2025:PHHC:023288-DB

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.112 **LPA-1567-2024 (O&M)**
Date of decision : 18.02.2025

Haryana Financial Corporation and others ..... Appellants

VERSUS

Anil Kumar Lekhi ..... Respondent

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Deepak Balyan, Advocate, for the appellants.

Mr. Mukund Gupta, Advocate, for the respondent.

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SANJEEV PRAKASH SHARMA, J. (Oral)

1. The challenge in the appeal is to the order dated 05.03.2024 passed by the learned Single Judge in CWP-33167-2019 whereby the learned Single Judge passed the following order:-

> *'23. In view of the aforesaid facts and circumstances, the present petition is allowed. The impugned order dated 3/12.04.2017 (Annexure P6) and order dated 12.03.2019 (Annexure P9) are hereby set aside and quashed. The respondents are directed to calculate the entire salary of the petitioner from the date of his dismissal which is the period during which he was prevented from discharging his duties to the post of Assistant General Manager and to pay the same to the petitioner with all consequential benefits along with interest @ 6% per annum (simple) within a period of three months from today.*
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> *24. At this stage, learned senior counsel for the petitioner has also stated that the petitioner has not been paid his full provident fund till date.*

> *25. In view of the above, it is directed that the petitioner shall be at liberty to file a comprehensive representation to the respondent-Corporation by raising the aforesaid grievance within a period of two months from today. In case any such representation is filed to the Managing Director of the respondent-Corporation, then the Managing Director shall consider the same in accordance with law and in case the lawful dues of the petitioner pertaining to the provident fund are not released to the petitioner, then the same shall be released within next one month along with interest @ 6% per annum. In case it is found by the Managing Director that the petitioner is not entitled for the aforesaid, then the Managing Director shall after affording an opportunity of hearing to the petitioner or his counsel will pass a speaking order in this regard and shall convey the same to the petitioner and thereafter, the petitioner shall be at liberty to challenge the same in accordance with law before an appropriate forum.'*

2. Learned counsel for the appellants submits that so far as punishment is concerned, the same ought not have been given by the learned Single Judge once part of the charge was found to have been proved. He further submits that there was no occasion to grant full back-wages to the writ petitioner. Moreso, admittedly the respondent-petitioner had been working elsewhere and had earned an amount of Rs.52.35 lacs from June 2005 to June 2014 till he attained superannuation.

3. Learned counsel submits that a direction to pay the arrears along with interest @ 6% was also warranted in the facts of the case.

4. *Per contra,* learned counsel appearing for the respondent upon instructions fairly states that the writ petitioner would not claim the back wages keeping in view that he had been working from June 2005 to

June 2014. However, the order of punishment of degradation to the lower post was not called for and supports the judgment passed by the learned Single Judge. He submits that the charges levelled against the petitioner were not proved by the appellate authority. However, he has been punished on presumption drawn by the appellate authority having committed delinquency of negligence. Learned Single Judge has rightly set aside the order of appellate authority. Hence, the interference if any by the appellate Court should be limited only to the extent of relief prayed as fairly stated by him.

5. We have carefully heard the litigation in this case which has been protracted since long. The respondent was holding the post of Assistant General Manager since 1984 in the Haryana Financial Corporation. He was placed under suspension and served with charge-sheet. The enquiry officer submits his report wherein he initially held the respondent guilty of certain charges out of the total of 14 charges alleged against the respondent and he was dismissed from service. Appeal preferred by him was also dismissed. Civil suit was preferred challenging the order of dismissal and the appeal was filed before appellate authority and the same was decreed in his favour on 24.07.2010 setting aside the order of dismissal. The first appellate Court refers the findings of the learned trial Court which were subject to RSA-2335-2012. The appellate Court set aside the order passed by the first appellate Court and upheld the finding of the trial Court vide its judgment dated 11.02.2014. Thus, the order of dismissal was set aside. He further ordered that the case be

