

(2001) 11 P&H CK 0139

High Court Of Punjab And Haryana At Chandigarh

Case No: C.M. No. 1965 of 2001 in C.W.P. No. 4929 of 1986

Ram Niwas Bansal

APPELLANT

Vs

State Bank of Patiala and
Another

RESPONDENT

Date of Decision: Nov. 23, 2001

Acts Referred:

- Industrial Disputes Act, 1947 - Section 17B

Citation: (2002) 1 ILR (P&H) 270

Hon'ble Judges: Swatanter Kumar, J; N.K. Sodhi, J; K.S. Kumaran, J

Bench: Full Bench

Advocate: P.S. Patwalia, for the Appellant; H.N. Mehtani, for the Respondent

Judgement

Swatanter Kumar, J.

Petitioner has filed this application for clarification of the order dated 22nd May, 1998 passed by the Full Bench of this Court and further with a prayer that the Respondents be directed to grant consequential benefits to the Petitioner upon setting aside of order of dismissal passed against him by the Respondents earlier. The Petitioner has filed this civil miscellaneous application basing his claim on the orders passed by the Hon'ble Apex Court on 27th September, 2000 in Special Leave to Appeal No. 15098 of 2000. The order of the Hon'ble Apex Court reads as under:

Learned Counsel wishes to withdraw this petition with liberty to file an application in the High Court for consequential relief pursuant to the High Courts order dated 22nd May, 1998, passed in Civil Writ No. 4929/1986. The petition is dismissed as withdrawn. It is quite obvious that the observations made by the High Court while dismissing the contempt petition will not stand in the way of High Court disposing of any application filed by the Petitioner.

2. As the writ petition itself was disposed of by the Full Bench --vide its judgment dated 22nd May, 1998, the application has also been listed for disposal before the

Full Bench. Thus, now, we proceed to deal with this application on merit.

3. Before we deal with this application on merits, reference to the facts leading to filing of the present application would be inevitably necessary. The Petitioner had filed a writ petition being CWP No. 4929 of 1986 praying that the orders of dismissal dated 25th April, 1985 and 18th July, 1986 be quashed and Petitioner be ordered to be reinstate with full service benefits. The writ petition also contained residue prayer for grant of any other appropriate relief in the facts and circumstances of the case.

4. Keeping in view that there were conflicting views of Division Benches of this Court, the Hon"ble Single Judge had referred the matter to a larger Bench. There fore, the petition itself was listed for disposal before the Full Bench. As already noticed,--vide judgment dated 22nd May, 1998, the writ petition was allowed. While setting aside the orders of dismissal passed against the Petitioner, the matter was remanded by the Full Bench to the disciplinary authority and the disciplinary authority was given liberty to proceed with the disciplinary proceedings against the Petitioner, directing the disciplinary authority to grant opportunity to the Petitioner to reply to the enquiry report and pass appropriate orders, after granting personal hearing to the Petitioner in accordance with law.

5. The judgment of the Full Bench was assailed in appeal before the Hon"ble Apex Court by the State Bank of Patiala. Vide order dated 12th April, 1999 the Hon"ble Apex Court stayed the reinstatement of the Petitioner (Respondent in the Special Leave Petition) subject to the Appellant-bank complying with the provisions of Section 17-B of the Industrial Disputes Act. It was also directed by the Apex Court that the disciplinary proceedings, in terms of the judgment of the High Court, would continue and any decision taken therein would be without prejudice to the outcome of the appeal before the Apex Court. During the pendency of this appeal the employee/Respondent filed a contempt petition before the Hon"ble Apex Court being Contempt Petition (Civil) No. 396 of 1999. The SLP as well as the contempt petition before the Hon"ble Apex Court were dismissed--vide order dated 6th December, 1999.

6. The employee had also filed Civil Original Contempt Petition No. 1666 of 1998 before the High Court, This contempt petition was dismissed by the Hon"ble Single Judge on 24th July, 2000, observing as under:

There is no direction of payment of any salary to the Petitioner or for the grant of consequential benefits in the order dated 22nd May, 1998, although, the contention of the learned Counsel for the Petitioner is that the same is a necessary consequence to the decision rendered by this Court. It is not possible for me to arrive at the conclusion that in view of the aforesaid factual position, the Respondents have intentionally or deliberately violating the orders of this Court.

