(10) For the reasons mentioned above, the writ petition is dismissed.

P.S.Bajwa

Before Rajiv Narain Raina, J.

RAJBIR SINGH—*Petitioner*

versus

STATE OF HARYANA AND ANOTHER—*Respondents*

CWP No. 7235 of 2012

August 14, 2013

Constitution of India,1950 - Art. 226 - Suspension - Petitioner clerk was charge sheeted on two counts that he came to office under influence of liquor, and that he misbehaved with his co-employees - In inquiry, both charges held to be proved, leading to removal from service - High Court partly allowed writ petition by returning a finding that removal from service was too harsh a punishment and matter was remanded back to disciplinary authority for imposing a lesser punishment as allegation of misbehaviour was not proved - However, again an equally harsh punishment of reduction to lowest pay in time scale was imposed on the assumption that both charges were proved, and further, employee was deprived of his salary for period he was removed from service - Held, that only charge of attending office under influence of liquor sticks to petitioner charge may be grave but it has happened on a single day in a large span of service with no recurrence or prior history of delinquency - A lesser punishment proportionate to charge was to be imposed - Case remanded to appellate authority for passing a fresh order choosing a punishment proportionate to charge - Period of absence was to be considered as duty period, with arrears of salary payable from date of first order of High Court.

Held, that the only charge that sticks to the petitioner is attending office under influence of liquor. Liquor obviously not consumed in office during duty hours but before reaching office. The charge may be grave but it has happened on a single day in a large span of service with no recurrence or prior history of delinquency. It is, therefore, not one

such which should invite harsh punishment of stoppage of three increments with cumulative effect and treating five years and one month as leave of the kind due by clubbing them in an amalgam of punishments.

Further held, that the effect of which would be no increments for the intervening period and a cumulative loss of eight increments perhaps not even imagined by the appellate authority since there is nothing in the impugned order which shows cognizance has been taken of the length of service buried under leave of kind due.

(Para 11)

Further held, that, a fresh exercise would have to be ordered by remanding this case to the appellate authority to pass a fresh order choosing a punishment which is proportionate to charge, that is, of the after effects of consumption of liquor and attending office on 2.6.2004 when the petitioner was suspended from service pending enquiry. The appellate authority may consider lesser punishment proportionate to the single charge proved. No moral turpitude is involved nor misconduct of a base kind showing depravity of character since it is no longer linked with 'misbehaviour', 'din' or 'noise'.

(Para 12)

Further held, that the impugned order to the extent it inflicts, for the period the petitioner remained out of service, a further onerous condition for that period to be treated as leave of the kind due is not legally sustainable and that part of the order would stand quashed with all consequential benefits attaching thereto. Resultantly, the period of five years and one month would be considered as duty period for all intents and purposes including preservation of accrued prior seniority etc. However, the petitioner was not exonerated on the remaining charge.

(Para 13)

R.K. Malik, Sr. Advocate with Nikhil Sharma, Advocate *for the petitioner.*

Harish Rathee, Sr. D.A.G. Haryana.

RAJIV NARAIN RAINA, J.

(1) The petitioner was appointed as a clerk in the Transport Department in 1987. He was charge sheeted on 25.8.2004 for major

misconduct. Two charges were levelled against him. One, that he came to office under the influence of liquor on 1.6.2004 and, two that he created a scene and misbehaved with his co-employees during office hours and while on duty. The second part of the charge is termed 'din' by the punishing authority and 'noise' by the appellate authority in their respective orders which will be adverted to later in this order. He was removed from service on 6.3.2006 following enquiry instituted on 23.11.2004 where both charges were held to be proved. The petitioner's appeal against the punishment order failed on 4.9.2006. The petitioner challenged the order of removal and the appellate order upholding the punishment order before this Court through CWP No. 16029 of 2006.

