

(2005) 08 P&H CK 0052

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 13448 of 2005

Jagdish Singh Chawla

APPELLANT

Vs

The State of Punjab and Another

RESPONDENT

Date of Decision : 29-08-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2006) 142 PLR 106

Hon'ble Judges : S.S. Nijjar, J;Nirmal Yadav, J

Bench : Division Bench

Advocate : Pankaj Gupta, for the Appellant;

Final Decision : Dismissed

Judgement

S.S. Nijjar, J.—The petitioner, who was working as a Junior Engineer in the office or the Improvement Trust, Ludhiana, was ordered to be transferred. On transfer, he was to join duty forthwith at the Improvement Trust, Patiala. The petitioner did not care to join for a period of 4 years. The order of transfer was passed on 30.5.1990. Therefore, he should have joined at Patiala on 1.6.1990. The petitioner, however, did not submit the joining report till 22.11.1994. His joining report was accepted. However, in the meantime, a departmental enquiry had been initiated against him. The Enquiry Officer found that the petitioner had remained absent without leave. Consequently, an order was passed on 28.10.1994 inflicting the punishment of stoppage of two increments with cumulative effect on the petitioner. The period of absence was treated as extraordinary leave Without pay. The petitioner challenged the aforesaid order before the appellate authority.

2. A perusal of the order passed by the appellate authority, which is attached as Annexure P-8, shows that the appellate authority had considered that the petitioner had been unduly harassed and humiliated. It was also observed by the appellate authority that the department should have taken a more liberal and humane view. Therefore, keeping in view the specific merits of the case, the

appellate authority was inclined to undo an unwarranted step taken in meting out the punishment to the petitioner. By order dated 10.4.2003, the appeal filed by the petitioner was accepted. He was fully and finally exonerated. A direction was issued to the competent authority to treat his period of absence as leave of the kind due and settle all his retiral benefits accordingly. Not satisfied with the aforesaid order, the petitioner filed C.W.P. No. 8547 of 2003. The aforesaid writ petition was decided on 12.1.2005. The order passed in appeal dated 10.4.2003 was set aside. The matter was remanded back to the Secretary to Government Punjab to re-adjudicate the appeal filed by the petitioner and pass a fresh speaking order within a period of 3 months from the date of certified copy of the order being received. Pursuant to the aforesaid order, respondent No. 1 issued a notice to the petitioner to appear before him for personal hearing. In response to the notice, the petitioner sent a reply on 12.3.2005 and submitted that:

The Hon'ble Court has observed that this factual position has not been disputed by Shri Rakesh Verma, the learned Assistant Advocate General, Punjab for the respondents. From the perusal of the order dated April 10, 2003 (Annexure P/8), it does not appear that the aforesaid point has not been taken into consideration by the appellate authority. In this view of the matter, it would be appropriate if the matter is remitted back to the appellate authority to decide the aforesaid specific contention of the petitioner by passing afresh order.

The Hon'ble Court further observed that during the aforesaid disputed period, persons junior to the petitioner had also been promoted and because of the controversy with regard to the aforesaid period, the petitioner was not even considered for promotion when his juniors were promoted. Even the aforesaid contention has not been dealt with by the appellate authority.

My present petition, C.W.P. No. 8457 of 2003, has been allowed by the Hon'ble High Court vide order dated January 12, 2003 and the matter is remitted back to the Secretary, Local Government Department, Punjab to re-adjudicate the appeal to decide the aforesaid specific contention pertaining to the period from 22.11.1991 to 21.11.1994 by passing a fresh speaking order. I remained thrown out of my service for this period of three years. I was neither given duty nor subsistence allowance for this period. This situation is in conflict with the Civil Services Rules and is unlawful. I am entitled to be treated as on duty during this period from 22.1.1991 to 21.11.1994. I am also entitled to be promoted as Assistant Trust Engineer with effect March 2, 1993, the date from when the persons junior to me were promoted to the said post, with all consequential benefits.

