

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

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CWP-23157-2014 (O&M)

Decided on : 09.08.2017

Mahavir Prasad Jindal

... Petitioner

Versus

State Bank of Patiala and another

.. Respondents

CORAM : HON'BLE MR.JUSTICE P.B. BAJANTHRI

Present : Mr.Animesh Sharma, Advocate
for the petitioner.

Mr.Anil K.Ahuja, Advocate
for the respondents.

P.B. Bajanthri , J. (Oral)

In the instant writ petition, petitioner has prayed for the following relief.

- “I) Issue a writ in the nature of mandamus directing the respondents to grant to the petitioner the benefit of continuity in service, increments, notional promotion and other consequential benefits that accrue to him, counting the period of suspension and dismissal of the petitioner from service i.e. from 14.09.1998 to 23.06.2001 and thereafter from 11.03.2002 to 24.09.2010, as period of service.
- II) Issue a writ in the nature of mandamus directing the respondent to consider, in light of the petitioner's acquittal and subsequent reinstatement, his period of wrongful suspension and dismissal i.e. from 14.09.1998 to 23.06.2001 and thereafter from 11.03.2002 to 24.09.2010 as period of service and to release all other consequential increments and notional benefits, other than back wages, duly entitled to the petitioner.
- III) Issue a writ in the nature of mandamus directing the respondent No.1 to grant the petitioner all wages and salary which were due to him for the period extending from 01.10.2010 to 12.04.2011 (Annexure P/3) for delay in reinstatement of the petitioner.”

The petitioner joined service with the respondent No.1-bank as a Cashier-cum-Clerk on 20.10.1983. Under the Prevention of Corruption Act, 1988, the petitioner was subjected to criminal proceedings with reference to the complaint dated 22.08.1998. In view of the allegations of the criminal complaint, petitioner was placed under suspension on 14.09.1998 and it was revoked on 23.06.2001. Petitioner was convicted on 06.02.2002. Due to conviction, he was dismissed from service on 11.03.2002. Petitioner aggrieved by the order of conviction, preferred an appeal. In appeal, he was acquitted on 24.09.2010 (Annexure P/1). Thereafter, he submitted a representation for his reinstatement on 30.09.2010. Respondents passed an order on 12.04.2011 reinstating the petitioner w.e.f. 22.04.2011. After his reinstatement, petitioner submitted application for payment of salary during intervening period of suspension and dismissal to reinstatement. The same was rejected by the respondents-Bank on the principle of 'No Work No Pay' on 05.07.2011. The communication dated 05.07.2011 (Annexure P/5) was the subject matter of writ petition No.14870 of 2011 which was decided on 17.07.2012. This Court set aside the communication/ order dated 05.07.2011 and further ordered that the petitioner is entitled to the salary for the intervening period. Respondents-Bank aggrieved by the order of the learned Single Judge preferred LPA No.1535 of 2012 which was decided on 12.12.2012 while affirming the order of the learned Single Judge passed in CWP No.14870 of 2011. The respondents-Bank preferred an appeal before the Supreme Court and it was decided on

28.04.2014 to the extent that the petitioner is not entitled for back wages. Thereafter, the petitioner sent a legal notice to the respondents-Bank for grant of notional promotion and considering continuity in service and all other consequential benefits. Respondents issued a reply to the notice dated 11.08.2014 (Annexure P/10) wherein, respondents have declined that the petitioner is not entitled to continuity of service or any other increment on the score that the matter has already been decided upto the Hon'ble Supreme Court and it has been held that petitioner is not entitled to any back wages. Hence, the present petition.

Learned counsel for the petitioner contended that in his earlier litigation, relief sought is only to the extent of salary during the intervening period of suspension and from the date of dismissal to reinstatement and the same has attained finality before the Hon'ble Supreme Court to the extent that the petitioner is not entitled to back wages. Therefore, the petitioner is entitled to other service benefits for the intervening period of suspension and date of dismissal to reinstatement. It was further pointed out that petitioner is entitled to regulate the suspension period as duty in view of the ***Chapter XLIII of the Disciplinary Action and Procedure***. It was also submitted that the petitioner is entitled to notional benefits during the intervening period to the extent that he is entitled for increments and promotion at par with the juniors who have been extended the benefit of increments and promotion.

Learned counsel for the respondents submitted that relief sought in the petition amounts to res judicata. Learned counsel for the

respondents relied upon *Explanation IV to Section 11 of the CPC* and cited two decisions (i) the Apex Court in case *Forward Construction Co. and others* Vs. *Prabhat Mandal (Regd.), Andheri and others*, 1986 (1) SCC 100 and this Court in case *Ramesh Kumar* Vs. *Punjab School Education Board* in CWP No.26185 of 2014 decided on 04.03.2016.

