



IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO.6603/1992
(S.S. Srivastava Vs. Food Corpn. Of India & Ors.)



Date of order : January 10th, 2008

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. M. Mridul, Senior Advocate assisted by
Mr. R. N. Upadhyay, for the petitioner.
Mr. Shelendra Kala, for the respondents.

By way of filing the present writ petition, the petitioner has challenged the order of his reversion dated 28.12.1989 and prayed that he may be declared confirmed on the post of Assistant Manager (Quality Control) w.e.f. 31.12.1989. He has also prayed for quashing adverse entry communicated by memorandum dated 30.3.1989 for the year 1988 and prayed for directions tot he respondents to pay emoluments of the post of Assistant Manager (Quality Control) including the salary, allowances and other benefits upto date with interest @ 18% p.a.



According to the facts of the case, this is third writ petition filed by the petitioner. In the first writ petition, the petitioner was apprehending his reversion, therefore, he preferred a writ petition, which was registered as SB Civil Writ Petition No.4726/1989. In the said writ petition, the petitioner sought relief on the ground that he will be reverted on account of enquiry which is commenced against him vide memorandum dated 16.12.1989. In the aforesaid writ petition, this Court vide order dated 21.12.1989 directed that the petitioner shall not be reverted on account of the said enquiry from the post of Assistant Manager (Quality Control). However, the said writ petition was dismissed as withdrawn vide order dated 4.8.1992 because a punishment was awarded against the petitioner in a departmental enquiry and the said order of punishment was challenged by the petitioner by way of filing another writ petition.



The petitioner filed the second writ petition before this Court being SB Civil Writ Petition No.2876/1992 against the order of punishment order dated 27.3.1992 imposing penalty of withholding of two grade increments with cumulative effect for the year 1993 and 1994. The order dated 27.3.1992 which was challenged by the petitioner in the second writ petition was withdrawn by the respondents vide order dated 23.7.1992, therefore, the said writ petition was



rendered infructuous and was accordingly dismissed vide order dated 9.11.1992.

In the present writ petition, the petitioner has challenged the order of reversion dated 28.12.1989 so also the adverse entry communicated to him vide communication dated 30.3.1989.



According to the facts of the case, the petitioner entered in the service of the respondents - Food Corporation of India on being appointed as Technical Assistant Grade-III on 30.4.1970 and lastly he was promoted on the post of Assistant Manager (Quality Control) vide order dated 6.1.1988 and the said promotion was on probation for a period of one year. The period of probation was further extended for six months at first instance w.e.f. 31.12.1988 vide order dated 20.3.1989. Again the period of probation was extended for six months w.e.f. 1.7.1989.

The order dated 18.12.1989, which was served upon the petitioner on 28.11.1992 in terms of Regulation 15 (3) of the Food Corporation of India (Staff) Regulations, 1971 (hereinafter, "the Regulations of 1971" only) by which the petitioner was reverted from the post of Assistant Manager (Quality Control) to the post of Technical Assistant Grade-I.

A memorandum of charge sheets was issued to



the petitioner on 16.12.1989 whereby the disciplinary authority has proposed to hold an enquiry against the petitioner under Regulation 58 of the Regulations of 1971 and during the course of enquiry, an order dated 28.12.1989 was issued whereby the petitioner was reverted to the post of Technical Assistant Grade - I and at that time he was getting the salary of Technical Assistant Grade-I and the order of reversion was given effect to vide order dated 30.11.1992 whereby the petitioner was relieved.



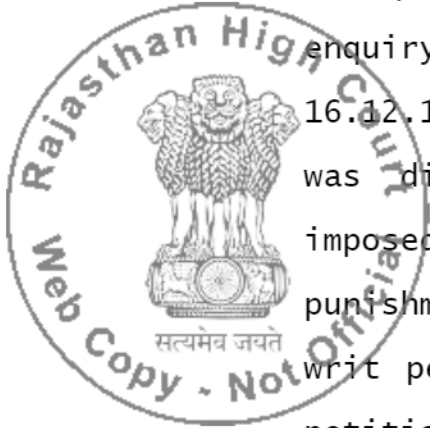
Learned counsel for the petitioner has argued that the order dated 28.12.1989 was illegal and incorrect for the simple reason that it has been served upon the petitioner after three years. It is further submitted that an order is not an order till it is served upon the person concerned. The order was served upon the petitioner in the month of November, 1992, it cannot have retrospective effect from 28.12.1989. It is also submitted that after expiry of the extended probation period, the petitioner stood confirmed on the post, therefore, the order of reversion dated 28.12.1989 from the post of Assistant Manager (Quality Control) to the post of Technical Assistant Grade - I deserves to be quashed and the petitioner may be treated to be confirmed on the post.

During the course of arguments, it is pointed out by the learned counsel for the respondents that in



the charge-sheet issued to the petitioner, a penalty was inflicted against him and he has not challenged the said order of punishment. It is also pointed out that order of reversion was not served upon the petitioner because an order was passed by this Court in his first writ petition whereby it was ordered that the petitioner shall not be demoted on account of enquiry instituted against him by memorandum dated 16.12.1989. However, later on the said writ petition was dismissed as withdrawn because a penalty was imposed against the petitioner and that order of punishment was challenged by the petitioner in another writ petition. It is also pointed out that the writ petition which was preferred against the order of punishment was rendered infructuous by this Court vide order dated 09.11.1992 as the punishment order was subsequently withdrawn by the respondents because it was issued by incompetent authority. In the order dated 9.11.1992 passed in Writ Petition No.2876/92, it was observed as follows :

“.... now, the respondents have revoked order Ann. 9 vide order Anne.R.1, whereby they have reserved the right to initiate fresh disciplinary action against the petitioner as deemed fit through a competent disciplinary authority. In my opinion, this writ petition has become infructuous and the petitioner can challenge the action of the respondents as and when they proceed





against him by way of disciplinary action.

With the above observation the writ petition is disposed of finally at this stage on the ground that this writ petition has become infructuous and the cause of action does not survive inasmuch the impugned order has been taken back. In spite of the reservations made in Ann.R.1, it is anybody's guess if the respondents shall at all proceed against petitioner or not. This would be for the disciplinary authority to decide after giving proper consideration to the entire matter. Hence, in my opinion, the cause of action does not survive at all and the writ petition as stated already has become infructuous."



After passing the aforesaid order, a regular enquiry was conducted against the petitioner by the competent authority whereby he was penalized and he has not challenged the said punishment.

In these circumstances, it is apparent that the order was on probation and the same was not extended after expiry of extended period and reversion order dated 28.12.1989 was issued but the same was kept in abeyance due to stay order passed in earlier writ petition and after dismissal of the writ petition No.4726/1989 on 4.8.1992 the said order was given effect to on 30.11.1992. Now the petitioner has been



retired also and he was penalized with a penalty in the disciplinary proceedings.

In this view of the matter, the contention of the learned counsel for the petitioner cannot be accepted that the order impugned dated 28.12.1989 was given effect to after lapse of three years retrospectively on 30.11.1992, therefore, it is illegal. It is not disputed by the learned counsel for the petitioner that after rendering the writ petition infructuous, which was preferred against the order of punishment, the disciplinary action was taken against the petitioner and penalty was inflicted against him. Thus, it is clear that during the probation period, the petitioner was charge-sheeted and subsequently, he was penalized with the penalty, therefore, in my opinion, no interference is required in the order impugned dated 28.12.1989. Accordingly, the writ petition is dismissed.

(GOPAL KRISHAN VYAS), J.

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