
(2015) 09 P&H CK 0028
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 1907 of 2011 (O&M)

Kalam Singh

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 01-09-2015

Acts Referred:

Citation : (2016) 1 SCT 397

Hon'ble Judges : P.B. Bajanthri, J

Bench : Single Bench

Advocate : Subhash Singh, for the Appellant; Saurabh Mohunta, Deputy Advocate General, Advocates for the Respondent

Final Decision : Allowed

Judgement

P.B. Bajanthri, J—In this petition, petitioner has questioned the Inquiry Officer's report dated 21.11.2007, dismissal order dated 25.8.2008 and Appellate Authority's order dated 12.11.2010, vide Annexures P-4, P-7 and P-9, respectively.

2. The petitioner was working as Deputy Superintendent in the Department of Town and Country Planning, Haryana, Chandigarh. He remained absent from 4.6.1999 till issuance of charge memo i.e. 17.5.2000. Thereafter he joined service on 30.5.2000.

3. For remaining un-authorisedly absent from 4.6.1999 the respondent initiated departmental proceedings on 17.5.2000 vide Annexure P-1. It is to be noted that petitioner did not file his explanation to the charge memo. Consequently, the 3rd respondent proceeded to appoint Inquiry officer on 4.3.2002.

4. During pendency of the enquiry, the petitioner submitted application for voluntary retirement/notice on 31.10.2007 and the notice period would be expiring on 31.1.2008. Even though notice period expired on 31.1.2008, the enquiry initiated against the petitioner was not concluded. Thus the petitioner presumed that he deemed to be retired in view of Rule 5.32(B) of the Punjab

Civil Service Rules Volume II (as applicable to Haryana) and he stopped attending office w.e.f. 1.2.2008.

5. On 14.1.2008, show cause notice was issued seeking explanation of the petitioner as to why petitioner should not be dismissed from service for his unauthorised absence. The petitioner is stated to have submitted his reply to the show cause notice on 26.2.2008.

6. The Disciplinary Authority imposed the penalty of dismissal from service on 25.8.2008 in the disciplinary proceedings initiated vide memorandum dated 17.5.2000 (Annexure P-1). The petitioner aggrieved by the order of dismissal dated 25.8.2008 preferred an appeal before the Appellate Authority under Rule 9(1)(a) of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 on 8.12.2008. The Appellate Authority - Financial Commissioner and Principal Secretary to Government, Haryana, Town and Country Planning Department, rejected the petitioner's appeal on 12.11.2010 vide Annexure P-9. The petitioner feeling aggrieved by the Inquiring Officer's report, dismissal order and Appellate Authority's order, filed this petition.

7. Learned counsel for the petitioner vehemently contended that the Inquiring Officer's report is one page order, which reads as under:-

"Kindly refer to the Directorate Memo No. 24065 dated 24.9.07.

2. It is intimated that vide above referred letter the documents related to Charge-sheet of Sh. Kalam Singh, Deputy Supdt. have been received in this office. Sh. Kalam Singh was given an opportunity of hearing to defend himself on 20.10.07 at 11.30 AM but he did not appear on the said date. Again a personal hearing was given to defend himself intimating him (by Registered post on his address mentioned in his chargesheet) on 6.11.2007 at 11.30 AM but he did not turn up on the said date. Meaning thereby he does not want to say anything or produce any document to defend him against charges mentioned in his chargesheet.

3. In view of above facts, charges stand proved. This enquiry report is submitted for kind consideration and further necessary action, please"

Even though the petitioner did not appear in the enquiry proceedings, it was duty of the Inquiring Officer to proceed with the enquiry with reference to the materials available and examination of relevant witnesses. In other words the Inquiring Officer should have conducted ex parte enquiry. Reading of the Inquiring Officer's report reveals that no materials have been taken into consideration and even for ex parte enquiry, the procedure prescribed under the Disciplinary Rules, has not been complied with. Thus, it was submitted that pursuant to Inquiring Officer's report, further actions are arbitrary and illegal.

8. Learned counsel for the petitioner further submitted that the petitioner cannot be dismissed from service having regard to Rule 5.32(B)(2) read with proviso. Extract of Rule 5.32(B) is reproduced hereunder:-

"5.32(B)(1) At any time a Government employee has completed twenty years, qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority, retire from service. However, a Government employee may make a request in writing to the appointing authority to accept notice of less than three months giving reason therefor. On receipt of a request, the appointing authority may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the Government employee shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

(2) The notice of voluntary retirement given under sub rule (1) shall require acceptance by the appointing authority subject to rule 2.2 of Pb. C.S.R. Vol. II.

