

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

CWP-21326-2020

Reserved on 14.09.2022

Pronounced on: 29.10.2022

Gurmej Singh

.... Petitioner

Versus

State of Punjab and others

.... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Sameer Sachdeva, Advocate,
for the petitioner.

Mr. Mohit Kapoor, Additional Advocate General, Punjab.

JAISHREE THAKUR.J

1. The petitioner herein seeks to challenge the order dated 13.11.2017 whereby the period of his compulsorily retirement till he was reinstated in service i.e. w.e.f. 16.02.2017 to 23.11.2017 has been treated as non-duty period as well as order dated 08.06.2020 whereby his appeal has been dismissed, despite the fact that he was found innocent in the departmental proceedings.

2. The facts as pleaded are that the petitioner was appointed as Constable on 12.12.1989, promoted as Head Constable in the year 2002 and then promoted to the post of ASI on 16.02.2016. The allegation made against the petitioner is that he was having close relations with one Kuldeep Singh @ Kipa and other gangsters and by taking money and liquor from them, helped in securing bail in case FIR No.120, dated 25.11.2016, registered under Sections 307, 323, 148, 149 IPC and Section 25, 27 of Arms Act, at Police

Station Badhani Kalan. He was the Investigating Officer of that case. On the basis of said allegation, he was ordered to be retired compulsorily vide order dated 16.02.2017 passed by the Senior Superintendent of Police, Moga. Against the said order, he preferred appeal before the IGP, Bathinda, which was partly allowed vide order dated 13.11.2017. Instead of compulsorily retirement, a departmental enquiry was ordered to be initiated against him. However, the period from the date of compulsorily retirement to the date of joining was treated as non-duty period, as he did not perform any official duty during that time. He was reinstated in service and departmental enquiry was initiated by the SSP, Moga, wherein the petitioner was found innocent. Thereafter, he moved representation before SSP, Moga for counting his period of compulsorily retirement till the date of reinstatement i.e. w.e.f. 16.02.2017 to 23.11.2017 as duty period and to pay him salary and other allowances accordingly. However, his representation was forwarded to the IGP, who further directed the petitioner to approach the next appellate authority i.e. DGP, Punjab. Accordingly, he filed an appeal before the DGP on 01.09.2019. Since no action was being taken, he approached this Court by way of CWP No.36040 of 2019, which petition was disposed of vide order dated 12.12.2019 with a direction to decide his appeal within a period of six months. Vide order dated 08.06.2020, his appeal was dismissed. Hence, the present petition.

3. Learned counsel appearing on behalf of the petitioner would argue that before passing the impugned order dismissing his appeal, he was not afforded any opportunity of hearing. It is argued that since the petitioner

was found innocent in departmental enquiry, the period w.e.f. 16.02.2017 to 23.11.2017 was wrongly treated as *non-duty period*. He has relied upon notification dated 26.03.1990 of the State Government that if minor punishment is given to an employee, then his suspension period is to be counted as duty period and the employee is entitled to salary along with other allowances.

4. *Per contra*, learned State counsel would argue that in compliance of order dated 12.12.2019 passed in CWP No.36040 of 2019, the petitioner was given personal hearing by the DGP, Punjab, but since the appeal of the petitioner had no merit, it was dismissed. Moreover, there were 23 bad entries in his service record.

5. I have heard learned counsel for the petitioner as well as learned State counsel and have gone through pleadings of the case.

6. The grouse of the petitioner is that despite having been found innocent in the departmental enquiry, the period w.e.f. 16.02.2017 to 23.11.2017 was treated as non-duty period.

7. Admittedly, the petitioner was compulsorily retired from service vide order dated 16.02.2017 on the allegation that he, as the investigating officer, had helped gangsters get bail in FIR No.120, dated 25.11.2016, under Sections 307, 323, 148, 149 IPC and Section 25, 27 of Arms Act, Police Station Badhani Kalan. This order was challenged in appeal which was partly accepted. The order of compulsory retirement was then set aside and it was ordered that a regular departmental inquiry should be held against the petitioner. An Inquiry Officer was appointed who came to the conclusion

that the allegations against the petitioner were not proved. The inquiry report has since been accepted. Now the question for consideration before this Court is as to whether the period from the date of compulsory retirement to the date of reinstatement of the petitioner is to be considered as non-duty period or he is entitled for salary of that period.