remanded back to pass a fresh order after giving an opportunity of hearing. The Managing Director thereafter heard the writ petitioner and an order was passed on 08.10.2014 upholding charges No.(ii), (iii) & (xiv) to be proved and other charges were dropped as against the writ petitioner. Further appeal was preferred by the writ petitioner before the Board of Directors who remanded the matter back to the Managing Director, who reviewed its earlier order dated 08.10.2014, vide their order dated 31.03.2016. The Managing Director again passed an order dated 03/12.04.2017 setting aside the order of dismissal. He observed that charges No.1 to 3 having not been proved but proceeded to give observation that the petitioner had been somewhat negligent and lack managerial capability to get the data/record maintained for ascertaining which of the investors money and how much have been received. Learned Single Judge form such observations to be bad in law and we are also of same view considering that the concerned delinquent was not to be with such charges before him and the charge as ascertained by the appellate authority namely Managing Director remain uncontested with no details. The punishment order passed by the Managing Director based on such observations, therefore, cannot be sustained. The Managing Director while setting aside the order of dismissal, proceeded to pass the following conditions:-

> *'(i). Degradation to a lower post as on 27.07.2000;*
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> *(ii) Back wages of 50% from the date of his suspension to the date of superannuation along with retiral benefits of leave encashment and gratuity;*

(iii) Deduction of an amount of Rs.52.35 lacs which the petitioner had earned from June, 2005 to June, 2014 plus the suspension allowance paid to him from the dues payable to him.'

6. So far as, charge No.XIV is concerned, the Managing Director reached to the conclusion 'be that the Managing Director of Haryana Financial Corporation was also charged with similar allegations as charge No.xiv and was completely exonerated by the government'. The subsequent action of the delinquent clearly demonstrates the lack of any negative intent to defraud the delinquent. The total of value of outstanding recoverable has also been shown to be vinistued Rs.2,000/-. After making such an observation, which had been noted by the learned Single Judge, the learned Single Judge had proceeded to hold that punishment awarded to the delinquent was misplaced and unjustified.

7. If we look at the order passed by the learned Single Judge, while we affirm his order so far as setting aside the punishment awarded of degradation to the lower post. As far as other two aspects are concerned regarding granting of entire salary from the date of dismissal of the post of Assistant General Manager till his retirement along with interest @ 6% per annum, is found to be unsustainable in law. It is well settled that while granting back-wages, the factum of the concerned delinquent of having worked elsewhere, is relevant fact required to be considered. It is an admitted position that from 2005 to 2014, the concerned delinquent had been working elsewhere. This aspect is required to be considered for grant of back-wages. Similarly, the principle of 'no

work no pay' is also required to be taken into consideration. We also find that the case remained pending for long. Both the parties had been contesting the case and while the Civil Court had granted the decree in favour of the respondent, the First Appellate Court passed an order in favour of the appellants. In these circumstances, we will have to balance the equity and we accordingly deem it appropriate to modify the order passed by the learned Single Judge to the extent of setting aside the punishment order of degradation to the lower post as on 27.07.2000 holding the petitioner deemed to be reinstated in service from 27.07.2000 on the post of Assistant General Manager. As regards back-wages are concerned, for the intervening period till he attained superannuation, we do not find reasons to grant back-wages as he was in service elsewhere from where he had earned his living. He would, however, be entitled to his retiral benefits from the date he attained superannuation and for calculating his pension, the period of service rendered from 2000 to 2014 will be treated as notional, the salary accordingly shall be calculated by fixing his increments notionally for the period continuously from 2000 to 2014 in order to arrive at the last pay drawn as on the date of retirement, after fixing his salary in terms of the revised pay fixation which may have been granted from time to time. His pension shall be calculated as on the last pay drawn and actual benefits of pension and retiral benefits including gratuity etc. which are payable under the Regulations of Haryana Financial Corporation shall be released. The exercise in this regard shall be done within a period of three months, henceforth. If there

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is a delay in releasing the amount, the writ petitioner would be entitled to receive interest @ 9% per annum on the said dues. If pension is not payable to the employee, then his last pay drawn shall be treated for the purpose of calculating his entire provident fund, the respondent would be entitled to both employees and employer share for the intervening period which will be paid by the employer-appellants. The said provident fund shall be released accordingly within a period of three months.

8. With the above directions, the appeal stands disposed of.

9. Pending miscellaneous application(s), if any, also stands disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(KIRTI SINGH)
JUDGE

18.02.2025
Ramandeep Singh

Whether speaking / reasoned Yes/No
Whether Reportable Yes/No