(2) The learned Single Judge of this Court vide order dated 9.12.2010 partly allowed the writ petition by returning a finding that removal from service was too harsh a punishment keeping in view the allegations against the petitioner. The matter was remitted back to the disciplinary authority to pass a fresh order and to impose any lesser punishment prescribed under law other than removal from service. The Court noticed that the charges against the petitioner contained two allegations: (i) the petitioner was under the influence of liquor when he attended the office on the fateful day and (ii) that he misbehaved with co-employees. The enquiry officer found both charges proved. This Court, however, found that the first charge was established since the petitioner was medically examined by a government doctor and the report clearly established that the petitioner was under the influence of liquor while on duty. However, on the second charge this Court found that the finding recorded by the enquiry officer was based on no evidence on record. When this Court said that: *"However, it is a case where the Enquiry Officer has returned a finding without any evidence on record, in respect of one of the allegations. It seems that the disciplinary authority has been influenced by the findings of the Enquiry Officer wherein he has held allegations of misbehaviour as established",* it could refer only to charge (ii). This Court delved into enquiry proceedings and discovered that none of the witnesses produced by the prosecution testified to petitioner's misbehaviour with any employee or that he created any type of hurdle in office work. The order of the learned Single Judge was not appealed against and has therefore, attained finality.

(3) On remand, the matter was re-examined by the Director General State Transport, Haryana, Chandigarh. A fresh order was passed equally harsh but short of removal. It appears from a reading of it that the disciplinary authority did not pay any attention to the judgment and order of this Court in which only one charge could be said to be established, that is, of coming to office under the influence of liquor. He ignored the specific finding of this court on charge (ii) which held no water. He proceeded to impose major punishment of reduction to the lowest pay in the time scale of pay/pay band to the employee on the assumption that both charges were proved and made an unfair, uncalled for, unacceptable and unfortunate comment in passing (as underlined) that:

> *"**The department has insufficient time to go in appeal after seeking advice of LR/AG in the matter. Hence, looking into the facts of the case and the proven grave deed of misconduct of the employee** in a regular and proper enquiry conducted which gave full opportunity to the official, I order the reduction to the lowest pay in the time scale of pay/pay band to the employee. He shall not be given any dues including earned leave, pay arrears etc. for the period he was not in public service but it shall be counted towards benefits like pension. The above is also subject to outcome of appeal, if any, filed by the department."*
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> *[Emphasis supplied]*

(4) Aggrieved by the fresh punishment order, the petitioner preferred a statutory appeal before the administrative appellate authority against the order dated 6.4.2011 contending that the punishment awarded was excessive. The resultant effect of the order was that the petitioner's emoluments were reduced from ₹24782/- to ₹13462/- which was financially crippling. The petitioner urged that there was no justification to deprive him of salary for the period he remained out of job, that is, for a period of 5 years and 1 month as the petitioner was removed from service on 6.3.2006 while the judgment of this court was rendered on 9.12.2010 but he was reinstated to service on 6.4.2011.

(5) The statutory appeal was partly accepted by the Financial Commissioner and Principal Secretary to Government Haryana, Transport Department by order dated 23.2.2012 endorsed on 27/28.2.2012 to the

petitioner. The punishment was reduced to stoppage of three increments with cumulative effect. But the Appellate Authority also ordered that the period during which the petitioner remained out of service will be treated as leave of the kind due. That period was substantial as already mentioned running into five years and one month.

