

CWP No.24941 of 2016
Date of Decision: 05.03.2020

Dinesh Kumar

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAURPresent: Mr. R.K. Malik, Senior Advocate with
Mr. Sandeep Dhull, Advocate
for the petitioner.

Mr. Gaurav Jindal, Addl. Advocate General, Haryana.

NIRMALJIT KAUR, J. (ORAL)

The prayer in the present petition is for setting aside the order dated 09.08.2016, vide which, the period from 22.05.2012 to 29.06.2016 was decided as “Dies-Non” with a further prayer to direct the respondents to treat the period from 22.05.2012 to 29.06.2016 for all intents and purposes.

The grievance of the petitioner is two fold.

Firstly, in pursuance to an FIR registered against the petitioner on 21.05.2007, he was suspended on the said date itself. However, the petitioner was acquitted by the Special Judge, Faridkot, vide judgment dated 12.01.2010. In spite of the said acquittal, the petitioner was issued charge-sheet on the same grounds on 25.08.2011 but he was exonerated by the Enquiry Officer, vide his enquiry report dated 09.11.2011. He was accordingly, exonerated by the Punishing Authority and enquiry proceedings came to end. Subsequently, the Commissioner of Police, without calling the comments of the petitioner and without granting any opportunity to him, held the petitioner guilty and issued a show cause notice

to him as to why an order of dismissal should not be imposed vide his order dated 13.04.2012 and accordingly the petitioner was dismissed from service by the Commissioner of Police on 22.05.2012. The said order dismissing the petitioner from service as well as dismissal of the statutory appeal against the said order was set aside by this Court in CWP No.23339 of 2013, decided on 30.04.2015 with liberty to the competent authority to pass afresh order after granting opportunity of hearing to the petitioner. This time, the competent authority ordered the reinstatement of the petitioner from the date of his dismissal i.e. on 22.05.2012 and also ordered that he is deemed to have retired from service w.e.f. 30.06.2016 as meanwhile the petitioner had attained the age of superannuation, vide his order dated 14.07.2016.

In spite of the above, the competent authority took a decision that the period from 22.05.2012 to 29.06.2016 is to be taken as “Dies-Non” in view of the principle of no work of no pay, which cannot be sustained.

Reply has been filed. The facts are not disputed. The issue, therefore, is squarely covered by the judgment rendered by the Full Bench of Hon'ble the Apex Court in the case of Radha Ram Vs. Municipal Committee, Barnala, 1983 PLR 21 as well as rendered by Full Bench of this Court in the case of Ram Niwas Bansal Vs. State Bank of Patiala and others, 2002 (2) RSJ 273, wherein, it was held that an employee cannot be denied the salary for the period he has remained out of service on account of order of termination, in case the said order of termination is set aside. Para 12 of the judgment rendered in the case of Radha Ram (supra) reads as under:-

“12. Now apart from precedent on larger consideration of

principle as well the stand of the appellant herein commends itself for acceptance. Once the relief of setting aside or quashing the order of termination has been granted, or a declaratory decree has been passed to the similar effect, it necessarily follows that the employee in the eye of law continues to be in service and as a necessary consequence thereof would be entitled to all the emoluments flowing from the status. He must be deemed to be in a position identical with that existing prior to the passing of the order of termination of his service. In the felicitous language of their Lordships the emoluments of the post are a logical consequence of setting aside the order of termination. In such a situation to insist upon the filing of a second suit for a relief which directly flows from the declaratory decree can hardly be warranted. The hallowed rule that the law disfavors multiplicity be recorded in the original proceedings itself. This seems to be the more so in view of the recent judgments of the final court adverted to above holding that in essence the cause of action for the claim to salary and emoluments is co-terminus with the decree setting aside the wrongful termination. Therefore no issue or bar of limitation now raises any hurdle in this context. It deserves recalling that on the earlier view that the right to salary and emoluments was likely to become barred after a period of three years from the date of the order of termination itself there might have been some jurisdiction for the need of a separate suit for emoluments etc. to test it on the envil of limitation. However, since such a view has now been given the go-by and its anomalous results have been authoritatively noticed by the final Court in State of Madhya Pradesh Vs. State of Maharashtra and Maimoona Khatun's case, it seems wholly wasteful to

require a fresh spurt of litigation for the recovery of emoluments which necessarily flow from the quashing of the termination order or the grant of the declaratory decree.”

Similarly, para 20 of the judgment rendered in the case of Ram Niwas Bansal (supra), reproduced under, clarifies that an employee having been absolved of the allegations and charges cannot be deprived of his right to full pay and salary for the period he remained out of service on account of dismissal which subsequently set aside.

“20. I agree with the conclusion reached by my Brother Swatanter Kumar, J. that the applicant whose termination from service was quashed by this Court is entitled to be paid his salary from the date of termination of his services till the date an appropriate order is passed by the disciplinary authority or till the date of his superannuation, whichever is earlier.”

In the present case, the petitioner is entitled to the salary for the period from 22.05.2012 to 29.06.2016 not only on account of the settled proposition of law in the case of Radha Ram and Ram Niwas Bansal (surpa) but also in view of the facts, which speak for themselves.

From the above facts as narrated above, it is evident that the petitioner was exonerated both from the criminal proceedings as well as by the departmental proceedings. The order of dismissal was passed by the Commissioner of Police, suo-moto without giving any opportunity of hearing to the petitioner knowing fully well that he stands duly exonerated. The said order was also set aside by this Court by granting liberty to pass fresh order. While passing the fresh order, the petitioner was found entitled

to reinstatement from the date of dismissal. Therefore, the order denying the salary is in fact against the spirit of the very order passed by the Commissioner of Police dated 14.07.2016. The sequence of events show how the petitioner had to battle and was wronged by the department. He had to fight a battle for reinstatement even though he stood totally absolved of the allegations leveled against him and is still continuing to fight for his salary for the period when he was wrongly kept out of from service.

Accordingly, the present writ petition is allowed and order dated 09.08.2016 (Annexure P-8) is set aside. The respondents are directed to pay the salary for the period starting from 09.08.2016 till it is actually paid alongwith interest @ 6%. Needful be done within two months from the date of receipt of certified copy of this order. In case, the needful is not done within two months, the respondents are liable to pay the same with 12% interest after the expiry of two months.

05.03.2020
sandeep

(NIRMALJIT KAUR)
JUDGE

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No