

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

**CWP-18613-2015 (O&M)
Date of Decision :31.01.2020**

Baljit Singh

... Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Manu K. Bhandari, Advocate for the petitioner.

Mr. Vikas Mohan Gupta, Addl. A.G., Punjab.

SUVIR SEHGAL, J.

Petitioner has approached this court for issuance of an appropriate writ for quashing order dated 21.07.2014 (Annexure P-12), order dated 28.01.2014 (Annexure P-11), order dated 03.06.2013 (Annexure P-9) and order dated 21.08.2012 (Annexure P-1) passed by respondents No.2 to 5 respectively whereby the petitioner was dismissed from service under Rule 16.2(1) of the Punjab Police Rules, 1934 (for brevity 'the Rules') and his appeal, revision and mercy petition were rejected by the respondents. The petitioner has further sought issuance of a writ of mandamus for directing the respondents to pay to the petitioner the arrears of pension along with interest thereon @ 12% per annum or in the alternative, a direction has been sought to the respondents to consider and decide the justice demand notice dated 08.09.2009 (Annexure P-15).

In brief, the facts are that the petitioner was appointed as a Constable with the Punjab Police on 16.05.1992 and was assigned Constabulary No.2484/Sangrur. The petitioner suffered from severe back

pain and absented from duty from 19.04.2012. He remained under treatment. A departmental inquiry was initiated against him and upon completion thereof a show cause notice was served upon him. Vide order dated 21.08.2012, Annexure P-1, he was dismissed from service under Rule 16.2(1) of the Rules and his 12 years service was forfeited permanently and 9 years service was forfeited temporarily. Petitioner filed an appeal, Annexure P-8 which was rejected by respondent No.3 vide order dated 03.06.2013, Annexure P-9. Revision petition filed by the petitioner on 19.06.2013, Annexure P-10 came to be rejected vide order dated 28.01.2014, Annexure P-11. Further appeal before respondent No.2 was rejected on 21.07.2014, Annexure P-12. Mercy petition, Annexure P-13 was rejected on 03.12.2014. A justice demand notice, dated 15.04.2015, Annexure P-15 was served by the petitioner before filing the present writ petition.

Writ petition has been contested by the respondents by filing a detailed reply wherein it has been submitted that prior to this absence the petitioner had remained absent for 47 days in the year 2011 whereupon he was dismissed from service, but by adopting a compassionate approach, he was reinstated vide order dated 18.10.2011. In 2012, when he was not found present on duty at the time of roll call he was marked absent vide DDR No.2 dated 19.04.2012. By order dated 22.05.2012 a departmental inquiry was ordered and entrusted to an Inquiry Officer who issued notice to the petitioner on 29.05.2012 to join the inquiry proceedings. Despite the fact that this notice was duly served on the petitioner on 01.06.2012, the petitioner did not turn up. Two more notices were issued and served upon the petitioner but the petitioner did

not join the inquiry proceedings. Vide order dated 05.07.2012, Inquiry Officer proceeded ex-parte against the petitioner. A summary of allegations, list of prosecution witnesses and ex-parte order was sent to the petitioner which was duly served on his son on 07.07.2012, despite this the petitioner did not join with the inquiry proceedings. A charge sheet was prepared and sent to the petitioner at his home address to produce his defence, though it was received by the petitioner, again the petitioner did neither submit his defence nor replied to the charge sheet. After conducting ex-parte proceedings, the Inquiry Officer gave a report holding the petitioner guilty of continuous absence from duty w.e.f. 19.04.2012. The Senior Superintendent of Police, Sangrur after examining the inquiry report issued show cause notice dated 13.08.2012 along with the copy of the inquiry report which was duly served upon the petitioner proposing punishment of dismissal from the department. After this another opportunity was given by the punishing authority to the petitioner but again the petitioner neither submitted reply to the show cause notice nor did he appear before the punishing authority. Considering all these facts, the punishing authority by order dated 21.08.2012, Annexure P-1, dismissed the petitioner from service. It has been further submitted by the respondents that an appeal was filed by the petitioner wherein he was given hearing and after considering his submissions, the appeal was rejected by respondent No.3 vide order dated 03.06.2013, Annexure P-9. Even before the revisional authority the petitioner was heard before the dismissal order was passed. The respondents have further justified their action on the basis of the Rule 16.2(1) of the Rules. The respondents have also made a reference to the

Punjab Civil Service Rules Volume-II (Pension Rules) to submit that the petitioner was not entitled to pension since he did not have the qualifying service to his credit. Petitioner filed replication re-asserting the averments of the writ petition.

