

C.W.P No. 3861 of 2014

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P No. 3861 of 2014

DATE OF DECISION:09.11.2016

Surinder Kumar

.....Petitioner

Versus

State of Punjab and another

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. V.K. Sachdeva, Advocate with
Ms. Deepali Puri, Advocate
for the petitioner.

Mr. Pankaj Mulwani, DAG, Punjab.

DAYA CHAUDHARY, J.

The prayer in the present petition is for issuance of a writ in the nature of certiorari for quashing the impugned order dated 19.6.2004 (Annexure P-1) passed by respondent No.2, whereby, the petitioner has been denied the benefits of past and future emoluments by declaring the period from 12.6.1993 to 29.10.2003 as “Out of Service Period”.

Briefly, the facts of the case as made out in the present petition, are that the petitioner was initially enrolled as Constable on 21.8.1991 and was posted at Police District Majitha. The petitioner could not report for duty from 15.5.1993 to 7.6.1993 and accordingly was discharged from service as per Rule 12.21 of Punjab Police Rules vide order dated 12.6.1993. The petitioner filed a civil suit for declaration to the effect that

order dated 12.6.1993 was illegal, ultravires and was passed without holding any inquiry. Said civil suit was dismissed by Civil Judge (Junior Division), Amritsar vide order dated 18.1.1999. Aggrieved by aforesaid order, the petitioner filed an appeal, which was allowed by the Additional District Judge, Amritsar vide judgment dated 8.12.1999 and order passed by Civil Judge (Junior Division), Amritsar was set aside. Against order dated 8.12.1999, respondent-Department filed Regular Second Appeal before this Court, which was dismissed on 30.7.2002 and order passed by the appellate Court was upheld. After dismissal of RSA by this Court, vide order dated 30.10.2002, the petitioner was ordered to be reinstated in service by the respondent-Department with a direction to hold fresh departmental inquiry for granting arrears of back wages to him. The petitioner joined duty on 30.10.2003 but since he was not given benefit of the period from 8.6.1993 to 29.10.2003, he filed Execution Application before the Civil Court. Objections to the Execution application were filed by respondent-Department. Regular Departmental Inquiry was also conducted and the petitioner was not found guilty of the charges framed against him but the absence period from 15.5.1993 to 7.6.1993 was treated as leave of the kind due and the period from 12.6.1993 to 29.10.2003 was treated as “out of service period” vide order dated 19.6.2004 . The objections filed by respondents were allowed and execution application filed by the petitioner was dismissed by the Civil Court on 29.7.2011. Against order dated 29.7.2011, the petitioner filed Civil Revision but the same was dismissed as withdrawn with liberty to challenge order dated 19.6.2004, which is subject matter of challenge in the present petition.

Learned counsel for the petitioner contends that the petitioner is

entitled for benefit of period which has been treated as 'out of service' in view of Full Bench Judgment of this Court in **Radha Ram Vs. Municipal Committee, Barnala and another** 1983 PLR 21, wherein, it has been held that once the relief of setting aside order of termination has been granted or a declaratory degree has been passed, the employee is entitled for consequential benefits. Learned counsel has also relied upon another Full Bench judgment of this Court in **Parkash Chand Vs. SS Grewal, Chief Secretary, Punjab etc.** 1974 (2) ILR (Punjab) 56 as well as judgment of Single Bench in C.W.P. No. 15348 of 1999 (**Zuber Ahmed Vs. The Union of India and others**) decided on 30.4.2015, in support of his contentions.

Learned State counsel has opposed the submissions made by learned counsel for the petitioner. He has also raised a preliminary objection that impugned order was passed in the year 2004 and the present petition has been filed in the year 2014 and the same is liable to be dismissed on the ground of delay and laches. Learned counsel also submits that the petitioner was reinstated in service vide order dated 30.10.2002 and as per liberty given by the appellate Court for taking action against the petitioner for remaining absent from his duty in accordance with law, a departmental inquiry was initiated against him for granting arrears of back wages. In the inquiry report, it was held that the period of absence of the petitioner from 12.6.1993 to 30.10.2002 and period of his absence from 15.5.1993 to 6.6.1993 i.e. 23 days be treated as leave of the kind due because he did not perform his duty during that period. Thereafter the abovesaid period of the petitioner was regularised, which was due vide order dated 26.7.2004. Even the pay of the petitioner was fixed vide order dated 7.10.2004 and all benefits have been paid to the petitioner as per

Rules. At the end, learned State counsel submits that the petition is liable to be dismissed on the basis of unexplained delay.

Heard the arguments advanced by learned counsel for the petitioner as well as learned State counsel and have also perused the documents available on the file including impugned order.

The facts relating to appointment and discharge from service for remaining absent from 15.5.1993 to 7.6.1993 are not disputed. Filing of civil suit, appeal, revision petition and execution application are also not disputed. It is also not disputed that RSA No. 2373 of 2002 filed by respondent-Department was dismissed by this Court and the judgment passed by the appellate authority was upheld. The petitioner was ordered to be reinstated vide order dated 30.10.2002 but he was not given the benefit of the period from 8.6.1993 to 29.10.2003. Thereafter departmental inquiry was also initiated against the petitioner. Undisputedly, the revision petition filed by the petitioner was dismissed as withdrawn with liberty to challenge order dated 19.6.2004. The dispute is of the period from 15.5.1993 to 7.6.1993, on which dates, he remained absent. In the departmental inquiry, the petitioner was not found guilty of the charges framed against him but period of absence from 15.5.1993 to 7.6.1993 was ordered to be treated as leave period of the kind due and period of absence from 12.6.1993 to 29.10.2003 was ordered to be treated as “Out of Service Period” vide order dated 19.6.2004. No doubt, learned counsel for the petitioner has made all efforts to explain the delay, which has occurred due to filing of different petitions/availing of remedies but undisputedly order dated 19.6.2004 has been challenged before this Court after a long delay, which has not been properly explained. The petitioner cannot be held entitled for benefit of

salary during the period he remained out of service on the principle of 'no work no pay'. At the most, the petitioner can be held entitled for benefit for the period of three years and two months prior to the date of filing of this petition as this petition was filed in the year 2014 and notice of motion was issued on 3.3.2014.

By considering the request of the petitioner that his wife was ill during absence period and by taking a lenient view, the submission made by the petitioner was accepted in the Departmental inquiry. Moreover, the period from 12.6.1993 to 29.10.2003 has been treated as 'out of service' and the period from 15.5.1993 to 7.6.1993 has been treated as leave of the kind due and that too by treating the period under different types of leave like earned leave, half pay leave and leave without pay. The petitioner is not entitled for grant of benefit for the period as claimed in the petition on the ground of delay in view of judgment passed by this Court in C.W.P. No. 21416 of 2016 (**Raj Kumar Sehgal Vs. Presiding Officer, Industrial Tribunal and Labour Court and another**) decided on 17.10.2016.

In view of the facts as mentioned above, the present petition is partly allowed and the petitioner is held entitled for the benefit prior to the date of filing of this petition.

November 09, 2016
pooja

(**DAYA CHAUDHARY**)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes