reinstated in service and retired as such on 31.01.2004 and after adjusting the recovery of Rs.23,858.90/- he has been paid the balance amount and since learned Single Judge vide Judgement dated 06.11.2009 did not grant any back wages or any other service benefit for the period he remained out of service of the Corporation, no further dues are pending with the respondent-Corporation.

9. I have heard learned counsel for the parties and perused the record.

10. The facts are not in dispute that the services of the petitioner were terminated alongwith other four employees, after holding joint departmental proceedings, vide order dated 15.05.1989, and the industrial dispute raised by the petitioner was answered in negative by the Labour Court vide award dated 28.02.1996 and the said award was challenged by the petitioner in CWP

No.15541 of 1999, which was partly allowed by learned Single Judge vide Judgement dated 06.11.2009, and the punishment awarded to the petitioner was ordered to be modified and it was further directed that the punishment to be imposed to the petitioner should be lesser than the awarded punishment of removal from service. After, the said Judgement of learned Single Judge dated 06.11.2009, having been upheld by the Division Bench of this Court vide Judgement dated 16.10.2012 in LPA No.204 of 2010 preferred by the respondent-Corporation (PRTC), the punishment of removal awarded to the petitioner-Gobinder Singh vide order dated 15.05.1989 was modified to that of reduction in lower stage in time scale of Assistant Store Keeper and proportionate recovery of Rs.23,858/- was ordered vide order dated 03.06.2014 (Annexure P-4), and the petitioner was ordered to be deemed to have been reinstated in service and retired as such on 31.01.2004 and it was further ordered that he will not be entitled to back wages or any other service benefit for the period he remained out of service of the Corporation.

11. Initially, the written statement was filed by the respondents and thereafter, the case came up for hearing before this Court, and a Co-ordinate Bench of this Court, on 12.10.2018 passed the following order:-

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“ Learned counsel for the respondents shall seek instructions as to how the remaining employees who were found to be negligent along with the petitioner has been treated.

Post against on 04.02.2019.

In the meantime, the amount due to the petitioner under the Contributory Provident Fund Scheme be reimbursed to him. ”

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12. In compliance with the aforesaid order dated 12.10.2018, an

additional affidavit 16.07.2019 of Mr. Gurlovleen Singh Sidhu, Managing Director, PRTC, Nabha Road, Patiala was filed and the relevant portion of the said affidavit dated 16.07.2019, is as under:-

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“ 2. That the brief facts of the case are that Sh. Satinder Pal Singh and Sh. Tarvinder Singh (Assistant Store Keepers) and Sh. Lakhmir Singh, Sh. Gobinder Singh (petitioner) & Kamaljit Singh (Store Keepers) were found to be negligent, dishonest and causing loss of Rs. 1,19,294.59 due to shortage of stocks. A chargesheet dated 19/07/1988 was issued to them and after holding joint departmental proceedings, the order of termination dated 15/05/1989 was passed against them. All the workmen mentioned above raised industrial disputes except Sh. Kamaljit Singh. The industrial dispute raised by Sh. Lakhmir Singh and Sh. Gobinder Singh (petitioner) was rejected, whereas, the industrial dispute raised by Sh. Satinder Pal Singh and Sh. Tarvinder Singh (Assistant Store Keepers) was accepted. Thereafter, the matter reached before this Hon'ble Court by way of separate writ petitions i.e. CWP No. 5734 of 1997 was filed by Sh. Lakhmir Singh, CWP No. 15541 of 1999 was filed by Sh. Gobinder Singh (petitioner), CWP No. 1418 of 1997 was filed by the respondent corporation against the reinstatement of Sh. Satinder Pal Singh and CWP No. 2336 of 1997 was filed against the reinstatement of Sh. Tarvinder Singh. All the writ petitions were heard together and vide order dated 06/11/2009 (Annexure P-2) this Hon'ble Court has held that the negligence against the workmen has been proved, however, it has been directed to provide penalty to the workmen, which is less than punishment of removal from service. It has been further held that the punishment could be either of stoppage of increments for any specified period or any other punishment enumerated in Clauses (i) to (vi) of Regulation 20 of the services regulations framed by the respondent Corporation, which is reproduced at page 11 of the writ petition. LPA Nos. 204, 205, 206 and 207 of 2010 filed against the aforesaid order dated

06/11/2009 has been dismissed by the Hon'ble Division Bench vide order dated 16/10/2012 (Annexure P-3). Hence in compliance to the directions issued by this Hon'ble Court, the impugned order dated 03/06/2014 (Annexure P-4) has been passed by the respondent Corporation.