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in sub rule (1) supra, the retirement shall become effective from the date of expiry of the said period."

9. It was further contended that in view of the proviso and voluntary retirement application/notice dated 31.10.2007, in which notice period would expire on 31.1.2008, therefore the petitioner is deemed to have been retired. In view of the aforesaid proviso to Rule 5.32(B)(1) and (2), as on the date of dismissal viz., 25.8.2008, the petitioner is deemed to be retired w.e.f. 31.1.2008 i.e. after expiry of notice period. Against a retired employee/official question of imposing penalty of dismissal is impermissible. Therefore, the dismissal order, as well as, Appellate Authority's order, are liable to be set aside.

10. It was also contended that the Disciplinary Authority has considered extraneous material while imposing the penalty. The extraneous material is that the petitioner was habitual absentee.

11. Learned counsel for the petitioner relied on the following judgments in support of prayer made in this petition :-

"1. State of Haryana and Others Vs. S.K. Singhal, AIR 1999 SC 1829 : (1999) 82 FLR 476 : (1999) 3 JT 140 : (1999) 2 SCALE 650 : (1999) 4 SCC 293 : (1999) 2 SCR 714 : (1999) 2 UJ 944 : (1999) AIRSCW 1427 : (1999) 4 Supreme 205 ;

2. Dr. M.K. Dhingra v. Haryana Agricultural University and another, CWP No. 732 of 1987;

3. UCO Bank and Another Vs. Rajinder Lal Capoor, AIR 2007 SC 2129 : (2007) 114 FLR 413 : (2007) 8 JT 581 : (2007) 8 SCALE 255 : (2007) 6 SCC 694 : (2007) 2 SCC(L&S) 550 : (2007) 8 SCR 543 : (2008) 1 SLJ 262 : (2007) AIRSCW 3656 : (2007) 4 Supreme 474 ;

4. Walaiti Ram Gupta and others v. The State of Punjab and another 1997 (4) RSJ 379;
5. Balwant Singh Vs. Punjab Agricultural University and Others, (2007) 147 PLR 33 ;
6. R.P. Bhat v. Union of India and others 1986 (1) SLR 470;
7. Bhagwan Devi v. State of Haryana 1998 (3) S.C.T. 110;
8. Kailash Sharma v. State of Punjab through Secretary to the Government Punjab Education Department 2004 (2) RSJ 134;
9. Chairman cum Managing Director, Coal India Limited and Another Vs. Mukul Kumar Choudhuri and Others, AIR 2010 SC 75 : (2009) 123 FLR 601 : (2009) 11 JT 472 : (2009) 4 LLJ 672 : (2009) 11 SCALE 608 : (2009) 15 SCC 620 : (2009) 13 SCR 487 : (2009) 7 SLR 546 : (2009) 7 SLR 251 : (2009) 9 UJ 4097 : (2009) AIRSCW 5596 and
10. Gurdev Singh v. State of Haryana and others 2007 (1) RSJ 45."
12. Per contra, learned counsel for the respondent vehemently contended that the petitioner remained un-authorised absent for about a year and no materials have been produced to show the cause for remaining absent. In fact the petitioner did not file his explanation to the charge memo. Having regard to the conduct of the petitioner, the Disciplinary Authority has rightly dismissed him from service. He also contended that remaining un-authorised absent for about a year is a serious mis-conduct for the reasons that the petitioner is working in a Government department, public interest suffered severely due to the petitioner's un-authorised absence.
13. Learned counsel for the respondent further submitted that it is true that Inquiring Officer's report is one page report, it is to be noted that the petitioner failed to appear before the Inquiring Officer and did not cooperate in the disciplinary proceedings. It is admitted fact that petitioner remained absent from 4.6.1999 to 29.5.2000. Thereafter from 1.2.2008 onwards, the petitioner did not attend office. Having regard to the conduct of the petitioner, there is no infirmity in the Inquiring Officer's report, Disciplinary Authority's order (dismissal order) and Appellate Authority's order.
14. Heard learned counsel for the parties.
15. Inquiry Officer's report is not at all a report. Even in an ex parte enquiry available materials should have been taken into consideration and the same should have been analyzed in order to establish charges which are to be proved. In the present case, Inquiring Officer should have taken relevant materials and also should have examined relevant witnesses for the purpose of establishing charge. Reading of paragraph 2 of the Inquiring Officer's report do not contain material consideration, what has been stated is an opportunity was given to the petitioner but he did not appear on the said dates. Thus concluded that petitioner

does not want to say anything or produce any document to defend the charges levelled against him in the charge sheet. Therefore, I am of the view that it is not at all an Inquiring Officer's report. Consequently, Inquiring Officer's report, issuance of show cause notice, dismissal order, as well as, Appellate Authority's order, are liable to be set aside.

