

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.18703 of 2013

Date of Decision: 20.09.2016

Moti Lal

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Mani Ram Verma, Advocate,
for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

RAJIV NARAIN RAINA, J.

1. The petitioner and two others were tried for offences under sections 326 and 323 read with section 34 of the Indian Penal Code on the allegation that on May 15, 1983 in the afternoon, they caused injuries to one Satyadev, complainant on the head with an axe and injury attributed to co-accused Krishan Kumar. The present petitioner was accused of “throwing stones at the right thigh of Satyadev” while Girdhari Lal was armed with *lathi*. They were convicted of the offences and sentenced to undergo imprisonment for two years with a fine of ₹ 600/- each vide judgment of conviction and sentence dated May 13, 1987.

2. In appeal to the Sessions Court, Narnaul the sentence was reduced from two years to one year RI etc. However, the conviction was upheld vide judgment and order dated August 17, 1988.

3. The petitioner was a government servant working as a Junior Basic Teacher in a school. The department placed the services of the

petitioner under suspension on November 18, 1988 following conviction on a criminal charge. With the creation of District Rewari the petitioner was adjusted in that District in 1993 by the department while he was under suspension.

4. Criminal Revision No.855 of 1988 preferred jointly by the three accused including the petitioner was dismissed by this Court. The sentence awarded to Krishan Kumar was substituted to reduced sentence of six months RI with a fine of ₹ 10,000/-. The sentence of imprisonment awarded to the petitioner and Girdhar Lal was reduced to the period already undergone by them and a sentence of lesser fine imposed upon them was increased to a fine of ₹ 10,000/- each. The petitioner deposited the amount before the Chief Judicial Magistrate, Narnaul on April 18, 2003 to avoid further rigorous imprisonment for three months. The amount of fine was to be paid to Satyadev injured.

5. The petitioner as was inevitable reached the age of superannuation on October 31, 2005 and was relieved from serviced by an order of even date from Government Primary School, Khandora, Bawal-II, Rewari while he was still under suspension as the result of criminal proceedings set in motion vide FIR No.53 dated May 15, 1983 registered at Police Station Khol, Rewari for commission of the afore-stated offences was pending.

6. It is not in dispute that the petitioner was paid his subsistence allowance as per Rule 7.2 of the Punjab Civil Service Rules, Volume-1, Part-1, as applicable to Haryana @50% of the basic pay w.e.f. November 19, 1988 [the date of suspension] to February 28, 1991 and thereafter at the

prescribed higher rate of 75% w.e.f. March 01, 1991 to October 31, 2005. This was a rather long period of time spanning about 17 years facing the agony of trial for pelting a few stones on the thighs of Satyadev while the grievous injury was inflicted by Krishan Kumar.

7. The petitioner's request for revocation of suspension evoked no response from the District Primary Education Officer, Rewari who took no action till September 27, 2005 when he issued a show cause notice to the petitioner for taking action against him under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 on the same set of allegations which were subject matter of the criminal trial. The petitioner filed his reply to the notice and within a month was relieved from service by the relieving report dated October 31, 2005 served on him by the office.

8. The petitioner then made a written request to the authorities to release his pension and other retirement benefits but no action was taken thereon. He served a legal notice dated March 20, 2006 through his counsel requesting the authorities to release his pension etc. and arrears of salary being the difference of pay and subsistence allowance paid. This met no success.

9. Left with no other alternative, the petitioner for the first time approached this Court in CWP No.14310 of 2006 for his service dues which case was disposed of by the Division Bench on December 19, 2006 directing the official respondents to take a decision on the legal notice within a period of four months on receipt of the order.

10. In implementation of the orders of this Court the disciplinary authority issued order dated April 27, 2007 of deemed dismissal of the

petitioner retrospectively w.e.f. May 13, 1987. The petitioner challenged this order by filing CWP No.13639 of 2007. The State was put to notice. Realizing the mistake committed in passing a retrospective dismissal order even when the petitioner had been relieved from his duties bidding adieu to service on reaching the age of superannuation on October 31, 2005, the authorities withdrew the order during the pendency of the petition and the Court was informed accordingly that the impugned order had been withdrawn. Presented with this situation, the Bench felt that the question of quashing the order did not survive for consideration and accordingly a direction was issued by the Single Judge that pension and pensionary benefits could not be withheld in the face of the withdrawal of the impugned order. The respondents were directed to calculate the pensionary benefits of the petitioner along with statutory interest forthwith with a direction to release the same within two months from the date of receipt of copy of the order.