7. The Petitioner in the contempt petition then filed an appeal before the Hon"ble Apex Court against the order dated 24th July, 2000. The appeal was registered as

Special Leave to Appeal No. 15098 of 2000. This appeal was withdrawn by the Appellant and liberty to approach this Court was granted by the Hon"ble Apex Court,--vide order dated 27th September, 2000 as afore reproduced.

8. In the light of the above facts, the present application was filed wherein the Petitioner-Applicant claims that he is entitled to full salary from the date of the order dismissing his service i.e. 25th April, 1985. This application for clarification of the order and for issuance of directions was contested vehemently by the Respondent-bank. The plea of the Respondent-bank is that in terms of the judgment of the Full Bench, the Petitioner is not entitled to the payment of salary from the date of dismissal till any subsequent period. It is stated that the Petitioner joined the service of the Petitioner on 26th February, 1962 and completed 30 years of service on 25th February, 1992, thereby the Petitioner stood superannuated in February, 1992. The Petitioner had claimed no relief of reinstatement even in the main petition and as such no relief could be granted to the Petitioner in excess thereof. The bank had provided the copy of the enquiry report to the Petitioner--vide its letter dated 10th July, 2000 and he was granted personal hearing twice i.e. on 25th February, 2000 and 3rd January, 2001. However, the disciplinary authority has not passed any final order till today and the proceedings are still pending. It is specifically denied that the necessary consequence of setting aside the dismissal order would be reinstatement and payment of back wages to the Petitioner. The learned Counsel for the bank, in support of his contention, relied upon the case of [Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.,](#) .

9. On the other hand, learned Counsel for the Applicant--Petitioner relied upon a judgment of the Full Bench of this Court in the case of Radha Ram v. Municipal Committee, Barnala and Anr. 1983 (1) S.L.R. 151 to contend that where order of dismissal is set aside, reinstatement and payment of back wages would be a consequential relief as a necessary corollary to the setting aside of the order of dismissal. Thus, the controversy in the present case falls in a very narrow compass, but the question involved is of some importance. The petition was accepted by the Full Bench for variety of reasons including two basic issues which related to violation of the maxim audi alteram partem and non-furnishing of the enquiry report to the delinquent by the disciplinary authority even till conclusion of the proceedings. The Full Bench had, thus, allowed the petition and the relief granted to the Petitioner read as under:

The cumulative effect of our above discussion is that the impugned orders of punishment dated 25th April, 1985 and dated 18th July, 1986 are liable to be quashed, which we do hereby quash without any hesitation.

However, we would further direct the disciplinary authority to grant opportunity to the Petitioner to reply to the enquiry report and pass appropriate orders after granting. personal hearing to the Petitioner in accordance with law. This petition is accordingly allowed to that extent but without any order as to costs.

10. The order of dismissal was set aside and the matter was remanded by the Full Bench to the Disciplinary Authority to proceed further in accordance with law, from the stage of furnishing the enquiry report to the delinquent officer. This was so directed in view of the judgment of the Hon"ble Apex Court in the case of B. Karunakar (supra).

11. The learned Counsel appearing for the bank placed emphasis on the observation of the Full Bench that the Court had not accepted the contention of the Petitioner that he was entitled to reinstatement with back wages automatically. No doubt", the Full Bench had made such observations because in terms of the judgment of B. Karunakar"s case (supra) the disciplinary authority was required to pass appropriate orders in that behalf as the matter squarely falls in its domain. It is an admitted case before us that the disciplinary proceedings have not culminated into any final order even as of today. If the Petitioner had super-annuated in the year 1992 as alleged, still the Respondents were required to pass appropriate orders in regard to the disciplinary proceedings and as well as the payment of salary to the Petitioner.

12. A Full Bench of this Court in the case of Radha Ram (supra), upon reference, adjudicated upon somewhat similar question, and held as under:

Adverting, now to precedent it deserves highlighting that in the ultimate analysis I am inclined to the view that the answer to the legal question before us has atleast implicitly, if not explicitly, been rendered by the final court itself in [Krishan Murari Lal Sehgal Vs. State of Punjab](#), . In this view of the matter, it becomes necessary to advert in some depth to the facts of the said case and its legal history and what necessarily flows from the aforesaid judgment Civil Misc. Petition No. 10572 of 1978 in Civil Appeals Nos. 1298, 1299 of 1969.

