(2012) 11 P&H CK 0083

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 1256 of 2012 (O and M)

Tarsem Singh — APPELLANT

Vs

The Punjab Scheduled Castes Land Development and Finance Corporation — RESPONDENT

Date of Decision : 30-11-2012

Acts Referred:
Penal Code, 1860 (IPC) — Section 120B, 419, 420, 467, 468

Citation : (2013) 2 SCT 342

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : K. L. Arora, for the Appellant; Bhuwan Luthra, for the Respondent

Final Decision : Allowed

Judgement

Rajesh Bindal J.—The petitioner, who retired as Assistant District Manager from Punjab Scheduled Castes Land Development and Finance Corporation (for short, ''the Corporation''), has approached this court challenging the order dated 21.1.2011 dismissing him from service and further prayer is for release of gratuity and leave encashment. Learned counsel for the petitioner submitted that the petitioner retired from service on 30.9.2008. At the time of his retirement, no proceedings were pending against him. Still the retrial dues of the petitioner in the form of gratuity and leave encashment were withheld. To the surprise of the petitioner, vide order dated 21.1.2011, the petitioner was dismissed from service with retrospective effect from 30.9.2008, merely for the reason that he had been convicted in FIR No. 79 of 1997. The submission is that firstly the impugned order has been passed without affording opportunity of hearing to the petitioner and secondly, an employee cannot be dismissed from a retrospective date. The petitioner in the present case was honorably retired on 30.9.2008. More than two years after his retirement, he could not be dismissed from service from the date of his retirement. The Punjab Scheduled Castes Land Development and Finance Corporation (Staff) Regulation, 1971 (for short, ''the Regulations'') does not permit passing of such an order, as there was no master and servant relationship between the parties after the petitioner had retired. Even as per the case set up by the respondent, no pecuniary loss has been suffered by the respondent, which could be recovered from the petitioner out of his retiral benefits as a punishment.

2. On the other hand, learned counsel for the respondent submitted that the petitioner was permitted to retire from service on his attaining the age of superannuation for the reason that criminal case bearing FIR No. 79 of 1997, registered against the petitioner under Sections 419/ 420, 467/ 468/ 474 /120-B IPC, Police Station, Malout was pending on that date and the result thereof could not be foreseen. Ultimately, the petitioner was convicted. The Regulations clearly provided that in case of conviction, an employee can be dismissed from service. As the petitioner was admittedly convicted, there is no illegality in the order passed by the authorities dismissing the petitioner from service from the date he retired. The master and servant relationship continues till all the retiral benefits are paid, which admittedly in the present case had not been paid till the dismissal of the petitioner.

3. Heard learned counsel for the parties and perused the paper book.

4. The facts, which are not in dispute are that the petitioner retired from service on 30.9.2008. No doubt, at that time, a criminal case was pending against him, in which he was convicted vide judgment dated 25.11.2010, passed by Sub Divisional Judicial Magistrate, Malout. As a consequence thereof, without issuing any show cause notice to the petitioner, he was dismissed from service vide order dated 21.1.2011 with retrospective effect from 30.9.2008, the date of his retirement. It is settled that an employee cannot be dismissed from service from retrospective effect. Regulation 44 of the Regulations though enables the competent authority to dismiss an employee on account of conviction in a criminal case for any offence involving moral turpitude, explanation to the aforesaid Regulation clearly provides that dismissal can be from a date when an employee is convicted. In the present case, admittedly the petitioner was convicted by the Sub Divisional Judicial Magistrate on 25.11.2010, which was after the petitioner had already retired from service and there being no relationship of master and servant between the parties on that day, he could not be dismissed from service with retrospective effect. Accordingly, the impugned order dated 21.1.2011 (Annexure P-10) dismissing the petitioner from service is quashed.

5. Nothing has been pointed out to show that any amount is to be recovered from the petitioner on account of pecuniary loss caused to the Corporation. In view of my aforesaid discussion, the writ petition is allowed. The respondent is directed to pay retiral dues of the petitioner within a period of three months from the date of receipt of a copy of the order, failing which the petitioner shall be entitled to interest on the delayed payment @ 7% per annum from the date of judgment till payment.

