

214.

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

CWP-3566-2015

Date of Decision: 03.08.2022

DARSHAN SINGH

.... Petitioner

Versus

STATE OF PUNJAB AND OTHERS

.... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Krishan Singh Dadwal, Advocate,
for the petitioner.

Mr. Pawan Sharda, Senior DAG, Punjab.

JAISHREE THAKUR.J

The petitioner was recruited as a Constable on 14.11.1989. He continued to perform his duties with due diligence, however, he met with an accident on 26.06.2005. He was unable to undergo the anti-terrorist course at Bahadurgarh for which he had been deputed. As he was unable to move and did not appear for duty, a charge-sheet was drawn up on 18.08.2005 regarding his absence from duty. The petitioner did not appear in the inquiry proceedings and ultimately, the Inquiry Officer submitted his report holding the petitioner guilty for absence from duty. The punishing authority dismissed him from service by order dated 15.07.2006. The petitioner filed an appeal stating that he was not intentionally absent from service but had met with an accident and his leg was fractured, on which account, he could not present himself either before the Inquiry Officer or at work. The appeal

was dismissed as was the revision petition by orders dated 02.05.2007 and 29.01.2008 respectively. A mercy petition thereafter was also preferred, which too was dismissed.

The petitioner has approached this Court by way of instant writ petition while stating that his dismissal orders do not take into account the reason as to why he was absent from service, nor have they taken into account his length of service and his entitlement for pension by considering Rule 16.2(1) of the Punjab Police Rules, 1934.

Learned counsel appearing on behalf of the petitioner herein, while giving up his claim for reinstatement, relies upon Rule 16.2 of Punjab Police Rules, 1934 to contend that it was incumbent upon the authority concerned to have taken into account his entitlement for pension. He would submit that the impugned orders have been passed in violation of Rule 16.2(1) of Punjab Police Rules, 1934 inasmuch as the orders of punishment of dismissal from service have not taken into account the service rendered by the employee in regard to his entitlement for pension.

On the other hand, learned State counsel has submitted that the petitioner herein would not be entitled to any pension in view of the fact that out of the gross service of 16 years, 8 months, the petitioner had served for only 2 years, 4 months and 12 days as 10 years of service of the petitioner had been forfeited by the competent authority due to his absence from duty besides leave without pay for 872 days due to his absence from duty. His service had been forfeited on four different occasions. Learned State counsel would argue that it is by virtue of the fact that 10 years of his service stood forfeited, the petitioner would not qualify for pension.

In response to the said argument, learned counsel for the petitioner has relied upon several judgments rendered by this Court in support of his argument that at the time of dismissal, the authorities have to take into consideration the length of service of the employee along with the right to pension while awarding the punishment. He would rely upon judgments rendered in ***Virender Singh Versus State of Haryana and others, 2014(13) R.C.R. (Civil) 300; Mewa Singh Pattar Versus State of Haryana and others, 2015(3) S.C.T. 239; Onkar Singh Versus The Punjab State through Collector, Gurdaspur and another, 2003(4) S.C.T. 55.*** Further reliance has been placed upon a judgement rendered in ***Baljit Singh Versus State of Punjab and others, 2020(4) S.C.T. 391***, which allowed the claim of the petitioner therein for grant of pension taking into account his length of service rendered. The said judgment further noted decision in CWP No.19196 of 2009, ***Napinder Singh Versus State of Punjab and others***, decided on 06.08.2012.

Counsel for the petitioner would submit that even though 10 years of service stands forfeited, however, the same have to be considered and counted towards the length of service rendered by him for grant of pensionary benefits. It is submitted that the petitioner would be satisfied in case the authorities concerned would consider his claim by relying upon the judgments as cited.

Accordingly, the instant petition is allowed. The orders of dismissal of the petitioner from service are set aside. The matter is remitted back to the competent authority to consider his claim for pension afresh in the light of the observations made above after affording him an opportunity

of hearing. This exercise shall be completed within a period of 4 months from the date of receipt of certified copy of this order.

(JAISHREE THAKUR)
JUDGE

03.08.2022

sanjeev

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No