

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-24714-2021 (O&M)
Date of Decision :05.04.2024

Om Parkash Now (deceased) through his LRs

...Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rishi Pal Singh Garttan, Advocate for the petitioner.

Mr. Harish Rathee, Senior DAG, Haryana.

* * *

Harsimran Singh Sethi, J. (Oral)

1. In the present petition, petitioner-Om Parkash (now deceased) has challenged order dated 08.10.2017 (Annexure P/1) as modified by the Appellate authority vide order dated 29.11.2017 (Annexure P/2), vide which petitioner was compulsorily retired from service.

2. As per the facts mentioned in the present petition, the petitioner was initially appointed as driver on 07.02.1990 in the Haryana Roadway upon being recommended by the Subordinate Service Selection Board, Haryana but services of the petitioner were terminated vide order dated 11.07.1991 while he was on probation, which order dated 11.07.1991 was challenged by the petitioner before the Industrial Disputes Tribunal under the Industrial Dispute Act. An award was passed by the Industrial Dispute Tribunal-cum-Labour Court on 01.10.1999 and order terminating the services of the petitioner dated 11.07.1991 was set aside and the petitioner

was directed to be reinstated in service with continuity in service alongwith 40% back wages. The said award dated 01.10.1999 was challenged by the State by way of filing CWP-17573-2000 wherein, reinstatement of the petitioner was stayed and the writ petition was admitted .

3. Despite the interim order, the petitioner was allowed to join duties on 04.06.2009 by the respondents. Upon reinstatement in service, the petitioner continued working when once again allegations were alleged against him that while driving bus No.55W-9038, he was smoking hukka putting the life of the passengers in danger hence, by invoking provisions of Section 311(2) (b) of the Constitution of India, services of the petitioner were again terminated by the respondents on 09.10.2017. The said order was passed by the respondents when a video of the petitioner smoking Hukka while driving on route from Delhi to Shimla had gone viral.

4. Against the said order of dismissal from service dated 09.10.2017, petitioner filed an appeal and vide order dated 29.11.2017, the Director General Transport Department, Haryana modified the punishment of dismissal from service to that of compulsorily retirement with the observation that no financial benefit is to be given over and above the suspension allowance already paid.

5. It may be noticed that keeping in view the video which had gone viral of the petitioner smoking Hukka while driving the bus, an FIR No.43 dated 01.02.2018 was also registered under Sections 279 & 336 of the IPC and Section 4 of the COTPA Act and in the said FIR, the petitioner was acquitted by the trial Court vide order dated 07.07.2021.

6. After the said judgment of acquittal, the petitioner has filed the present petition challenging the order by which, he was compulsorily retired

from service dated 29.11.2017.

7. Learned counsel for the petitioner argues that as the petitioner has already been acquitted of the same allegations by the criminal Court, the order of compulsorily retirement dated 29.11.2017 cannot stand and the same is liable to be set aside.

8. Learned counsel for the respondents submits that departmental proceedings and the criminal proceeding operate in a different sphere and the evidence required to prove the allegations in both the proceedings is entirely different and merely that the petitioner was acquitted in the criminal proceedings, it will not vitiate the order passed in the departmental proceedings by the punishing authority, by which, the petitioner has been compulsorily retired from service.

9. I have heard learned counsel for the parties and have gone through the record with their able assistance.

10. The only question which arises for determination in the present petition is as to whether the petitioner can claim that punishment order of his compulsorily retirement from service dated 29.11.2017 be set aside on the ground that he has been acquitted of the allegations alleged against him, by the criminal Court.

11. Keeping in view the settled principle of law settled by the Supreme Court of India in **Civil Appeal No.1763-1764 of 2022 titled as State of Karnataka and another vs. Umesh, decided on 22.03.2022**, according to which, mere acquittal in the criminal case has no bearing upon the departmental proceedings, which have already been concluded or any disciplinary proceedings which is to be started after the culmination of the said proceedings. As per the judgment of the Hon'ble Supreme Court of

India in Umesh's case (supra) even an acquittal in the criminal proceedings does not create bar upon the department to initiate the departmental proceedings hence, merely that the petitioner acquitted of the criminal charges does not give him right to claim that the punishment imposed upon him in the departmental proceedings is liable to be set aside. Relevant paragraph of the judgment is as under:-

“13 The principles which govern a disciplinary enquiry are distinct from those which apply to a criminal trial. In a prosecution for an offence punishable under the criminal law, the burden lies on the prosecution to establish the ingredients of the offence beyond reasonable doubt. The accused is entitled to a presumption of innocence. The purpose of a disciplinary proceeding by an employer is to enquire into an allegation of misconduct by an employee which results in a violation of the service rules governing the relationship of employment. Unlike a criminal prosecution where the charge has to be established beyond reasonable doubt, in a disciplinary proceeding, a charge of misconduct has to be established on a preponderance of probabilities. The rules of evidence which apply to a criminal trial are distinct from those which govern a disciplinary enquiry. The acquittal of the accused in a criminal case does not debar the employer from proceeding in the exercise of disciplinary jurisdiction.”

