

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

**CWP No.1922 of 2013 (O&M)  
Decided on : 25.04.2016**

Name Chand

... Petitioner

Versus

State of Punjab and others

... Respondents

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA**

Present : Mr.Shubham Kaushik, Advocate, for  
Mr.Vinod Bhardwaj, Advocate,  
for the petitioner.

Mr.I.P.Goyat, Addl., AG, Punjab.

**G.S. Sandhawalia , J. (Oral)**

The impugned order dated 25.4.2012 (Annexure P-11) depicts total non-application of mind by respondent No.2. It is not disputed that the petitioner was under suspension from 20.11.1989 to 21.1.1992 and there was a punishment of stoppage of two increments imposed upon him vide said order Annexure P-8 with cumulative effect. He was not to be paid anything beyond the subsistence allowance for the period of suspension. The said order was upheld in appeal on 9.11.2009.

He filed an application dated 3.3.2008 that his suspension period be treated as duty period and, thereafter approached this Court in CWP No.5477 of 2010 which was decided in his favour on 22.7.2011 ( Annexure P-10)

This Court noticed that as per the provisions of rule 7.3 of Punjab Civil Services Rules, no order had been passed regarding the period of suspension and a specific order was to be passed. Resultantly, the writ petition was disposed of to pass a reasoned and speaking order on merits. The operative part of the order reads as under :-

“ As per Rule 7.3 of Punjab Civil Services Rules (Punishment and Appeal Rules 2009) sub clause (1) in the order dated 21.1.1992 Annexure P-8, the Government has decided not to pay him beyond the suspension allowance. No order has been passed as to how the said period shall be treated whether or not the said period shall be treated period spent on duty. On appeal, the petitioner has been imposed penalty of stopping one increment with cumulative effect. After reinstating him the Department was required to pass a specific order in relation to his suspension period. As per Rule 7.3 Sub clause (5), the suspension period shall not be treated as period spent on duty, unless the competent authority specifically directs that it shall be so treated. The competent authority could convert the suspension period into leave of any kind due and admissible to a Government employee. As per Rule 7.3 sub clause (8) Note 3, if no order is passed under Rule 7.3 sub-rule (5), directing that the period of absence be treated as duty then the past service will not be forfeited. In the present case under no circumstances, the suspension period could be forfeited. It could at best be treated as “non duty”.

In view of the above, this petition is disposed of. The order dated 9.11.2009 Annexure P-1 is set aside with direction to the competent authority to pass a reasoned and speaking order on merits.”

Inspite of the above said categorical decision, respondent No.2 has failed to take a decision regarding how the period of

suspension is to be treated. It has only been reiterated that punishment has already been imposed upon and he is not to be paid anything over and above what has been paid for the suspension period. A plea has been taken in defence that the petitioner has no right to claim any service benefits of suspension period after 21 years and this Court had not given the benefit to the petitioner for the period he remained under suspension.

The stance in the written statement is worse than the reasoning given in the impugned order and shows total lack of application of mind as to what relief the petitioner was seeking and what the respondents were to decide. Rather it has been pleaded that the period of suspension cannot be counted for the purpose of granting pension benefits thus denying the petitioner his right without deciding the issue by passing any order. It was the duty of the respondents as per the directions of this Court earlier, to pass a categorical order on the period the petitioner remained under suspension as per rules mentioned above and decide how it was to be treated and whether it was to be treated on duty or not. Unfortunately, the same has not been done. The petitioner has been forced to come to this Court for the second time unnecessarily and accordingly, this Court in the present case is of the opinion that the writ petition is liable to be allowed with exemplary costs.

Accordingly the impugned order dated 25.4.2012 is set aside. The respondent-State shall pay litigation costs of ₹ 20,000/- to the petitioner on account of the unsustainable order passed. A direction

is issued to respondent No.2 to ensure compliance of the earlier order dated 22.7.2011 of this Court within a period of two months from the date of receipt of a certified copy of this order. It will, however, be open to the State to recover the said amount from the erring officials.

**April 25, 2016**

Paritosh Kumar

**(G.S. SANDHAWALIA)**  
**JUDGE**