16. That apart, petitioner, during pendency of the disciplinary proceedings, submitted application/notice for voluntary retirement on 31.10.2007. Notice is for a period of three months and it was expired on 31.1.2008. Consequently, as per proviso to Rule 5.32(B)(1) and (2), there is a deeming provision that if the enquiry is not completed within the notice period for voluntary retirement, it is deemed that employee is retired. In the present case as on 31.1.2008, enquiry was not concluded and it was concluded only on 25.8.2008, the date on which dismissal order was passed. Therefore, the petitioner would get the benefit of proviso to Rule 5.32(B)(1) and (2), by which the petitioner is deemed to have retired from service on 31.1.2008. Consequently, the disciplinary authority cannot dismiss the petitioner from service. Dismissal from service is impermissible since the petitioner is deemed to be retired from service on 31.1.2008 itself by operation of law. Even on this count, the order of dismissal, as well as, rejection of appeal are liable to be set aside.

17. The petitioner's contention that the Disciplinary Authority has taken extraneous material while imposing penalty of dismissal i.e. stating that the petitioner was a habitual absentee, for which the petitioner was not charge sheeted. In disciplinary proceedings relying on extraneous material is impermissible.

18. The petitioner relied on the various decisions. In fact Rule 5.32(B)(1) and (2) of Punjab Civil Services Rules, Volume II (as applicable to Haryana), have been interpreted and held that employee is deemed to have retired from service as soon as notice period is expired, if the disciplinary proceedings do not conclude within the notice period of voluntary retirement vide reported judgment in S.K. Singhal's case (Supra). The relevant paragraphs No. 18 and 20 of the said judgment are reproduced below:-

"18. In the case before us sub-clause (1) of Rule 5.32B contemplates a "notice to retire" and not a request seeking permission to retire. The further "request" contemplated by the sub-section is only for seeking exemption from the 3 months period. The proviso to sub-clause (2) makes a positive provision that "where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in sub-rule (1), the retirement shall become effective from the date of expiry of the said period. The case before us stands on a stronger footing than Dinesh Chandra Sangma's case so far as the employee is concerned. As already stated Rule 2.2 of Punjab Civil Service Rules Vol.II only deals with a situation of withholding or withdrawing pension to a person who has already retired.

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20. So far as the plea of the State in regard to absence from duty during the notice period is concerned, the High Court has shown that it is unsupportable on facts. In any event, in view of the express provision in the proviso to sub-rule (2) of Rule 5.32B referred to above requiring communication of rejection within the notice period, the said allegations of absence even if true, cannot help the State."

The abovesaid judgment is aptly applicable to the present case to the extent that the petitioner is deemed to have retired from service w.e.f. 31.1.2008, the date on which notice period for voluntary retirement expired.

19. For the forgoing facts and law, Annexure P-4 - Inquiring Officer's report dated 21.11.2007, Annexure P-7 - dismissal order dated 25.8.2008 and Annexure P-9 - Appellate Authority's order dated 12.11.2010, are hereby set aside.

20. Respondent No. 3 - Disciplinary Authority is directed to continue the disciplinary proceedings prior to submission of Inquiring Officer's report i.e., from defective stage. In this case, if the Inquiry Officer has already retired from service, a new Inquiry Officer may be appointed to conclude the enquiry. The 3rd respondent is directed to conclude the disciplinary enquiry within a period of three months. For the purpose of passing final order against the retired employee, the Inquiring Officer's report be placed before the competent authority for taking action on the Inquiring Officer's report with reference to relevant rule. Such action shall be taken by the competent authority within one month from the receipt of the Inquiring Officer's report.

21. The State Government may take note of the Inquiry Officer's conduct i.e. he was appointed as Inquiry Officer on 4.3.2002 and he had submitted hasty report of one page for which he has taken six years.

22. The respondents are directed to release the provisional pension of the petitioner in accordance with rules within a period of one month.

23. The respondents are directed to release full pension and pensionary benefits of the petitioner after concluding the disciplinary proceedings in accordance with law.

24. The writ petition is allowed.

25. No order as to costs.