

(2014) 07 P&H CK 0853

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 2375 of 2011

Punjab Scheduled Castes Land Development and Finance Corporation

APPELLANT

Vs

Sucha Ram

RESPONDENT

Date of Decision : 10-07-2014

Acts Referred:

Citation : (2014) LabIC 3960

Hon'ble Judges : Jasbir Singh, J; Harinder Singh Sidhu, J

Bench : Division Bench

Advocate : Bhuvan Luthra, Advocate for the Appellant; K.L. Arora and Arun Sharma, Advocate for the Respondent

Judgement

Jasbir Singh, J.—This appeal has been filed against an order dated 22.9.2011 passed by the learned single Judge allowing Civil Writ Petition No. 9401 of 2010 filed by respondent-Sucha Ram. As per facts on record, after rendering about 32 years of service with the appellant, the respondent retired as District Manager on 30.6.2005 on attaining the age of superannuation i.e., 58 years. It is on record that at the time of retirement, some criminal proceedings were going on against the respondent on account of which gratuity and leave encashment amount was not released in his favour. Despite many efforts made, amount of retiral benefits were not disbursed to the respondent. After his retirement, two notices dated 3.2.2006 and 25.5.2006 were served upon him asking him as to why action be not taken against him for misplacement of three files. It was further case against him that he had defrauded the appellant for an amount of Rs. 24,000/-. The respondent submitted his reply denying accusations levelled against him. It was further stated by him that after his retirement, as per service regulation of the appellant corporation, no action can be taken against him. Regarding the Government instructions, upon which reliance was placed to take action, it was stated that those were not applicable to him.

2. Instead of releasing his retiral benefits, in a very strange manner, on account

of some conviction in a criminal case, the respondent was dismissed from service on 7.9.2007. Once he had already retired from service, there is no question of his dismissal from service as was done in this case. For release of his retiral benefits, he approached this Court by filing Civil Writ Petition No. 9401 of 2010, which was allowed vide the impugned judgment by the learned single Judge by observing as under:--

"The petitioner has been in service for a period of more than 32 years and gratuity is to be released on retirement after reaching the age of superannuation. The gratuity can only be withheld in case an employee resigns from service. Since it is the case of retirement and not of resignation as the petitioner was retired by the Corporation vide order dated 30.6.2005. Subsequently, after retirement two notices were issued to the petitioner i.e., 3.2.2006 and 25.5.2006. The petitioner submitted reply of both the notices by stating that he was not the Record Keeper nor he was the custodian of the record and moreover while in service he was not informed with regard to missing of any file. The action has been taken on the basis of Government instructions which are not applicable to the Corporation and 1971 Regulations is a complete service code which is applicable to the petitioner. There is no provision of 1971 Regulation for withholding gratuity and leave encashment. The retiral benefits can be withheld only in case of conviction. In judgment of Hon''ble Supreme Court in Bhagirathi Jena Vs. Board of Directors, O.S.F.C. and Others, has held that in the absence of any statutory rule, the disciplinary proceedings cannot be continued against an employee after he reaches the age of superannuation. It was further held that in the absence of Rules, the enquiry lapses and the punishment order is nullity and he is entitled to full retiral benefits on retirement. In Darshan Singh Chauhan's case (supra) the employee retired from service on 30.11.2006 and his retiral benefits of gratuity and leave encashment were withheld without any passing written order. He challenged the action of the respondents by way of filing CWP No. 19657 of 2008 which was allowed in his favour and retiral benefits were ordered to be released with interest at the rate of 9% per annum from the date of reliefs became due till the date payment is made. The said judgment was challenged by the Corporation by way of LPA No. 234 of 2010 which was dismissed. Apart from the settled position of law, the impugned order of dismissal was passed in violation of principles of natural justice as the petitioner was not afforded any opportunity of hearing before passing of the impugned order which is liable to be set aside on this ground alone.

In 1971 Regulations, there is no provision for withholding of gratuity and leave encashment even on the basis of conviction. The petitioner had already sent a copy of the conviction order dated 24.4.2004 immediately after passing of the judgment and appeal against the judgment of conviction was filed which was admitted on 26.4.2004 and the petitioner was released on bail. The said order of bail was also sent to the Corporation and he was allowed to continue in service till he retired. It has been held in Kaur Singh's case (supra) that mere conviction cannot constitute the basis of a dismissal order of an employee unless the

competent authority has considered the conduct of the employee, which has led to the conviction."

3. The view taken is perfectly justified. The dismissal order dated 7.9.2007 (Annexure P9) was passed without any application of mind. As per regulations of the appellant corporation, there is no provision that after retirement of an employee, on his conviction in a criminal case, he can be dismissed from service. Further there is no provision in the service regulations that any cut can be imposed upon a retired employee qua any loss caused to the corporation or to the appellant. Furthermore, qua alleged embezzlement of Rs. 24,000/-, no enquiry was conducted. Qua missing files also, after issuing notice to the respondent, no further action has been taken.

4. No case is made out to cause interference by this Court in the present appeal. Dismissed.