It would appeal that despite the success of the Appellant before the final court he was denied the emoluments beyond 15th January, 1963, when his suit was decreed by the Subordinate Judge 1st Class, Patiala. Thus, faced with the not unusual nightmare which bedevils (by the denial of salary, emoluments, etc.) even the successful employees after they have secured a declaration that the termination of their services is non est, the Appellant then preferred Civil Misc. Petition No. 10572 of 1978 subsequent to the decision of the two Civil Appeals in the Supreme Court in his favour on 9th February, 1977. It was on the said miscellaneous application that their Lordships issued the under-mentioned categoric direction:

Heard counsel for the parties. This application is disposed of on a short ground. It has become necessary to clarify the order made by this Court allowing the appeals of the Petitioner. According to the decision of this Court, the Petitioner was given a declaration that he would be deemed to continue in service with effect from the date of the suit. As a logical consequence of this declaration, it is manifest that the Petitioner would be entitled to back-salary right from 1st June, 1962 till 9th February, 1974. The only way in which the judgment of this Court can be implemented is to

pay the aforesaid amount of salary to the Petitioner. With these observations this application is disposed of. The amount of the salary must be paid within two months from today.

13. The above decision of the Full Bench of this Court has to be read and followed in the light of the judgment of the Hon''ble Apex Court in the case of B. Karunakar (supra). The Hon''ble Apex Court formulated question No. (v), which has a direct bearing on the matter in controversy in the present application. Question No. (v) formulated by their Lordships of the Supreme Court read as under:

(v) What is the effect of the non-furnishing of the report on the order of punishment and what relief should be granted to the employee in such cases?

The above question was answered by the Hon''ble Court as under:

(v) The next question to be answered is what is the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report, is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denied to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to "illogical and exasperating limits. It amount to an "unnatural expansion of natural justice" which in itself is antithetical to justice.

14. In a given case right to get the emoluments and back wages may be a logical consequence of a declaration that employee continues in service or where his order of termination is held to be illegal or without jurisdiction. But, this cannot be an absolute rule. The Court would have to examine each case on its own merits. A principle which is generally applicable can and may always have exceptions to it. Their Lordships of the Supreme Court have certainly diluted the general principle stated by the Full Bench of this Court in the case of Radha Ram (supra) and made it obligatory upon the Court not to grant reinstatement with back wages as a

necessary corollary to the setting aside of an order of dismissal or termination. Certain ingredients are required to be satisfied before the Court can direct reinstatement of the employee and payment of back wages. Another case would be where the Court consciously leaves this decision to be taken by the disciplinary authority upon re-commencement of the disciplinary proceedings from a particular stage, as a result of setting aside the order of dismissal. The right of the Petitioner to claim back wages accrued only upon setting aside of the order of dismissal by the Court. Thus, it is a right to the Petitioner which accrues as a matter of course resulting from setting aside of the order of dismissal by the Court. This is a substantive right which accrued upon the Petitioner only consequently and not inherently. So long the order of dismissal stands, the relationship of employer and employee has come to an end and status of the delinquent officer is under a cloud. The Hon'ble Supreme Court in the case of [The State of Madhya Pradesh Vs. The State of Maharashtra and Others](#), held as under:

... Therefore, the Plaintiffs cause of action for salary for the period of suspension did not accrue until he was reinstated on December 12, 1953. The Plaintiffs salary accrued only when he was reinstated as a result of the decree setting aside the orders of suspension and of dismissal" and then--

The original order of suspension on September 16, 1943 as well as the original dismissal dated November 7, 1945 was declared to be illegal by the decree dated August 30, 1953. Therefore, when the Plaintiff was reinstated on 12th December, 1953 it is then that the Plaintiffs claim for salary accrued due. This salary was again suspended from 19th January, 1954. Dismissal on 23rd February, 1956 was at a time when the Plaintiff was still under suspension. The order of suspension does not put an end to his service. Suspension merely suspends the claim to salary. During suspension there is suspension allowance. See *Khem Chand v. Union of India* 1963 Supp 1 SCR 229, where this Court said that the real effect of the order of suspension is that though he continues to be a member of the service he is not permitted to work and is paid only subsistence allowance which is less than his salary. Under Fundamental Rule 52 the pay and allowance of a Government servant who is dismissed or removed from service, cease from the date of his dismissal or removal. Therefore, there would be no question of salary accruing or accruing due so long as orders of suspension and dismissal stand. The High Court was correct in the conclusion that the Plaintiffs claim for salary accrued due only on the order of dismissal dated 23rd February, 1956 being set aside.