11. The final order dated November 12, 2010 passed in CWP No.13639 of 2007 remained without implementation for a long time and ultimately pension was sanctioned on September 28, 2011. However, the pensionary benefits were calculated taking into account the period restricted from 1973 to 1988 alone whereas the service to be taken into consideration should have been from 1973 to 2005, or so the petitioner claimed. Feeling aggrieved, the petitioner moved the authorities with a legal notice sent by registered post on July 23, 2012 but the authorities failed to pay heed to the notice.

12. It is relevant to notice that the total period of judicial custody

suffered by the petitioner was for 9 days i.e. from August 17, 1988 to August 26, 1988 whereafter he was admitted to bail with sentence suspended pending appeal.

13. The prayer in the petition is for counting service from 1988 to 2005 also, in addition to the period allowed from 1973 to 1988 for purposes of qualifying service for pension and accordingly the pension granted by reckoning the period restricted from 1973 to 1988 deserves to be modified to take into account the entire period of service. The only ground to restrict pension was on account of the criminal appeal being dismissed on August 17, 1988 by the learned ASJ, Narnaul giving rise to the criminal revision before this Court and suspension ordered on November 18, 1988 which continued till the petitioner turned 58 years of age.

14. Mr. Mani Ram Verma, appearing for the petitioner submits that the petitioner was kept under suspension for an unduly long period while he could have been reinstated to service to enable him to continue teaching in the school. In any case, the learned Single Judge in the petitioner's case against the order of dismissal passed in 2007 had directed the authorities to release pension to the petitioner in no uncertain terms with the withdrawing of the dismissal order by the government itself. Therefore, the order dated November 12, 2010 passed in CWP No.13639 of 2007 *Moti Lal v. State of Haryana and others* [the petitioner's case] has been disobeyed. No ifs or buts can be read in the High Court order while the respondent-State could have raised the issue in 2010 at the time of disposal of the writ petition but failed to do so. Not only this, directions for deciding the legal notice regarding pension and pensionary benefits were issued by this Court for the

authorities to take a decision in the first writ petition which was disposed of in December 2006. It is further argued that pension has to be calculated on last salary of the month drawn on the date of retirement calculated by deeming fiction of the law till the petitioner reached the age of superannuation in October 2005 when he was relieved from service by the relieving order while still under suspension since the criminal revision had by then remained pending. Accordingly, a claim is made for difference of subsistence allowance and pay and allowances for the period of suspension.

15. The respondents have put in their written statement and have contested the case. It is the department's contention that suspension period cannot be treated as duty period under Rule 7.3 of the Punjab Civil Services Rules, Volume 1, Part 1 which prescribes as follows:-

“ALLOWANCES ON REINSTATEMENT

7.3(1) When a Government employee, who has been dismissed, removed or compulsory retired or suspended, is reinstated or would have been reinstated but for his retirement on superannuation while under suspension the authority competent to order reinstatement shall consider and make a specific order-

(a) regarding the pay and allowances to be paid to the Government employee for the period of his absence from duty, occasioned by suspension and/or dismissal, removal or compulsory retirement ending with his reinstatement on or the date of his retirement on superannuation as the case may be, and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Where the authority mentioned in sub rule (1) is of the opinion that the Government employee has been fully exonerated or, in case of suspension, that it was wholly unjustified, the Government employee shall be given the full

pay and allowances to which he would have been entitled, has he not been dismissed, removed or compulsorily retired or suspended as the case may be :

(3) In other cases, the Govt. employee shall be given such proportion of such pay and allowances as such competent authority may prescribe:

Provided that the payment of allowances under sub-rule (2) or sub-rule (3) shall be subject to all other conditions under which such allowances are admissible.

Provided further that such proportion of such pay and allowances shall not be less than the subsistence and other allowances admissible under rule 7.2.

(4) In case falling under sub-rule (2), the period of absence from duty shall not be treated as a period spent on duty for all purposes.

