

226

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-21119-2020

Date of decision: 24.10.2024

RAMESH KUMAR

...Petitioner(s)

VERSUS

STATE OF HARYANA AND OTHERS

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

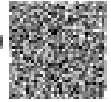
Present:- Mr. R. S. Chahal, Advocate for
Mr. Arjun Lakhanpal, Advocate for the petitioner.

Mr. Gaurav Jindal, Addl. A.G., Haryana.

Mr. Bhupinder Gupta, Advocate for respondent No.3.

JASGURPREET SINGH PURI, J. (Oral)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing the order dated 16.09.2020 (Annexure P-5), vide which the petitioner has been dismissed from service.
2. Learned counsel appearing on behalf of the petitioner submitted that the petitioner applied for the post of Shift Attendant in pursuance of the advertisement issued by the respondent-Haryana Staff Selection Commission vide Annexure P-1 dated 20.02.2016. He further submitted that the petitioner applied for the aforesaid post against Visually Handicapped Category but he attached a certificate of being Ortho Handicapped to the extent of 70%. He

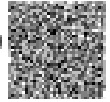


submitted that however the petitioner was selected for the aforesaid post and he was granted appointment vide appointment letter dated 09.03.2019 (Annexure R-2). He further submitted that thereafter, the petitioner joined the services of the respondent-Nigam and he was kept on probation for a period of two years and various other conditions were also incorporated in the aforesaid appointment letter. He further submitted that thereafter, the petitioner started working on the aforesaid post but vide impugned order dated 16.09.2020 (Annexure P-5), he has been dismissed from service after about 1½ years on the ground that while he had applied for the aforesaid post of Shift Attendant, then along with his application form he had attached a certificate of Ortho Handicapped at the time of joining but he applied under the Visually Handicapped Category and his selection was made under the Visually Handicapped Category.

3. Learned counsel appearing on behalf of the petitioner also submitted that when the petitioner applied for the aforesaid post of Shift Attendant, then at the time of appointment when he submitted his disability certificate, it was within the knowledge and in the records of the respondents and despite the same, he was granted permission to join and he joined the services but later on after about 1½ years, he was dismissed from service.

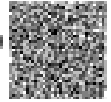
4. Learned counsel appearing on behalf of the petitioner has raised three arguments.

(i) Firstly, a perusal of the impugned order (Annexure P-5) would show that the respondent-Nigam after taking a decision to dispense with the services of the petitioner issued a notice to him asking him to explain his



position within a period of 15 days and therefore, the same was issued with a pre-determined mind and was an empty formality because after taking a decision on its own unilaterally by the respondent-Nigam, there was no use of issuance of any notice to the petitioner to explain his position and therefore, the aforesaid impugned order is liable to be set aside not only on the ground of it being violative of principles of natural justice but also on the ground that it was passed with a pre-determined mind. In this regard, he referred to a judgment passed by Hon'ble Supreme Court in **Khem Chand Versus Union of India and others, 1957 SCC OnLine SC 6** and a judgment passed by a Coordinate Bench of this Court in **Hans Raj Gupta Versus State of Punjab, 1991 SCC Online P&H 1891**, wherein it was so held that if such kind of notices are issued with a pre-determined mind then issuance of the same is only an empty formality and there is no use of issuance of such notices.

(ii) Secondly, the petitioner was kept on probation for a period two years and instead of dispensing with his services within the probation period, he has been directed to be dismissed from service by passing of a stigmatic order regarding which neither any opportunity was given to the petitioner before taking a decision for his dismissal from service nor any enquiry was held because the petitioner was appointed against substantive regular vacancy. He submitted that the petitioner being a regular employee although on probation was entitled for an enquiry before an order of dismissal was passed because a stigma has been attached in the aforesaid order of dismissal and it is a settled law that once an order is stigmatic in nature then even an employee who is on contractual basis or even on probation, an enquiry qua him has to be conducted



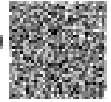
once allegations are attached or a stigma is attached and on this ground as well, the aforesaid impugned order (Annexure P-5) is liable to be set aside.

(iii) Thirdly, a perusal of the impugned order (Annexure P-5) would show that it is so stated by the authorities in the aforesaid order that it has been tentatively decided by the competent authority to dispense with the services of the petitioner, whereas in the last paragraph of the aforesaid order, the petitioner has been dismissed from service without any justification. He submitted that in this way now the petitioner is out of job for about four years and he is even debarred from making any application to any organization because in various organizations the prior dismissal is an embargo for being appointed and in this way, the entire career of the petitioner has been ruined by the respondent-Nigam by passing of such an illegal and perverse order.

5. On the other hand, learned counsel for respondent No.3-Nigam submitted that the petitioner has been dismissed from service in view of the fact that the petitioner while joining had submitted his Ortho Handicapped certificate but he applied under Visually Handicapped Category and it was a condition attached in the appointment letter that in such like situation, his services can be dispensed with and since the appointment letter was accepted by the petitioner including its terms and conditions, the respondent-Nigam has rightly dismissed the petitioner from service.

