A STATE OF PUNJAB AND ORS.

v.

DR. HARBHAJAN SINGH GREASY

APRIL 12, 1996

B [K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

Service Law :

Disciplinary inquiry—Doctor in Government service—Charged for being C *absent from Emergency duty of attending flood victims and for other derilictions of duty—Inquiry Officer submitting report stating that the delinquent had admitted that he was having a private practice during the period of suspension—No such statement recorded by Inquiry officer—Subsequently the delinquent denying to have made the statement—Penalty of removal from service* D *awarded—High Court setting aside the order of removal and directing reinstatement of the employee with consequential benefits—Held, High Court may be justified in setting aside the order of dismissal but in such cases it would not be proper to direct reinstatement with consequential benefits and matter should be remitted to disciplinary authority to follow the procedure from stage at which the fault was pointed out—Pending inquiry delinquent* E *must be deemed to be under suspension—However, since the employee has retired from service no useful purpose would be served in directing to conduct inquiry afresh—Employee not entitled to back wages.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7530 of 1996.

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From the Judgment and Order dated 17.11.93 of the Punjab and Haryana High Court in L.P.A. No. 398 of 1992 DB.

Manoj Swarup for the Appellants.

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D.V. Sehgal, Sanjay Sarin, Fizani Husain and Ashok Mathur for the Respondents.

The following Order of the Court was delivered :

H Leave granted.

We have heard learned counsel on both sides. The respondent was charged for being absent from duty in the Emergency of attending on the flood victims between July 18, 1975 and July 21, 1975. He was further charged for other derelictions of duty. The details are not necessary. Suffice it to state that enquiry was conducted and the Enquiry Officer submitted his report that respondent No. 1 had admitted that he was having a private practice at Moga during the period of his suspension in spite of the directions issued by the Government in the suspension order to remain at Head-quarter. Accordingly, the disciplinary authority removed him from service which came to be challenged in the High Court. The learned single Judge allowed the writ petition and directed reinstatement with consequential benefits. On appeal, the Division Bench confirmed the same in the impugned order dated November 17, 1993 in L.P.A. No. 398/92. Thus, this appeal by special leave.

It is seen that the Enquiry Officer's report is based on the alleged admission made by the respondent. But, unfortunately, the Enquiry Officer has not taken his admission in writing. Subsequently, the respondent has denied having made any admission. As against the denial of the delinquent, we have only the statement of the Enquiry Officer which is not supported by any statement in writing taken from the respondent. Under those circumstances, High Court may be justified in setting aside the order of dismissal. It is now well settled law that when the enquiry was found to be faulty, it could not be proper to direct reinstatement with consequential benefits. Matter requires to be remitted to the disciplinary authority to follow the procedure from the stage at which the fault was pointed out and to take action according to law. Pending enquiry, the delinquent must be deemed to be under suspension. The consequential benefits would depend upon the result of the enquiry and order passed thereon. The High Court had committed illegality in omitting to give the said direction. Since the respondent had retired from service, now no useful purpose will be served in directing to conduct enquiry afresh. However, the respondent is not entitled to the back wages as he voided responsibility as a Doctor to treat on flood victims and that was cause for the suspension.

The appeal is accordingly allowed. No costs. Disallowance of the back wages would not stand in the way of computation of the pensionary benefits as if he had continued in service.

R.P. Appeal allowed.