
(1996) 01 P&H CK 0011
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 19045 of 1995

Subhash Chand

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 11-01-1996

Acts Referred:

Haryana Civil Services (Punishment and Appeal) Rules, 1987 — Rule 7

Citation : (1996) 112 PLR 715

Hon'ble Judges : S.S. Sudhalkar, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : R.S. Badhran, for the Appellant;

Final Decision : Dismissed

Judgement

G.S. Singhvi and S.S. Sudhalkar, JJ.—Heard learned counsel for the petitioner and perused the record of the case.

2. The petitioner who was holding the post of a conductor in the Haryana Roadways, Karnal Depot, was removed from service by an order dated 28.7.1990 (Annexure P6). The revision petition filed by the petitioner against the order of his removal from service was accepted by the Commissioner and Secretary, Government of Haryana, Transport Department, on 8.7.1993. In his order, the Commissioner and Secretary to Government of Haryana noted that the petitioner was removed from service without holding any enquiry in accordance with the provisions of the Rules. He, therefore, set aside the order of punishment and gave liberty to the punishing authority to start enquiry against the petitioner u/s 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987. On the basis of the order of Commissioner and Secretary, the General Manager, Haryana Roadways, Karnal passed order dated 31.8.1993 and reinstated the petitioner. After about a year and four months of his reinstatement in service, the petitioner served a notice upon the respondents and prayed for grant of back wages for the period between the date of his removal from service and the date of reinstatement and as he did not get any relief from the respondents, the

petitioner has sought the intervention of the Court through this writ petition and has prayed that a mandamus be issued to the respondent to pay him salary and other emoluments for the period between the date of his removal from service and the date of reinstatement.

3. A careful reading of the petition shows that the petitioner has nowhere made a statement that he was not gainfully employed during the period from 28.7.1990 to 31.8.1993. In the absence of any such assertion by the petitioner, it is not possible for us to straightaway direct the payment of full wages and allowances to the petitioner for the intervening period. Even otherwise, we are of the opinion that in such like matters a more effective remedy is available to the petitioners, who clearly falls within the definition of "workman" u/s 2(s) of the Industrial Disputes Act, 1947, to get relief by way of proceedings u/s 33-C(2) of the ibid Act.

4. Even in matters where the Court quashes an order of termination of service on the violation of the rules of principles of natural justice, ordinarily relief of back wages is not to be granted and the employee is to be relegated to the other remedies which are available to him. This principle has been laid down by the Supreme Court in *Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee*, .

5. In proceedings u/s 33-C(2) of the Industrial Disputes Act, 1947, the employer has a right to plead and prove that the employee was gainfully employed after termination of his service and, therefore, he should not be given full back wages or part thereof. This right of the employer cannot be defeated by entertaining a writ petition under Article 226 of the Constitution of India and by directing the respondents to pay full salary and allowances to the employee whose service had been terminated illegally.

6. For the reasons mentioned above, the writ petition is dismissed but liberty is given to the petitioner to approach the Labour Court for payment of back wages by making an application u/s 33-C(2) of the Industrial Disputes Act, 1947.