

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

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**RSA No.328 of 2014 (O&M)
Date of Decision : 30.11.2017**

Braham Parkash

..... Appellant

Versus

Haryana State through Collector, Gurgaon,
Distt. Gurgaon and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Pankaj Jain, Advocate
for the appellant.

Dr. Sushil Gautam, D.A.G., Haryana
for the respondents.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the judgments of the lower appellate Court below partly allowing the appeal filed by the State.

The appellant was proceeded against and dismissed by order dated 27.10.1995. He filed an appeal which was partly allowed by order dated 29.11.1996. As per the appellate order the punishment of dismissal was set aside but a lesser penalty was imposed (with which we are not concerned). The relevant part of the penalty which was imposed was that he would not be given any payment for the period during which he remained out of service. He was, however, actually reinstated only on 17.03.1997 and the respondents did not pay him anything from 27.10.1995 to 17.03.1997 which led him to file the instant suit.

The trial Court decreed the suit, set aside the punishment and ordered that he be released full salary right from 27.10.1995 to 17.03.1997. The appellate Court, however, partly allowed the appeal filed by the respondents and held that the denial of any payment to him for that period was valid.

Counsel for the appellant has argued that the judgment of the appellate Court is wrong while the Deputy Advocate General has asserted that the judgment of the trial Court was wrong. The Rule which would apply is Rule 7.3 of the Punjab Civil Services Rules as applicable to Haryana Vol. 1 Part 1 Chapter 7. The relevant portion of the Rule is quoted herein below :-

“7.3 (1) When a Government employee, who has been dismissed, removed, compulsorily retired, or suspended, is reinstated or would have been reinstated but for his retirement on superannuation the authority competent to order the reinstatement shall consider and make a specific order: -

(a) regarding the pay and allowances to be paid to the Government employee for the period of his absence from duty, occasioned by suspension and/or dismissal, removal or compulsory retirement ending with his reinstatement on or the date of his retirement on superannuation as the case may be, and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Where the authority mentioned in sub rule (1) is of opinion that the Govt. employee has been fully exonerated or, in case of suspension, that it was wholly unjustified, the Govt. employee shall be given the full pay and allowances to which he would have been entitled, had he not been dismissed, removed, compulsorily retired or suspended, as the case may be.

(3) In other cases, the Govt. employee shall be given such proportion of such pay and allowances as such competent authority may prescribe:

Provided that the payment of allowances under sub-rule (2) or sub-rule (3) shall be subject to all other conditions under which such allowances are admissible.

Provided further that such proportion of such pay and allowances shall not be less than the subsistence and other allowances admissible under rule 7.2.”

A perusal of this Rule shows that Rule 7.3 (1) (a) deals with the general power which the appellate authority may exercise with regard to the entitlement of the employee for pay and allowances. Rule 7.3 (2) lays down that where the employee is fully exonerated he would be entitled to full salary and allowances for the period he remained out of service. Rule 7.3 deals with the other cases. As per the Rule 7.3 sub Rule 3 and the provisos, in a case where an order of dismissal is set aside in appeal the pay and allowances admissible to the employee can not be less than the subsistence allowance computed under Rule 7.2.

The Deputy Advocate General is not able to refute this argument and has suggested that the matter be remitted back to the punishing authority to decide this aspect.

Learned counsel for the appellant has however, countered by arguing that the minimum payable under the second proviso is the subsistence allowance and rather than send the matter back to the appellate authority where he might get something more also, he would be satisfied if from 27.10.1995 i.e the date of dismissal to 29.11.1996 i.e. the date of the appellate order he be given the allowances as computed under Rule 7.2 but

salary because with the order of the appellate authority he was entitled to be reinstated immediately.

I find this to be a fair submission and consequently hold that for the period 27.10.1995 to 29.11.1996 the appellant would be entitled to subsistence allowance computed in terms of Rule 7.2 and for the period 30.11.1996 to 17.03.1997 he would be entitled to the full salary. If the payment is not released to him within one month from the date of receipt of certified copy of this order he would be entitled to interest thereon @6% per annum from the date/s the amount/s fell due till the date of payment.

The appeal is disposed of in the above terms.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

30.11.2017

Pooja sharma-I

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No