Learned counsel for the petitioner has argued that the impugned orders have been passed in violation of the Rule 16.2 (1) of the Rules, in as much as the punishment of dismissal from service is to be awarded when a person is held guilty of the gravest act of misconduct and simultaneously the service rendered by such an employee with regard to his entitlement to pension has to be considered. He has placed reliance upon the judgments Annexures P-2, P-3 and P-5 to P-7. He has argued that the petitioner had put in more than 20 years of service and in any case he was entitled to pension as postulated in Rule 6.16 of the Punjab Civil Service Rules.

Per contra, learned counsel for the State has argued that umpteen opportunities were given to the petitioner to join the departmental proceedings but he failed to do so. He has further argued that after following the principles of natural justice the dismissal order Annexure P-1 was passed whereby the petitioner was not only dismissed from service but even his length of service was duly considered. He has further submitted that the petitioner had not put in 20 years of service nor had he attained the age of 50 years as was required under Punjab Civil Service Rules, Volume II (Pension Rules). Rather the petitioner had qualifying service of 16 years, 8 months and 15 days and therefore he was not entitled to pension. Learned State counsel has also made a reference to the list of orders whereby service of petitioner for certain

years had been forfeited on temporary and permanent basis towards increments.

Counsels for the parties have been heard and record has been perused with their able assistance.

Rule 16.2(1) of the Rules deserves to be noticed and is reproduced hereunder:-

“16.2 Dismissal (1) Dismissal shall be awarded only for the gravest acts of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service. In making such an award regard shall be had to the length of service of the offender and his claim to pension.

Explanation- For the purpose of sub-rule (1), the following shall, inter alia, be regarded as gravest acts of misconduct in respect of police officer, facing disciplinary action:

- (i)Indulging in spying or smuggling activities;*
- (ii)disrupting the means of transport or of communication;*
- (iii)damaging public property;*
- (iv)causing indiscipline amongst fellow policemen.*
- (v)Promoting feeling of enmity or hatred between different class of citizens of India on grounds of religion, race, caste, community or language;*
- (vi)Going on strike or mass casual leave or resorting to mass absentions;*
- (vii)Spreading disaffection against the Government; and*

(viii)Causing riots and the life.”

This Rule came up for interpretation before a Division Bench of this Hon'ble Court in ***Dhan Singh versus State of Haryana and others*** 2008(3) SCT 816. After noticing the provision, a Division Bench of this Court held as under:-

“ 7. We have carefully gone through the dismissal order dated 27.08.2003 (Annexure P-2). The punishing authority has not dealt with the question of definition of gravest misconduct as provided under Explanation to Rule 16.2, though it has formulated an opinion that the petitioner absented twice from duty and his behaviour depicts that he is not fit to be retained in service and he is incorrigible type of employee. His length of service and right to pension has not even been taken note of. The appellate as well as the revisional authorities also rejected the appeal/revision, even without going into these two questions. It is pertinent to note that the petitioner did raise these questions in the memo of revision.”

The judgment in ***Dhan Singh's*** case came to be considered before a co-ordinate Bench of this Court in CWP No.6447 of 2004 dated 01.10.2008, Annexure P-2. After noticing the judgment and Rule 16.5 of the Punjab Civil Services (Premature Retirement) Rules, 1975 a co-ordinate Bench of this Court held as under:-

“In the judgments referred to above, it has been held that notwithstanding the forfeiture by way of punishment, it does not effect the length of service rendered by a public servant and the said service has to be counted as qualifying service for grant of pension. It is not

in dispute rather it is admitted case of the respondents that the petitioner rendered 26 years of service.”

In RSA No.2356 of 1996, ***State of Punjab Versus Constable Surjit Singh***, decided on 18.10.2001 a co-ordinate Bench of this Court, after extensive review of the case law on the subject, allowed the appeal of the State and set aside the judgment and decree passed by the Courts below. However, having regard to the fact that the employee had rendered about 15 years of service, this court held that the employee could not be deprived of pensionary and other benefits earned by him for rendering service. It was further observed that in case he makes representation in this regard, the authorities will consider the grant of such benefits to him within a period of 3 months. In pursuance to this observation, the employee-Constable Surjit Singh submitted a representation which was considered by the State of Punjab and order dated 16.05.2004, Annexure P-4 was passed whereby his dismissal order was modified and he was held entitled to pension. In CWP No.19196 of 2009, ***Napinder Singh Versus State of Punjab and others*** decided on 06.08.2012, Annexure P-5 a Single Bench of this Court held that despite forfeiture, the total length of service rendered by an employee does not get adversely affected and will be counted towards qualifying service for purpose of pension. It was observed as under:-

