

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

(Heard through VC)

CWP No.26524 of 2016 (O&M)

Date of Decision: April 2, 2022

Bhup Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Vijay K. Jindal, Advocate
for the petitioner.

Mr. Tapan Kumar Yadav, DAG Haryana.

JAISHREE THAKUR, J.

1. The petitioner herein seeks to challenge the order dated 10.11.2016 (Annexure P-8) by which subsistence allowance has been disallowed to him.

2. In brief, the facts are that the petitioner herein, who was posted as Treasury Guard at Dabwali, absented himself from the duty from 01.08.1991 and did not return till 17.08.1991. The petitioner faced departmental enquiry and the competent authority imposed penalty of dismissal from service, which order was challenged in appeal and thereafter in revision, however, the both came to be dismissed. Against the orders upholding dismissal from service, the petitioner had filed CWP No.13733 of

1993, which writ petition was accepted by this Court on 07.01.2010, holding that the impugned order of dismissal is not sustainable in law, as the requirement of Rule 16.2 of Punjab Police Rules, had not been adhered to. While setting aside the order of dismissal, the matter was remanded back to the disciplinary authority to initiate fresh proceedings and decide the matter within 6 months. Pursuant thereto, a regular departmental enquiry was held and the Superintendent of Police, Sirsa, on 05.07.2010 came to hold that the petitioner was willfully absent from duty from 01.08.1991 to 17.08.1991 without any leave or intimation and imposed penalty of stoppage of three future annual increments with permanent effect. Vide order dated 14.01.2011, the unemployment/out of service period of the petitioner from 12.03.1992 to 27.04.2010 was treated as *dies-non period* under the principle of “No work No pay”. Against the impugned order, the petitioner had filed a CWP No.7579 of 2011, which writ petition was allowed on 18.09.2012, quashing the impugned order dated 14.01.2011. The said order passed on 18.09.2012 was challenged in LPA No.1008 of 2013 by the State and the order dated 18.09.2012 was modified by the Division Bench of this Court with a direction to the competent authority to pass an appropriate order afresh in terms of the Rules. Thereafter, the matter was re-considered by the Superintendent of Police, Sirsa, who passed the order dated 10.03.2014 whereby, the period from 12.03.1992 to 27.04.2010, during which the petitioner remained out of service on account of dismissal, was treated as *leave of kind due* as per Rule 7.3(5) of Punjab Civil Service Rules, Volume-1, Part-1. This order was again challenged (CWP-10286-2015) on the ground that there was no order with regard to the suspension period as per

Rule 7.2 of the Punjab Civil Service Rules, Volume-I, Part-I, for grant of subsistence allowance by the respondents, which petition was disposed of by an order dated 09.05.2016 by giving directions to the respondents to pass an order on subsistence allowance as per Rule 7.2 of the Punjab Civil Service Rules, Volume-I, Part-I, within a period of three months. Thereafter, by the impugned order dated 10.11.2016, the Superintendent of Police, Sirsa, has held that the petitioner never remained under suspension from 01.08.1991 till his dismissal from service on 12.03.1991, and, therefore, subsistence allowance cannot be allowed to him, as there was no suspension period.

3. Mr. V. K. Jindal, learned counsel appearing on behalf of the petitioner herein would contend that the impugned order is not sustainable on the ground that once the petitioner has been reinstated in service and has been imposed penalty of stoppage of three annual increments with permanent effect in a departmental enquiry, the respondents are bound to allow him subsistence allowance for the period during which he remained out of service. It is argued that Rule 7.3 has been overlooked, while passing the impugned order, which permits allowance to be paid to a person on his reinstatement, as such, principle of 'No work No pay' cannot be applied. In support of his arguments, learned counsel for the petitioner relied judgments rendered by the Apex Court in the case of ***State of Assam and another vs. Raghava Rajgopalachari, 1972 SLR 44, B.D. Gupta vs. State of Haryana, 1973(3) SCC 149***, judgments rendered by this High Court in ***Shiv Kumar Goel vs. State of Haryana and another, 2007(1) SCT 739, Vir Bhan Singh vs. FCI and another, 2011(2) SLR 601, Ishwar Singh vs. State of Haryana***

and others, LPA No.1660 of 2011, decided on 17.11.2011, Surjit Singh vs. State of Haryana and another, CWP No.1326 of 2013, decided on 30.04.2015, Ram Anjore vs. Uttari Haryana Bijli Vitran Nigam Limited through its Managing Director, Panchkula and others, CWP No.2918 of 2014, decided on 18.01.2016, Ex-Constable Kulwant Singh vs. State of Punjab and others, 2008(4) SCT 201.