In response to an opportunity given to me by Shri N.K. Arora, Secretary, Local Government Department, vide his letter dated 19.10.1995 for personal hearing, I attended his office in Mini Secretariat, Sector 9, Chandigarh on 14.11.1995. In response to another opportunity, I attended the office of Shri Sarvesh Kaushal, Secretary, Local Government, Punjab after submitting a detailed written report about my case on 3.4.2003. The facts about my leave case have been thoroughly

thrashed out by now. I do not feel the necessity to attend to personal hearing for the third time any more. My case may kindly be decided in the spirit enunciated in the order of the Hon"ble High" Court dated January 12, 2005.

3. Since the petitioner declined to appear before the Secretary, the appeal has been decided afresh by the competent authority by order dated 8.4.2005. The following observations have been made by the appellate authority:

After perusal of the record of this official and enquiry report of the Enquiry Officer, Regional Deputy Director, Ludhiana, it has been found that the absence of Shri Jagdish Singh Chawla, Section Officer from duty in an unauthorised manner till date 21.11.1994 is proved, because after becoming medically fit on dated 21.11.1991 and despite of writing letters by the Director Local Government, Punjab to him on dated 15.1.1991 and 27.12.1991, he has not submitted his joint report at Improvement Trust, Patiala, however, he has been sending leave applications to the Improvement Trust, Ludhiana on medical ground. He has been directed by the Government to appear before the Medical Officer, Ludhiana, but instead of appearing, the medical certificate had been sent by him on dated 15th August, 1991, which was not authenticated. The medical certificate was got verified by the Government. The report has not been sent by the Medical Officer, Ludhiana after making the check-up of Shri Chawla, however, it had been intimated by the Medical Officer vide his letter No. 5.6.1992 that Shri Chawla had visited the O.P.D. on dated 15.10.1991 as a patient and the certificate had been issued. This certificate has not been attested by him. Instead of submitting his joining report at Improvement Trust, Patiala, Shri Chawla has tried to report for duty at Improvement Trust, Ludhiana, whereas he had already been relieved by the Improvement Trust, Ludhiana on dated 30.5.1990 due to his transfer to Patiala. In this way, despite of being medically fit, he has not reported for duty at Improvement Trust, Patiala from dated 21.11.1991 till dated 21.11.1994. Since Shri Chawla has not submitted his joining report at Improvement Trust, Patiala, till 8.11.1994 the date of imposition of punishment, therefore, the Director, Local Government, Punjab while canceling his transfer orders, made his new posting vide his order bearing letter No. 4/104/91-5LG2/14691 dated 8.11.1994 at Improvement Trust, Abohar against the vacant post of Section Officer, whereupon he has submitted his joining report at Improvement Trust, Abohar on dated 22.11.1994 (A.N.). In this way it becomes clear that Shri Jagdish Singh Chawla has deliberately remained absent from duty from dated 1.6.1990 till 21.11.1994. Shri Chawla has since attained voluntary retirement with effect from 24.4.1995.

After my thoughtful consideration of the office record as well as the findings given by the Enquiry Officer in his enquiry report, I have come to the conclusion that Shri Jagdish Singh Chawla, Section Officer, had been transferred by the Director, Local Government, Punjab who had not complied with the orders of transfer even after becoming medically fit. The joining report has not been submitted by him at Improvement Trust, Patiala till dated 21.11.1994. While

making the excuse of his illness, he kept on evading his joining at the place of his transfer, whereas he had since been relieved by the Improvement Trust, Ludhiana and he was not the official of that office. He was supposed to join the duty at Improvement Trust, Patiala or had to obtain leave only after joining his duty, but the proper procedure has not been adopted by him. In this way it is proved that Shri Chawla has deliberately remained absent from his duty from dated 1.6.1990 till 21.11.1994 and he has not complied with the orders of the department. Accordingly, the order dated 8.11.1994 passed by the Director, Local Government, Punjab stopping two annual increments of Shri Jagdish Singh Chawla (with cumulative effect) shall stand. The period from dated 9.8.1989 till 30.5.1990 is treated as leave of kind due. The period of willful absence from duty from dated 1.6.1990 till 21.11.1994 is treated as leave without pay and his appeal is hereby rejected.