(6) Aggrieved by the substituted major punishment at the hands of the Appellate Authority, the petitioner has approached this Court through the instant writ petition. He prays that the punishment is still excessive and is based on an incorrect assumption that this Court had not "exonerated him of the charges". The Appellate Authority fell in error perhaps due to oversight in assuming that this Court had declared charge (ii) as established. This assumption was wrong. Charge (ii) of misbehaviour was not established for want of evidence. Therefore, if the factual position had been correctly appreciated then *a priori* the further re-examination or choice of punishment from the range available to the decision-maker could have revolved around only charge (i). The Appellate Authority in its order treats the charge of being inebriated as the *"principle (sic principal) charges against him are or being drunk during duty hours"*. It was though noticed by him in the earlier part of the order that the petitioner had argued before him *"that the High Court had found the charges of making noise and misbehaving were not proved but punishment has been imposed by the DGST keeping in view this charge"*. The contention of the petitioner though noticed was misdealt with which is noticeable from two angles (i) that the appellate authority has held that the Court has not exonerated the petitioner of the charges and (ii) it holds that it is correct that the principal charges against the petitioner or of being drunk on duty, which inferentially means that the subordinate charge subsists. In case both the charges have weighed in the mind of the Appellate Authority while choosing punishment without clearly separating the two then the final result of choice of punishment gets murky or mixed up, on one relevant and the other, an irrelevant consideration. It is this fine distinction which Mr. Malik, learned senior counsel appearing for the the petitioner has drawn and then hammered before this Court to secure a partial certiorari if not full against the impugned order dated 23.2.2012.

(7) On the question of treating the period when the petitioner remained out of service under a removal order as leave of the kind due, Mr. Malik would submit that it is extremely harsh and oppressive and disproportionate to the charge (not charges) proved. He relies on a Full Bench dicta of this Court in ***Radha Ram v. Muncipal Committee, Barnala(1)*** speaking through S.S. Sandhawalia, J, to submit that once the relief of setting aside of quashing the order of termination has been granted it necessarily follows that the employee in the eye of law continues to be in service and as a necessary consequence thereof would be entitled to all the emoluments flowing from declaration of that status. He must be deemed to be in a position identical with that existing prior to the passing of the order of termination of his service. The emoluments of the post are a logical consequence of setting aside the order of termination. In the present case this court had declared the order of removal harsh and the punishment order was set aside on the quantum of punishment. He submits that at the best or worst the cause of action for purposes of grant of arrears of salary should be taken as the date of passing of the judgment of the learned Single Judge, that is, 9.12.2010 when the declaration first came that the removal order was bad and the punishing authority was required to consider choosing lesser punishment.

(8) Mr. Malik has further placed reliance on a decision of the learned Single Bench of this Court in ***Punjab State and others v. Gurdip Singh(2)*** where a constable in Punjab Police was dismissed from service by the Superintendent of Police, Kapurthala on the charge of being found under the influence of liquor while on duty. This Court examined the issue in the light of Rule 16.2 of the Punjab Police Rules 1934 Volume II which deals with award of punishment of dismissal for the gravest acts of misconduct or of the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service. In making such award regard shall be had to the length of service of the defendant and his claim to pension. This Court found on facts that it was only a single stray case of taking liquor by the petitioner and there was

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(1) 1983 PLR 21

(2) 1994(3) RSJ 71

no evidence whatsoever that the petitioner had created nuisance under influence of liquor and consequently held the impugned order arbitrary and illegal. In coming to this conclusion, the learned Single Judge relied on earlier decisions of the Court in ***Ram Partap Constable v. State of Haryana and others(3)*** and ***Ram Kishan Constable v. State of Haryana(4)***.

(9) On the other hand, Mr. Harish Rathee, in his defence of the impugned order submits that this Court should assume that the learned Single Judge of this Court in his order had found punishment of removal harsh. He would want this court to read the judgment in a manner favourable to the State inasmuch as there is no specific direction quashing the charge of misbehaviour or charge (ii) of the charge sheet. I am unable to persuade myself and it is also not possible to read the judgment in the manner suggested. The operative part of the order itself suggests that the learned Single Judge had held that there is no evidence on record to establish the charge of misbehaviour in office. This Court categorically said that it is not a fact on record that both the allegations stood proved.