4. Per contra, Mr. Tapan Yadav learned counsel appearing on behalf of the respondent-State would argue that the order dated 10.11.2016 passed by respondent No.3 is valid and legal as per Rule 7.2, which deals with the subsistence allowance during the period of suspension. It is contended that the petitioner herein never remained under suspension in the present case and the period from 12.03.1992 to 27.04.2010, during which the petitioner remained out of service, has already been treated as leave of kind due, as such, subsistence allowance cannot be granted to him. It is submitted that the Hon'ble Division Bench in LPA No.1008 of 2013 has clearly held that the respondents shall be given a right to pass an appropriate order afresh in terms of Rule 7.3(5), pursuant to which order dated 10.03.2014 was passed whereby, the period from 12.03.1992 to 27.04.2010 was treated as *Leave of Kind Due* as per Rule 7.3(5). It is contended that the said order dated 09.05.2016 was challenged by the petitioner in CWP No.10286 of 2015, which petition was disposed of on 09.05.2016, by giving a direction to the respondents to pass an order on subsistence allowance as per Rule 7.2 within a period of three months. It is submitted that pursuant to the order dated 09.05.2016, order dated 10.11.2016 came to be passed by the Superintendent of Police, Sirsa, holding that the subsistence allowance

cannot be granted to him, as there was no suspension period, which order has been assailed by the petitioner in the instant writ petition. It is argued that the prayer of the petitioner that the period during which he remained out of service, be treated as deemed suspension is not sustainable, as it is already decided by the respondents in pursuance to the orders passed by the Hon'ble Division Bench.

5. I have heard learned counsel for the parties and have also gone through the pleadings of the case.

6. The facts of the case as enumerated above are not in dispute. At the present moment, the short question involved in the present case is whether the petitioner is entitled to the subsistence allowance during the period he remained out of service as per Rules 7.2/7.3 of the Punjab Civil Service Rules, Volume-I, Part-I. The relevant rules are available on record as Annexure P-10. **Rule 7.2** clearly states that a government employee, under suspension, shall be entitled to the payment of subsistence allowance to the extent as enumerated in the subsequent sub-clauses of Rule 7.2. In other words, first of all, an employee should be under suspension, before Rule 7.2 can be invoked to pay subsistence allowance to an employee. **Rule 7.3 (1)** relates to payment of allowance to a Government employee, who has been dismissed, removed, compulsory retired or suspended and the authority competent is to pass a specific order to this effect (a) regarding the pay and allowance to be paid to the Government employee for the period of his absence, occasioned by suspension, dismissal, removal or compulsory retire, as the case maybe and (b) whether or not the said period shall be treated as a period spent on duty. **Rule 7.3(2)** would be applicable to the cases where

the competent authority is of the opinion that the Government employee has been fully exonerated or in case of suspension that it was wholly unjustified and in that eventuality, the government employee shall be given the full pay and allowance, as the case may be. **Rule 7.3 (3)** would be applicable in other cases and under this sub-rule, the Government employee shall be given such proportion of such pay and allowance, as the competent authority may prescribe, provided that the same shall be subject to all other conditions under which such allowances are admissible and provided further that such proportion of such pay and allowance shall not be less than the subsistence and other allowances admissible under Rule 7.2. **Rule 7.3(4)** would be applicable to a case falling under the sub-rule (2), which provides that the period of absence from duty shall not be treated as a period spent on duty for all purposes. **Rule 7.3(5)** would be applicable to a case falling under sub-rule (3), which provides that the period of absence from duty shall not be treated as a period spent on duty, unless such competent authority specifically directs that it shall be so treated for any specified purpose, provided that if the government employee so desires, such authority may direct that the period of absence from duty shall be converted into leave of any kind due and admissible to the government employee. Further, Note:8 appended to Rule 7.3 provides that *if no order is passed under sub-rule (5) of this rule directing that the period of absence be treated as duty for any specified purpose, the period of absence should be treated as 'non-duty'. In such even, the past service (i.e. service rendered before dismissal, removal, compulsory retirement or suspension) will not be forfeited.*

