

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

CWP No. 542 of 2015

Date of Decision: 09.03.2017

GURMIT SINGH

... Petitioner

VS.

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Vivek K. Thakur, Advocate,
for the petitioner.

Mr. Anshul Gupta, AAG, Punjab.

KULDIP SINGH, J. (Oral)

The petitioner has preferred this writ petition under Article 226/227 of the Constitution of India praying for issuance of writ in the nature of certiorari for setting aside the order dated 26.09.2014 endorsed on 25.11.2014 (*Annexure-P-6*) passed by the respondent No. 1 vide which the appeal filed by the petitioner has been rejected and for issuance of writ of Mandamus, directing the respondents to release the retiral benefits of the petitioner alongwith interest, by treating the suspension period as duty period.

Brief facts of this case are that the petitioner, who was working as Lecturer History in Government Model Senior Secondary School, Bhatnura, Kapurthala, was booked in an FIR No. 53 dated 25.06.1998 registered under Sections 326, 325, 323, 342, 148 and 149 IPC at Police Station, Bholath, District Kapurthala. Consequently, he was placed under suspension w.e.f. 26.06.1998. He remained under suspension upto 24.01.2006 and reinstated thereafter in the respondent-department. Later on, the petitioner superannuated from service on 30.11.2010. It also comes out that during his

CWP No. 542 of 2015

service, the said trial under FIR resulted in his conviction under Sections 323/324/325/342/148 & 149 IPC vide judgment dated 25.04.2007 (*Annexure P-2*). However, in an appeal, learned Sessions Judge, Kapurthala vide judgment dated 13.02.2008 (*Annexure P-3*), released the petitioner on probation under section 360 Code of Criminal Procedure. In any case, the petitioner continued to be in service with the respondent-department and superannuated on 30.11.2010. Thereafter, the petitioner kept making representation for deciding his suspension period w.e.f. 26.06.1998 to 24.01.2006. Thereafter, he served a legal notice dated 24.11.2014 (*Annexure P-5*) addressed to the Principal Secretary to Government of Punjab, Department of Education, who passed the order dated 26.09.2014 endorsed on 25.11.2014 (*Annexure-P-6*) vide which it was held that since, the petitioner was not fully exonerated, therefore, his request for allowing 100% pension including commutation and release of all benefits including gratuity was rejected. The petitioner has prayed for quashing of the said order dated 26.09.2014 endorsed on 25.11.2014 (*Annexure-P-6*) and also for release of all of the retiral benefits.

The reply of the State shows that the suspension period of the petitioner was treated as non-duty period. However, DCRG (Provisional) amounting to ₹1,63,067/-, GPF amounting to ₹90,137/-, GIS amounting to ₹1,152/- have been released and provisional pension is also being paid to the petitioner. The case of payment of leave encashment amounting to ₹91,191/- has also been forwarded to the District Treasury Officer, Jalandhar on 29.09.2015. The case of the petitioner for regular pension and gratuity was forwarded to the Accountant General, Punjab on 22.11.2010 (*Annexure R-3*)

CWP No. 542 of 2015

and was returned by the said office on 29.12.2010 with the observations that till the decision with regard to period of suspension of the petitioner is taken by the respondent-department, the retiral benefits of the petitioner may be released on provisional basis. Therefore, vide order dated 26.09.2014 endorsed on 25.11.2014 (Annexure P-6) the decision regarding suspension period was taken and forwarded to the office of Accountant General, Punjab, which could not be finalised due to the difference of the period of suspension mentioned in the order dated 26.09.2014 (*Annexure P-6*) and the actual period of suspension as per the service book. Now, the matter has now been submitted again to the office of Accountant General, Punjab on 04.11.2015.

