

206

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-20468-2014 (O&M)
Date of Decision:23.01.2024

MADAN MOHAN ARORA

.....Petitioner

V/s.

STATE OF PUNJAB AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr. R.L. Luthra, Advocate, for the petitioner.

Ms. Shivani Sharma, DAG, Punjab.

SANJEEV PRAKASH SHARMA, J. (Oral)

1. The petitioner has challenged the order dated 31.10.2011/08.11.2011 whereby he has been dismissed from service.

2. Learned counsel for petitioner submits that the petitioner attained superannuation and was retired from Government service on 30.04.2010 (A/N) vide order dated 21.04.2010. After the petitioner had retired, he was convicted in the vigilance case registered against him vide FIR No.19 of 2007 and was convicted by the Court of learned Special Judge, Tarn Taran for 2 years rigorous imprisonment and a fine of ₹2,000/- vide order dated 09.08.2011.

3. He preferred an Appeal against the said judgment which is pending. While the said criminal case is pending in Appeal, the respondents passed the order dismissing him from Government service from the date of his retirement i.e. 30.04.2010 by passing the impugned orders dated 31.10.2011/08.11.2011 which could not have been done as there is no such provision available under the Punjab Civil Services (Punishment and Appeal)

Rules, 1970 nor there is any such provision under the Punjab Civil Services Pension Rules.

4. Learned State counsel has supported the impugned orders and submitted that the action was taken in terms of the Government instructions issued on 05.08.1998 which provided that if a person has been convicted of charges relating to corruption, the conduct of the Government servant which led to his conviction would be examined, and even if the Appeal is pending, it would not be advisable to retain such person in service.

5. I have carefully considered the submissions of learned counsel for both the parties.

6. The instructions dated 05.08.1998 issued by the State Government are relevant for a Government servant who is in a service. While in service, if he has been convicted of any offence amounting to moral turpitude, he could not be allowed to retain in Government service and the services have to be dispensed with even if the Appeal is pending. The instructions, however, nowhere provide to pass orders of dismissal with retrospective effect i.e. even for those who have retired, the dismissal order cannot be made operative from the date of retirement as there is no such provision either in the Rules framed under Article 309 of the Constitution of India or under the proviso thereto.

7. In view thereof, the action of the respondents is found to be *dehors* the Rules applicable to a retired employee and therefore, the orders dated 31.10.2011/08.11.2011 is quashed and set aside. The petitioner would be deemed to be retired as a Government employee and would be entitled to the benefits as available to retired employee.

8. The Writ Petition is allowed accordingly.
9. All pending applications in this Writ Petition stand disposed of
accordingly.

January 23, 2024
Ess Kay

[SANJEEV PRAKASH SHARMA]
JUDGE

Whether speaking / reasoned

:

Yes / No

Whether Reportable

:

Yes / No