

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 16363 of 2016
Date of Decision : 08.01.2019

Paramjit Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. M.S. Rana, Advocate for the petitioner.

Ms. Deepali Puri Sandhu, Additional Advocate General, Punjab

Harsimran Singh Sethi, J.(Oral)

In the present writ petition, the challenge is to the order dated 26.05.2016 (Annexure P-6) by which the General Manager, Punjab Roadways, Ferozepur directed to re-fix the pay of the petitioner by withdrawing the increments for the period when the petition remained out of service i.e. from 01.03.1987 to 02.11.2000. Further, after the withdrawal of the said increments, it was ordered that recovery should also be effected from the retiral benefits of the petitioner. In pursuance to the said order, the pay of the petitioner was re-fixed vide order dated 09.06.2016 (Annexure P-7) reducing the pay of the petitioner and effecting recovery from the pensionary benefits. Orders dated 26.05.2016 (Annexure P-6) and dated 09.06.2016 (Annexure P-7) have been impugned in the present petition.

As per the averments made in the present writ petition, the petitioner was appointed as a Conductor with the Punjab Roadways on 21.07.1983. His services were terminated on 04.03.1987. The said order of terminating the services of the petitioner was challenged by him initially by

filing a civil suit, which was dismissed on 26.10.1989 and thereafter the petitioner raised an industrial dispute before the Industrial Tribunal, Bathinda. By an Award dated 30.05.2000 (Annexure P-1), the Industrial Tribunal, Bathinda set-aside the order of terminating the services of the petitioner and ordered for re-instatement with continuity of service but without back wages. The relevant findings of the Labour Court, Bathinda are as under :-

“12. In view of my findings on the above issues and observation in the foregoing para, the reference is answered in favour of the workman who is ordered to be reinstated with continuity of service but without back wages. He is directed to report for duty to the respondents within thirty days of the publication of the award. No order as to costs.”

In compliance with the order passed by the Labour Court, Bathinda, the petitioner was reinstated in service vide order dated 31.10.2000 (Annexure P-2) and thereafter his salary was fixed as directed by the Labour Court vide order dated 12.10.2001 (Annexure P-3). Petitioner retired from service on attaining the age of superannuation on 31.03.2016.

After retirement of the petitioner, his pensionary benefits were to be computed and the same were sent for approval to the Accountant General, Punjab. The Accountant General, Punjab raised an objection about the fixation of the salary of the petitioner vide order dated 12.10.2001. The objection raised was as to why the petitioner has been granted the benefit of increment from 01.03.1987 to 02.11.2000 i.e. for the period for which the petitioner remained out of service.

Rather than explaining the relevant fact to the Accountant General, Punjab that the petitioner was reinstated in service with continuity

of service and only back wages were denied. In order to remove the objection, an order was passed by the General Manager, Punjab Roadways, Ferozepur on 26.05.2016 holding that the petitioner was wrongly given the benefit of increments for the period 01.03.1987 to 02.11.2000 while fixing his salary on 12.10.2001 and, therefore, the said benefit needs to be withdrawn and the salary needs to be fixed account. In pursuance to the said order dated 26.05.2016, the salary of the petitioner was re-fixed again by withdrawing the increments for the period the petitioner remained out of service from 01.03.1987 till 02.11.2000. These two orders have been impugned in the present writ petition.

Upon notice of motion, the respondents have filed reply, wherein, the stand taken by the respondents in support of the impugned orders is that once the Labour Court had denied the back wages, the petitioner was not entitled for the increments even for the period he remained out notionally and, therefore, the orders which have been passed by the competent authority, are perfectly valid and legal.

I have heard learned counsel for the parties and have gone through the record.

It is an admitted fact that the Labour Court passed an Award in favour of the petitioner on 30.05.2000 (Annexure P-1) by which the petitioner was reinstated in service with continuity of service but without back wages. As per the said order, the petitioner was entitled to be deemed to have continued in service even for the period when he remained out but was not to be paid actual salary for the said period. The pay of the petitioner was liable to be fixed by deeming fiction that the petitioner continued working for the said period only then the Award can be

implemented because the petitioner was given the benefit of continuity of service. In case the petitioner is to be denied the benefit of increments for the period when the petitioner remained out of service from 01.03.1987 till 02.11.2000, there will be no continuity of service and the action will be contrary to the Award passed by the competent court of law.

The orders which have been passed by the General Manager, Punjab Roadways, Ferozepur dated 26.05.2016 and the consequential re-fixation of his salary on 09.06.2016 are by wrongly interpreting the Award given by the Labour Court. Both the orders being contrary to the Award of the Labour Court are set-aside.

As the impugned orders have been set-aside, the petitioner will be entitled for the fixation of his pay as fixed vide order dated 12.10.2001 and the petitioner will be entitled for the pensionary benefits as per the pay fixed by the said order.

Let the pensionary benefits of the petitioner be recalculated by the respondents within a period of two months from the date of receipt of certified copy of this order and whatever the petitioner will be entitled for as a monetary benefit upon the re-fixation, shall also be released to the petitioner within a period of one month thereafter. The amount, which the petitioner shall be paid, shall also carry on interest @ 6% per annum from the date it became due i.e. from the date of retirement till the actual payment is released to the petitioner.

The writ petition is allowed in above terms.

January 08, 2019
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned? *Yes*
Whether reportable? *Yes*