(5) In a case falling under sub-rule (3) the period of absence from duty shall not be treated as a period spent on duty unless such competent authority specifically directs that it shall be so treated for any specified purpose:

Provided that if the Government employee so desires, such authority may direct that the period of absence from duty shall be converted into leave of any kind due and admissible to the Government employee.”

16. They have produced on record an order dated April 11, 2011 passed by the District Elementary Education Officer, Rewari declining the suspension period to be countable as duty period for any purpose under Rule 7.3 (3) of PCS Rules Vol-1 Part-1. The order reads as follows:-

“Sh. Moti Lal, JBT GPS Chandpura (M/Garh), now JBT Retd. GPS Khandora Distt. Rewari was placed under suspension vide District Education officer, Narnaul order No.E-5 (Suspension) 88/10806/848-54 dated 18/11/1988 w.e.f. 18/11/1988 on account of the criminal case registered against him under Section 323/324/34 of IPC in Police Station Khol, The Hon'ble Punjab & Haryana High Court at Chandigarh in Criminal revision No. 855 of 1988 passed

the Order dated 09/10/2002 as under:-

“On the question of sentence, it is submitted that grievous injury is attributed to Krishan Kumar petitioner. Having regard to the fact that the occurrence to the fact that the occurrence took place about 19 years ago and the petitioners have been on bail during all this period, I am of the view that the interest of justice will be met if the sentence award to Krishan Kumar petitioner is substituted by the sentence of six month rigorous imprisonment and fine of Rs.10,000/-, in default of payment of fine Krishan Kumar petitioner will undergo further rigorous imprisonment for three months. Order accordingly. The sentence of imprisonment award to Moti Lal and Girdhari Lal petitioner is reduced to the period already undergone by them and the sentence of fine imposed on them is substituted by a fine of Rs. 10000/- each. The entire amount of fine will be paid to Satyadev injured.

Subject to the above modification in the sentence, the appeal is dismissed.”

Sh. Moti Lal found guilty as per above decision of the Hon'ble Punjab and Haryana High Court, Chandigarh. Hence, the suspension period of Sh. Moti Lal w.e.f. 18/11/1998 to 31/10/2005 is not countable as duty period for any purpose under rule 7.3 (3) of Punjab Civil Service Rules Vol-I Part-I. He is not entitled for any pay and allowances other than he received already during his suspension period as subsistence allowance.”

17. The petitioner has filed an affidavit dated May 22, 2016 deposing therein that the order dated April 11, 2011 was never passed in the presence of the petitioner nor was he called or put to notice nor was heard in that respect. This order was not conveyed to the petitioner and has no binding effect when passed behind the back. It is categorically stated that no copy of the aforesaid order was ever received by the petitioner. This order came to his knowledge only when the written statement was filed by the

respondents. The affidavit has not been controverted by filing a counter and the position explained in the affidavit is accepted as correct on the principle that what is not specifically denied is admitted. An uncommunicated order is no order in the eyes of law and cannot be read against the petitioner and nor is he bound by the order, the same having been passed in breach of principles of natural justice. No pre-decisional hearing was afforded to the petitioner which was a valuable right and, therefore, Mr. Verma submits that the order is liable to be ignored and the case of the petitioner considered on merits. Nor is it a case to accommodate post decisional hearing especially when the petitioner is no longer in service. Due to these reasons, it is not necessary for the petitioner to bring separate and independent challenge to the order which has apparently been kept in the drawer of the District Elementary Education Officer, Rewari only to be used to contest this case.

18. The question which falls for determination is whether the petitioner has a right to pension calculated taking the entire period into account from 1988 to 2005, in other words, from 1973 to 2005 and whether the action of the respondents in restricting pension and pensionary benefits by treating qualifying service towards pension restricted to the period 1973 to 1988 only is a good decision.

19. I have heard the learned counsel for the parties and have perused the record and noticed the provisions of Rule 7.3.

20. In my considered opinion the petitioner was kept under unwarranted and unjustified suspension from 1988 to 2005 having suffered prior thereto nine days of judicial custody following conviction by the criminal court for causing simple injury to the complainant. Thereafter,

sentences remained suspended till merger with the orders passed in the criminal revision in 2002 when this Court ordered the petitioner's sentence to run as the period undergone.

