

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.519 of 2018

Date of Decision: 28.08.2018

Harkesh Kumar

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.N.C.Kinra, Advocate, for the petitioner.

Mr.Nidhi Garg, AAG.Haryana.

RITU BAHRI, J. (ORAL)

Petitioner is seeking quashing of the order dated 22.06.2017 (Annexure P-10) to the extent of treating the period from 04.06.2015 to the date of dismissal till 22.06.2017 and further seeking directions to the respondents to treat the aforesaid period from 04.06.2015 to 22.06.2017 as a duty period for all intents and purposes and to release all consequential retiral and other benefits.

Petitioner had joined the services of the respondents/Department as constable on 26.01.1991. He was promoted as Head Constable in the year 2007. On 12.05.2011, a criminal case bearing FIR No.57 was registered on 12.05.2011 at the behest of the complainant for the offence under Sections 148, 149, 323, 325, 506 IPC at P.S.Raipur Rani. The petitioner and others were convicted and sentenced by the Court of ACJM, Panchkula vide judgment dated 31.10.2014/4.11.2014. The petitioner and others preferred criminal appeal on 17.11.2014 as provided under the code of Criminal Procedure . The appeal came to be decided on 04.06.2015 by the learned Addl. Sessions Judge, Panchkula vide judgment dated 4.06.2015 by the learned Addl.Sessions Judge, Panchkula vide judgment dated 04.06.2015 (Annexure P-1) and the sentence awarded to the petitioner and others was

substituted with the release of the petitioner and others under the Probation

of Offenders Act, 1958 and it was also recorded in the judgment that the conviction in the criminal case would not be a disqualification in the service career of the petitioner and others. Vide order dated 04.06.2015 petitioner was dismissed from service. After the judgment of criminal appeal dated 14.07.2015, on 26.08.2015, the petitioner also made application (Annexure P-3) to respondent No.4 alongwith a certified copy of the judgment dated 04.06.2015 making a humble prayer to permit the joining of the duties by the petitioner. A similar application dated 26.08.2015 (Annexure P-4) was also made by the petitioner to respondent No.3 permitting the petitioner to join his duties. The applications were kept pending and vide letter dated 11.09.2015 (Annexure P-5), the request of the petitioner was declined by respondent No.4 and petitioner was conveyed the order of dismissal dated 04.06.2015. Against the order of dismissal, petitioner filed statutory appeal (Annexure P-6) and this appeal was also dismissed vide order Annexure P-7 by respondent No.3. Thereafter, petitioner challenged the order dated 04.06.2015 vide which the petitioner was dismissed from service and order dated 11.09.2015 passed by respondent No.4 vide which the petitioner was declined to join his duties after the decision of his criminal appeal releasing the petitioner on probation and also the order passed by the respondent No.3 vide which the statutory appeal filed by the petitioner was dismissed by way of filing CWP No.5748 of 2016. The writ petition was allowed vide judgment (Annexure P-8) and the matter was remanded back to the authorities for fresh decision by taking into consideration the order dated 04.06.2015 passed in criminal appeal and the fact that petitioner had rendered 24 years or service. Pursuant to the order passed (Annexure P-8), the impugned order dated 22.06.2017 (Annexure P-10) has been passed vide which, petitioner was taken back in service from the date of his dismissal i.e. 04.06.2015 to 22.06.2017 treated as LWP i.e. Leave Without Pay. After the abovesaid order was passed, petitioner has taken voluntary retirement vide order dated 24.07.2017 (Annexure P-12). Learned counsel for the petitioner has referred to the judgment passed by the appellate Court dated 04.06.2015 (Annexure P-1) whereby, petitioner has been released on probation and in paragraph 14 it has been observed as under:

“It is worthwhile to mention here that no

disqualification could be attached by virtue of Section 12 of Probation Offenders Act and this benefit of probation will not caused any effect on the service career of the appellants and the appellants will not suffer from any disqualification attaching to a conviction of an offence under such law. Thus all the appellants are entitled to avail benefits of Section 12 of the Probation of Offenders Act, 1958.

Petitioner has further argued that after registration of the FIR and during the pendency of the trial , the petitioner was never suspended nor any departmental proceedings have initiated against him and hence, appeal was allowed and he was released on probation. Impugned order dismissed him from service has been passed vide order dated 04.06.2015 and even once this order has been set aside by this Court dated 10.01.2017 (Annexure P-8) by remanding the matter before the authorities to consider the case of the petitioner afresh from the date of dismissal but respondent/Authorities had reinstated the petitioner w.e.f. 22.06.2017. As such, petitioner has challenged the period i.e. 04.06.2015 to 22.06.2017 may be counted as duty period.

The question for consideration is that whether the petitioner may be granted the benefit of service from 04.06.2015 to 22.06.2017 keeping in view the judgment of the learned Additional Sessions Judge, Panchkula dated 04.06.2015(Annexure P-1).

Learned counsel for the respondents has argued that petitioner is not entitle to get this benefit on the principle of no work no pay and even his case for voluntary retirement has been accepted by the department vide order dated 24.07.2017. The question for consideration before this Court is that once the petitioner had been released on probation, department should have been reinstated him immediately and moreover, delay caused in reinstatement of petitioner was on account of department and as such, delay in reinstatement cannot be attributed to the petitioner. The judgment of the trial Court was very clear that petitioner was being released on probation and as such, department is liable to be held for delay occurred for the period

w.e.f. 04.06.2015 to 22.06.2017.

In view of the above, present writ petition is allowed by giving directions to the respondent/Department to treat the period w.e.f. 04.06.2015 to 22.06.2017 as a duty period for intents and purposes with all consequential retiral and other benefits.

(RITU BAHRI)
JUDGE

28.08.2018

anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No