

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

104

CWP-1187-2015

Date of decision: 07.02.2023

RAMESH CHANDER

..Petitioner

Versus

STATE OF PUNJAB & ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajinder Sharma, Advocate
for the petitioner.

Mr. Athar Ahmed, DAG, Punjab.

ANIL KSHETARPAL, J(Oral)

1. On 06.02.2023, after hearing the learned counsel representing the parties, the following order was passed:-

“Heard the learned counsel representing the parties at some length.

In Civil Writ Petition no.1187 of 2015, the petitioner prays for a writ of certiorari to quash the order dated 05.08.2014 to the extent it declined the relief of arrears of pay to the petitioner w.e.f. 22.01.2010 to 27.04.2012 in the pay-scale of Rs.10,300-34,800 plus Grade Pay of Rs.4,800/-.

The petitioner claims that while he was working as a Junior Assistant, he was suspended on 08.12.2009 on account of the pendency of a criminal case in the Court. Subsequently, he was reinstated during the pendency of the criminal case on 30.04.2010. He immediately joined as a Junior Assistant on 02.05.2010. Vide order dated 25.04.2012 (Annexure P4), the petitioner was promoted as a Senior Assistant w.e.f. 22.01.2010. The petitioner was permitted to join as a Senior Assistant w.e.f. 27.04.2012.

The learned counsel representing the petitioner submits that though he has been paid the arrears as payable to the Junior Assistant, however, he has not been paid the arrears as payable to the Senior Assistant w.e.f. 22.01.2010. He relies upon Rule 7.5 of the Punjab Civil Services Rules Volume-I.

On the other hand, the learned counsel representing the State of Punjab has relied upon Clause 3(e) of the Instructions dated 27.06.1985 to contend that the petitioner cannot be granted the arrears of difference

in the salary with respect to the period he never worked as a Senior Assistant.

However, the learned counsel representing the State of Punjab prays for some time to examine the matter, in detail, before making further submissions.

List on 07.02.2023 for final disposal, in the urgent list.

A photocopy of this order be placed on the file of another connected case.”

2. The learned counsel representing the State of Punjab fairly admits that the instructions dated 27.06.1985 are applicable to an employee whose conduct is the subject to an enquiry, hence, not applicable to the facts of the present case. However, he contends that in **Union of India and others Vs. Jaipal Singh, 2003 Supplementary (5) SCR 115**, the Supreme Court has held that an employee shall not be entitled to back wages even if he gets acquitted in the criminal case.

3. This Court has carefully read the judgment passed in **Jaipal Singh's case (supra)**. It is evident that in that case, the criminal prosecution was not initiated at the behest of the department. Moreover, the concerned employee was convicted by the trial Court, though acquitted by the Appellate Court. In the present case, the petitioner was falsely implicated in a criminal case arising under the Prevention of Corruption Act, 1988. The trial Court recorded a positive finding that the petitioner was implicated on account of enmity between Sh. Pawan Kumar, Pharmacist and Sh. Ashok Naik.

4. Hence, the judgment relied upon by the learned counsel representing the State of Punjab, is not applicable to the facts of the present case. It is evident that the petitioner was not allowed to work as a Senior Assistant due to the order of suspension. During the pendency of the

criminal case, he was reinstated. He has already been ordered to be promoted as Senior Assistant with effect from 22.01.2010.

5. Hence, the petitioner is entitled to the difference of pay between the post of Senior Assistant and Junior Assistant with effect from 22.01.2010 till 25.04.2012.

6. With these observations, the writ petition is allowed.

7. All the pending miscellaneous applications, if any, are also disposed of.

February 07th, 2023

(ANIL KSHETARPAL)
JUDGE

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<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>