15. The above principle was reiterated with approval by the Hon'ble Apex Court again in the case of *Maimoone Khatun v. State of U.P.* 1980 3 SLR 455 where it was held as under:

It seems to us that if we take the view that the right to sue for the arrears of salary accrues from the date when the salary would have been payable but for the order of dismissal and not from the date when the order of dismissal is set aside by the Civil

Court, it will cause gross and substantial injustice to the employee concerned who having been found by a court of law to have been wrongly dismissed and who in the eye of law would have been deemed to be in service, would still be deprived for no fault of his, of the arrears of his salary beyond three years of the suit which, in spite of his best efforts he could not have claimed until the order of dismissal was declared to be void.

16. Reverting back to the facts and circumstances of the present case, It is again not disputed before us that the delinquent officer was never placed under suspension. After the order of dismissal of his service dated 25th April, 1985 was set aside by the Court on 22nd May, 1998. The disciplinary authority has neither concluded the disciplinary proceedings nor has it passed any other appropriate order till today, for the reasons best known to the concerned authority. The question before this Court is not whether the Petitioner would or would not stand super-annuated in February, 1992 after serving the bank for a period of 30 years. This question, in any case, was beyond the purview and scope of the writ petition itself. Thus, the parties cannot call upon the Full Bench to decide this question in an application in this writ petition. The parties are free to agitate the question in this regard before the appropriate forum and by way of appropriate proceedings. The Full Bench in consonance with the judgment in the case of B. Karunakar (*supra*) has held that definite prejudice was caused to the Petitioner and he was denied a fair opportunity. The Court held as under:

Non supply of this document certainly caused definite prejudice to the case of the Petitioner. The Petitioner had every right to comment or meet the points raised in the recommendation of the General Manager. Thus, there is denial of fair and reasonable opportunity to the delinquent officer in the present case. The delinquent officer was not even aware as to what case he was to meet as reject (should be projected) in the report of recommendations of the General Manager which were considered by the authorities while imposing punishment upon him.

17. The full Bench having decided in no uncertain terms that serious prejudice was caused to the Petitioner in the departmental proceedings, the Bench set aside the order of dismissal and remanded the matter to the authorities concerned granting permission to proceed further in the departmental enquiry in accordance with law and to pass appropriate orders. The disciplinary authority has miserably failed, over a period of more than three years to pass any appropriate order. We are unable to understand this conduct on the part of the Respondent-authorities. Though it has been contended that the Petitioner has superannuated in the year 1992, but eventually, no copy of such order has been placed on record of this Court. The Hon'ble Apex Court had granted the interim stay during the pendency of the SLP subject to compliance of provisions of Section 17-B of the Industrial Disputes Act, which itself indicates that the Respondent bank was obliged to pay salary in terms thereof to the Petitioner, Admittedly at no point of time, right from the

commencement of the disciplinary proceedings till today, the Petitioner was ever placed under suspension. Upon dismissal of the Special Leave Petition, the judgment of the Full Bench has attained finality at least inter-se the parties.

18. In the present case there is no occasion for the Court even to direct reinstatement of the Petitioner as mere setting aside of the dismissal order would result in maintaining the status-quo between the parties of the date and the stage to which the disciplinary proceedings are remanded. At the cost of repetition, we may notice that on the date of non-furnishing of enquiry report to the Petitioner, he was admittedly not under suspension, but was in service. Thus, the inevitable conclusion that follows is that the Petitioner would continue to be in service till he is dismissed from service in accordance with law, or superannuates in accordance with rules. We have already noticed that we are not concerned with the question whether the Petitioner actually super-annuated in the year 1992 in accordance with law or not. The parties are free to agitate the said issue independently.

19. For the reasons afore-stated, we allow this application and direct the Respondents to pay back wages to the Petitioner from the date of dismissal till passing of appropriate order in the disciplinary proceeding/super-annuation of the Petitioner, whichever is earlier, in accordance with law. However, the parties are left to bear their own costs.

N.K. Sodhi, J.

20. I agree with the conclusion reached by my Brother Swatantar Kumar, J that the Applicant whose termination from service was quashed by this Court is entitled to be paid his salary from the date of termination of his services till the date an appropriate order is passed by the disciplinary authority or till the date of his superannuation, whichever is earlier.

K.S. Kumaran, J.

21. I also agree with the view taken by Swatanter Kumar, J.