*“8. It is now well settled that forfeiture of service by way of punishment does not affect the length of service rendered by an employee and the said service has to count towards qualifying service for grant of pensionary benefits. The Hon'ble Apex Court in the case of ***Chamba Singh v. State of Punjab and****

others, reported as 1997 Judicial Reports (Labour & Services) SCC 538 while examining the scope of Rule 16.5 of the Punjab Civil Services (Pre-mature Retirement) Rules, 1975 had held in the following terms:

“The effect, therefore, of the punishment of forfeiture of two years for the purpose of increments is that there is deferment of increment or increments over the forfeited period or there is reduction in pay. It does not have any impact on the length of service qualifying for pension which is the qualifying service to be taken into account for the purpose of compulsory retirement. It is contended by the appellant that since Sub Rule (3) of Rule 16.5 provides that on the expiry of the period fixed under Sub Rule (1) or (2) of Rule 16.5, reinstatement is subject to good conduct and it is open to the department to pass a separate order not to reinstate an officer, there is a break in the service of the officer when an order is passed under Sub Rule (1) or (2). However, reinstatement in the context of Rule 16.5 can refer only to the resumption of service for the purpose of grant of increments. Forfeiture of service for the grant of increments does not result in termination of employment. Thus, Sub Rule (1) provides for withholding of increments of a police officer on a time

scale as a punishment. There is no reference in this sub rule to forfeiture of service. Yet Sub-Rule (3) applies to an order under Sub-Rule (3) applies to an order under Sub Rule (1) as much as to an order under Sub Rule (2). Under Sub Rule (2), the forfeiture is expressly of Approved service for the purpose of increments. Such forfeiture may be temporary or permanent. This Rule has no bearing on qualifying service for compulsory/premature retirement.”

9. *Even the co-ordinate Bench of this Court while following the judgment of the Hon'ble Supreme Court in Chamba Singh's case (supra) vide judgment dated 1.10.2008 in Civil Writ Petition No.6447 of 2004 titled as '**Manohar Lal v. State of Punjab and another**' had clearly held the petitioner therein to be entitled to the pensionary benefits on account of the past service rendered notwithstanding the forfeiture. It was held in categoric terms that forfeiture of service would have no bearing on the qualifying service for purposes of grant of pensionary benefits. In fact, in the present case, it is the admitted position that the petitioner had rendered 25 years of service prior to the passing of order of dismissal.”*

This judgment was challenged by the State of Punjab in LPA No.2173 of 2012 which was dismissed on 27.01.2014, Annexure P-6. SLP(C) No.17412 of 2014 filed by the State was dismissed on 10.04.2015 (Annexure P-7).

When the matter is examined in the backdrop of the rule

reproduced above as well as the settled position of law, it is clear that the authorities have not applied their mind to the length of service rendered by the petitioner. The claim of the petitioner insofar as his entitlement to pensionary benefits on account of the service rendered by him notwithstanding the forfeiture could not have been declined. After noticing the forfeiture and mentioning that the case of employee has been considered for the purposes of pension, the punishing authority in its order (Annexure P-1) found that the petitioner is not entitled to pension. However, the appellate and revisional authorities did not even advert to his entitlement to pension.

From the facts it is clear that the petitioner had joined service on 16.05.1992. He had remained absent from duty from 19.04.2012 and was dismissed on 21.08.2012. By the time the dismissal order was passed he had put in more than 20 years of service. As such, his service period and the length of service rendered by him could not be over-looked and totally ignored by the authorities while dismissing him from service. The mandate of Rule 16.2(1) of the Rules is that the authorities are bound to take into account the service rendered by the employee before passing any order under the said provision. Having not done so, the impugned appellate and revisional orders passed by the respondent-authorities cannot be sustained.

Consequently, the petitioner is held to be entitled to the pensionary benefits. The impugned appellate and revisional orders, Annexures P-12, P-11 and P-9 are set aside in as much as respondents No.2 to 4 have failed to consider his claim to pension. The petition is allowed to this limited extent. Matter is remitted back to the appellate

authority-respondent No.4 to decide the appeal of the petitioner in the light of observations made above after affording him with an opportunity of hearing. This exercise be completed within a period of 4 months from the date of receipt of the certified copy of the order.

31.01.2020

pooja saini

(SUVIR SEHGAL)

JUDGE

<i>Whether speaking/reasoned?</i>	<i>Yes/No</i>
<i>Whether reportable?</i>	<i>Yes/No</i>