

CWP No.18402 of 2021

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

CWP No.18402 of 2021

Date of decision : 13.10.2023

Swaranjit Singh & Ors.

....Petitioners

Versus

State of Punjab and Anr

....Respondents

CORAM : HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present :- Mr. Karikeya Swaroop Mehta, Advocate for the petitioners.

Mr. D.K. Singal, Addl.AG, Punjab.

SANJEEV PRAKASH SHARMA, J. (ORAL)

1. The petitioners have challenged the part of order dated 04.02.2021 passed by respondent No.2-Principal Secretary, Department of Food, Civil Supplies and Consumer Affairs (for brevity "the Authority") whereby while dropping charges levelled against them relating to departmental inquiry, the period of suspension has been directed to be treated as them being on leave of kind due and if the leave is not due, it has been directed to be treated as regular period for pension purpose only.

2. Learned counsel for the petitioners submits that the Authorities could not have converted the period of suspension to leave of kind due or to be treated only for the purpose of pension as the Authorities reached the conclusion that the charges were not substantiated and the inquiry needs to be dropped.

3. Learned counsel representing the petitioners submits that with regard to said charges, a criminal case was also instituted but the petitioners were

discharged. In view thereof, the petitioners were entitled, in terms of Rule 7.3 B (3) of the Punjab Civil Services Rules (Vol 1 Part 1) (hereinafter to be referred as “the Rules”) to full pay and allowances for the period, the petitioners remained under suspension.

4. Learned counsel for the State does not dispute so far as provisions are concerned to submit that the impugned order needs not to be disturbed as the same does not entail or take away the petitioners’ right.

5. I have heard considered the submission.

6. An FIR was registered against the petitioners on 08.12.2009. The court of learned Judicial Magistrate, Ist Class, Ferozepur on appraisal of the report submitted by the Authorities did not find any incriminating circumstances against the petitioners and ordered discharge vide order dated 19.05.2017. In the departmental inquiry relating to the same allegations, the petitioners were served with a charge sheet in March, 2012 wherein an inquiry was conducted. The petitioners were indicted by the Inquiry Officer, however, Disciplinary Authority vide its order dated 09.01.2019 ordered for dropping of the charges against the petitioners and passed the order relating to suspension, as noticed above.

7. While a person can be suspended on account of there being any allegation, which requires to be examined/inquired into, the question arises as to what relief should be given to such an individual after the Disciplinary Authority reaches the conclusion of exonerating the concerned delinquent. In this regard, Rule 7.3-B of the Rules being relevant reads as under:

“CHAPTER VII			
DISMISSAL, REMOVAL, SUSPENSION AND RESIGNATION			
CESSATION OF PAY AND ALLOWANCES OF REMOVAL OR			
DISMISSAL			
7.1	xxxxx	XXXXXXXXXX	
7.2	xxxx	xxxx	
7.3	xxxx	xxxxxxx	
7.3-A	xxx	xxx	

“7.3-B. (1) When a Government employee who has been suspended is reinstated or would have been so re-instated but for his retirement on superannuation while under suspension the authority competent to order re-instatement shall consider and make a specific order –

(a) regarding the pay and allowance to be paid to the Government employee for the period of suspension ending with re-instatement 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) Notwithstanding anything contained in rule 7.3 or rule 7.3-A, where a Government employee under suspension dies before the disciplinary or court proceedings instituted against him, are concluded, the period between the date of suspension and the date of death shall be treated as spent on duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled, had he not been suspended, subject to adjustment in respect of subsistence allowance already paid.

(3) Where the authority competent to order re-instatement is of opinion that the suspension was wholly unjustified, the Government employee shall, subject to the provisions of sub-rule (8), be paid the full pay and allowances to which he would have been entitled, had he not been suspended:

Provided that where such authority is of opinion that the termination of the proceedings instituted against the Government employee, had been delayed due to reasons directly attributable to the Government employee, it may, after giving him an opportunity to make his representation and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government employee shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.

(4) In a case falling under sub-rule (3), the period of suspension shall be treated as a period spent on duty for all purposes.

(5) In cases other than those falling under sub-rules (2) and (3), the Government employee shall, subject to the provisions of sub-rules (8) and (9), be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled, had he not been

suspended, as the competent authority may determine, after giving notice to the Government employee of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period as may be specified in the notice.

(6) Where suspension is revoked pending finalisation of the disciplinary or court proceedings, any order passed under sub-rule (1) before the conclusion of the proceedings against the Government employee shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in sub-rule (1) who shall make an order according to the provisions of sub-rule (3) or sub-rule (5), as the case may be.

(7) In a case falling under sub-rule (5), the period of suspension shall not be treated as a period spent on duty unless the 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 order that the period of suspension shall be converted into leave of any kind due and admissible to the Government employee.

Note.—The order of the competent authority under the preceding proviso shall be absolute and no sanction of the higher authority shall be necessary for the grant of—

(a) extraordinary leave in excess of three months in the case of temporary Government employee; and

(b) leave of any kind in excess of five years in the case of permanent Government employee. (8) The payment of allowances under sub-rule (2), sub-rule (3) or sub-rule (5) shall be subject to all other conditions under which such allowances are admissible.

(9) The amount determined under the proviso to sub-rule (3) or under sub-rule (5) shall not be less than the subsistence allowance and other allowances admissible under rule 7.2.”

8. In terms of the aforesaid provision i.e 7.3-B clause (3) as noticed above, on exoneration or acquittal, the concerned delinquent would be entitled to entire benefits for the period of suspension. Thus the concerned delinquent would be entitled to the remaining salary as well as continuity of service for all purposes. The order passed by the Disciplinary Authority dated 09.01.2019 is found to be not in consonance with the aforesaid Rules and the said part of the

order, therefore, is set aside. The petitioners would be entitled to the actual salary for the entire period of suspension and would also be allowed to count the said period for all purposes. Their pay fixation will accordingly be done and their pension and retiral benefits would also accordingly be fixed. The entire exercise shall be completed within a period of three months henceforth.

9. Petition stands allowed in the aforesaid terms.

October 13, 2023

(SANJEEV PRAKASH SHARMA)

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JUDGE

Whether speaking/reasoned: Yes

Whether Reportable : No