

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

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CWP-13698-2021

Decided on : 27.07.2021

Chander Lal

... Petitioner

Versus

State of Haryana & another

... Respondents

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

Present: Mr.S.P.Laler, Advocate, for the petitioner.

Ms.Kirti Singh, DAG, Haryana.

(The proceedings are being conducted through video conferencing, as per instructions.)

G.S. Sandhawalia, J. (Oral):-

Prayer in the present writ petition, filed under Articles 226/227 of the Constitution of India is for issuance of writ in the nature of certiorari for quashing the impugned order dated 10.01.2020 (Annexure P-4). Vide the said order, respondent No.1 has treated the 337 days of the petitioner's suspension period as leave of kind due, while referring to Rule 42 of the Haryana Civil Services (Leave) Rules, 2016. The said rule is regarding the competency of the authority(s) to sanction extraordinary leave.

Notice of motion.

Ms.Singh accepts notice on behalf of the respondents.

Keeping in view the limited controversy, this Court does not feel it necessary to call upon the respondents to file reply, as it would only delay the decision making process.

A perusal of the paperbook would go on to show that the petitioner was placed under suspension on 21.07.2014 with the condition that he would be entitled for subsistence allowance under Rule 7.2 of the Punjab Civil Services Rules, Vol-I Part-I, as applicable to State of Haryana (Annexure P-1). The said order was revoked on 17.07.2015 (Annexure P-2) and he was reinstated and posted at GSSS, Nilokheri against a vacancy. The reinstatement was without prejudice to the disciplinary action pending against him and also without prejudice to the decision that may be taken regarding the period for which he remained under suspension.

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The petitioner was departmentally proceeded against and charge-sheeted on 21.07.2014 since an FIR was registered against him. The enquiry report dated 11.08.2016 was also submitted against him by the Enquiry Officer. However, the Addl.Chief Secretary, keeping in view the fact that he was acquitted in the criminal proceedings and after examining the facts, came to the conclusion that he had no relation with M/s Ankur Trading Company or that he had forged the signature of his wife for change of licence of the said company. Resultantly, the said charge-sheet was dropped on 30.01.2019 (Annexure P-3).

Counsel for the petitioner has referred to Rule 89 of the Haryana Civil Services (General) Rules, 2016 to contend that the petitioner is entitled for full pay and allowances of his post for the suspension period. Said rule reads as under:

“89. Where the competent authority is of the 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 shall have been entitled, had he not been dismissed, removed, compulsorily retired or suspended, as the case may be. The payment of allowances shall be subject to all other conditions under which such allowances are admissible. The period of absence from duty shall also be treated as a period spent on duty for all purposes.

Note 1.— As this rule is absolute, the law of limitation need not be invoked at the time of paying the arrears of pay and allowances for the period from the date of dismissal/removal/compulsory retirement/suspension to the date of reinstatement in respect of cases where the pay and allowances are regulated on reinstatement in accordance with the provisions contained in this Chapter.

Note 2.— Where a Government employee under suspension is acquitted by a Court of Law and the order of reinstating him is passed sometime after the date of acquittal, full pay and allowances shall be paid from the date of acquittal to the date of re-joining duty.”

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A perusal of the paperbook would go on to show that after the impugned order was passed on 10.01.2020 (Annexure P-4) without considering the said rule and the petitioner has also filed a detailed representation with respondent No.1 on 23.09.2020 (Annexure P-5) that the said period be treated as period on duty for all intents and purposes. A legal notice dated 22.03.2021 (Annexure P-6) has also been served upon the respondents.

In such circumstances, the present writ petition is disposed of, with directions to respondent No.1, to take into consideration the representation dated 23.09.2020 (Annexure P-5) and the legal notice dated 22.03.2021 (Annexure P-6) and decide the issue afresh, within a period of 2 months from the receipt of certified copy of this order.

The earlier decision shall not stand in the way of the respondents who will have the authority to review the order. In case the petitioner is found entitled for the relief claimed, same be disbursed to him, immediately thereafter. In case there is any legal impediment and the relief is to be declined, the respondents shall pass a reasoned order and communicate the same to the petitioner.

July 27, 2021

Sailesh

**(G.S. SANDHAWALIA)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No