7. In the present case, by an order dated 14.01.2011 (Annexure P-3) passed by the Superintendent of Police, Sirsa, the period during which the petitioner remained out of service i.e. from 12.03.1992 to 27.04.2020 was treated as *dies-non period* under the principle of 'No work No pay', which order was challenged and by an order an order dated 18.09.2012 (Annexure P-4) passed by the learned Single Judge, it was held that;-

“In the light of the fact that the punishment of treating the period from 12.3.1992 to 27.04.2010 (sic.) as dies-non period, when the petitioner was out of service because of dismissal, is not provided under the statutory Rules governing the service and keeping in view the fact that the principles of natural justice have also not been complied with by the respondents while passing the impugned order dated 04.012011, cannot be sustained and is hereby quashed.

This order passed by the learned Single Judge was challenged in LPA by the State and the Division Bench of this Court by an order dated 08.01.2014 (Annexure P-5) modified the said order passed by the learned Single Judge by observing as under;-

“Vide order dated 5.7.2010, for remaining absent from duty for a period of 17 days, punishment order of stoppage of three future annual increments with permanent effect was passed against the respondent. That order has become final. Thereafter, the competent authority vide order dated 14.1.2011 ordered that the period, for which the respondent remained out of service i.e. from 12.3.1992 to 27.4.2010, be treated as dies-non period in view of principle of “No Work No Pay”. Order dated

14.1.2011 was put under challenge by the respondent by filing Civil Writ Petition No. 7579 of 2011, which was allowed by the learned Single Judge on 18.9.2012 on the ground that before passing that order, no notice was given to the respondent. For violation of principle of natural justice, order was set aside.

*It is contention of counsel for the appellants that the authority, as per the Rules, part of which has been brought on record as Annexure P6, is competent to pass an order regarding the period for which the employee remained out of service on account of dismissal, suspension etc. In that regard, reference has been made to the provisions of Chapter VII Rule 7.3 of the Punjab Civil Services Rules Volume I Part I. **Reading of Rule 7.3(5) of the said Rules clearly envisages that the competent authority has a power to pass an appropriate order regarding the period during which an employee was not in service on account of punishment of disciplinary proceedings against him.***

In view of above, we feel that the appellants shall be given a right to pass an appropriate order afresh in terms of the Rules, as mentioned above. This appeal is disposed of by modifying the order passed by the learned Single Judge on 18.9.2012.”

A perusal of the order dated 08.01.2014 passed by the Division Bench would show that the Division Bench modified the order passed by the learned Single Judge, while observing that under Rule 7.3(5) *clearly envisages that the competent authority has a power to pass an appropriate order regarding the period during which an employee was not in service on account of punishment of disciplinary proceedings against him.* In response

to the said order passed by the learned Division Bench, the respondents herein passed the order dated 10.03.2014 (Annexure P-6) treating the period from 12.03.1992 to 27.04.2010 as *Leave of Kind Due* as per Rule 7.3 (5) of Punjab Civil Service Rules, Volume-I, Part-I. This order dated 10.03.2014 (Annexure P-6) was challenged before this Court and this court by an order dated 09.05.2016 (Annexure P-7) has passed the directions to the respondents to pass an order on subsistence allowance as per Rule 7.2 of the Punjab Civil Service Rules, Volume-I, Part-I and pursuant to which the impugned order dated 10.11.2016 (Annexure P-8) came to be passed by the Superintendent of Police, Sirsa, whereby, it was held by the competent authority that Leave of Kind Due to the petitioner has already been paid to him and since the petitioner never remained under suspension from 01.08.1991 i.e. the date of his absence from the duty till his dismissal from service i.e. 12.03.1992, as such, subsistence allowance cannot be granted to him.

