

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-22372-2016

Date of decision: - 08.11.2019

Dilbag Singh

....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Ramesh Goyat, Advocate, for the petitioner.

Mr. Charanjit Singh Bakhshi, Addl. A.G., Haryana.

HARSIMRAN SINGH SETHI, J. (ORAL)

The grievance which is being raised in the present writ petition is that the petitioner, who was exonerated of the allegations alleged against him, has been denied the benefit of salary for the period when he remained suspended during the pendency of disciplinary proceedings by treating the said period as a leave of the kind due. The challenge is to the order dated 29.09.2015 (Annexure P-5) as well as to the order dated 13.10.2015 (Annexure P-6), by which the said period has been set off against the earned leave. Even the appeal filed against those orders, was dismissed by the respondents on 27.07.2016 (Annexure P-8), which is also under challenge in the present writ petition.

Petitioner was appointed as a helper with the respondents on 15.12.1979 and was further promoted as an Assistant Fitter w.e.f.

05.11.1985. Thereafter, petitioner was promoted as a Fitter w.e.f. 18.11.1991 and further promoted as a Mechanic on 25.01.2001. While working as a Mechanic, petitioner retired from service on attaining the age of superannuation on 31.03.2015.

During the service period, petitioner was placed under suspension on 10.04.2013 on the ground that the disciplinary action is proposed against him under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 (for short "Rules of 1987"). Thereafter, a charge-sheet was served upon the petitioner on 14.05.2013. Suspension was revoked on 03.05.2013 without prejudice to the inquiry to be held against the petitioner. After conducting an inquiry into the allegations, the inquiry officer submitted the report on 30.04.2015 and in the inquiry report, petitioner was exonerated of the allegations alleged against him in the charge-sheet. Keeping in view the finding of the inquiry report, the punishing authority passed an order on 05.09.2015, holding that as the allegations against the petitioner are not proved, therefore, the charge-sheet is dropped, but the suspension period of the petitioner from 10.04.2013 till 03.05.2013 will be treated as a leave of the kind due.

In pursuance to the said order dated 05.09.2015 (Annexure P-5), the period of suspension from 10.04.2013 till 03.05.2013 was set off against the earned leave for which the petitioner was entitled, vide order dated 13.10.2011 (Annexure P-6). Petitioner filed an appeal against the order dated 29.09.2015 (P-5), by which the punishing authority had ordered that the suspension period will be treated as a leave of the kind

due and the said appeal was rejected by the respondents on 27.07.2016 (P-6) being non-maintainable.

The grievance of the petitioner is that once he has been exonerated of the allegations, no prejudice can be caused to him and therefore, the suspension period should be treated as a duty period for all intents and purposes otherwise it will cause prejudice to him without there being any fault on his part.

Upon notice of motion, respondents have filed the reply.

In the reply, the respondents have stated that the competent authority had a power to decide upon the suspension period after the disciplinary proceedings come to end and the competent authority in the facts and circumstances of this case has rightly passed an order that petitioner will not be given the benefit of the suspension period as a duty period and the said period will be treated as a leave of the kind due and therefore, no interference is called for in the impugned order.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The facts as noticed above are not in dispute. It is not disputed by learned counsel for the respondents that the allegations on the basis of which the petitioner was suspended on 10.04.2013, were not substantiated during the inquiry and as the charges were not proved, the charge-sheet was dropped. Once, the charge-sheet has been dropped, it was incumbent upon the respondents to pass an order under Rule 7.3 of Rules of 1987, as to how the suspension period is to be treated upon reinstatement. Under Rule 7.3(2) of Rules of 1987, it is clear that where a

government employee has been fully exonerated, he will be given full pay and allowances for the period for which he remained under suspension.

The relevant Rule 7.3(2) of Rules of 1987 is as under: -

“(2) Where the authority mentioned in sub-rule (1) is of opinion that the Government employee has been fully exonerated or, in the case of suspension, that it was wholly unjustified, the Government employee shall be given the full pay and allowances to which he would have been entitled, had not been dismissed, removed, compulsorily retired or suspended, as the case may be.”

It is clear that in the present case Rule 7.3(2) of Rules of 1987 will be applicable and the Government has no discretion to deny the benefit of the full salary and allowance for the period of suspension period, where an employee has been exonerated of the charge and the proceedings have been dropped. Learned counsel for the respondents has not been able to show this Court any other rule, which governs the service, according to which, the discretion lies with the punishing authority to deny the benefit of full salary for the period of suspension despite the fact that an employee has been exonerated of the allegations. In the present writ petition, petitioner is entitled for the full pay and allowance under Rule 7.3(2) of Rules of 1987.

The order passed by the respondents in treating the suspension period as a leave of the kind due despite exonerating the petitioner of the allegations, is contrary to abovesaid Rule 7.3(2) and therefore, the order dated 05.09.2015, having endorsement dated 29.09.2015 (Annexure P-5), is set aside to the extent that direction was

given that suspension period of the petitioner will be treated as a leave of the kind due and the consequent order dated 13.10.2015 (Anenxure P-6) of setting off the said period against the earned leave and the rejection of his appeal, vide order dated 27.07.2016 (Annexure P-8) are also set aside. Further, the direction is issued to the respondents to grant the benefit of the full pay and allowances for the period when the petitioner remained under suspension from 10.04.2013 till 03.05.2013. In case, the petitioner is found entitled for any benefit after the passing of this order in respect of recalculation of the leave encashment, the said benefit shall also be extended to him alongwith arrears.

As the respondents had passed an order declining the claim of the petitioner, which was contrary to the rules governing the service, petitioner is held entitled for interest @ 9% per annum to compensate him for the delay in the release of the benefit, which should have been released to him immediately in the year 2015, when the inquiry proceedings were dropped. Present writ petition is allowed in the above terms.

Let the respondents calculate the benefits for which the petitioner is entitled for under this order within a period of three months from the date of receipt of certified copy of this order and the benefits so calculated, shall be released to the petitioner within a period of one month thereafter.

(HARSIMRAN SINGH SETHI)

JUDGE

November 08, 2019

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Whether reasoned/speaking?

Yes

Whether reportable?

Yes