(10) As I read the observations and directions of the learned Single Judge in the order dated 9.12.2010, I am even more convinced that the separation pointed out in the order was not kept in mind at the stage of remand in the order dated 6.4.2011 and then the same defect has crept into the impugned order dated 23.2.2012 as well which has influenced the decision-maker by considering an irrelevant fact. Therefore, the order dated 23.2.2012 suffers from the same error as the order dated 6.4.2011 did and consequently amounts to apparent non-compliance of the directions of this Court, not on the point of choice of punishment but on the point of what erroneously weighed in the mind of the Appellate Authority in selecting punishment of stoppage of three increments with cumulative effect and the added oppressive burden of treating five years and one month as leave of the kind due, the period when the petitioner was kept out of service.

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(3) 1989(2) RSJ 566

(4) 1990(2) RSJ 637

(11) The only charge that sticks to the petitioner is attending office under influence of liquor. Liquor obviously not consumed in office during duty hours but before reaching office. The charge may be grave but it has happened on a single day in a large span of service with no recurrence or prior history of delinquency. It is, therefore, not one such which should invite harsh punishment of stoppage of three increments with cumulative effect and treating five years and one month as leave of the kind due by clubbing them in an amalgam of punishments. One visible the other hidden in what in first glance looks innocuous. In the circumstances the second part of the punishment order becomes as oppressive as the first par. The effect of which would be no increments for the intervening period and a cumulative loss of eight increments perhaps not even imagined by the appellate authority since there is nothing in the impugned order which shows cognizance has been taken of the length of service buried under leave of kind due. To this extent the conscience of this Court remains as disturbed as it was when Permod Kohli, J. passed the order dated 9.12.2010.

(12) Therefore, in my view a fresh exercise would have to be ordered by remanding this case now to the appellate authority to remove the wheat from the chaff and pass a fresh order choosing a punishment which is proportionate to charge (i), that is, of the after effects of consumption of liquor and attending office on 2.6.2004 when the petitioner was suspended from service pending enquiry. The appellate authority may consider awarding punishment either least major or maximum minor but certainly lesser than stoppage of three increments with cumulative effect which appears to this Court totally disproportionate to the single charge proved and committed on a single day in long length of service. No moral turpitude is involved nor misconduct of a base kind showing depravity of character since it is no longer linked with 'misbehaviour', 'din' or 'noise'. Justice M. Rama Jois in his treatise "Services under the State", 1987 edition, refers to a useful principle laid down in *"Sukraniti Sara p. 69 verses 418 and 419, (1882; G. Oppert ed)",* the great Indian compilation of the principles to be adopted in the administration of the affairs of the State written in Sanskrit of which the translation reads as found in the book:

"Low salary, harsh treatment, insults and imposition of heavy penalties are the causes of unrest among the employees. Satisfied with adequate wages, promoted honourably and consoled or cheered up by gentle words, the employees would never desert the king".

To which I may humbly add, reformatory compassion and divine forgiveness where it is due.

(13) To this end the punishing authority may also consider issuing a warning to the petitioner to be careful in future. However, the impugned order to the extent it inflicts, for the period the petitioner remained out of service, a further onerous condition for that period to be treated as leave of the kind due is not legally sustainable and that part of the order would stand quashed with all consequential benefits attaching thereto. Resultantly, the period of five years and one month would be considered as duty period for all intents and purposes including preservation of accrued prior seniority etc. However, the arrears of salary would become due and payable from only from 9.12.2010, the date of judgment of the learned Single Judge, as the best serviceable cause of action for payment of arrears of salary since the removal order was quashed and a new right declared but the petitioner was not exonerated by court on the remaining charge.

(14) Accordingly, the impugned appellate order and the order appealed against stand quashed and it is directed that the reconsideration exercise as ordered above be now completed within three months from the date of receipt of a certified copy of this order. The monetary benefits which would become available be calculated and made over to the petitioner within one month after final order on remand is passed and communicated to the petitioner. The writ petition is partly allowed in the above terms with no order as to costs.

P.S. Bajwa