

207

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-21368-2018
Date of Decision: 28.02.2024

Anil Kumar Bishnoi

..... Petitioner

Versus

Haryana State Federation of Consumers Coop. Wholesale Stores and anr.

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Dinesh Nagar, Advocate,
for the petitioner.

Mr. Sushant Sharma, Advocate for
Mr. Deepak Balyan, Advocate,
for the respondents.

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 in the nature of *certiorari* for quashing the impugned order dated 24.05.2018 (Annexure P-3) with a further prayer for issuance of a writ in the nature of *mandamus* directing the respondents to release all the retiral monetary benefits viz leave encashment, gratuity, pension and other related dues along with interest @ 18% per annum.

2. Learned counsel for the petitioner submitted that the petitioner was working as a Storekeeper in the respondent-Department and was retired on 30.09.2013 on attaining the age of superannuation and vide Annexure P-2, it was so directed that he retired on 30.09.2013 under pending inquiry. He further submitted that while he was in service, a charge-sheet dated

03.05.2005 was issued against him for embezzlement/misappropriation of CONFED funds/negligence in performing the duties and involving the Federation into serious losses and thereafter, an inquiry was conducted against the petitioner which was an *ex parte* inquiry and he was not associated with the inquiry and thereafter, an order of dismissal was passed against the petitioner. He submitted that the petitioner thereafter challenged the aforesaid order before the Board of Directors and the Board of Directors on 16.12.2009 decided that the petitioner was not afforded an opportunity of hearing and he had also undertaken to associate himself with any inquiry if ordered in this regard and therefore, the Board of Directors directed that the alleged dereliction of duty on the part of the inquiry officers may also be looked into and it was decided by the Board of Directors that the inquiry be conducted by the Managing Director. Thereupon, the matter went to the Managing Director of the CONFED and vide Annexure P-1, the Managing Director came to the conclusion that so far as the punishment of dismissal awarded to the petitioner is concerned, the same was disproportionate and therefore, he was directed to be reinstated and the petitioner was thereafter called for further inquiry as directed by the Board of Directors. He further submitted that the petitioner had been appearing before the Managing Director for completion of inquiry and the Managing Director had also reported a number of times to the Board of Directors but till date even the Board of Directors have not taken any decision with regard to the report, if any, submitted by Managing Director. He submitted that in this way the petitioner has not been paid any retiral benefits despite the fact that he has retired more than 10 years ago. He further submitted that because of the

inaction on the part of the Board of Directors, the petitioner has not been paid any amount and submitted that now after the retirement of the petitioner, a show-cause notice dated 24.05.2018 has been issued to him stating that as to why an amount of Rs.32,26,263/- be not recovered from him which is under challenge in the present petition.

3. On the other hand, learned counsel appearing on behalf of the respondents while referring to the reply filed by the CONFED submitted that after the Board of Directors had observed that the petitioner should be reinstated, he was immediately reinstated in service in the year 2010 but since the inquiry was still to be conducted by the Managing Director, the Managing Director gave an opportunity of hearing to the petitioner and he had been appearing before the Managing Director in this regard. He further submitted that since the petitioner had retired, no other punishment could have been awarded to him but so far as the loss caused to the CONFED is concerned, the same was ascertained and the same could be recovered from the petitioner only by following the process of law and for that purpose a show-cause notice (Annexure P-3) was given to him in the year 2018 but when the present petition was filed by the petitioner before this Court, the recovery of the amount was stayed and thereafter, no action could be taken by the Board of Directors because of the pendency of the present petition and also because of the interim order passed by this Court. He further submitted that the Board of Directors will take a final decision on the report of Managing Directors within a period of two months.

4. After hearing the learned counsel for the parties, this Court is of the view that although there has been a delay in making of the decision by

the Board of Directors but it appears that because of the interim order passed by this Court in the year 2018, no final decision was taken by the Board of Directors. The Board of Directors had only remanded the case to the Managing Director for the purpose of giving an opportunity of hearing because earlier the petitioner was proceeded *ex parte* before the inquiry officer. The only change of the circumstance was that the petitioner has now retired in the year 2013 but the charge-sheet and the inquiry was in continuation prior to his retirement and therefore, could have been continued. Be that as it may, now this Court is of the view that the present petition can be disposed of with a direction to the Board of Directors to take a final decision on the report of the Managing Director, if any, within a period of two months from today.

5. In view of the above, the present petition is disposed of and it is directed that the Board of Directors shall finalize the decision on the report of Managing Director within a period of two months from today.

6. In case, the petitioner is found to be innocent and no recovery is required to be effected from him, then he shall be paid all retiral benefits within a further period of two months along with interest @ 6% per annum.

7. However, in case any adverse order is passed against the petitioner on the basis of decision made by the Board of Directors, then the petitioner shall be at liberty to challenge the same in accordance with law by filing an appropriate petition in this regard.

28.02.2024

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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