8. The relevant rules have already been discussed above and this court is of the view that under Rule 7.3(5) the competent authority has a power to pass an appropriate order regarding the period during which an employee was not in service on account of punishment of disciplinary proceedings against him. Further, Note:8 appended to Rule 7.3 (as reproduced above) also provides that if no order is passed under sub-rule (5) of this Rule directing that the period of absence be treated as duty for and specified purpose, the period of absence should be treated as 'non-duty'. The Division Bench of this court in its order dated 08.01.2004 (Annexure P-5) has also observed a similar view regarding Rule 7.3(5). Furthermore, Rule

7.2 clearly states that an employee should be under suspension, before Rule 7.2 can be invoked to pay subsistence allowance to an employee, which is not so in the instant case.

9. As far as the case laws cited by the learned counsel for the petitioner are concerned, the same are distinguishable. In the case of ***State of Assam and another vs. Raghava Rajgopalachari (supra)***, the employee in that case was suspended from service and thereafter, dismissed from service on the ground of criminal convictions and subsequently, his conviction was confirmed in two of the offences and his conviction in remaining offence was set aside by the Allahabad High Court and thereafter, the Apex Court allowed his appeal. Thereafter, he sought regularization and pension, which is not so in the instant case. In the case of ***B.D. Gupta vs. State of Haryana (supra)*** it was observed by the Apex Court principle of natural justice should be followed, if an order affects employees financially and it must be passed after an objective consideration and assessment of all relevant facts and circumstances and after giving the person concerned full opportunity to make out his own case about that order whereas, in the present case, no principle of natural justice has been violated and nor so claimed by the petitioner in his petition. In the case of ***Shiv Kumar Goel vs. State of Haryana and another (supra)***, the employee remained under suspension from 12.07.1996 to 30.06.2002 and the services of the petitioner were retrenched on 30.06.2002, whereas, the employee was acquitted by the learned Special Judge on 24.01.2002 under the Prevention of Corruption Act. In that case, services of the employee were retrenched on 30.06.2002 whereas, the judgment of the acquittal came to be passed much prior on

24.01.2002 and despite that acquittal on 24.01.2002 and retrenchment on 30.06.2002, the employee was subsequently charge-sheeted on 24.10.2002, whereas, the facts in the present case are not so. In the case of ***Vir Bhan Singh vs. FCI and another (supra)***, the employee was working in the Food Corporation of India and in the enquiry, charge No.2 was not proved against the employee. However, the disciplinary authority disagreed with the enquiry report and held the employee guilty of charge No.2 and subsequently, dismissed him from service. In that case, the employee was punished by the disciplinary authority under charge No.2 disagreeing with the enquiry report, however, no reasons were conveyed to the employee of this disagreement with the enquiry report, whereas, facts in the case in hand are totally different. In the case of ***Ishwar Singh vs. State of Haryana and others (supra)*** the employee was reinstated into service and the entire period, the employee remained out of service, had been treated as continuity in service, but was deprived of the wages and in that eventuality, the Court allowed full wages to the petitioner, whereas, this is not a situation in the case in hand. In the case of ***Surjit Singh vs. State of Haryana and another (supra)*** the employee was implicated in a false case and it was on account of his conviction that he had been dismissed from service. Subsequently, the order of conviction was set aside and the petitioner was reinstated, which is not so in the case in hand. In the case of ***Ram Anjore's case (supra)*** an FIR came to be registered against the petitioner in that case Ram Anjore and one Ramesh Kumar Gulati under the Prevention of Corruption Act and both were ultimately convicted by the Special Judge. However, the appeal filed by the petitioner therein was allowed and he was acquitted of the charges

framed against him. In that case, the suspension/termination period of the petitioner therein was treated as Leave of Kind Due, whereas, the suspension/termination period of co-accused Ramesh Kumar Gulati was treated as duty period. In that case, since the case of the petitioner therein was not different from that of co-accused Ramesh Kumar Gulati, as such, the petitioner therein was held entitled to full pay and allowance, as was allowed to co-accused Ramesh Kumar Gulati whereas, facts in the present case are totally different. In the case of *Ex-Constable Kulwant Singh vs. State of Punjab and others (supra)* the employee was exonerated from the charges and had not suffered any punishment, which is not so in the present case.

10. In view of the foregoing discussion, this court is of the considered view that the impugned order dated 10.11.2016 passed by the respondents is in consonance with the Rules and no ground is made out to interfere with the same.

11. Accordingly, the instant writ petition is hereby dismissed being devoid of merit.

April 2, 2022
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No