21. It appears that none of the authorities in the department have addressed the basic question as to the role attributed to the petitioner in the criminal trial and the findings returned by the courts. The offence attributed of throwing stones on the thigh of Satyadev was not a crime heinous in nature. His conduct which led to the conviction on a criminal charge was not examined by the authorities but still they continued the petitioner under suspension, paid him subsistence allowance @50% and then 75% for a period of 17 years till the petitioner reached the age of 58 in 2005. The dismissal order was aborted by the department itself when it tactfully withdrew the same during the pendency of the writ petition filed by the petitioner in challenge to the dismissal order. The petitioner can no longer be treated as an employee dismissed from service. He would be treated as having retired on reaching the age of superannuation on October 31, 2005 by the cold letter of the law.

22. Rule 7.3 is a provision which deals with allowances on reinstatement. Sub Rule (3) of Rule 7.3 of the PCS Volume 1, Part 1 has been invoked in the order dated April 11, 2011. Rule 7.3 (1) deals with a situation where Government employee is suspended or would have been reinstated but for his retirement on superannuation while under suspension, the competent authority to order reinstatement then has to consider and make a specific order regarding the pay and allowances to be paid to the Government employee for the period occasioned by suspension ending with

reinstatement or on the date of his retirement on superannuation as the case may be, as to whether the period shall be treated as a period spent on duty.

23. Rule 7.3 (2) deals with another significant facet where in the opinion of the authority named under sub Rule (1) is of the opinion that the Government employee has been fully exonerated or, in case of suspension, that it was wholly unjustified, the Government employee shall be given the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended, as the case may be.

24. It appears to this Court quite evidently that Rule 7.3 is limited in its application to allowances on reinstatement. It follows that if there is no reinstatement there is no scope to read Rule 7.3 into this case, as the order produced in the written statement wrongly relies on the provision by a clear misreading of the rule. The petitioner was never reinstated to service and retired under suspension. Neither does Rule 7.3 deal with criminal cases against Government employees. The tone and tenor of the rule is to my mind tailored to a setting of the departmental proceeding initiated upon a charge-sheet and a regular inquiry held to establish misconduct. Criminal Courts do not exonerate accused persons as it not part of the criminal lexicon and is mostly a service law expression. The criminal courts either convict or acquit a person tried in the dock. Exoneration in service law is peculiar to departmental proceedings. Therefore, the expression “fully exonerated” implied in Rule 7.3 is restricted in meaning to proceedings initiated by a domestic charge-sheet and not charges framed by a Criminal Court. Still further, the question whether a Government employee is kept

under suspension is justified or unjustified is also a matter of moment and relevant to the administrative decision-making of whether to treat the period of absence due to suspension as period spent on duty or otherwise. This appears to me to be the position while juxtaposing criminal and service law.

25. The admitted position is that for 17 years subsistence allowance was paid to the petitioner while no work was taken from him which labour he did not withhold due to any of his actions as an employee and a teacher except for the period of arrest and detention in judicial custody, but due to the action of the employer in keeping him under suspension till he reached the age of superannuation had he been in service on reinstatement. One should imagine that keeping a Government employee and that too a teacher in a Government school suspended for 17 years and even after conviction in a less heinous offence of simple injury may not be wholly justified. The petitioner committed no murder, rape, embezzlement or corruption to be kept away from the taught. The petitioner was not involved or had committed an offence involving moral turpitude. The role of the petitioner may find conviction but the period has been ordered to be treated as undergone which period effectively is no more than nine days in judicial custody following conviction by the Criminal Court and being let on bail and suspension of sentence pending appeal and revision.

26. I have already held for the reasons stated above that the order dated April 11, 2011 attached with the written statement at Annex R-1 is illegal and not binding on the rights of the petitioner and is liable to be ignored for the reason that it was not conveyed for it to take effect. Besides, it was ill conceived behind the back of the petitioner and that too when the

petitioner was no longer under the yoke of government service. Most importantly the thread of employment continued throughout the period under consideration. A fact confirmed by payment of subsistence allowance and the passing of the relieving order. What more evidence is needed, I ask.

27. It was always open to the department to have dismissed the petitioner from service on conviction on a criminal charge but no such order was made and the department remained satisfied in continuing the petitioner under suspension and paying him subsistence allowance causing huge loss to the public exchequer for which the erring officials deserve to be made accountable, keeping him under suspension for 17 years without performing duty.

