

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.274 of 2015 (O&M)

Date of Decision: 24.09.2019

O.P. Gupta

....Petitioner

Versus

Life Insurance Corporation of India and another

...Respondents

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA

Present: Mr. Harminderjeet Singh, Advocate
for the petitioner.

Mr. Prateek Mahajan, Advocate
for the respondents.

G.S. SANDHAWALIA, J. (ORAL)

The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of direction to the respondents to decide the representation dated 14.10.2014 (Annexure P-8) by passing a speaking order. Similarly directions have been sought to fix the proper pay of the petitioner as per the actual date of his voluntary retirement i.e. 31.10.2004 and calculate, grant and release all the consequential retiral benefits including revised pension after taking into consideration the entire length of service upto the date of voluntary retirement and also to calculate and pay interest on the same from the date the same became due till the date of actual payment.

In the representation dated 14.10.2014 (Annexure P-8) the demand is to the pay calculated upto 31.05.1997 as the petitioner had to be treated as retired w.e.f. 31.10.2004 and on that basis, payment of full gratuity on total service from the date of joining till the date of retirement

was sought along with interest @ 12%.

It is not disputed that petitioner was appointed as Development Officer with the respondents-Corporation on 28.12.1971 and thereafter earned promotions and remained posted at Ludhiana as Senior Branch Manager in May, 1996. On account of his transfer he had applied for leave from 31.05.1997 to 04.06.1997 and having not joined his duties thereafter, he was served with a charge-sheet dated 30.04.1998. An *ex parte* enquiry was held against him and he was removed from service on 21.12.1999. Appeal against the said order was rejected on 19.09.2000.

As such CWP No.4326 of 2001 against the said order was filed by the petitioner on the quantum of punishment on account of the fact that he had service of 20 years directions were issued on 15.12.2003 that the same may be reconsidered so that his claim for pension can be safeguarded. His request for re-consideration was rejected on 03.12.2005 which he challenged by filing CWP No.2846 of 2006 which was decided on 04.02.2008 (Annexure P-1) and the order of rejection dated 03.12.2005 qua the quantum of punishment from 31.05.1997 to 02.12.2005 was set aside. The same was substituted from the order of punishment of removal from service to that of voluntary retirement from 03.12.2005. The period of absence from 31.05.1997 to 02.12.2005 was to be treated as *dies non*. The relevant portion reads as under:

“16. In view of the above, we set aside the order dated 3.12.2005, Annexure P-20, so as to substitute the order of punishment of removal from service to that of voluntary retirement from 03.12.2005. The period from 31.05.1997 to 02.12.2005 shall be treated as the dies non period. Respondents shall release the retiral benefits in accordance with law after adjusting Rs.1 lac out of such pensionary

benefits payable to the petitioner.”

The matter was taken to the Apex Court by the respondent-Corporation and the SLP was dismissed on 22.07.2011 (Annexure P-2). Thereafter, his terminal benefits were paid on 05.01.2012 (Annexure P-6). Resultantly, he filed representation dated 14.10.2014 (Annexure P-8) making the above said claims.

Thus it is apparent that for the relief of retiral benefits regarding the entire length of service upto the date of retirement, the petitioner is estopped in view of the order of the Division Bench as his order of termination was substituted by the order of voluntary retirement. The Division Bench had also in principle directed that the period of his absence from 31.05.1997 till the date of his retirement which is 31.10.2004 would not be counted for the purpose of service. However, it is apparent that in view of the order dated 03.12.2005 rejecting his claim regarding quantum of punishment, it was mentioned that the period from 31.05.1997 to 02.12.2005 shall be treated as *dies non*. In such circumstances, the said order having not been challenged before the Apex Court, the petitioner is bound by the said order and cannot claim the benefit of counting of his service for the purpose of pensionary benefits. The claim is unfounded and thus, the representation which is also couched in the same terms cannot be accepted in view of the valid defence which has been taken by the respondents in reply.

Coming to the issue of grant of interest for the period of delay, the respondents have taken the stand that interest @ 18% had been asked for before the Division Bench in the earlier writ petition bearing CWP No.2846 of 2006. Relevant portion of the prayer clause reads as under:-

“i). Writ of certiorari, mandamus or any other appropriate writ, order or direction quashing the order dated 21.12.1999 (Ann. P-15) and the order dated 19.9.2000 (Ann. P-17) whereby the petitioner has been removed from service and his appeal against the order of punishment has been rejected with a further direction to the respondents to reinstate the petitioner with continuity of service and full back wages alongwith interest @ 18% per annum.”

Thus, the stand of the respondents that once the said relief of interest on the payment of full wages was not granted by the Division Bench, and the matter had not been further agitated before the Apex Court by the petitioner, it would be deemed to have been declined by the Division Bench. No replication as such has been filed regarding the said stand. Reliance has been placed upon the judgment in case **Jaspal alias Jaswant Singh Vs. State of Haryana, 2002(1) PLR 684**, of the Division Bench by Mr. Prateek Mahajan to the extent that in view of the principles embodied in Section 11 of CPC, the relief which was specifically prayed and had not been expressly granted, shall be deemed to have been declined.

In such circumstances, once the matter has been finalized in the earlier set of litigation *inter se* the parties and the relief of interest as such has not been granted on the back wages and interest has been specifically asked for, the second limb of litigation which has been initiated is not maintainable.

Accordingly, there is no merit in the present writ petition and the same is dismissed.

(G.S. SANDHAWALIA)
JUDGE

24.09.2019
pvd

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No