Admittedly, on account of registration of case under Sections 326, 325, 323, 342, 148 and 149 IPC at Police Station, Bholath, District Kapurthala on 25.06.1998, the respondent-department was very prompt in suspending the petitioner w.e.f. 26.06.1998. Thereafter, for the next seven and half years, respondent-department slept over the matter and kept the petitioner under suspension. The trial of the petitioner ultimately ended in his conviction under Sections 324, IPC, 325/149 IPC, 323/149, 342 and 148 IPC. Thereafter, the respondent-department reinstated the petitioner and did not take any departmental action against the petitioner and he continued to serve in the respondent-department. However, in an appeal, learned Sessions Judge, Kapurthala, while maintaining the conviction of the petitioner, released the petitioner on probation under section 360 of the Cr. P.C vide judgement dated 13.02.2008 (Annexure P-3). Thereafter, the petitioner continued in service and retired as such on 30.11.2010.

CWP No. 542 of 2015

According to the stand taken by the respondent, the said suspension period of the petitioner is being treated as non duty period vide order dated 26.09.2014 endorsed on 25.11.2014 (*Annexure P-6*). The relevant extract of the said order is as under: -

“Whereas, Sh. Gurmeet Singh vide his representation dated 11.09.2012 pleaded that since he has been released on probation his suspension from 10.12.1998 to 29.12.2005 be regularized as held by the Hon’ble High Court of Punjab and Haryana in case titled as Darshan Singh Vs. State of Punjab reported as 7011 (3) SCT 796 that the respondents are entitled to 100% persion including commutation and release of all other benefits including gratuity since the criminal proceedings are totally unrelated to the service misconducts.

And whereas, he was given an opportunity to be heard in person on 26.09.2014. As the petitioner was not fully exonerated, I do not find any weight in the arguments advanced by him.

Now therefore, I, Anjali Bhawra, IAS Principal Secretary, School Education in exercise of the Powers conferred by the (Punishment and Appeal) Rules, 1970, reject the appeal dated nil of Sh. Gurmeet Singh, Lecturer, History, now retired.”

The perusal of the said order shows that what the petitioner has prayed before the Principal Secretary to Government of Punjab, Department of Education, was that he is entitled to 100% pension including commutation and release of other retiral benefits including gratuity, as the criminal proceedings are totally unrelated to service misconduct. That prayer of the petitioner was declined. It was no where held in the impugned order that the suspension period is to be treated as non duty period. In fact, it comes out that till date, no

CWP No. 542 of 2015

order has been passed about the fate of the said suspension period by the respondent-department.

It is assumed that during the said suspension period the petitioner was getting subsistence allowance. The limited prayer of the petitioner is that the petitioner does not claim salary for the said suspension period. However, the same may be treated as duty period for all other intents and purposes including fixation of pension and all other retiral benefits.

The petitioner retired from service in the year 2010 and approximately seven years have elapsed. The matter is still hanging fire and the department is still unable to pass any order regarding the said suspension period, though, in the written statement, the stand has been taken by the respondents that the said suspension period be treated as non-duty period. Therefore, it can be presumed that respondent-department will follow the said stand and will treat the said period as non-duty period.

I am of the view that once the petitioner is released on probation and the department has not decided to take any departmental action against the petitioner under Rule 2.2 (b) of Punjab Civil Services Rules, the said period of suspension w.e.f 26.06.1998 to 24.01.2006 is to be treated as duty period for all intents and purposes and is to be computed as qualifying for pension and other retiral benefits, though, learned counsel for the petitioner has contended before this Court that the petitioner does not press for the salary for the suspension period, except the subsistence allowance which was paid already.

It being so the present petition is allowed and the order dated 26.09.2014 endorsed on 25.11.2014 (*Annexure P-6*) is ordered to be set aside to the extent that the suspension period of the petitioner w.e.f 26.06.1998 to

CWP No. 542 of 2015

24.01.2006 be treated as duty period for all intents and purposes except for the full salary. However, the said period shall be continued as a qualifying period for grant of pension and other retiral benefits.

Consequently, the respondents are directed to re-fix the pension and other retiral benefits and release the same after considering the suspension period within three months from the date of receipt certified copy of this order.

March 9, 2017

Suresh Kumar

**[KULDIP SINGH]
JUDGE**

<i>Whether speaking / reasoned</i>	:	✓ Yes	/	No ✓
<i>Whether Reportable</i>	:	Yes	/	No