3. That from the facts narrated above, it is clear that there were four other employees, who were found negligent alongwith the petitioner. The names of these four employees are as under:

- (i) Sh. Kamaljit Singh (Store Keeper)*
- (ii) Sh. Satinder Pal Singh (Assistant Store Keeper)*
- (iii) Sh. Lakhmir Singh (Store Keeper)*
- (iv) Sh. Tarvinder Singh (Assistant Store Keeper)*

4. That the punishment awarded to all the above four employees is as under:

5. Sh. Kamaljit Singh (Store Keeper)

That since Sh. Kamaljit Singh has not challenged his termination order dated 15.05.1989 in any competent court of law, therefore, the said order of termination has attained finality and no fresh orders were passed against him.

6. Sh. Satinder Pal Singh (Assistant Store Keeper)

That in compliance to the orders passed by this Hon'ble Court (Annexure P-2) & (P-3), vide office order dated 28.05.2014, the punishment of Sh. Satinder Pal Singh was reduced to that of initial time scale of (Assistant Store Keeper) and proportionate recovery of Rs. 23,858.90/- is ordered to made from him. In the said order, it was also made clear that Sh. Satinder Pal Singh will not be entitled to any back wages or any other service benefit for the period he remained out of service of the Corporation.

Hence same punishment has been awarded to Sh. Satinder Pal Singh as has been awarded to the petitioner.

7. **Sh. Lakhmir Singh (Store Keeper)**

That in compliance to the orders passed by this Hon'ble Court (Annexure P-2) and interim order dated 16.02.2010 passed by the Hon'ble Division Bench in the LPA filed by the respondent Corporation, vide office order dated 16.04.2010, the punishment of Sh. Lakhmir Singh was reduced to that of initial time scale of (Assistant Store Keeper). Since the order was passed during the pendency of the LPA and Sh. Lakhmir Singh had not attained the age of superannuation, therefore, he was ordered to be reinstated in service. In the said order, it was also made clear that Sh. Lakhmir Singh will not be entitled to any back wages or any other service benefit for the period he remained out of service of the Corporation. The said order was passed subject to the final order of the Hon'ble High Court in LPA.

8 **Sh. Tarvinder Singh (Assistant Store Keeper)**

That so far as the case of the Sh. Tarvinder Singh concerned, he was reinstated in service in presence of the award passed by the Ld. Labour Court in compliance of the provision of section 17-B of Industrial Dispute Act 1947. However, his reinstatement was subiect to the decision of the writ petition filed by the corporation against the award passed by the Ld. Labour Court. It is further pertinent to mention here that after his reinstatement proportionate recovery was effected from the salary for the loss caused by him to the corporation. During pendency of the writ petition he attained the age of superannuation and retired as such on January 2010. Therefore, no punishment order was passed against him as per the order passed by this Hon'ble Court.

9. *That it is further submitted that in compliance to order dated 12.10.2018, passed by this Hon'ble Court the amount due to the petitioner under the Contributory Provident Fund Scheme has been released to the petitioner vide Cheque No. 064378 dated 11.07.2019, amounting to Rs. 35,368. ”*

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Thereafter, the case was heard by Co-ordinate Bench of this Court

and on 22.07.2019 and 27.01.2020, the following orders were passed:-

Order dated 22.07.2019

“ Cheque of Rs.35,000/- has been handed over during the course of hearing to learned counsel for the petitioner on account of contributory Provident Fund Scheme.

Learned counsel for the petitioner submits that no details of the same have been provided to the petitioner as to how this amount of Rs.35,000/- has been calculated.

In the premises learned counsel for the respondents is directed to provide calculations of the amount to the petitioner on or before the next date of hearing.

Adjourned to 27.01.2020.

A photocopy of this order be placed on the file of other connected case. ”

Order dated 27.01.2020

“ Anupam Singla, Advocate, representing respondent-Pepsu Road Transport Corporation, has furnished to counsel representing the petitioner in Court today the calculation sheet justifying an amount of Rs.35,368/- on account of contributory provident fund which had been handed over at the time of the previous date of hearing i.e.22.07.2019.

Counsel for the petitioner seeks an accommodation to go through the same and to complete instructions.

List on 11.05.2020.

A copy of this order be placed on other connected matter. ”

14. The Hon'ble Supreme Court in the case titled as '**Om Pal Singh versus Disciplinary Authority & Ors. 2020' (1) SCT 608 : 2020 (2)** that if reinstatement is a consequence of imposition of lesser punishment, neither back-wages nor continuity of service nor consequential benefits follow as a natural or necessary consequence of such reinstatement. The observations made by Hon'ble

the Apex Court in the Judgement (*Supra*) in its concluding paras, are as under:-

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“ 10. The only question that arises for our consideration in the present appeal is whether the Appellant is entitled to payment of salary for the period of suspension i.e. from 29.07.2003 to 10.09.2012. There is no need to reiterate that the order of dismissal was set aside and the punishment of reduction in time scale of pay was imposed on the Appellant. It is clear that the findings of the Inquiry Officer that the charges against the Appellant were proved and have not been disturbed. Reduction of the penalty from dismissal to that of reduction in time scale of pay does not result in exoneration of the Appellant of the charges framed against him. However, it is for the Disciplinary Authority to take a decision as to how the period of suspension shall be treated. While passing the impugned order dated 29.10.2015, the Disciplinary Authority held that the Appellant shall not be entitled for any payment from 06.07.2004 to 29.08.2012.