28. If a dismissal order had been passed on conviction then the issue would had to be decided not only in terms of the Punjab Civil Service Rules, Volume 1, Part 1, but also in terms of Article 311 (2) (a) of the Constitution of India where dismissal is not automatic but a discretionary power exercisable only on the conduct which led to the conviction. I have no doubt having regard to the criminal proceedings culminating in this Court in 2010 that a dismissal order had it been passed could never been legally sustained when the role attributed to the petitioner was not heinous or involving moral turpitude rendering him unfit for service. The injury was inflicted by Krishan Kumar whose sentence was reduced to six months rigorous imprisonment with fine of ₹ 10,000/- etc. All these aspects have not been kept in view and in the totality of circumstances, I would hold that the suspension of the petitioner from 1988 to 2005 was wholly unjustified and uncalled for. The petitioner was a victim of circumstances in a private

dispute which had no nexus with his employment and thus he was unceremoniously deprived of earning full salary for the period by performing his duties as a teacher. An attempt was made later to pass a hare brained dismissal order retrospectively which was annulled by the authorities themselves knowing fully well what its fate might be when put to judicial scrutiny when wisdom dawned on them in the face of pending proceedings in the writ petition filed by the petitioner in challenge to the order of dismissal. Even the learned Single Judge in his order dated November 12, 2010 passed in CWP No.13639 of 2007 had directed the respondents to calculate pensionary benefits of the petitioner along with statutory interest forthwith and release the same within two months. These orders have unfortunately been followed in breach and in contempt. There was sufficient room for the department to have reinstated the petitioner consequent upon the order dated October 09, 2002 passed in Criminal Revision No.855 of 1988 reducing the petitioner's sentence of imprisonment to one as period already undergone by him. The fine had been deposited but the department kept the petitioner under relentless suspension.

29. I find no valid reason to decline the prayer of the petitioner who has been wronged for too long and hounded by the respondents even after crossing the age of 58 years in 2005 as though he was a pariah. He needs a respite and the department should make amends for their apathy, showing no concern to a fellowman. I may not be taken to have applauded what the petitioner did for which he has had to suffer with conviction not erased but sentence undergone. Despite that, it would I think be very harsh and oppressive to deprive the petitioner of his pension and pensionary benefits

for a substantial period disallowed by the department. The period of forced absence spent under trauma of suspension for 17 years is not justified. It is totally unfair, arbitrary and unconstitutional. Interference in writ proceedings clothed in the armour of writ of certiorari and mandamus has become the sine qua non of restorative justice in this extraordinary case. It seems to me that the petitioner has been inflicted far graver injury by the respondents on the administrative side than what was at its worst attributed to him in the criminal trial of throwing stones on the thighs of the complainant causing hardly any serious bodily injury. The callous officials of the department who live in glass houses should also not be seen throwing stones at the petitioner in the hail of 17 years. A teacher's life has been completely destroyed only because no one used common sense dealing with the petitioner's files.

30. Therefore, in order to do justice by balancing the equities in a just and fair manner in order to serve the ends of justice, the petitioner is held entitled to pension and pensionary benefits by counting his entire period of service from 1973 to 2005 as qualifying service for pension. The order at Annex R-1 is declared void ab initio and not binding on the rights of the petitioner to pension and is accordingly invalidated. Even the reason given in support of the order based on Rule 7.3 (3) is a terrible misreading of the rule. The suspension period would have to be treated as period spent on duty after deducting leave of the kind due. The petitioner is also held entitled to arrears of difference of salary and subsistence allowance paid on no fault theory. Accordingly, the Pension Payment Order dated September 28, 2011 is modified by including the total service from February 27, 1973

to October 31, 2005 in employment with all other consequential benefits both pecuniary and non-pecuniary in favour of the petitioner. The pension and pensionary benefits be refixed and redetermined and paid to the petitioner within eight weeks from the date of receipt of a certified copy of this order. This is the price the State must bear for committing manifest and blatant errors which are apparent on the face of record.

31. The petition is allowed in the above terms.

(RAJIV NARAIN RAINA)
JUDGE

20.09.2016
manju

Whether speaking/reasoned	Yes
Whether reportable	Yes