

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

CWP-15301-2017

Date of decision: 14.12.2021

J.K. Sethi

.....Petitioner

versus

M/s Indian Drugs and Pharmaceuticals Ltd.
and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Arun Nehra, Advocate
for the petitioner.

Mr. Subhash Ahuja, Advocate
for the respondents.

FATEH DEEP SINGH, J.

The petitioner was initially appointed as Distribution Assistant with the respondent-M/s Indian Drugs and Pharmaceuticals Ltd. (A Central Government Undertaking). It is, thereafter, vide memo dated 22.06.1987, the petitioner was administratively dealt by the Department and charge sheet was issued for imposition of major penalty under the respondent's Conduct, Disciplinary and Appeal Rules, 1976 (in short 'the Rules'). Thereafter, an inquiry was held and on receipt of inquiry report, the petitioner stood dismissed from service vide order dated 10.05.1990 by the Punishing Authority.

Upon appeal before Appellate authority vide order dated 05.06.1991, the appeal of the petitioner was partly allowed and he was ordered to be reinstated with immediate effect and his rank was reduced to the lower post to Executive Assistant from the post of Personnel Executive and it was ordered that the period between order of termination i.e. 10.05.1990 and the date of rejoining, shall be treated as break in service and the order is Annexure P-4. The writ petition challenging the said order before the Delhi High Court stood dismissed vide order dated 31.10.2001 and, thereafter, petitioner joined his duties with effect from 05.06.1992. It is with the claim that the petitioner is legally entitled to be paid his full EPF, gratuity and other retiral benefits from the date of his retirement and re-fixation of his seniority retrospectively, by keeping him at the top position of Executive Assistants as on 10.05.1990 in terms of (Ex. Annexure P-6), the instant petition has been filed.

The stand of the respondents though was of admission of the facts so canvassed by the petitioner but claim that the enforceable orders which were operative were that there ought to be break in service from 10.05.1990 to 05.06.1992 and, therefore, petitioner can neither claim any pay scales nor seniority on the basis of his previous engagement and sought dismissal of the petition.

Heard counsel for the parties and perused the records.

The sole point involved in the instant writ petition is the interpretation of break in service. In an earlier civil writ petition bearing No.16608 of 2002, filed before this Court, by the petitioner on the same very grounds, which was disposed off with the directions to the respondents to consider the claim of the petitioner for promotion from the date persons junior to him were promoted by treating the petitioner to be the senior most Executive Engineer from the date he was reinstated and the consequential benefits, if any, be granted within a period of three months from the date of receipt of orders. The LPA No.22 of 2006 against the said order was also dismissed vide orders of this Court dated 05.02.2009 (P-7) and which order was upheld in the SLP which stood dismissed on being preferred by the present respondent-Company.

Appreciating the submissions, it is in fact duly accepted that the orders holding the petitioner's break in service had attained finality and was never challenged or set aside. Since, the petitioner was thrown out of service on 10.05.1990, upon due process of law by holding inquiry and passing punishment thereon and it is the Appellate Authority under the Rules which partly allowed his appeal and he was ordered that this period between 10.05.1990 till his rejoining be considered as break in

service and upon his joining on 05.06.1992, the petitioner is supposed to be joining at the lowest position of the hierarchy in the cadre system in which he was working when he was thrown out and, therefore, is deemed to be a “fresh joining” by the petitioner, who cannot claim seniority of his past service or emoluments. Since, as is submitted by the petitioner's counsel Mr. Arun Nehra, Advocate and which submissions could not be controverted by counsel for the respondents' counsel Mr. Subhash Ahuja, Advocate, that the petitioner was made to join as Junior Executive Assistant and as no person from the post of Junior Executive Assistant has been promoted to the next post of Personnel Executive after 05.06.1992, the day the petitioner was taken back in service, therefore, claim of petitioner of having been denied his right to promotion had been refuted and thus, does not subsists. It is the own stand of the petitioner that at the relevant time, he was working as Personnel Executive on 13.01.1986 and vide memo dated 22.06.1987 was departmentally dealt with by serving of charge sheet and subsequent orders were passed as has been detailed above and, therefore, having been thrown out of the service initially from the post of Personnel Executive, the petitioner's right would crystallize only to that post and not the higher post, so claimed, by virtue of his so claimed

seniority and would also be entitled to the pay grade prescribed for that post by the respondents at that point of time that is on his rejoining on 05.06.1992.

The history of litigation initiated by the petitioner is suggestive of the amount of litigation, the petitioner had dragged the respondent-employers at various forums including filing of contempt petition. Counsel for the petitioner has placed reliance on judgments titled as 'Punam Gulati versus State of Punjab' 2013(3) S.C.T. 642 () and 'Joginder Kaur versus State of Punjab' 2017(3) S.C.T. 295 which do not come to their aid. Moreover, the earlier similar petition by the petitioner stands disposed off vide order dated 27.04.2005 (Annexure P-6) by this Court and, therefore, the petitioner cannot be allowed to revert from his previous stand and re-agitate the matter afresh for which this Court seeks reliance upon the judgment titled as 'Charan Pal Singh versus State of Punjab' 1995(2) S.C.T. 255 where this Court has earlier held the following:-

13. Yet another reason for not giving relief to the petitioner is that in effect and in substance the petitioner is seeking to challenge the order passed by a co-ordinate Bench of this Court on 31.8.1981 in exercise of its jurisdiction under Article 226 of the Constitution of India. Every High Court is a Court of record by virtue of Article 215 of the constitution of India and an order passed by the High Court in exercise of its jurisdiction under Article 226 cannot be made subject-matter of a petition filed under Article 226 in the same Court. The only course open to an aggrieved party against an order of Single Judge of the High Court is to file L.P.A.

*where such one L.P.A. Is provided under the rules regulating the procedure or to file a petition before the Supreme Court under Article 136 of the Constitution. Similarly against an order of the Division Bench the only mode of challenge available to an aggrieved party is to file a S.L.P. under Article 136 of the Constitution of India. Order passed by the High Court under Article 226 cannot be challenged directly in a writ petition filed under Articles 32 or 226 of the Constitution of India. This conclusion of mine is fortified by a Seven Judges Bench Judgment of the Supreme Court in **Naresh Shridhar Mirajkar v. State of Maharashtra and another**, AIR 1967 SC 1.*

and otherwise even falls within the ambit of constructive *resjudicata*.

In light of foregoing discussions detailed above, there is no merit in the present petition and the same stands dismissed.

(FATEH DEEP SINGH)

JUDGE

14.12.2021

Neha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No