

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

Sr. No.212

(1)

CWP No.4135 of 2012

Krishan Dass Mehmi

....Petitioner

versus

State of Haryana and others

....Respondents

(2)

CWP No.4391 of 2012

Ratan Lal Yadav

....Petitioner

versus

State of Haryana and another

....Respondents

(3)

CWP No.4392 of 2012

Anoop Singh

....Petitioner

versus

State of Haryana and another

....Respondents

(4)

CWP No.4393 of 2012

Sushil Kumar Lathar

....Petitioner

versus

State of Haryana and another

....Respondents

(5)

CWP No.4148 of 2012

Raj Kumar

....Petitioner

versus

State of Haryana and another

....Respondents

(6)

CWP No.4164 of 2012

Surinder Kumar Goyal

....Petitioner

versus

State of Haryana and another

....Respondents

Date of decision: 11.02.2016

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

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To be referred to Reporters or not?

Whether the judgment should be reported in the digest?

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Present: Mr. R.K. Malik, Senior Advocate with
Mr. Kuldeep Sheoran, Advocate
for the petitioner(s).

Ms. Shruti Jain Goyal, AAG, Haryana.

Mr. Manjeet Singh, Advocate for
Mr. J.S. Maanipur, Advocate
for respondent No.3 (in CWP No.4135 of 2012).

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DEEPAK SIBAL, J.

A bunch of six writ petitions being **C.W.P. Nos.4135, 4391, 4392, 4393, 4148 and 4164 of 2012**, involving similar issues of fact and law were heard together and being disposed of through the present common judgment. For the sake of convenience, facts have been taken from **C.W.P. No.4135 of 2012** titled as **'Krishan Dass Mehmi vs. State of Haryana and others'**.

After hearing counsel for the parties and perusing the record, the relevant facts which have emerged are that on August 18, 1981, the petitioner was appointed as a Junior Engineer on adhoc basis. Such appointment was after inviting of applications through an advertisement and considering the claim of other eligible applicants. After the petitioner had

put in over two years of satisfactory service, through order dated 25.08.1983 his services were terminated against which he filed a representation stating therein that persons junior to him had been retained and that the order of termination had been passed by an incompetent authority. Not disputing the facts mentioned by the petitioner in his representation and impliedly accepting the fault on their part, the respondents through order dated 01.01.1986 accepted the representation of the petitioner and while withdrawing the order of termination of the petitioner's services reappointed him. After rejoining the post, since the petitioner had been kept out of service from 26.8.1983 till 31.12.1985 without any fault on his part, he made a representation asking the respondents to condone the aforementioned period. Through order dated 28/30.11.1995, this representation of the petitioner was also accepted and the period from 26.08.1983 to 31.12.1985 was condoned while ordering that the same would be considered as leave of the kind due. Thus, now, the petitioner was in continuous service since 18.08.1981 and that being so, being covered under the regularization policy of the Government of Haryana, his services were ordered to be regularized w.e.f. 1.11.1986. Thereafter, on 30.10.1998, the petitioner was promoted as Sub-Divisional Engineer initially on adhoc basis and then on 01.01.2004 on regular basis.

On 8.06.2011, the petitioner was issued a show cause notice as to why order dated 30.11.1995 from which the break period in his service from 26.08.1983 to 31.12.1985 had been condoned, be not withdrawn. The petitioner submitted a detailed reply to the show cause notice but through the impugned order dated 14/27.02.2012 order dated 30.11.1995 through which the petitioner's break in service between 26.08.1983 to 31.12.1985

had been condoned, was withdrawn. It is this order which is under challenge through the present petition.

Learned State counsel has sought to defend the impugned order primarily on the ground that the earlier order dated 30.11.1995 through which the break period in the petitioner's service had been condoned had been passed without approval of the Finance Department and the Chief Secretary, Government of Haryana and therefore, the same was unsustainable. It was submitted that a mistake committed earlier could always be corrected by the State.

The submissions made on behalf of the State cannot be accepted. When on 25.08.1983, the services of the petitioner were terminated, there was no complaint with regard to his work and conduct, juniors had been retained and that the order of termination had been passed by the authority which was not competent to do so. On a representation by the petitioner, the respondents realizing their fault of having wrongly terminated his services, withdrew the order and ordered the petitioner's reappointment. Once the State was itself of the view that the petitioner's services had been wrongfully terminated and while making amends, had on a later date ordered his reinstatement, there would be no hesitation on my part to hold that between the date of termination of his services and reinstatement, the petitioner would be entitled to continuity of service which had rightly been given to him through the earlier order dated 30.11.1995 by ordering that the break period and would be treated to be leave of the kind due.

It may be noticed that the order of reinstatement of the petitioner dated 01.01.1986 has never been questioned by the State and once

they accept the reinstatement of the petitioner, as a natural consequence, they also accept that at an earlier point of time the petitioner's services had been wrongly terminated by them. In such a circumstance, there is no reason in fact or in law so as to why the petitioner should not be granted continuity of service for the break period.

A person similarly situated as the petitioner had earlier approached this Court through CWP No.486 of 1989 titled as 'Harish Kumar Gupta versus The State of Haryana and another', in whose case a Division Bench of this Court had passed the following order:-

“The undisputed position in that the petitioner was removed from service by an authority who was not competent to do so the impugned this order through CWP No.5051 of 1987. The Assistant Advocate General appearing for the State of Haryana made statement before the motion bench that the service had been withdrawn. Copy of this order is Annexure P-2. As a consequence of this, the petitioner was re-instated into service. However, for the period during which he remained out of service i.e. from 28.8.1986 to 30.11.1987 he has been deprived out of his pay and it has been ordered vide Annexure P-5 that this period be treated as leave of the kind due to him. The petitioner challenges this order i.e. Annexure P-5. Mr. Kundu appearing for the respondents finds it difficult to support this order. It is patent that the petitioner had to remain out of service for no fault of his. As a consequence of the withdrawal of the order of termination of his services, he became entitled to all the emoluments etc. where were due to him and for period he had to be treated on duty. In the light of this we, therefore, accept this petition and set aside the impugned order, Annexure P-5. This, however, would not debar the respondent authority to

proceed against the petitioner for any misconduct in accordance with law, if so advised. The authorities would made the payment of the arrears of the pay etc. to the petitioner within a period of two months from today.”

A perusal of the afore-quoted order shows that in similar circumstances a Division Bench of this Court has held that when a person is kept out of service for no fault of his, on his reinstatement, he would be entitled to condonation of the break period with all consequential benefits.

The case of the petitioner herein cannot be distinguished from **Harish Kumar Gupta's case (supra)**.

Even otherwise, the petitioner was granted a benefit in the year 1995, on the strength of which his services had been regularized and thereafter, granted promotions. After 16 years and that too without any justifiable reason, the benefits granted to the petitioner cannot be allowed to be withdrawn when admittedly there has been no fraud or misrepresentation on his part.

In view of the above, while quashing the impugned order dated 14/27.02.2015, Annexure P-6 in C.W.P. No. 4135 of 2012, Annexure P-5 in C.W.P. No. 4391 of 2012, Annexure P-4 in C.W.P. No. 4392 of 2012, Annexure P-4 in C.W.P. No. 4393 of 2012, Annexure P-6 in C.W.P. No. 4148 of 2012 and Annexure P-6 in C.W.P. No. 4164 of 2012, the writ petitions are allowed holding the petitioners entitled to all consequential benefits.

(DEEPAK SIBAL)
JUDGE

February 11, 2016
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