

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

**CWP No.20919 of 2014 (O&M)
Date of decision : November 03, 2016**

Mahipal Singh Mann

..... Petitioner

Versus

The State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Arjun Pratap Atma Ram, Advocate for the petitioner.

Mr. Parupkar Singh Ghuman, Addl. A.G., 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 Deputy Superintendent of Police on 10.02.1986. While, he was under probation, his services were dispensed with on 28.09.1987. The petitioner approached this Court against the order of discharge by way of filing of CWP No.4720 of 1988, which was dismissed. Thereafter, the petitioner filed LPA No.23 of 1992. During the pendency of the said appeal, the petitioner was reinstated vide order dated 09.02.1993 (Annexure P-5), after considering his mercy petition. It was stipulated in the said order that he will not claim the benefits of any kind for the period between the earlier termination orders and their withdrawal. It was further stipulated that he will not claim seniority for the period he remained out of service. His probation was to start when he was terminated.

Thereafter, vide another order dated 30.07.1998 (Annexure P-6), the said period during which the petitioner remained out of service from 28.09.1987 to 25.02.1993 was treated as extraordinary leave under Rule 9.12(1) of the Punjab Civil Services Rules, Volume I, Part I on the condition that the period of extraordinary leave shall not be counted for the purpose of increment, pension or for any other benefits as qualified service. Vide order dated 20.01.2004 (Annexure P-9), the petitioner was confirmed as DSP w.e.f. 20.08.1993 on completion of two years probation period, apparently, after excluding the period he remained out of service.

It also comes out that the petitioner earlier approached this Court by way of filing CWP No.1942 of 2011, whereby he had challenged the order, vide which he was confirmed w.e.f. 20.08.1993. The Single Bench of this Court vide order 14.03.2012 (Annexure P-13), set aside the aforesaid order and directed the respondents to consider the claim of the petitioner for confirmation after treating his service w.e.f. 28.02.1986 on the same parity as the claim for confirmation of his batchmates was considered. The LPA No.1620 of 2012 filed by the Department against the said order was dismissed on 18.10.2012. Consequently, vide order dated 30.01.2013 (Annexure P-15), the petitioner was confirmed w.e.f. 11.03.1986. Now, the petitioner claims that the period during which he remained out of service should be computed for the purpose of grant of pensionary benefits.

Having heard learned counsel for the petitioner and learned State Counsel and considering the reply of the respondents, I am of the view that once the period during which the petitioner remained out of service has been treated as duty period and the petitioner has been confirmed by the

State after excluding the said period of absence, then the State cannot fall back upon the terms and conditions of reinstatement to claim that the said period during which the petitioner remained out of service and was subsequently taken back by the Government cannot be computed for the purpose of grant of pensionary benefits. Once it is treated as duty period, the said period shall also be computed for the purpose of grant of pensionary benefits.

Hence, the impugned order dated 30.05.2014 (Annexure P-19), vide which the claim of the petitioner made by way of legal notice was rejected, is hereby quashed and it is ordered that the period from 28.09.1987 to 25.02.1993 for which the petitioner remained out of service, which was treated as duty period, is to be computed for the purpose of grant of pensionary benefits. Needless to say that all the consequential benefits shall also be granted.

As such, the present petition is allowed.

(KULDIP SINGH)
JUDGE

November 03, 2016

sarita

Whether speaking / reasoned Yes

Whether Reportable: No