11. In **J.K. Synthetics Ltd. v. K.P. Agrawal & Anr., 2007 S.C.T. 79 : (200&) 2 SCC 433** , this Court dealt with the issue regarding the entitlement of a delinquent to claim continuity of service and consequential benefits in all cases of reinstatement as follows:-

“17. There is also a misconception that whenever reinstatement is directed, 'continuity of service' and 'consequential benefits' should follow, as a matter of course. The disastrous effect of granting several promotions as a 'consequential benefit' to a person who has not worked for 10 to 15 years and who does not have the benefit of necessary experience for discharging the higher duties and functions of promotional posts, is seldom visualized while granting consequential benefits automatically. Whenever courts or Tribunals direct reinstatement, they should apply their judicial mind to the facts and circumstances to decide whether 'continuity of service' and/or 'consequential benefits' should

*also be directed. We may in this behalf refer to the decisions of this Court in **A.P.S.R.T.C. v. S. Narasa Goud [2003 (2) SCC 212]**, **A.P.S.R.T.C. v. Abdul Kareem [2005 (6) SCC 36]** and **R.S.R.T.C. v. Shyam Bihari Lal Gupta [2005 (7) SCC 406]**. ”*

12. *It was further held in the said judgment that if reinstatement is a consequence of imposition of a lesser punishment, neither back-wages nor continuity of service nor consequential benefits follow as a natural or necessary consequence of such reinstatement. This Court went on to hold that where the misconduct was held to be proved, reinstatement by itself is a consequential benefit arising from imposition of a lesser punishment. However, this Court was of the opinion that award of back wages for the period when the employee has not worked may amount to rewarding the delinquent employee and punishing the employer for taking action against the misconduct committed by the employee, which should be avoided.*

13. *Following the aforementioned judgment, we are of the opinion that the decision of the Disciplinary Authority in not paying the salary for the period of suspension cannot be said to be contrary to law. ”*

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15. The Hon'ble Supreme Court in the case titled as '**State of Orissa and another versus Mamata Mohanty', 2011 AIR (SCW) 1332** has held as under:-

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“ **RELIEF NOT CLAIMED - CANNOT BE GRANTED:**

35. *Pleadings and particulars are required to enable the court to decide the rights of the parties in the trial. Thus, the pleadings are more to help the court in narrowing the controversy involved and to inform the parties concerned to the question in issue, so that the parties may adduce appropriate evidence on the said issue. It is a settled legal proposition that "as a rule relief not founded on the pleadings should not be granted." Therefore, a decision of a case cannot be based on grounds outside the pleadings of the parties. The*

pleadings and issues are to ascertain the real dispute between the parties to narrow the area of conflict and to see just where the two sides differ. (Vide : Sri Mahant Govind Rao v. Sita Ram Kesho,(1898) 25 Ind. App. 195; M/s. Trojan & Co. v. RM. N.N. Nagappa Chettiar, AIR 1953 SC 235; Ishwar Dutt v. Land Acquisition Collector & Anr., AIR 2005 SC 3165; and State of Maharashtra v.Hindustan Construction Company Ltd., (2010) 4 SCC 518.) ”

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16. Since, vide order dated 03.06.2014 (Annexure P-4) passed by the respondent-Corporation, the punishment of removal from service, which was awarded to the petitioner-Gobinder Singh vide order dated 15.05.1989, was reduced to that of reduction to the lower stage in time scale of Assistant Store Keeper and proportionate recovery of Rs.23,858.90/- was ordered to be recovered from the petitioner and the petitioner was ordered to be deemed to have been reinstated in service and retired as such on 31.01.2004 with further orders that he will not be entitled to back wages or any other service benefit for the period he remained out of service of the Corporation in terms of the Judgement dated 06.11.2009 of learned Single Judge and later part of the the said order dated 03.06.2014 (Annexure P-4) to the extent of “ *that he will not be entitled to back wages or any other service benefit for the period he remained out of service of the Corporation in terms of the Judgement dated 06.11.2009 of learned Single Judge*” having not been challenged by the petitioner in the present writ petition, therefore, his claim *qua* entitlement of back wages for the period he remained out of service of the Corporation is not sustainable due to the limited scope of the petition and as the same has attained finality, therefore, in the absence of any

claim to this effect and the petition is also bereft of any pleading and therefore, no further relief has either been sought by the petitioner nor can be granted by this Court, as it is a well settled proposition of law that relief not claimed cannot be granted.

17. Dismissed.

January 30, 2024

mkkoundal

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*