

Sr. No.204

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

CWP No.1096 of 2006 (O&M)

Date of Decision: 01.11.2019

Major Singh

... Petitioner

Versus

Punjab State Civil Supplies Corporation Limited and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. H.C.Arora, Advocate,
for the petitioner.

Ms. Deepali Puri, Advocate,
for the respondents.

ARUN MONGA, J.(ORAL)

Inter alia, issuance of a writ in the nature of certiorari has been sought seeking to quash order dated 11.06.2004 (Annexure P-5) and consequent issuance of a writ in the nature of mandamus commanding the respondents to treat the period from the date of dismissal from service i.e. 10.09.1998 to the date of reinstatement in service i.e. 07.07.2004 as duty period for all intents and purposes.

2. One of the lead contentions amongst others raised by learned counsel for the petitioner is that for no fault of the petitioner, the departmental appeal filed by him was kept pending and owing to the delay entirely attributable to the Appellate Authority setting aside of the dismissal order took as long as about 6 years during which period petitioner continued to be out of job.

3. Per contra, learned counsel for the respondent-PUNSUP submits that due to heavy pendency of the appellate work, the turn of the hearing of the appeal got delayed before the Appellate Authority and it was for this reason that eventually reinstatement of the petitioner also could not happen since during the intervening period, operation of the impugned order was not stayed.

4. I have heard the rival contentions of the learned counsel and after perusal of the record appended thereto, I am of the opinion that the stand of the respondent-PUNSUP flies in the face of record, which shows that another colleague of the petitioner having been reinstated with effect from 12.05.2000, who too had preferred an appeal around the same time as the petitioner herein.

5. Not only that, I am in agreement with the contention of the learned counsel for the petitioner that the disciplinary authority had passed an order of dismissal of the petitioner as also the other similarly situated co-employee Hari Singh which were challenged by both of them around the same time before the Appellate Authority. It, therefore, does not lie in the mouth of the respondent-Corporation to say that appeal of the petitioner got delayed since he was in the queue whereas the other co-appellant, who too had filed an appeal arising out of same charges and the same delinquency and entire same set of allegations and facts involved therein, yet he was given priority over the petitioner in the hearing of his appeal while the petitioner was not heard on the ostensible ground that the Appellate Authority is too busy in

hearing of other appeals.

6. I may hasten to add that it is rather intriguing that an administrative authority who has been only given an additional charge of the quasi judicial functions should plead such heavy pendency of the appeals before it so as to take as long as 6 years to hear a departmental appeal.

7. Be that as it may, the case of the petitioner otherwise is squarely covered by Division Bench's judgment rendered by this Court in CWP No.1073 of 2004 contained at Annexure P-6. Relevant whereof is reproduced hereinbelow:-

“Having considered the submissions of the learned counsel for the parties, we find force in the submissions of learned counsel for the petitioner that the order of compulsory retirement would have to relate back to the order of dismissal dated 6th April, 2000. Therefore, pension of the petitioner would have to be computed from 6th April, 2000. Similarly, we find that the claim of the petitioner for leave encashment cannot be rejected as the interruption in the service of the petitioner from 6th April, 2000 to 30th July, 2002 cannot be attributed to the petitioner. Had the order of premature retirement been passed on 6th April, 2000, the petitioner would have been entitled to the retiral benefits from that date. In such circumstances, there would have been no interruption in service. Once the order of dismissal is set aside by Appellate Authority, it would become nonest in law. It is settled beyond cavil that appeal is a continuation of the original proceeding. The order passed by the Disciplinary Authority was subject to challenge in appeal.”

8. In view of the aforesaid discussion and the reasons

contained therein, writ petition is allowed.

9. Respondent Corporation is directed to reinstate the petitioner with effect from the same date as his colleague i.e. Hari Singh who had also preferred an appeal arising out of the same allegations i.e. 12.05.2000 and to disburse the arrears of salary to the petitioner for the period he remained out of job.

10. Necessary calculation be carried out along with interest @ 7% per annum with effect from the date of entitlement till actual date of disbursement.

11. Let the needful be done within a period of 3 months from the date of receipt of a certified copy of this order.

12. Allowed in the aforesaid terms.

01.11.2019

vandana

**(ARUN MONGA)
JUDGE**

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No