

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No.510 of 2018 (O&M) in
CWP No. 7326 of 2017
Date of decision: 05.04.2018

Mehar Singh

.... Appellant

Versus

State of Haryana and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL.
HON'BLE MR. JUSTICE B.S. WALIA.**

Present: Mr. Dilbagh Singh, Advocate for the appellant.

B.S. Walia, J.

[1] Intra-court appeal has been filed against order dated 28.08.2017 whereby the writ petition praying for quashing of order dated 12.08.2016 (Annexure P-8) whereby relief for counting entire service of the appellant from 12.07.1988 to 21.10.2008 for the purpose of pensionary benefits including different spells of suspension period as also to release 50% subsistence allowance along with relief of 2nd ACP on completion of 20 years of service as well as grant of interest on the delayed period from 21.10.2008 onwards on the pensionary benefits, was dismissed.

[2] The appellant had earlier filed CWP No.5425 of 2015 which was disposed of vide judgment dated 27.09.2016 (Annexure P-6) holding the appellant entitled to subsistence allowance for the period he remained under suspension between 20.11.1991 to 04.05.1992 and 14.01.2003 to 26.04.2003

as well as to count the aforementioned two spells of suspension period

towards qualifying service for grant of pension. Respondents were further directed to count service of two spells of suspension period of the appellant and if he found fulfilling all the terms and conditions required for grant of ACP on completion of 20 years of service to pass appropriate orders in respect thereto.

[3] Still being unsatisfied, the appellant preferred LPA No.2374 of 2016 against order dated 27.09.2016 passed in CWP No.5425 of 2015 which was disposed of by observing that on reduction of punishment and substitution whether lesser punishment, the appellant had rightly been treated as compulsory retired w.e.f. 21.10.2008 that is the date of award of original punishment on which date he had earlier been removed from service but by further observing that in case the appellant was entitled to pension from the date of compulsory retirement i.e. 21.10.2008, he could raise such claim before the Competent Authority which would decide the same in accordance with law. Thereafter, the appellant filed RA No.14 of 2017 which was disposed of vide order dated 01.05.2017 (Annexure P-11) by observing that if the Competent Authority passed any order which did not redress the appellant's grievance regarding pension claim, he would be at liberty to challenge the same before an appropriate forum.

[4] Claim of the appellant for counting suspension period towards pension as well as grant of ACP was considered and on account of the appellant not found to be fulfilling the requisite period of 20 years of service, prayer for grant of ACP Scale was declined.

[5] The Writ Court found that grant of interest on delayed payment had already been declined while subsistence allowance had already been ordered to be paid. Besides, both the suspension periods referred to above

had already been ordered to be counted towards grant of pensionary benefits

as well as grant of ACP Scale in case the appellant was found to be completing 20 years of service. The Writ Court came to the conclusion that similar relief having been claimed as had been claimed in the earlier writ petition. It was not open to the appellant to split up the claim in view of Order II Rule 2 of the CPC.

[6] The direction of the Writ Court in CWP No.5425 of 2015 was to count the two spells of suspension period for grant of pension under Rules and if the appellant was found to be fulfilling all the terms and conditions required for grant of ACP on completion of 20 years of service then appropriate orders in respect thereto were to be passed. If on consideration of the claim of the appellant in accordance with Rules, the Competent Authority has found the appellant not fulfilling the parameters in respect thereto, therefore, not being entitled to the relief claimed, the same in our view would not confer any right on the appellant to challenge the impugned order without showing his entitlement to the relief claimed being covered as per Rules.

[7] In the light of the position as noted above, we do not find any infirmity with the order of the Writ Court warranting intervention.

[8] Accordingly, the appeal is dismissed in limine.

(Rajesh Bindal)
Judge

(B.S. Walia)
Judge

05.04.2018
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| 1. | Whether speaking/reasoned | : | Yes/No. |
| 2. | Whether reportable | : | Yes/No. |