



CWP-17646-2018

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

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CWP-17646-2018
Date of decision: 02.12.2024

Het Ram Bishnoi

....Petitioner

Versus

State of Haryana and Another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. D.S.Patwalia, Sr. Advocate with
Ms. Rishu Bajaj, Advocate,
for the petitioner.

Ms. Tanisha Peshawaria, DAG, Haryana.

AMAN CHAUDHARY, J. (ORAL)

1. The impugned order dated 30.03.2018 (Annexure P-15) is stated to be erroneous as it records having upheld the order dated 17.11.1999, dismissing the petition from service, that already stood set aside on 04.11.2016 by this Court in the previous *lis* at the hands of the petitioner, being CWP-243 of 2001. Moreso, the opportunity of hearing granted to him was by an authority other than the one that has inflicted the punishment, underscores procedural fairness, that prioritizes *audi alteram partem* and the banner of the maxim *fiat justitia ruat caelum*, that the

justice is not merely done, but must be apparent as well, regarding which judgment of **Union of India vs. Shiv Raj**¹ can be beneficially referred to.

2. Admittedly, the petitioner retired on attaining the age of superannuation on 30.06.2013, after rendering about 33 years of service, the order of dismissal having come about on 30.03.2018 with retrospective effect, which is unsustainable, the issue being no longer *res integra*, as settled by Hon'ble the Supreme Court in **High Court of Punjab & Haryana vs. Amrik Singh**,² and **UCO Bank vs. Rajendra Shankar Shukla**,³ where on a challenge raised against the validity of the dismissal order passed after the superannuation of the employee, it was observed the same was rendered ineffective as the individual had already retired, the relevant paras of **Amrik Singh (supra)** 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

¹ (2014) 6 SCC 564

² 1995 Supp (1) SCC 321

³ 2018(14) SCC 92

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.”

3. While following the dictum of law in Amrik Singh (supra), in **Bahadur Singh v. State of Punjab (P&H)**⁴, wherein vide order dated 25.01.2010, the petitioner who stood retired on 31.10.2006, was dismissed from service, was set aside with liberty to the respondents to pass appropriate orders in accordance with law as per the statutory Rules, to which there was no challenge and the observations made were that the claim of the petitioner 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.

4. Learned State counsel despite his best efforts was unable to draw out any distinctive aspects in the aforementioned judgments or cite any contrary law.

⁴ 2013(4) SCT 322

5. This Court on a conspectus evaluation on the factual and legal aspects involved, disposes of the petition in terms of **Bahadur Singh** (supra).

02.12.2024
parveen kumar

(AMAN CHAUDHARY)
JUDGE

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