

217 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.18848 of 2014 (O&M)
Date of decision : 19th January, 2017

Jai Parkash Bhargave

..... Petitioner

Versus

State of Haryana and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. R.K.Malik, Sr. Advocate with
Mr. Mandeep Singh, Advocate
for the petitioner.

Mr. Naveen Sheoran, DAG, Haryana.

KULDIP SINGH J. (ORAL)

The petitioner was working as Section Officer in the office of Director, Treasuries and Accounts Department, State of Haryana. The petitioner was arrested by the police on 08.06.1994 under Section 7 and 13 (1) (d) read with Section 13(2) under Prevention of Corruption Act(for short 'the Act'). He was suspended from service w.e.f. 30.06.1994 and was reinstated only on 22.11.1994. In the meanwhile, vide order dated 22.05.1997 (Annexure P-3) the promotions from Section Officer to the Accounts Officer were carried out and the petitioner was not promoted on account of pendency of criminal case. However, a post was reserved for him. Ultimately, petitioner was convicted on 31.05.2003 under Section 7 and 13 (1) (d) read with Section 13(2) under Prevention of Corruption Act and was sentenced to undergo imprisonment for two to three years along with fine.

Consequently, vide order dated 26.06.2008, he was served with three months notice intimating that he is being compulsory retired after attaining the age of 55 years. Accordingly, on the expiry of said notice period, petitioner stood compulsory retired on attaining the age of 55 years

on the ground that the petitioner has been convicted and sentenced to undergo imprisonment in a criminal case. Petitioner attained the age of superannuation on 30.06.2011. The appeal filed by the petitioner against the sentence and conviction was ultimately decided by this Court on 18.11.2013, vide judgment Annexure P-7 whereby the court allowed the appeal and set aside the conviction and sentence.

The petitioner had earlier approached this Court by way of filing CWP No.3792 of 2014 with a prayer that he should be reinstated from back date and be granted promotion and other consequential benefits. The said petition was disposed of with a direction to the respondent to decide the legal notice by passing a speaking order. Consequently, the speaking order (Annexure P-12) had been passed, whereby, the claim of the petitioner for reinstatement had been declined on the ground that the retirement order dated 26.06.2008 was not challenged within limitation. Further his absence period, due to suspension from 08.06.1994 to 22.11.1994 was not treated as duty period and he was found entitled only for subsistence allowances during the period of suspension which has already been paid to him. Regarding promotion as Accounts Officer/Senior Officer / Chief Accounts Officer, from the date his juniors have been promoted, the matter was referred to the Government. It comes out that the matter regarding promotion is still pending with the Government.

Respondent in reply, while relating the facts have reiterated the stand stating that he was firstly suspended w.e.f. 08.06.1994 and then compulsory retired due to conviction in a criminal case. The respondents have justified the impugned order endorsed dated 08.08.2014 (Annexure P-12) stating that petitioner cannot be reinstated as he has not challenged the

order of his compulsory retirement. It is further stated that case regarding promotion as Accounts / Senior Accounts Officer and Chief Accounts Officer from the date of his juniors were promoted has already been forwarded to the Government and the same is under process.

I have heard learned counsel for the parties and pleadings on record have been perused.

The factual position is not disputed, the petitioner was arrested on 08.06.1994 in a criminal case under Section 7 and 13 (1) (d) read with Section 13(2) under Prevention of Corruption Act in which he was ultimately convicted on 31.05.2003. However, vide judgment dated 18.11.2013, his conviction and sentence has been set aside and he stands acquitted, holding that prosecution failed to prove its case against the petitioner beyond shadow of reasonable doubt. Now this court is to see what is the effect of acquittal from a criminal case? The ultimate analysis is that the guilt of the petitioner could not be proved before a criminal Court and he has been acquitted. The promotion order (Annexure P-3) shows that while promoting the eligible employees, petitioner was ignored only on the ground that a criminal case is pending against him and one post was kept reserved for him. I am of the view that the stand of the respondent that he did not challenge the compulsory retirement order with a limitation is without any force.

So long as the conviction of the petitioner was in operation, he could not challenge the order of compulsory retirement which was justified in view of the fact that he stands convicted and sentenced by a Criminal Court. The cause of action arose to the petitioner only when his conviction was set aside by this Court on 18.11.2013 and thereafter he immediately

approached the respondent and when they did not decide his representation, he approached this Court. This Court directed the respondents to decide the representation, which was decided vide order dated 08.08.2014 (Annexure P-12). Therefore, petitioner challenged the order of his compulsory retirement within a limitation i.e. from the date the cause of action accrued. Therefore, the impugned order passed on 08.08.2014 (Annexure P-12) in this regard along with the order of compulsory retirement dated 26.06.2008 (Annexure P-4) are liable to be quashed.

So far as the suspension period of the petitioner from 08.06.1994 to 22.11.1994 is concerned, no breakup has been given by the petitioner as to how long he remained in police and judicial custody and when he was granted bail. Though he was reinstated w.e.f. 22.11.1994. In view of the matter, it is ordered that the period, during which the petitioner remained in the police and judicial custody, shall be treated as leave of the kind due and the remaining period shall be treated as period on duty. The entire period of suspension is to be computed for grant of pensionary benefits. The order of acquittal is having the same effect as if the petitioner was never convicted and sentenced. The net result will be that the petitioner will also be entitled to salary for the period, he remained under suspension due to his arrest in a criminal case and for the period during which he remained in police and judicial custody, he is entitled to leave and is also entitled for salary for the said period. Admittedly, the petitioner retired from service on attaining the age of superannuation on 30.06.2011. Now the petitioner will be only entitled to notional benefits in the shape of notional promotion from the date his juniors were promoted subject to the condition that his service record is otherwise satisfactory. Pay of the petitioner will

also required to be refixed and consequently, the pension and pensionary benefits will also required to be released. Petitioner will also to be entitled to release of gratuity and continuity of pension and re-fixation of the pay, ACP and other consequential benefits.

Petition is accordingly allowed in above noted terms.

Since, the pension and gratuity was not released though the petitioner was compulsory retired, the respondent shall also be liable to pay interest at the rate of 9% per annum on the same, starting three months from the date of order of compulsory retirement till the date of superannuation.

(KULDIP SINGH)
JUDGE

19th January, 2017

hemlata

Whether speaking / reasoned

Yes

Whether Reportable

No