

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

CWP No.3330 of 2018 (O&M)

Date of decision: 14.02.2018

Gurmail Singh

...Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Raj Kaushik, Advocate for the petitioner(s).

Jitendra Chauhan, J. (Oral)

By way of the present petition, the petitioner(s) seek(s) issuance of a writ in the nature of certiorari for quashing the impugned order dated 01.02.2016 (Annexure P-12) whereby the suspension period was treated as leave without pay and order dated 11.04.2017, vide which the appeal preferred by the petitioner was rejected and the decision of appeal conveyed to the petitioner vide Annexure P-15.

It is contended that the petitioner was appointed as Khalasi by the respondents, vide order dated 18.07.1991. On 10.09.2001, Addl. Chief Administrator, PUDA, Mohali marked an enquiry against the petitioner regarding issuance of 'No Objection Certificate' on the basis of which loans from different banks after submitting fake documents had been availed. During the enquiry, the General Manager (R), PUDA was asked to produce the original record but record was not produced. The statement of the petitioner was recorded by the Enquiry Officer and on

the basis of statement, the Enquiry Officer, vide its report dated 05.10.2001, held that due to non cooperation of General Manger (R) Mohali, it is not possible to fix the responsibility of the petitioner but the misplacement of the file from the office depicts that the forged NOC had been issued in connivance with the office. Thereafter, the petitioner was charge-sheeted, however, the copy of charge-sheet was not supplied to him and the petitioner had requested to the competent authority to make him available the copy of charge-sheet. During the pendency of enquiry, a criminal case was registered against the petitioner by the respondents, vide FIR No.343 dated 25.02.2003. Subsequently, another FIR No.253 dated 05.07.2003 was registered on a private complaint against the petitioner by financier from whom the petitioner had availed loan. However, the petitioner was acquitted in both the FIRs by the competent Court and the petitioner was reinstated into service by the respondent-Departments, however, the suspension period was not treated as duty period by the respondents.

Heard.

A bare perusal of the record would reveal that the petitioner was charge-sheeted and placed under suspension on the charges of issuance of NOC for electricity connection by putting signatures of Addl. Chief Administrator, PUDA, Mohali; for availing of loans from different banks after submitting fake and forged documents. The argument raised that copy of the charge sheet was not supplied to the petitioner is repelled as during the enquiry, the publication was done for supply of copy of

charge sheet and vide letter dated 04.03.2004, a show cause notice had been issued along with copy enquiry report whereby the petitioner was asked to produce his defence and in case no reply is received, then the punishment of stoppage of two annual increments with cumulative effect would be confirmed. In response to the letter dated 04.03.2004, the petitioner vide letter dated 18.03.2004 accepts the punishment. Thereafter, the petitioner was reinstated into service during the pendency of trial. However, the petitioner was declared as a proclaimed offender by the police and he surrendered before the police and was taken into custody due to which he was again suspended from the date of his custody i.e. 05.08.2012. The petitioner has not assailed the order of punishment of stoppage of two annual increments which is intact.

Hon'ble the Supreme Court in **State of Punjab Vs. Jaswant Singh Kanwar**, 2014(13) SCC, 622 has held as under:-

“18. A careful reading of the language employed in Rule 4.9(a) of the Punjab Civil Service Rules Volume I, Part I read with Rule 7.3-(B)(1) would stipulate the conditions on which service counts for increments in a time-scale. The aforesaid provision suggests that only the period spent on duty in a post would be counted for the purpose of increments. Rule 7.3(B)(1) would further stipulate that upon reinstatement of a suspended employee, the competent authority shall consider and make a special order regarding the pay and allowances to be paid to the government employee for the period of his absence from duty including the period of suspension, preceding his dismissal, removal or compulsory retirement, as the case may be and whether or not the said period shall be treated as a period spent on duty. The competent authority in the present case after a careful consideration, in accordance with the rules had although

thought it fit to grant the pay and allowances not exceeding the subsistence allowance already granted to the respondent during the period of suspension but has not granted increments for the period of suspension i.e the period not spent on duty.

19. It is an admitted fact that the respondent was kept under suspension pending departmental inquiry with effect from 17-2-1988. The disciplinary authority, by its order dated 22-10-1998 has imposed a major penalty on the respondent by way of stoppage of two increments with cumulative effect. But subsequently, the disciplinary authority and the High Court have concurred that the period of suspension was period not spent on duty and, therefore, keeping in view the rules applicable and the general principles of service law jurisprudence, the respondent would not be entitled to any increment during the aforesaid period of suspension. We, therefore, cannot sustain the orders passed by the courts below. Accordingly, while allowing the appeal, we set aside the orders passed by the learned Single Judge as affirmed by the Division Bench of the High Court. No costs. Ordered accordingly”.

Keeping in view the fact that the petitioner remained a proclaimed offender, therefore, no fault can be found in the impugned order dated 01.02.2016 (Annexure P-12) and orders dated 11.04.2017 and 04.05.2017 (Annexure P-14 and P-15) respectively.

Accordingly, finding no merit in the instant petition, the same is hereby dismissed.

14.02.2018

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(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :
Whether Reportable :

Yes No
Yes No