

(128)

**CM Nos.12834-35-C-2018 in/and
RA-RS-84-C-2018 in
RSA-656-2015**

State of Punjab and others Vs. Sukhdarshan Singh

Present: Mr. Gurminder Singh, Senior Advocate with
Ms. Harpriya Khaneka, Advocate for the
review applicant/respondent.

CM-12834-C-2018

Heard.

Delay of 51 days in filing the Review Application is condoned
for the reasons stated in the application as well as affidavit.

CM stands allowed.

CM-12835-C-2018

Annexure A-1 to Annexure A-3 are taken on record.
Exemption is granted from filing the certified copies thereof.

CRM stands allowed subject to all just exceptions for the
reasons stated in the application as well as affidavit.

RA-RS-84-C-2018

In the instant review application, grievance of the applicant is
that while disposing of RSA No.656 of 2015, wrongly Rule 7.3 (1) of the
Punjab Civil Services Rules, Volume-I Part-I has been interpreted.

2.) Learned counsel for the respondent-review applicant submitted
that relevant provision for the purpose of considering grievance of the
respondent-review applicant is under the Punjab Roadways (Operational)
State Service, Class III Rules, 1977 Notified on 2.6.1997 (for short 'the
Rules, 1977), wherein Punjab Roadways have adopted Punjab Civil

Services (Punishment and Appeal) Rules, 1970 (for short 'the Rules, 1970) in terms of Rule 15 of the Rules, 1977. Learned counsel for the respondent-review applicant submitted that respondent-review applicant was placed under suspension in the year 1988 with reference to FIR filed in the year 1986. Pursuant to the aforesaid FIR, respondent-review applicant is stated to have been acquitted on 22.12.2006. Whereas, the present litigation is arising out of FIR registered on 09.04.1995, wherein, respondent-review applicant was convicted on 17.09.1996. Based on the conviction order, show cause notice was issued on 24.07.2002 and his services have been terminated on 13.03.2003. Thereafter, he had preferred appeal before the Government. Appeal was allowed to the extent of setting aside the order of termination, reinstating him and suspension period has been treated as *dies-non*. It was submitted that question of treating the suspension period as *dies-non* in the present litigation do not arise for the reasons that arising out of the FIR registered on 09.04.1995, respondent-review applicant was never placed under suspension. Therefore, question of treating the suspension period as *dies-non* by the Appellate Authority-Government is without authority of law and contrary to the factual aspect. Therefore, relevant Rules are Rule 5, Rule 13 and Rule 15 of the Rules, 1970.

3.) No doubt while deciding RSA, due to non-assistance in the matter, Rule 7.3 of Punjab Civil Services Rules, Volume-I, Part-I has been taken into consideration instead of Rules, 1977 read with Rules, 1970. Perusal of Rules, 1977 and Rules, 1970, respondent-review applicant's termination is under special provision viz., Rule 13, with reference to his conviction. Against the order of termination, respondent-review applicant preferred an appeal before the Government. Appellate-Authority

Government set aside the order of termination and regulated the suspension period as *dies-non*. Learned counsel for the respondent-review applicant's contention that respondent-review applicant was never placed under suspension w.r.t. FIR dated 09.04.1995, whereas, he has been placed under suspension with reference to FIR registered in the year 1986. As on the FIR dated 09.04.1995, respondent-review applicant was already placed under suspension. Therefore, question of once again placing him under suspension with reference to another FIR or initiation of criminal proceedings do not arise. Undisputed facts are that respondent-review applicant continued to be under suspension till 13.03.2003, the date on which his services were terminated. His suspension with reference to FIR registered in the year 1986 would be regulated with reference to his acquittal on 22.12.2006 (FIR registered in the year 1986). The Appellate Authority is empowered to regulate the suspension period under Rule 15 (f) of the Rules, 1970 which reads as under:-

“(f) determining whether or not the period from the date of his suspension or from the date of his dismissal, removal, compulsory retirement or reduction to a lower service, grade, post, time-scale of pay or stage in a time scale of pay to the date of his reinstatement or restoration to his service, grade or post shall be treated as a period spent on duty for any purpose.

Explanation – In this rule -

- (i) the expression 'Government employee' includes a person who has ceased to be in Government service;*
- (ii) the expression 'pension' includes additional pension, gratuity and any other retirement benefit.”*

factual aspects of the respondent-review applicant relating to suspension in the year 1988 and it was never challenged by the respondent-review applicant or sought for revoking suspension order. Thus, it remains intact even as on the date of termination. In view of these facts and circumstances, review petition is allowed only with reference to quoting of wrong provision like Rule 7.3 of the Punjab Civil Services Rules, Volume-I Part-I. Contention of the review-applicant that he was not placed under suspension with reference to later FIR dated 9.4.1995, therefore, question of treating suspension period as *dies-non* is not permissible cannot be accepted as he was already placed under suspension with reference to FIR in the year 1988 and continued to be under suspension till order of termination as suspension merges with termination. Hence, review-applicant has not made out a case.

4.) Review application stands disposed.

(P.B. BAJANTHRI)
JUDGE

September 19, 2018.
sandeep