It was further submitted that in view of Section 10(1) b(1) of *the Banking Regulation Act, 1949*, for intervening period of suspension and date of dismissal to reinstatement, the petitioner is not entitled for any benefit including the service benefits as claimed by the petitioner. It was also submitted that for the purpose of earning increments and promotion, employee is required to fulfill certain criteria as imposed in the Banking regulation. Therefore, the petitioner could not satisfy the requisite criteria as he was out of service and he is not entitled for the relief sought in the CWP.

Heard learned counsel for the parties.

The question for consideration in the present writ petition is whether the petitioner is entitled to regulate his service condition for two spells, namely, from 14.09.1998 to 23.06.2001 (suspension period) and 11.03.2002 to 24.09.2010 (from dismissal to acquittal). Undisputedly, the petitioner is not entitled to back wages like arrears of salary during the aforesaid period since it was subject matter of litigation before this Court and the matter was taken upto Supreme Court and it has attained finality to the extent that petitioner is not entitled to back wages. Insofar as the claim of the petitioner that he is entitled to notional benefits during the

intervening period of suspension and date of dismissal to reinstatement, it is to be examined with reference to the service regulation in respect of increments and promotion. If the regulation is governed and extended for promotion, that is only with reference to seniority, in that event, the petitioner is entitled. If any criteria like experience in a particular cadre and others references are required to be taken into account for the purpose of extending the benefit of increment and promotion, in that event, respondents are required to examine with reference regulation whether the petitioner is entitled or not.

Coming to the res judicata issue is concerned, it is to be noted that after his acquittal in the criminal proceedings, petitioner has submitted a representation for extending the benefits of salary for the intervening period, for which the respondents have specifically denied vide Annexure P-5 stating that the petitioner is not entitled to salary for the intervening period on the principle 'No Work, No Pay' whereas in the present petition, grievance of the petitioner is relating to continuity in service, increment, notional promotion and other consequential benefits like counting period of suspension and dismissal as a period of service.

Having regard to the demand and prayer in earlier litigation and the present litigation which are different question of principle of res judicata do not arise for the reason that his grievance in the earlier litigation was only to the extent of that whether the petitioner is entitled to salary for the intervening period or not. To that extent, it has attained finality before the Supreme Court to the extent that the petitioner is not

entitled for any back wages. It is to be noted that neither the respondents-bank, nor this Court and the Supreme Court have dealt with the matter relating to notional benefits and continuity of service for the intervening period like grant of increments and notional promotion. Therefore, the contention of learned counsel for the respondents that relief sought in the present petition read with the prayer in the earlier litigation principle of res judicata not attracted.

Supreme Court in the case of **Sarva Shramik Sangh** Vs. **Indian Oil Corporation Ltd. and others**, 2009(11) SCC 609 has held as under:-

“11.4) The facts are completely different here. The issue in the first writ petition was with reference to section 10 of CLRA Act. The issue in the second petition was whether the dispute (relating to their claim that they were the direct employees of IOC) should be referred under section 10(1)(c) of the ID Act. The decision in SAIL II will not therefore apply. When the parties are different, issues are different, reliefs are different, the question of either res judicata, or finality or proceedings, acquiescence or estoppel will not arise”.

Having regard to the fact that the petitioner was acquitted in the criminal case on 24.09.2010, he is entitled to reinstatement within a reasonable period of three months whereas he has been reinstated w.e.f. 24.04.2011 vide order dated 12.04.2012. Thus, there is delay of four months while excluding three months as reasonable period for consideration the petitioner's grievance, the petitioner is entitled to arrears of salary after three months from the date of acquittal i.e. 24.09.2010. The same shall be calculated and disbursed to the petitioner

by the respondents-Bank. The petitioner is entitled to count the intervening period from 14.09.1998 to 23.06.2001 and from 11.03.2002 to 24.09.2010 towards increments and promotion as he has been acquitted in the criminal case. Section 10 of Banking Regulation Act, 1949 and Chapter XLIII of the Disciplinary Action and Procedure would not be a hurdle in view of the factual aspects of the matter.

If there is any hurdle that petitioner is not entitled to increments and promotion if any in not fulfilling the criteria laid down under the Increment and Promotional policy, in that event, the petitioner is entitled to count the entire period only for the purpose of monetary benefits on attaining the age of Superannuation. If the criteria for increments and promotion is only based on seniority, in that event, the petitioner's claim be considered by respondents-Bank and pass an appropriate order or notional benefits within a period of four months from today and communicate the same to the petitioner.

With the above observations, petitions stands disposed of.

[P.B. Bajanthri]
Judge

09.08.2017

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Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No