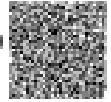
6. I have heard the learned counsels for the parties.

7. The petitioner in the present case had applied for the post of Shift Attendant, to which he was selected. He applied against Visually Handicapped Category but he submitted his Ortho Handicapped certificate at the time of



joining and still he was permitted to join by the respondent-Nigam although the certificate was on the record of the respondent-Nigam. The petitioner was kept on probation for a period of two years but after about 1½ years vide impugned order dated 16.09.2020 (Annexure P-5), he has been dismissed from service on the aforesaid ground. This Court is of the considered view that the aforesaid impugned order of dismissal from service is *ex facie* illegal and therefore, the same is liable to be set aside because of the following reasons:

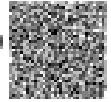
(i) A perusal of the impugned order of dismissal (Annexure P-5) would show that it is based upon a foundation, wherein allegations of filing a wrong certificate is made and a perusal of the aforesaid order would also show that the competent authority has so stated in the impugned order that the service of the petitioner is liable to be dispensed with on account of non-fulfilment of essential condition and also for submitting forged certificate which is a serious misconduct on his part and a crime against the society. When such a language is used in the aforesaid order of dismissal then it clearly is stigmatic in nature based upon the foundation of allegation of crime and forgery. However, it is not understood as to how such allegation of forgery and crime against society has been stated in the aforesaid order because the only reason which is discernible from the aforesaid order is that instead of Visually Handicapped Category under which the petitioner applied, he had submitted his Ortho Handicapped certificate. The respondent-Nigam at the most, at the time of joining of the petitioner would not have permitted him to join the services because he did not fulfill the aforesaid reservation criteria or essential qualification but once he was permitted to join and he started discharging his duties then such an



allegation which is the foundation of misconduct and fraud which attaches stigma cannot be made against him while passing an order of dismissal without holding regular enquiry and therefore, it was incumbent upon the respondent-Nigam to have afforded an opportunity of hearing to the petitioner and holding a regular enquiry in this regard. However, what to talk of holding a regular enquiry, only a notice was issued to the petitioner to explain his position within a period of 15 days that too after taking a conscious decision to dispense with his services.

(ii) A perusal of the aforesaid impugned order would also show that it is stated in the aforesaid order that it has been tentatively decided by the competent authority to dispense with the services of the petitioner on account of aforesaid reason and thereafter, it is stated that “*but, before proceeding further a notice was issued to him to explain his position wherein 15 days*”. Such kind of grant of opportunity after taking a conscious decision to dispense with the services is nothing but an empty formality. The relevant portion of the aforesaid judgment of Hon’ble Supreme Court in *Khem Chand’s case (supra)* is reproduced as under:-

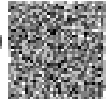
“22.....If the competent authority were to determine, before the charges were proved, that a particular punishment would be meted out to the government servant concerned, the latter may well feel that the competent authority had formed an opinion against him, generally on the subject-matter of the charge or, at any rate, as regards the punishment itself. Considered from this aspect also the construction adopted by us appears to be consonant with the fundamental principle of jurisprudence that justice must not only be done but must also be seen to have been done”.



From above, it is very clear that the petitioner has been dismissed from service without issuance of any notice and a notice, if any, issued to him was after taking a decision to dispense with his services and therefore, it was only an empty formality and therefore, it is held that the services of the petitioner have been terminated without affording any opportunity of hearing and absolutely in violation of the principles of natural justice.

(iii) A further perusal of the impugned order would show that it was tentatively decided by the competent authority to dispense with the services of the petitioner but later on in the last paragraph of the said order, it is stated that it has been decided to dismiss the petitioner from service. In this way, the entire future and career of the petitioner has been ruined because not only a stigma which is attached with the present order is important but also it would create further embargo for his future appointment for no fault of his because of a simple reason that the petitioner at the time of joining has submitted a medical certificate, which was accepted and was on record with the respondents. Instead of not permitting the petitioner to join at that point of time, the respondent-Nigam permitted him to join and he worked for about 1½ years and now by way of the aforesaid stigmatic order, he has been dismissed from service. Even the conduct of the respondent-Nigam in this regard deserves to be deprecated.

8. In a catena of judgments Hon'ble Supreme Court has held that if it was not the fault of an employee to have remained away from the work, then the salary and financial benefits can be given to him by departing from the principle of '*no work no pay*'.



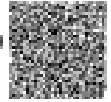
9. Hon'ble Supreme Court in **Union of India and others versus K. V. Jankiraman and others, 1991 (4) SCC 109** observed as under:-

“25. We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases.”

