

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

**LPA No. 451 of 2021 (O&M) in
RA-CW No. 142 of 2020 in
CWP No. 30542 of 2019
Date of Decision: 11.05.2021**

Jaswinder Singh

..... Appellant

Versus

State of Punjab and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH**

Present: Mr. Sameer Sachdeva, Advocate
for the appellant.

Mr. Vikas Mohan Gupta, Additional Advocate General, Punjab

*[The aforesaid presence is being recorded through video conferencing
since the proceedings are being conducted in virtual court]*

JASWANT SINGH, J.

Appellant-Jaswinder Singh has filed the present writ petition seeking quashing of the impugned order dated 10.03.2021 passed by the learned Single Judge in review application filed by appellant, whereby prayer made by appellant for modifying the original order dated 21.11.2019 to the extent of awarding him actual pay for the entire period of second extension when he was not permitted to work, has been declined on the principle of “no work no pay.”

[2] Learned counsel for the appellant has argued that the appellant was ready and willing to work for the entire second extension period granted to him beyond the age of superannuation, but he was not permitted to work on account of wrong orders passed by the respondents and thus,

appellant was entitled for grant of actual pay benefits for the period when he was not permitted to work. Reliance has been placed upon the judgment passed by Hon'ble Supreme Court in ***Shobha Ram Raturi Versus Haryana Vidyut Prasaran Nigam Limited and others (Civil Appeal No. 11325 of 2011 decided on 09.12.2015)*** as well as a Single Judge judgment of this Court in ***Suraj Mal Versus State of Haryana and others, 2014(2) SCT 246***.

[3] On the other hand, learned counsel for the respondent - State, who is on advance notice, has argued that the impugned order dated 10.03.2021 does not suffer from any illegality as the appellant cannot be held entitled to actual pay benefits for a period when he had not worked, especially when it was a case of working on second extension beyond the age of superannuation, which is completely discretionary. Hence, prayer has been made for dismissal of appeal.

[4] We have heard learned counsel for the parties at length and have scrutinized the paper book.

[4.1] Admittedly, the appellant was appointed as an Assistant Sub-Inspector on 23.05.1988 and was promoted as a DSP in 2011. As per service rules applicable to the appellant, he was due to retire at the age of 58 years i.e on 28.02.2018. However, on 19.02.2018 i.e prior to the date of his superannuation, the appellant was granted an extension of one year w.e.f 01.03.2018 upto 28.02.2019 as per the instruction issued by the Finance Department from time to time. Thereafter, the said extension order was withdrawn on 27.06.2018 on account of issuance of a charge sheet dated 17.05.2018 which was in pursuance to certain orders passed Judicial Magistrate, Nihal Singhwala on the allegation of mis-conduct as well as

directions issued by this Court.

[4.2] The said order dated 27.06.2018 was put to challenge by the petitioner vide CWP No. 15776 of 2018 before a learned Single Judge of this Court and the operation and effect of order dated 27.06.2018 was stayed vide interim order dated 02.07.2018 on an, *inter-alia*, assertion that the order dated 27.06.2018 was passed without issuance of show cause notice. Thereafter, the stay continued till appellant's first extension period was over on 28.02.2019, and vide interim order dated 04.02.2019, learned Single Judge gave liberty to the State to pass a fresh order with regard to granting of second extension or not. However, in that very order dated 04.02.2019 itself, it was observed that State is not inclined to grant the appellant second extension but on account of the fact that counsel for the appellant was not available, the matter was adjourned for a future date.

[4.3] It is seen that the representation given by appellant for grant of second extension was declined vide order dated 11.03.2019 however, the learned Single Judge vide order dated 17.07.2019 again directed the State to pass a fresh speaking order in view of certain subsequent developments that had taken place. In pursuance to the direction dated 17.07.2019, the respondent-State again declined the request of appellant for grant of second extension vide detailed order dated 25.09.2019.

[4.4] The aforesaid order dated 25.09.2019 was challenged before the Single Judge vide CWP No. 30542 of 2019 (out of which present impugned order arises) by the appellant which was allowed vide order dated 21.11.2019 and the State was directed to pass a fresh order as the order dated 25.09.2019 was held to be contradictory. Consequently, on

24.01.2020 fresh order was passed by respondents and petitioner was granted extension in service w.e.f 24.01.2020 till 28.02.2020. It is an admitted position that the petitioner had not worked w.e.f 01.03.2019 till 24.01.2020 and there is no extension of service period from 01.03.2019 till 23.01.2020.

[5] From the facts as noticed above, it is clear that it was under the interim orders of this Court that the appellant continued to work from 27.06.2018 till 28.02.2019 and even the order declining first extension was not put to judicial scrutiny on merits. It is further seen that the second order dated 25.09.2019 declining second extension was also set aside on a technical ground that no charge-sheet was pending against the appellant at the time of passing fresh orders. Hence, it is seen that the willingness of the State to continue with the services of an employee were never adjudicated on merits and the appellant had been able to continue to work by taking aid of technicalities.

[5.1] Once the facts are seen from this angle, we are convinced that the learned Single Judge had rightly declined to grant the actual pay benefits to appellant for the time he had not worked. Once the appellant had relinquished the charge on completion of his first extension, some other officer would have taken over the duties and discharged the functions, whereas all this time the appellant was before the Court trying to cling on to a job from which he had originally superannuated on completion of 58 years of service. The State although a welfare one, must be given the liberty to choose an employee which it wants to retain beyond the statutory period of service, as being an employer it is better equipped to adjudicate the

suitability of an employee to continue. However, the decision taken for such continuation / dis-continuation must be within the four corners of settled principles of service jurisprudence.

[6] In the present case, we find that the appellant had no vested right to continue and was permitted to continue on account of interim orders passed by this Court although admittedly, charge sheet was pending against him during the course of his first extension which was ultimately dropped on 02.09.2019 (i.e mid-way of second extension). This itself dis-entitled him from continuing beyond the period of superannuation in view of instructions dated 30.04.2015 issued by the Finance department which clarified that no extension can be granted to an employee against whom a decision has been taken to issue charge-sheet under Punjab Civil Services (Punishment & Appeal) Rules, 1970 (**Annexure P-6 at page 30 of paperbook**). Admittedly, the decision was taken in view of observations made by a judicial officer in a criminal trial and not at the behest of an employee / officer who might have an adverse interest against the appellant.

[6.1] As far as the judgments relied upon by appellant are concerned, the same are not at all applicable to the facts of present case. In ***Shobha Ram Raturi's case (supra)***, the appellant therein was otherwise to retire after three years but was wrongly retired prior to actual date of superannuation, which was ultimately set aside by the High Court, but no actual monetary benefits were given. By considering this fact, especially the factum that appellant was wrongly retired three years prior to actual date of retirement, actual benefits of pay etc were given by Hon'ble Supreme Court.

Similarly, ***Suraj Mal's case (supra)*** is also not applicable to the facts of

present case. It is evident that in the said case a handicapped employee, who was covered under the instructions issued by the State Government to continue in service being handicapped, was not permitted the benefit on account of fault committed by the employer / department concerned and therefore the Single Judge had held that petitioner therein was entitled for grant of actual pay. None of the situations, that had arisen in afore-referred case law, arise in the instant case.

[7] In view of the above, finding no merit, present **appeal** is hereby **dismissed**.

(JASWANT SINGH)
JUDGE

May 11, 2021
'dk kamra'

(SANT PARKASH)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>