

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 252

Civil Writ Petition No.13384 of 2016 (O & M)
Date of Decision: September 26, 2017

Suresh Chander Madan

..... PETITIONER

VERSUS

The Punjab Scheduled Castes Land Development and Finance Corporation
..... RESPONDENT

. . .

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

. . .

PRESENT: - Mr. K.L. Arora, Advocate, for the petitioner.

Mr. Gautam Thapar, Advocate, for the respondent.

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Jaspal Singh, J

The instant petition has been preferred by Suresh Chander Madan under Article 226/227 of the Constitution of India, for issuance of a writ in the nature of mandamus directing the respondent – Corporation to release his retiral benefits of Gratuity & Leave Encashment; full salary and allowances for suspension period; annual increments from 1997; to consider and promote him to the post of DM from the date his junior Baldev Singh was promoted as such alongwith all consequential benefits; and to release ₹ 1 lac deposited with the corporation as he has been acquitted in criminal case. Further prayer has been made for issuance of a writ in the nature of certiorari for quashing dismissal order dated January 07, 2011 (Annexure P-5), vide which, petitioner has been dismissed retrospectively w.e.f. July 31,

2005. Petitioner has further prayed for arrears of salary alongwith interest @ 18% per annum.

Petitioner was appointed to the post of Assistant in the Corporation (respondent herein) vide order dated February 01, 1977 (Annexure P-1) by following due process of selection. In the year 1989, designation of post of Assistant was changed to Assistant District Manager (ADM) and that of Enforcement Officer to District Manager (DM). Vide order dated July 06, 1990 (Annexure P-2), petitioner alongwith other employees was confirmed in the service as Assistant/ADM w.e.f. July 05, 1990. Petitioner retired from service of respondent – corporation from July 31, 2005 vide order dated July 29, 2005 on attaining the age of superannuation. Vide representation dated December 28, 2005 (Annexure P-4), petitioner requested that his retiral benefits i.e. Gratuity and Leave Encashment be released to him.

In a criminal case being FIR No.79/97, Police Station, Malout, petitioner was convicted and sentenced vide judgment dated November 25, 2010 passed by the Sub Divisional Judicial Magistrate, Malout. Consequently, vide impugned order dated January 07, 2011 (Annexure P-5), respondent – corporation dismissed the petitioner from service, retrospectively, from July 31, 2005, the date from which he had already been retired from service, mentioning therein that his dismissal will be reconsidered in case the matter is decided in his favour. Subsequently, vide judgment dated December 11, 2014 passed by this Court in Criminal Revision No.2592 of 2012, petitioner stood acquitted. Therefore, petitioner has prayed that he deserves the retiral benefits which have been withheld by the respondent – corporation.

Heard learned counsel for the parties and perused the record available.

Reply was filed by the respondent – corporation. As per the contents of reply, petitioner was placed under suspension twice from October 08, 1997 to July 12, 1998 and from December 03, 2002 to June 17, 2004. Petitioner was convicted and sentenced in a criminal case registered against him. His appeal was also dismissed. Pursuant to conviction of petitioner, his retirement was treated as dismissal from service. Petitioner never challenged the order of his dismissal from service.

However, petitioner was acquitted by this Court vide judgment dated December 11, 2014 passed by this Court in Criminal Revision No.2592 of 2012.

As regards full salary and allowances for suspension period. Petitioner was placed under suspension vide order dated October 08, 1997 (Annexure P-10) and second time, vide order dated December 03, 2002 (Annexure P-11). Vide order dated April 29, 2010 (Annexure P-11/2), suspension period w.e.f. December 03, 2012 to June 17, 2004 has already been treated as Duty Period and the fact that petitioner has already been acquitted in the criminal case, by this Court vide judgment dated December 11, 2014, petitioner is held entitled to full salary, increments and allowances for the suspension periods.

As far as release of retiral benefits, such as Gratuity and Leave Encashment is concerned, it has been settled by a catena of judgments that that in case of an employee retiring after having rendered service, it is expected that all the payment of retiral benefits should be paid to him on the date of retirement or soon thereafter if so for unforeseen circumstances the payments could not be made on the date of retirement. In this view of the

matter, a writ for direction to the respondent – corporation is to pay retiral benefits including interest is maintainable. Taking into consideration the facts and circumstances of the case in hand, this Court is of the view that petitioner is held entitled to retiral benefits i.e. Gratuity and Leave Encashment alongwith interest @ 9% per annum from the date of acquittal i.e. December 11, 2014 till the date of actual payment. So far as the impugned order dated January 07, 2011 (Annexure P-5) is concerned, it is not sustainable in the eyes of law and deserves to be set aside for the simple reason that no order for dismissing a delinquent official can be made operative with retrospective effect. Thus, order dated January 07, 2011 stands quashed.

As regards, consideration of promotion of petitioner to the post of District Manager from the date his junior Baldev Singh was promoted, alongwith consequential benefits; and release of annual increments since the year 1997 are concerned, pursuant to the acquittal of petitioner by this Court, he shall be at liberty to take recourse to the remedies available under law or to initiate proceedings before appropriate forum to seek the necessary relief. However, with regard to the release of amount of ₹ 1 lac deposited with the Corporation in connection with criminal case, the petitioner may approach the concerned Court for the redressal of his grievances, if any.

In the light of what has been discussed, instant writ petition is allowed and the respondents are directed to disburse the benefits, referred to above. Compliance of this judgment be made within a period of three months from the date of receipt of a certified copy of this judgment and in case of non-compliance, the petitioner shall be at liberty to approach this

No order as to costs..

September 26, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No