

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

112

CM-6153-C-2023 &
CM-6154-C-2023 in/&
RSA-1719-2023(O&M)
Date of Decision :31.05.2023

Kirpal Singh

...Appellant

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ajay Kumar, Advocate for
Mr. Rishu Mahajan, Advocate for the appellant.

Mr. Gurpreet Singh, Addl. A.G. Punjab.

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Harsimran Singh Sethi, J. (Oral)**CM-6153-C-2023**

The present application has been filed for condonation of delay of 38 days in filing the present appeal.

Keeping in view the averments made in the application, which are duly supported by an affidavit, the application is allowed. Delay of 38 days in filing the present appeal is condoned.

CM-6154-C-2023

As prayed for, application is allowed.

RSA-1719-2023

1. Present regular second appeal has been filed challenging the judgments and decrees of the Courts below by which, the claim of the appellant-plaintiff for setting aside the order dated 29.12.2013 having

endorsement dated 08.01.2014 passed by the respondents by which, the appellant-plaintiff was reinstated in service but with the condition that for the period he remained out of service will be treated as 'dies non', has been rejected.

2. Learned counsel for the appellant-plaintiff submits that once on a mercy petition, the appellant-plaintiff was reinstated in service, treating the period for which the appellant-plaintiff remained out of service as 'dies non' will completely take away all the benefits for the said period even for the pensionary purposes.

3. Learned counsel for the appellant-plaintiff further submits that he undertakes that for the period for which the appellant-plaintiff remained out of service, the appellant-plaintiff will not claim any arrears of salary or increment but the said period be treated as qualifying period for computing his pensionary benefits.

4. Notice of motion.

5. Mr. Gurpreet Singh, Addl. A.G. Punjab accepts notice on behalf of the respondent-State and submits that it was only on a mercy petition order of dismissal from service was set aside by the respondent but with a condition that no benefit of the said period will be given to the appellant-plaintiff.

6. Learned State counsel further submits that the grant of no benefit for the period the appellant-plaintiff remained out of service actually amounts to treat the said period as 'dies non' therefore, order passed by the Courts below is perfectly valid and legal.

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

8. In the present case, it is a conceded fact that vide order dated 19.11.2008, the appellant-plaintiff was dismissed from service after holding an enquiry and his appeal as well as revision against the said order of dismissal was also dismissed by the authority concerned but on a mercy petition filed by the appellant-plaintiff, an order was passed on 29.12.2014 having endorsement dated 08.01.2015 so as to modify the punishment of dismissal and appellant-plaintiff was reinstated in service with the condition that for the period he remained out of service, the said period will be treated as 'dies non'. It is also a conceded fact that the period which has been treated as 'dies non' cannot be taken into consideration for any purpose or for the grant of any benefits keeping in view the Service Rules.

9. Once, the respondent has reinstated the appellant-plaintiff in service means the earlier service is continued, hence by taking out certain period of service for which he remained out of service, the same will cause prejudice to the appellant/plaintiff.

10. As being contended by the learned counsel for the respondent that intention of the respondent was not to grant any financial benefit to the appellant-plaintiff for the intervening period, which can be duly taken care of keeping in view the undertaking given by the learned counsel for the appellant-plaintiff that the appellant-plaintiff will not claim any arrears of salary as well as increment for the period he remained out of service, which will satisfy the intention of the respondent. Treating the period for which, the appellant-plaintiff remained out of service as 'dies non', the said period will not be taken into account for even computing the pensionary benefits, which will be a too harsh decision as per the facts and circumstances of the present case as well as allegations being alleged against the appellant-

plaintiff.

11. Keeping in view the undertaking given by the appellant-plaintiff that the appellant-plaintiff will not claim any benefit for the period he remained out of service including arrears of salary as well as increment, order dated 29.12.2013 having endorsement dated 08.1.2014 is modified to the extent that period for which, the appellant-plaintiff remained out of service will be treated as qualifying period for computing his pensionary benefits and the judgments and decrees of the Courts below are modified accordingly.

12. Present regular second appeal is allowed in above terms.

May 31, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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