



**101 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP-6343-1998 (O&M)
Date of Decision : 11-02-2025**

ATMA SINGH

.....Petitioner

VERSUS

STATE OF PUNJAB AND ANOTHER

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Alka Chatrath, Advocate
for the petitioner.

Ms. Akshita Chauhan, AAG Punjab.

HARSIMRAN SINGH SETHI, J. (Oral)

1. In the present petition, the challenge is to the order by Public Works Department, Government of Punjab which, the petitioner has been compulsorily retired from service. The said order dated 09.03.1998 (Annexure P-13) is under challenge in the present petition. It may be noticed that while the petitioner was in service, the petitioner was proceeded against by way of departmental enquiry for certain allegations of misappropriation of 400 bags of cement which were under the control of the petitioner. As soon as the allegations against the petitioner were proved, the respondent-State passed an order dismissing the petitioner from service on 11.04.1991. The said order was challenged by the petitioner before this Court on the ground that the show cause notice along with the enquiry report was not

provided to the petitioner so as to seek his comment which has caused prejudice to him and ultimately, the said order of punishment dated 11.04.1991 was set aside with liberty to pass a fresh order in accordance with the law after serving the show cause notice as well as the enquiry report upon the petitioner.

2. Thereafter, once again after serving the show cause notice as well as the enquiry report vide office memo dated 19.11.1991 upon the petitioner and seeking his reply, an order was eventually passed by the concerned Department dated 18.09.1996 imposing punishment of compulsory retirement upon the petitioner. The said order was again challenged by the petitioner by filing CWP No.15980 of 1996 on the ground that the opportunity of personal hearing which was given to the petitioner before passing the impugned order was not in front of the punishing authority which was the then Secretary Public Works Department whereas he was given the opportunity before Joint Secretary who was not the punishing authority thus violating the Rules of Natural justice have been violated.

3. The said writ petition was also allowed by the Court directing that a fresh order be passed after giving an appropriate opportunity of personal hearing to the petitioner by the authority concerned who is in the seat to take the decision. The said order was complied with and ultimately a fresh order was passed on 09.03.1998 wherein a direction of compulsory retirement to the petitioner from service was given. The same order is under challenge in the present petition.

4. Learned counsel for the petitioner argues that the finding which has been recorded with regard to the embezzlement of 400 bags of the cement by the petitioner is incorrect and the charges could not have been proved by the Enquiry Officer hence, any reliance being placed upon the enquiry report is arbitrary and illegal hence, the impugned order dated 09.03.1998 (Annexure P-13), which is compulsory retiring the petitioner from service should be set aside and the petitioner should be deemed to have continued in service upto the date of his superannuation.

5. Learned counsel for the respondents submits that once the allegations have been proved against the petitioner in the departmental enquiry held against the petitioner that too by following the Rules of Natural Justice hence, this Court shall not go into the inquiry proceedings.

6. I have heard learned counsel for the parties and have gone through the records of the present case with their able assistance.

7. It may be noticed that the allegation alleged against the petitioner was embezzlement of 400 bags of cement and that too as far as back in the year 1984. The petitioner was proceeded against and ultimately the first order dismissing the petitioner from service was passed by the respondent on 11.04.1991.

8. The said order was set aside by this Court in CWP No.9661 of 1991 on the ground that the copy of enquiry report was not given to the petitioner which is a violation of the Rules of Natural Justice and thus liberty was given to the Department to pass a fresh order, which order was again passed by the Department on 18.09.1996 (Annexure P-11). By the fresh order, the punishment of dismissal was modified to that of compulsory

retirement. The said order was also challenged by the petitioner on the technicality that he was given the opportunity of hearing by officer who was not actually the punishing authority whereas the actual order of punishment was passed by a different officer and on the said ground, the order dated 18.09.1996 (Annexure P-11) was set aside with liberty to pass a fresh order and the impugned order dated 09.03.1998 was passed by the respondents retiring the petitioner prematurely.

9. It may be noticed that though the order dated 18.09.1996 (Annexure P-11) was set aside ultimately, but the said order of premature retirement got implemented though, subsequently set aside. It may be noticed that the order which was set aside only on technicality does not grant the benefit of salary to an employee. Once, even in the subsequent order, the petitioner was imposed the same punishment of premature retirement from service, it does not lie in the mouth of the petitioner to claim the salary of the post upto the date of passing of the subsequent fresh impugned order dated 09.03.1998 (Annexure P-13). The same will relate back to and given effect from the earlier order of the premature retirement which was also passed after taking due approval from the Punjab Public Service Commission.

10. Further, as far as the claim of the petitioner that the charges have proved wrongly by the Enquiry Officer, it may be noticed that the enquiry report is not under challenge in the present petition. The petitioner was given due liberty to present himself before the authorities concerned and after appreciating the evidence which had come on record, the allegations were proved on the basis of which the impugned order dated 09.03.1998 (Annexure P-13) has been passed.

11. It may be noticed that certain arguments which were raised by the petitioner during the hearing have been taken care of while passing the impugned order dated 09.03.1998 (Annexure P-13) upholding the punishment of premature retirement keeping in view the allegations of embezzlement of 400 bags of cement by the petitioner.

12. That being so, no interference is called for by this Court in the facts and circumstances of the present case.

13. Further, it may be noticed that after the petitioner was prematurely retired, the petitioner filed a civil suit claiming the benefit of pensionary benefits along with interest. The pensionary benefits have been allowed to the petitioner on the basis of the directions given by the Civil Court starting from the initial date of the retirement dated 18.09.1996 (Annexure P-11). Once, the said benefit has been given on the basis of the pronouncement by a competent Court of Law, claiming the salary from the period of 1996 to 1998 is even otherwise not permissible to the petitioner.

14. Learned counsel for the petitioner submits that nothing has come on record to show that the petitioner was granted the benefit from the date he was compulsory retired vide impugned order dated 18.09.1996 (Annexure P-11).

15. Learned counsel for the respondent submits that the claim of the petitioner for the grant of pensionary benefits if not already released, from 18.09.1996 (Annexure P-11) will be considered and an appropriate order will be passed and in case, the pensionary benefits have not been released to the petitioner from 18.09.1996, the same will be released within a period of 8 weeks along with interest as granted by the trial Court.

16. No ground is made out by this Court in the facts and circumstances of the present case.

17. Present petition is dismissed.

18. Pending application, if any, also stands disposed of.

11-02-2025
Sapna Goyal

(HARSIMRAN SINGH SETHI)
JUDGE

NOTE: Whether speaking: YES
Whether reportable: NO