12. Further, nature of evidence, which is required to prove the allegations in the criminal proceedings or in departmental proceedings is different.

13. In the present case, a video of the petitioner had gone viral while smoking Hukka while driving a bus on duty and under these circumstances, an action was taken by the authority concerned against the petitioner in departmental proceedings. Keeping in view the nature of allegations and the evidence which had come before the authorities

concerned, appropriate action was taken against the petitioner though, initially he dismissed from service but the said punishment has been modified to be that of compulsory retirement in an appeal.

14. Keeping in view the allegations alleged against the petitioner, it cannot be said that punishment imposed upon the petitioner is disproportionate to the allegations alleged.

15. Now question which arises is as to whether the petitioner is entitled for the grant of pensionary benefits or not.

16. It may be noticed that after the punishment of dismissal from service was modified by the appellate authority to that of compulsory retirement, the petitioner has to be treated as compulsorily retired from service from the date the order was passed by the punishing authority and for all intent and purposes, the petitioner is to be treated a retired employee. There is nothing on record to say that there was any impediment in the release of the pensionary benefits of the petitioner.

17. At this stage, learned counsel for the respondents submits that reinstatement of the petitioner by the Industrial Disputes Tribunal vide order dated 01.10.1999 is a subject matter of CWP-17573-2000 hence, unless and until the said petition attains finality, no benefit of pension can be extended to the petitioner.

18. Learned counsel for the petitioner submits that the said writ petition had already been dismissed by the Coordinate Bench of this Court vide order dated 04.01.2024, copy of which order has been furnished to the learned counsel for the respondents by the learned counsel for the petitioner during the course of hearing.

19. That being the factual position, as the reinstatement order

passed by the Labour Court as well as the order of compulsory retirement of the petitioner from service has attained finality hence, the petitioner is entitled for the grant of pensionary benefits as no impediment has been shown to this Court in the release of the pensionary benefits of the petitioner qua the services, which he had rendered with the respondent-department upto the date of his compulsory retirement i.e. 08.10.2017.

20. The respondents are directed to compute the pensionary benefits of the petitioner and release the same to him within a period of 08 weeks from the date of receipt of copy of this order.

21. At this stage, learned counsel for the petitioner submits that petitioner has already died and the present petition is being pursued by his legal heirs.

22. Keeping in view the said fact, it is directed that the pension as well as pensionary benefits for which, the petitioner becomes entitled be released to his widow, who has already come on record as legal heir of the petitioner.

23. Learned counsel for the petitioner further submits that there was no impediment in the release of the pensionary benefits of the petitioner after the punishment of dismissal from service was converted to that of compulsory retirement but still the petitioner has been made to wait for a period of more than six and a half years to get his entitled benefits hence, the petitioner is also entitled for the grant of benefit of interest on the said delayed payment of the pensionary benefits.

24. Learned counsel for the respondents submits that the claim of the petitioner is being decided by this Court today hence, no interest can be granted to the petitioner.

25. A Coordinate Bench of this Court in of ***J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355***, has held that where an amount belonging to an employee, has been retained and used by the respondents, upon the release of the said amount, on a later date, the interest has to be given. The relevant paragraph of ***J.S. Cheema's case (supra)*** is as under: -

“The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is lying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it.”

26. In the present case, after the reinstatement of the petitioner in service, despite the pendency of CWP-17573-2000, the petitioner continued in service and had discharged his duties since the year 2009, Further, by the award of the Industrial Disputes Tribunal dated 01.10.1999, petitioner was already given the benefit of continuity in service hence, there was no impediment in the release of the pensionary benefits of the petitioner and the delay in the release of the said benefit is attributable to the respondents only. Hence, the petitioner is also held entitled for the grant of benefit of interest @ 6% per annum on the pensionary benefits from the date the same became due till the date of actual payment.

27. At this stage, learned counsel for the petitioner submits that CWP-17573-2000 filed by the respondent-State has been dismissed and 40% of the back wages, which was allowed by the Tribunal vide award dated 01.10.1999 has also not been paid to him so far.

28. In case, the factual position is that the petitioner has not been paid 40% of the back wages for which he was entitled for under the award of the tribunal dated 01.10.1999, the same be also released to him.

29. It may be noticed that keeping in view the fact that while deciding CWP-17573-2000, a Coordinate bench of this Court has held that back wages was not even challenged, that being so, even 40% of the back wages, if not released so far, be also released to the petitioner along with interest @ 6% per annum.

30. Present petition stands allowed in above terms.

31. Civil miscellaneous application pending, if any is also disposed of.

April 05, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

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