

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

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RSA No. 929 of 2011 (O&M)**Date of decision: 08.08.2016**

Ram Lal

.... Appellant

Versus

State of Haryana and others

.... Respondents

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr. R.K.Malik, Sr. Advocate with
Mr. Kuldeep Sheoran, Advocate for the appellant.

Mr. Anil Mehta, DAG, Haryana.

P.B. Bajanthri, J. (Oral)

The appellant has assailed the order dated 25.10.2010 of the Appellate Court to the extent that denial of arrears of salary for the intervening period from the date of termination till quashing of the order of termination.

2. The appellant was a Driver in the respondents Department. On 08.05.2000, due to his negligence in driving, bus of the respondent met with an accident. Thereby two persons were died. In this regard, the respondents have initiated disciplinary proceedings against the appellant and it was concluded in imposing the penalty of termination from service on 17.02.2002. Appellant preferred an appeal before the appellate authority.

The same was rejected. Thus, he filed a suit for declaration before the trial Court. The Trial Court set aside the order of termination and it was held that appellant is entitled for reinstatement in service from 17.12.2002 onwards with all the benefits except the pay as he has not worked during the intervening period. Both the appellant as well as respondent-Department preferred appeal before the Appellate Court. The Appellate Court passed the following order:-

“14. As the enquiry has not been found to be valid one, the said enquiry cannot be allowed to remain in operation, as it is on record that driver was never charge sheeted for not having valid driving licence. In these circumstances, this court is of the view that there is no alternative with the Court but to ask the department to hold afresh enquiry including the charge as to whether Ram Lal, Driver of the bus in question was holding a valid driving licence or not at the time of accident. So, enquiry held by the department and the judgment and decree of learned trial Court are hereby set aside, as a result of which the appeal filed by Appellants State of Haryana and others stands allowed and appeal filed by Ram Lal stands dismissed. The department is directed to hold fresh enquiry to be concluded within six months from the date of receipt of file in which the charge of driving licence shall be included with

the question as to whether Ram Lal driver, at the time of accident was having a valid driving licence or not. No order as to costs. Decree sheets be prepared. Lower Court record be returned. Appeal files be consigned to the record room.”

3. Appellant feeling aggrieved by the order of the appellate Court to the extent of denial of monetary benefits during the intervening period from the date of termination till passing of the reinstatement order, by the trial court, presented this appeal.

4. During the pendency of this litigation, order dated 25.10.2010 of the Trial Court was considered by the respondents. Thereafter, appellant was terminated on 12.09.2011 afresh.

5. Learned counsel for the petitioner submitted that once the order of termination is set aside an employee is entitled for arrears of salary of service benefits. He relied on two decisions of this Court reported in 2002(2) RSJ 271 titled as ***Ram Niwas Bansal versus State Bank of Patiala and others*** and 1983 PLR 21 titled as ***Radha Ram versus Municipal Committee, Barnala*** wherein full court decision decided that employee is entitled for salary for the intervening period.

6. Learned counsel for the respondents submitted that by virtue of appellate court order dated 25.10.2010, consequently appellant has been dismissed from service and matter is pending consideration before the appellate court. Therefore, the appellant is not entitled for the relief sought in so far as arrears of salary for the intervening period.

7. Heard learned counsel for the parties.

8. Short question for consideration is whether the appellant is entitled for arrears of salary for the intervening period from the date of termination till reinstatement or not. Both the trial court as well as appellate court while appreciating the order of termination stating that is illegal and without compliance to principle of natural justice. Order of termination is held to be bad. Further trial court has held that state may initiate appropriate proceedings against the delinquent official/employee. Whereas, the appellate court while dismissing the appeal filed by the appellant, directed the department to hold fresh enquiry to be concluded within 6 months from the date of receipt of file in which the charge of driving licence shall be included with the question as to whether Ram Lal, Driver at the time of accident was having a valid driving licence or not. The appellant has not questioned the remanding of the matter in the present appeal. His appeal is restricted only regarding payment of salary for the intervening period. Therefore, appellate Court order dated 25.10.2010 to the extent of remanding the matter to the Department is upheld. Consequently, the appellant was subject to disciplinary proceedings afresh and matter was concluded by imposing penalty of dismissal from service.

9. In view of these facts and circumstances and principle laid down in the case titled as ***Managing Director ECIL versus B.Karunakaran*** reported in 1993(4)SCC727. The appellant is entitled only for subsistence allowance for the reasons that as and when order of termination is set aside and matter is remanded for fresh enquiry, the petitioner would be deemed to be under suspension till a final order is passed in the disciplinary proceedings.

10. Therefore, the appellant is entitled for only subsistence

allowance from time to time from the date of termination till passing of the final order in a fresh enquiry. The same shall be calculated by the respondents and disburse within a period of 3 months from today.

08.08.2016
pooja saini

(P.B.BAJANTHRI)
JUDGE

Whether speaking/reasons Yes/No

Whether Reportable: Yes/No