
(2013) 09 P&H CK 0505
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 14265 of 2003

Mam Raj

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 04-09-2013

Acts Referred:

Citation : (2014) 173 PLR 584

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Judgement

K. Kannan, J.—This case was directed to be heard along with CWP No. 2762 of 2003 by the Division Bench through its order dated 21.11.2003. The Registry has placed the judgment in the said case which is with reference to some investigation before the Superintending Canal Officer. It has no bearing to the case which is involved in the above writ petition and, therefore, I proceed to dispose of the case after arguments at length by the counsel. The matter in challenge in the writ petition is a decision to close down Haryana State Minor Irrigation and Tubewell Corporation whereby the services of all the employees were terminated. The counsel says that he will not press for that relief. There is also a challenge to the order issued under Annexure P-25 & P-26 dated 21.7.2003 and 22.8.2003 by the Managing Director of the Corporation imposing a punishment subsequent to a departmental proceeding denying to him the benefit of suspension period by treating the said period as non duty period. The office order issued by the Managing Director is Annexure P-25 and the determination of the amount payable to him in terms of the said order is Annexure P- 26. Both the orders are under challenge.

2. The departmental proceedings were preceded by a incident of criminal complaint against the petitioner for offence under Prevention of Corruption Act. The alleged commission of offence was under Prevention of Corruption Act on registration of a complaint and his arrest. The petitioner had been kept under suspension on 11.10.1996. The case ultimately resulted in acquittal on

21.11.2000. After his acquittal he was not immediately reinstated in service and after a representation given by him on 19.9.2000 and through judicial intervention he was reinstated on 10.6.2002. However, a fresh departmental proceeding was initiated against him on the same set of facts and three charges were levied against him:

- (i) That he was guilty of having accepted illegal gratification;
- (ii) He had caused disrepute to the organization by involving himself in a criminal offence;
- (iii) That he had breached the code of conduct set for his employees.

3. Before the Enquiry Officer, the management had not placed any evidence of receipt of alleged illegal gratification. It merely placed the Criminal Court judgment and the Enquiry Officer found that since the Criminal Court had already found that the charge had not been established beyond doubt, the same reasoning would apply to answer charge No. 1 and hence it must be taken that the charge of acceptance of illegal gratification had not been established. It was also held that even the third charge that there was a breach of the Code of conduct also could not be said to be established. However, he observed that even though there was an acquittal, the involvement of the petitioner in a criminal case had caused disrepute to the organization and found the said charge as having been established. The report was accepted by the Management and the Management proceeded to impose a punishment of treating the entire suspension period as a period not spent on duty. The benefits, therefore, were calculated by treating the said period as non-duty period and the impugned orders came to be passed.

4. The relevant rules relating to suspension have been brought out in the writ petition itself. Rule 9.2 of the Haryana State Minor Irrigation Tubewell Corporation Rules provides for suspension during criminal proceedings and enables the Corporation to take independent action for departmental proceedings and keep a person in suspension, notwithstanding the completion of the criminal case and any order or judgment for acquittal. Rule 9.3 referring to revocation of suspension is relevant to consider for the power of authority to revoke the suspension. It is, therefore, reproduced:

2).....But the appointing authority has to consider and decide as to what further emoluments are to be paid during the period of suspension and whether or not it has to count as duty period for all or any specified purpose.

5. When the order is passed about the manner of treatment of the suspension period, Rule 9.3 clause gives the guidance for the decision:

6).... Where a Corporation employee under suspension is acquitted by a Court of Law and the order reinstating him is passed sometime after the date of acquittal, full pay and allowances have to be paid from the date of acquittal to the date of rejoining duty and the period counted as duty for all purposes whereas for the

period from the date of suspension, removal, dismissal to the date of acquittal, he is to be allowed pay and allowances as directed by the competent authority.....

6. The above extracted portions of the Rules indicate that it would have been possible for the management to keep a person under suspension but if a person was acquitted of the charge and he was being reinstated, Clause 6 says that full pay and allowances have to be paid from the date of acquittal to the date of rejoining duty and that the period is counted as duty for all purposes and during the period of suspension removal or dismissal period to the date of acquittal it shall be in the manner in which the competent authority directed. This in turn would mean that while there is no discretion left for authority to pay the monetary benefits from the date of acquittal to the date of rejoining duty, there is a discretion for an authority to deny the full monetary benefits during the period of suspension when the criminal case was pending. This discretion I would understand would allow for passing any order regarding the monetary benefits that could be denied in the event of proving of charges in the departmental proceedings. When charge No. 1 & 3 were held to be not proved and the Management had not given any evidence before the Enquiry Officer about the illegal gratification, even the charge of causing disrespect by the petitioner involved in a criminal proceedings cannot be taken as having been established. Causing disrespect to the institution must be a case of voluntary conscious act. If there was a case of proof of illegal gratification in a departmental proceeding, it could be stated that it caused disrespect. For this finding, there ought to have been evidence placed before the Enquiry Officer. The mere fact that he was proceeded in a criminal case cannot be taken as constituting a disrespect to the organization. It is a well known precept of law that departmental proceedings and Criminal Court proceedings operate in distinct fields where the respective standards of proof are also different. If the management had not thought fit to lead appropriate evidence before the Enquiry Officer to prove the charge of illegal gratification or causing disrepute to the organization, the institution of the criminal complaint itself ought not to have been taken by the Enquiry Officer as proof of the said charge. If there was no proof, the acceptance of the report by the disciplinary authority was imperfect and not lawful. As a necessary sequitur, even the manner of treating the suspension period as non-duty period was not tenable. The petitioner was entitled for the payment of the monetary benefits that had accrued to him being the difference between the usual emoluments and benefits minus the subsistence allowance already drawn by him. The amount ought to be calculated and paid to the petitioner and to this extent, the petitioner ought to succeed in this writ petition. Orders passed which are impugned in the writ petition are therefore be quashed and the writ petition is allowed. The benefit of all the monetary emoluments and consequential benefits of treating the period of suspension as duty period and the amount shall be calculated and released to the petitioner by the successor organization after the corporation was dissolved. The writ petition is allowed on the above terms. The payment shall be

made within a period of 12 weeks from today failing which the petitioner shall be entitled to interest at 6% from today till the date of payment.