

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

CWP-27095-2015

Reserved on: 10.10.2022

Pronounced on: **20.10.2022**

RAMESH KUMAR

.... Petitioner

Versus

STATE OF HARYANA & ORS

.... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Harish Mehla, Advocate,
for the petitioner.

Ms. Kirti Singh, DAG, Haryana

JAISHREE THAKUR.J

1. The petitioner herein has sought a writ in the nature of mandamus directing the respondents to grant increment for the year 2006 which has been illegally withheld on account of his absence from duty being treated by the respondent department as a break in service.

2. In brief, the facts are that the petitioner was appointed as a Constable with the Haryana Police Department on 30.11.2003. While he was posted in the office of the Superintendent of Police, Ambala, he absented himself from service for a period of 1 day and 3 hours and on another occasion, he absented himself for a brief period of 3 hours and 55 minutes. He had to leave the job premises due to unwarranted circumstances, but before leaving the premises, he gave a leave application to his colleague for forwarding the same to the officiating senior, however, the same was not delivered. On account of being absent, he was issued a show cause notice for

misconduct of leaving his job without obtaining prior permission, to which, he gave his reply. For the said misconduct, his absence from duty was treated as leave without pay. These orders were accepted by the petitioner as no challenge was made thereto. The Haryana Government vide gazette notification dated 30.12.2008 framed Haryana Civil Services (revised) Pay Rules, 2008 (for short, Pay Rules 2008) vide which pay scales of the employees of the Government of Haryana were revised. These rules were given retrospective effect as they were to come into force from 01.01.2006. As per Rule 10 of the aforesaid Pay Rules 2008, there was to be an uniform date of annual increment w.e.f. Ist July for every year. The petitioner was not given the benefit of this increments for the year 2006 which led to the filing of a representation to the respondent to grant him the said increment. As the said increment was never released, the petitioner has approached this court by way of filing the instant writ petition.

3. Learned counsel appearing on behalf of the petitioner would contend that the stoppage of an increment amounts to imposing a major penalty and the same can be imposed only by following a procedure as set out in Rule 16.24 of the Punjab Police Rules. It is submitted that departmental enquiry can be initiated on the ground of spying or smuggling activities; disrupting the means of transport or communication; damaging the public property; creating indiscipline among fellow policemen; promoting feelings of enmity; going on strike or mass casual leave or resorting to mass abstentions; spreading disaffection against the government; causing riots. None of these are applicable in the instant case and, therefore, withholding the increment by treating the period of leave without pay as a break in

service is not sustainable.

4. Learned State counsel would submit that the petitioner herein had absented himself from duty without prior approval and, therefore, his period of leave is being treated as a break in service and, thus, would not be entitled for increment in terms of the Pay Rules of 2008.

5. I have heard learned counsel for the petitioner as well as learned State counsel and find that the action of the respondents in withholding the increment of the petitioner for the year 2006 on the ground that his period that he remained on leave is being treated as a break in service is wholly unjustified. It is an admitted fact that the petitioner remained absent for 1 day and a few hours and this period has been treated by the authorities concerned as the period of leave without pay, however, the same period is now being treated as a break in service. In the judgment rendered in ***Bhim Kumar Versus Home Secretary, State of Haryana and others, CWP No.5441 of 2010, decided on 25.02.2011***, the coordinate Bench has held that leave without pay and that too for solitary day cannot be construed to be break in service for the purposes of considering the qualifying service of the petitioner. This opinion was based upon judgment rendered in ***Bodh Raj Versus State of Haryana and another, 1972 SLR 475*** wherein it has been held as under:-

“Under this rule, the order that could be passed while refusing the leave is that the period during which the petitioner remained absent from duty shall be treated as “absence from duty without leave”. Absence from duty without leave does not

necessarily mean break in service of the Government employee whose leave has been refused.”

6. The facts of the present case are similar to that of ***Bhim Kumar's case*** and ***Bodh Raj's case (supra)***, wherein it has been categorically held that absence from duty without leave does not necessarily mean break in service. Consequently, the action of the respondents in denying the benefit of increment to the petitioner for the year 2006 holding his absence from duty which was initially treated as leave without pay as a break in service is wholly unjustified.

7. The writ petition stands allowed. The petitioner herein would be entitled to annual increment for the year 2006 in terms of Rule 10 of the Pay Rules 2008.

(JAISHREE THAKUR)
JUDGE

20.10.2022

sanjeev	Whether speaking/reasoned:	Yes/No
	Whether Reportable:	Yes/No