Dated, Chandigarh the Sd/- 8th April, 2005 R. BAJAJ, I.A.S. Principal Secretary to Government of Punjab, Local Government Department.

It is this order of the appellate authority, which has been challenged by the petitioner in the present writ petition.

4. Mr. Pankaj Gupta, learned Counsel appearing for the petitioner submits that the order passed by the appellate authority is not sustainable as again no decision has been taken as to how the period between 1.6.1990 to 21.11.1994 is to be treated. Learned Counsel submit, that earlier the appellate authority had committed an error while not passing any specific order as to how the period between 1.6.1990 to 21.11.1994 was to be treated, which led the petitioner to file C.W.P. No. 8547 of 2003. Now the view taken by the appellate authority is wholly perverse. He has come to a conclusion reached by the earlier appellate authority on the basis of the same material. Learned Counsel submitted that the order of the appellate authority is not based on the material which was placed before the departmental authorities as well as before the appellate authority. Learned Counsel further argued that the petitioner was not permitted to join duty when he had been declared medically fit on 21.11.1991. Once the respondents have not permitted the petitioner to join duty, he cannot be held to have been absent without leave till he was ultimately permitted to join duty on 22.11.1994.

5. Having considered the entire matter, we are of the considered opinion that the appellate authority has merely complied with the directions issued by this Court while deciding C.W.P. No. 8547 of 2003 by order dated 12.1.2005. The order passed by the appellate authority on earlier occasion on 10.4.2003 had been set aside and the matter was remitted back to the present appellate authority to "re-adjudicate the appeal filed by the petitioner and pass a fresh speaking order...." The appellate authority has merely followed the mandate of the High Court and re-decided the whole issue. As noticed earlier, the petitioner was given an opportunity of personal hearing. However, the petitioner sent a reply to the show cause notice dated 12.3.2005. In this reply, the petitioner narrated the history of the litigation, as noticed above. He then proceeded to inform the appellate

authority that earlier an opportunity of hearing had been given to him by a different Officer vide letter dated 19.10.1995. He appeared in the office of the then appellate authority on 14.11.1995. In response to another opportunity, he attended the office of the appellate authority which had passed the order dated 10.4.2003. Therefore, he did not feel the necessity to attend to the personal hearing for the third time anymore. In spite of the aforesaid reply, the appellate authority has examined the entire matter and has come to the conclusion that the major misconduct of remaining absent from duty without leave has been proved against the petitioner. It has been categorically observed that the petitioner had been transferred by the competent authority, but he did not care to comply with the order of transfer. The appellate authority observed that the petitioner did not care to join even after he had been declared medically fit.

6. Learned Counsel for the petitioner submits that findings of appellate authority is based on no evidence as, in fact, the petitioner wanted to join duty, but he was not permitted to join by the respondents. We are unable to accept this submission of the learned Counsel, as while exercising the jurisdiction under Articles 226/227 of the Constitution of India, this Court is not to re-examine the evidence as a Court of appeal. The Court is to see that the orders passed by the appellate authority does not suffer from non-application of mind. Merely because the appellate authority has come to a conclusion different from the conclusion arrived at by the earlier appellate authority, would not render the order passed by the appellate authority as perverse. The appellate authority was perfectly justified in coming to its own conclusion without being influenced by the earlier order as the same has been set aside by this Court in the order dated 12.1.2005 in C.W.P. No. 8547 of 2003.

7. In view of the above, we are of the considered opinion that no injustice has been done to the petitioner.