8. The service of the petitioner is governed under the Punjab Civil Service Rules, 1994. Under Rule 7.3 of the Punjab Civil Service Rules, Vol. I, Part I, it has been provided that in case, an employee is reinstated, he shall be given full pay and allowances to which he would have been entitled, had he not been dismissed. Rule 7.3 of the said Rules is reproduced as under:-

"7.3(1) When a Government employee, who has been dismissed, removed or compulsory retired, or suspended, is reinstated, or would have been reinstated but for his retirement on superannuation the authority competent to order re-instatement shall consider and make a specific order -

(a) regarding the pay and allowances to be paid to the Government employee for the period of his absence from duty, occasioned by suspension and/or dismissal, removal or compulsory retirement ending with his reinstatement on or the date of his retirement on superannuation as the case may be, and

(b) Whether or not the said period shall be treated as a period spent on duty.

(2) Where the authority mentioned in sub rule (1) is of opinion that the Government employee has been fully exonerated or, in the case of suspension, that it was wholly unjustified, the Government employee shall be given the full pay and allowances to which he would have been entitled, had he

not been dismissed, removed, compulsorily retired or suspended, as the case may be.

(3) In other cases, the Government employee shall be given such proportion of such pay and allowances as such competent authority may prescribe: Provided that the payment of allowances under sub rule (2) of sub rule (3) shall be subject to all other conditions under which such allowances are admissible.

Provided further that such proportion of such pay and allowances shall not be less than the subsistence and other allowances admissible under rule 7.2.

(4) In a case falling under sub-rule (2) the period of absence from duty shall be treated as a period spent on duty for all purposes.

(5) In a case falling under sub-rule (3) 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.

Note. 1 to 8 xxx xxx xxx

Note 9. Where a Government employee under suspension is acquitted by a Court of Law and the order reinstating him is passed some time after the date of acquittal, full pay and allowances have to be paid from the date of acquittal to the date of re-joining duty and period counted as duty for all purposes whereas for the period from the date of suspension/removal/dismissal to the date of acquittal he is to be allowed pay and allowances as directed by competent authority under sub rule (2) or sub rule (3) of this rule and the period treated as duty or non duty under sub rule (4) or sub rule (5) of this rule,

as the case may be.”

9. A bare perusal of Rule 7.3(2) of the Punjab Civil Services Rules specifically provides that in the event of a government employee, who had been dismissed, removed or compulsorily retired or suspended, being reinstated upon exoneration, shall be paid full pay and allowances to which he would have been entitled to, had he not been dismissed, removed or compulsorily retired or suspended. Sub Rule (4) of Rule 7.3 further provides for treating the entire period of suspension preceding dismissal, removal or compulsory retirement as a period spent on duty for all purposes. The petitioner was initially compulsorily retired from service on 16.02.2017 and was then reinstated by the department on 23.11.2017. An employee, who stands compulsorily retired from service on account of criminal proceedings initiated against him would be entitled to reinstatement if he stands acquitted, and would be entitled to all benefits for the period he was out of service. Reliance can be made to judgments rendered in ***Hukam Singh V. The State of Haryana and another 2001 (1) RSJ 201*** where the Division Bench of this Court has held that when a person is acquitted of the criminal charge, he would be entitled to full salary and allowances between the period of suspension, dismissal and reinstatement, as well as on a judgment rendered in ***Narinder Kumar Versus Dakshin Haryana Bijli Vitran Nigam Ltd. and others, 2016 (3) SCT 738 (P & H)***, where it has been held that once the petitioner has been exonerated, he would be entitled to all the benefits under Rule 7.3 of the Punjab Civil Services Rules. In the instant case, the petitioner was compulsorily retired by the department on the ground that he was the Investigating Officer in FIR wherein he helped accused to be given bail.

Allegation was that he was negligent in performing his duty. The order of compulsorily retirement was set aside and on reinstatement, the petitioner has faced a departmental inquiry and stands fully exonerated. He was not allowed to perform his duty for no fault of his and, therefore, to deny him benefits of salary etc. “for the period not on duty” is unjustified.

10. Consequently, the impugned orders are set aside and the writ petition is allowed holding that the petitioner would be entitled to all the benefits as mentioned in Rule 7.3(3) of the Punjab Civil Services Rules, 1994 for the period he remained out of service.

(JAISHREE THAKUR)
JUDGE

29.10.2022

sanjeev

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No