

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

226

CWP-1229-2019

Date of Decision :19.04.2022

Sukhwinder Kaur and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Parvinder Singh Ahluwalia, Advocate for the petitioners.

Ms. Anju Sharma Kaushik, DAG, Punjab.

Harsimran Singh Sethi, J. (Oral)

The present petition has been filed by the legal heirs of the Constable Kabal Singh for the grant of service benefits in respect of the services rendered by the said Kabal Singh.

As per the factual averments made in the present petition, Kabal Singh was employed as a Constable in Government Railway Police, Punjab on 02.05.1979. While working on the said post, he was involved in FIR No.95 dated 12.10.1993 registered under Sections 148, 149, 307,323,324 and 450 of the IPC at Police Station Sadar Rajpura, District Patiala and was convicted by the competent Court of law vide order dated 24.07.1998 and was awarded imprisonment for a period of seven years alongwith fine. The said conviction was challenged by Kabal Singh in an appeal preferred by him before this Court and during the pendency of the appeal, sentence awarded to him was suspended. In the meantime, after the conviction, Kabal Singh was suspended by the respondent-department on

19.09.1999 and he remained under suspension till 10.05.2006. After the reinstatement in service of the said Kabal Singh, he was issued show cause notice on 18.01.2008 with a proposal that as he has been convicted by the competent Court of law, why his services should not be terminated. After the reply was filed by Kabal Singh, vide order dated 28.01.2008, services of Kabal Singh was terminated by the respondent-department by relying upon Article 311 of the Constitution of India. The basis of the termination of services of Kabal Singh was his conviction in FIR No.95 dated 12.10.1993. Before any action could be taken by Kabal Singh on the order of termination, he died on 31.07.2009 and after his death the appeal preferred by Kabal Singh against his conviction was decided in his favour by this Court vide order dated 08.07.2010. After the conviction of Kabal Singh was set aside, legal heirs of the Kabal Singh approached the respondents for recalling of order of termination of his services, which was based upon conviction, keeping in view the fact that Kabal Singh stood acquitted of the charges by this Court.

Respondents passed an order dated 15.02.2018 (Annexure P/9) by which the prayer of the petitioners was rejected. The said order is under challenge before this Court.

Upon notice of motion, respondents have filed reply, wherein, it has been conceded that the services of Kabal Singh was terminated on the basis of conviction in FIR No.95 dated 12.10.1993 and further that the said conviction has already been overturned by this Court and Kabal Singh has been acquitted of the charges, which judgment attained finality. Learned counsel for the respondents submits that once Kabal Singh died before his acquittal and he is not alive anymore for reinstatement in service, order of

termination of his services cannot be recalled.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

It is a conceded fact that service of Kabal Singh was terminated only on the basis of conviction in FIR No.95 dated 12.10.1993 and the said conviction is no longer in existence as the same has been overturned by the this Court vide order dated 08.07.2010. That being the factual position, the petitioners, who are the legal representatives of Kabal Singh, have every right to approach the respondents for recalling the order of termination of services of Kabal Singh.

Further, nothing has been brought to the notice of this Court that any enquiry was conducted prior to the termination of services of Kabal Singh by the respondents into the allegations alleged against Kabal Singh, which was part of the FIR. That being so, the reason of termination of service of Kabal Singh was his conviction in criminal proceedings, which reason is no longer in existence, the respondents should have reconsider the said order terminating the services of Kabal Singh even if, Kabal Singh is no longer in this world. In case order terminating the services of Kabal Singh is held to be bad in law, his legal representatives will be entitled for service benefits in respect of the service rendered by the deceased employee. Therefore, legal representatives of Kabal Singh i.e. petitioners have every right to challenge order dated 28.01.2008 (Annexure P/4), by which the services of the Kabal Singh was terminated by the respondents as well as order dated 15.02.2018 (Annexure P/9), by which, claim of the petitioners for recalling the order of termination of services of Kabal Singh has been rejected.

Though, the case could have remanded back to the authorities concerned for reconsideration of claim of the petitioners but, as the said Kabal Singh died in the year 2009 and his acquittal was in July, 2010 and the respondents took eight years to even reject the claim of the petitioners hence, keeping in view the facts and circumstances of this case so as to save the petitioners from further agony this Court is now considering the plea of the petitioners whether order of termination of services of Kabal Singh can be sustained in the eyes of law in view of the facts stated hereinbefore.

As concededly, the basis of impugned order dated 28.01.2008 (Annexure P/4) is conviction of Kabal Singh in FIR No.95 dated 12.10.1993, which reason is no more in existence as the conviction was set aside by this Court vide order dated 08.07.2010 and Kabal Singh has already been acquitted of the charges, order of termination of Kabal Singh cannot be sustained in the eyes of law and is accordingly quashed. Consequently, Kabal Singh be treated in service up to his death i.e. 31.07.2009 but will not be paid any arrears of salary for the period he remained out of service but his pay will be notionally fixed on the presumption that he continued in service from the date of termination till his death and the respondents are directed to compute the benefits for which, the petitioners, being the legal representatives of Kabal Singh will be entitled for in respect of the services rendered by Kabal Singh including gratuity, leave encashment and other benefits, which have not been paid either to the legal representatives of Kabal Singh after his death due to termination of his service.

Let computation of benefits be done in favour of the petitioners within a period of two months from the date of receipt of copy of this order

and the benefits so calculated be released in favour of the petitioners within a period of one month thereafter.

Petition stands allowed.

April 19, 2022
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No