

**206 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.17244 of 2012 (O&M)
Date of decision : October 07, 2016**

Ashok Kumar

..... Petitioner

Versus

The State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. R.K. Arora, Advocate for the petitioner.

Mr. R.S. Pathania, DAG, Punjab.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

Petitioner joined as Math Master on 29.11.1975 on adhoc basis. His services were regularized on 01.04.1977. During his service, the petitioner remained absent from 01.07.1987 to 28.07.1998 i.e. for 11 years. Petitioner was served with a charge sheet on 19.01.1989 for absence from duty and ultimately, vide order dated 06.10.1999, punishment of stoppage of three annual grade increments with cumulative effect was imposed upon the petitioner. It was further ordered that the absence will not be treated as duty period for any purpose.

The appeal filed by the petitioner against the said order, was dismissed, vide order dated 29.03.2000 (Annexure P-2).

Petitioner retired from service on 31.10.2010. Now, the petitioner is aggrieved of the order dated 04.05.2012 (Annexure P-8), vide which his service before the absence i.e. from 29.11.1975 to 30.06.1987 is not being counted for the purpose of pension and grant of retiral benefits.

I have heard learned counsel for the parties and have also carefully gone through the case file.

Admittedly, the petitioner remained absent for 11 years i.e. from 01.07.1987 to 28.07.1998. The petitioner previously approached this Court by way of filing of CWP No.9029 of 2011, wherein this Court had directed the respondents to take appropriate decision, in accordance with the provision contained in the Rules regarding regularization of absence period of the petitioner and thereafter re-submit his pension case at the earliest.

Now, the Secretary, School Education has passed the impugned order dated 04.05.2012 (Annexure P-8), vide which it has been decided that the period prior to the absence i.e. from 29.11.1975 to 30.06.1987 stands forfeited for the purpose of pension.

The plea of learned counsel for the petitioner is that once the punishment of absence is awarded, the second punishment of forfeiting of past service cannot be passed.

Under Rule 3.25 of Punjab Civil Services Rules, Volume-1, Part-I, no Government employee can be granted leave of any kind for the absent period for more than five years, which means that the petitioner cannot be granted leave of any kind due for more than 5 years. Here the absence period is of 11 years. Therefore, said 11 years of absence is treated as unauthorized absence.

Rule 3.17(A)(2) of the Rules *ibid* reads as under:

“An interruption in the service of a Govt. Employee caused by willful absence from duty or unauthorized absence without leave, shall entail forfeiture of the past service.”

It is in accordance with this Rule that period of unauthorized leave has been forfeited.

I am of the view that there is no illegality or infirmity in the impugned order dated 04.05.2012 (Annexure P-8). As it is provided under Rule 3.17 of the Rule *ibid* that the leave for more than five years cannot be granted, such period has to be forfeited. Consequently, the impugned order qua the forfeiture of the past service, is upheld. It cannot be called second punishment but it is an order regarding treating the past service before the absence, which cannot be counted towards the pensionary benefits as provided under Rule 3.17(A)(2) of the Rules *ibid*.

Learned counsel for the petitioner has prayed that the impugned order (Annexure P-8) was passed on 04.05.2012, in which after excluding the said period, the pension was to be determined on the basis of qualifying period w.e.f. 29.07.1998 to 31.10.2010 and the same was to be finalized within four weeks. However, the same was not done and the retiral benefits were paid to the petitioner, which is as under:

<i>Sr. No.</i>	<i>Type of payment</i>	<i>Amount (₹)</i>	<i>Date of payment</i>
1	DCRG	81791/-	08/11/12
2	Commutation of Pension	140000/-	16/02/13
3	DCRG (Revised)	13246/-	12/02/14
4	Commuted Pension	53486/-	11/07/15
5	GPF	5742	12/10/12

Learned counsel for the petitioner presses for interest on the delayed payment of retiral benefits.

I am of the view that once the matter regarding the qualifying service for the purpose of pensionary benefits has been finally determined by the Secretary, School Education, and a direction was issued to release the pension within four weeks, it was supposed to be released by 04.06.2012 but the same was not done. Since, the retiral benefits of the petitioner were released late, therefore, he is entitled to interest @ 9% per annum for the delayed payment of retiral benefits w.e.f. 04.06.2012 till its realization.

As such, the present petition is allowed.

(KULDIP SINGH)
JUDGE

October 07, 2016

sarita

Whether speaking / reasoned Yes

Whether Reportable: No