10. Hon'ble Supreme Court in **Ramesh Kumar versus Union of India and others, 2015 (14) SCC 335** observed as under:-

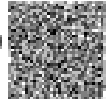
“14. In normal circumstances when retrospective promotions are effected, all benefits flowing therefrom, including monetary benefits, must be extended to an employee who has been denied promotion earlier. So far as monetary benefits with regard to retrospective promotion are concerned that depends upon case to case. In State of Kerala & Ors. vs. E.K. Bhaskaran Pillai, (2007) 6 SCC 524, this Court held that the principle of “no work no pay” cannot be accepted as a rule of thumb and the matter will have to be considered on a case-to-case basis and in para 4, it was held as under: (SCC p.527)

“4... We have considered the decisions cited on behalf of both the sides. So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered. Sometimes in a case of departmental enquiry or in



criminal case it depends on the authorities to grant full back wages or 50 per cent of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the matter when the person is superseded and he has challenged the same before court or tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, in that case the court may grant sometimes full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors. However, it is very difficult to set down any hard-and-fast rule. The principle “no work no pay” cannot be accepted as a rule of thumb. There are exceptions where courts have granted monetary benefits also.”

15. We are conscious that even in the absence of statutory provision, normal rule is “no work no pay”. In appropriate cases, a court of law may take into account all the facts in their entirety and pass an appropriate order in consonance with law. The principle of “no work no pay” would not be attracted where the respondents were in fault in not considering the case of the appellant for promotion and not allowing the appellant to work on a post of Naib Subedar carrying higher pay scale. In the facts of the present case when the appellant was granted promotion w.e.f. 01.01.2000 with the ante-dated seniority from 01.08.1997 and

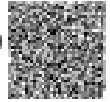


maintaining his seniority alongwith his batchmates, it would be unjust to deny him higher pay and allowances in the promotional position of Naib Subedar.”

11. Hon'ble Supreme Court in **Commissioner, Karnataka Housing Board versus C.Muddaiah, 2007 (7) SCC 689** observed as under:-

“33. The matter can be looked at from another angle also. It is true that while granting a relief in favour of a party, the court must consider the relevant provisions of law and issue appropriate directions keeping in view such provisions. There may, however, be cases where on the facts and in the circumstances, the court may issue necessary directions in the larger interest of justice keeping in view the principles of justice, equity and good conscience. Take a case, where ex facie injustice has been meted out to an employee. In spite of the fact that he is entitled to certain benefits, they had not been given to him. His representations have been illegally and unjustifiably turned down. He finally approaches a court of law. The court is convinced that gross injustice has been done to him and he was wrongfully, unfairly and with oblique motive deprived of those benefits. The court, in the circumstances, directs the authority to extend all benefits which he would have obtained had he not been illegally deprived of them. Is it open to the authorities in such case to urge that as he has not worked (but held to be illegally deprived), he would not be granted the benefits? Upholding of such plea would amount to allowing a party to take undue advantage of his own wrong. It would perpetrate injustice rather than doing justice to the person wronged.

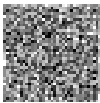
34. We are conscious and mindful that even in absence of statutory provision, normal rule is 'no work no pay'. In appropriate cases, however, a court of law may, nay must,



take into account all the facts in their entirety and pass an appropriate order in consonance with law. The court, in a given case, may hold that the person was willing to work but was illegally and unlawfully not allowed to do so. The court may in the circumstances, direct the authority to grant him all benefits considering 'as if he had worked'. It, therefore, cannot be contended as an absolute proposition of law that no direction of payment of consequential benefits can be granted by a court of law and if such directions are issued by a court, the authority can ignore them even if they had been finally confirmed by the Apex Court of the country (as has been done in the present case). The bald contention of the appellant-Board, therefore, has no substance and must be rejected.”

12. In view of the aforesaid facts and circumstances of the present case, the present writ petition is allowed. The impugned order dated 16.09.2020 (Annexure P-5) is hereby set aside. The respondent-Nigam is directed to reinstate and take back the petitioner on duty forthwith and to pay him the arrears of salary for the time he was kept out of service, which was because of the fault of the respondent-Nigam to have passed such an illegal and perverse order and not because of the fault of the petitioner. The aforesaid arrears be paid to the petitioner along with interest @ 6% per annum (simple), within a period of three months from today.

13. The respondent-Nigam after taking the petitioner back on duty shall be at liberty to proceed against him afresh and strictly in accordance with law not only by affording adequate opportunity of hearing to the petitioner but also by adopting strict procedure of law.



14. Since the petitioner is stated to be ortho handicapped person to the extent of 70% and he has been dismissed from service by the respondent-Nigam by way of illegal method and according to the learned counsel appearing on behalf of the petitioner, he is out of job for last four years and in future also his prospects were blocked by the respondent-Nigam by dismissing him from service by passing of an illegal order, he will also be entitled for costs, which are assessed as Rs.50,000/- (Fifty Thousand Rupees), which shall also be paid by the respondent-Nigam to the petitioner within the aforesaid period of three months.

(JASGURPREET SINGH PURI)
JUDGE

24.10.2024
Chetan Thakur

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