

[204] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-21871-2016

Date of Decision :01.12.2023

Gurmail Singh

...Petitioner

versus

State of Punjab and others

....Respondents

Coram : **HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA**

Present : Mr. Sunny Singla, Advocate for the petitioner.
Ms. Shivani Sharma, DAG, Punjab.

SANJEEV PRAKASH SHARMA, J. (ORAL)

[1] This is a writ petition, challenging the order dated 13.11.2017 whereby the appeal preferred by the petitioner against the order of punishment of stopping of one annual grade increment without cumulative effect was upheld and further the period of suspension was not counted for any purpose.

[2] Learned counsel submits that the petitioner was suspended on 05.11.2009 and reinstated on 24.10.2013. The suspension was initially on account of criminal case registered against him wherein he has been acquitted of the charges. The departmental action was also taken on the same charges and one annual increment without cumulative effect has been awarded as the punishment to the petitioner. Learned counsel does not assail the punishment so awarded but challenges the order of the Appellate Authority whereby the period from 05.11.2009 to 24.10.2013 has been discounted for all purposes. Learned counsel submits that the period of suspension is to be treated as part of the duty and there is no rule

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petitioner. It is submitted that the petitioner was being paid subsistence allowance during the suspension period and therefore has to be treated as on duty. Person, who is suspended is not allowed to perform duties anywhere else or to join any other service and therefore he is to be treated as on duty. The action of the respondents therefore in discounting the said period for all purposes is erroneous and deserves to be deleted from the order dated 13.11.2017.

[3] *Per contra*, learned counsel appearing for the respondents submits that the petitioner was suspended on account of a criminal case registered against him under Sections 420, 467, 468, 471 IPC and he has been ultimately acquitted by giving him benefit of doubt. Thus, it cannot be said that he has been honorably acquitted, therefore, the suspension period has been rightly not counted for any purpose.

[4] I have considered the submissions.

[5] The power of suspending a government employee on account of any criminal case or on account of departmental action is available under the Punjab Civil Service (Punishment and Appeal) Rules, 1970. However, while under suspension an employee continues to remain in service and he is required to mark his attendance and is also paid subsistence allowance, thus, the servant-employee relationship is not severed. In view thereof, the period rendered while under suspension has to be treated as period in service and the order of the Director, holding that the period shall not be counted for any purpose is therefore erroneous and unjustified. The Co-ordinate Bench of this Court in 'Jagdish

held as under:-

“ This fact is not in dispute that the punishment of stoppage of four increments with future effect is in accordance with law and after following the principles of natural justice. So far as treating the suspension period as non-duty period and forfeiting of pay and allowances other than the subsistence allowance is concerned, the same was against the principles of natural justice and was rightly set aside by the learned lower Appellate Court and the opportunity to the respondent-Board has been granted to decide the matter afresh after giving show cause notice to the appellant as to why the suspension period should not be treated as non-duty period and pay and allowance of the appellant-plaintiff other than the subsistence allowance should not be forfeited.”

[6] The submission of learned counsel for the State that the petitioner has been acquitted, granting him benefit of doubt would have no relevance for the purpose of deciding the treatment relating to the period of suspension, as the petitioner has been separately dealt with in departmental proceedings where he has already been punished with stopping one increment without cumulative effect.

[7] The question arises that in cases, where a person has been punished with a minor penalty, how the period of suspension is required to be treated. If the person is not granted the pay and allowances for the period during which he remained under suspension and has been ultimately given a minor penalty of stopping one increment without cumulative effect, the penalty awarded under the CCA Rules would be

period. The action of the State cannot be such which results in dual punishments.

[8] In view of above, this Court holds that in cases where a person is punished with a minor penalty, the concerned person would be entitled for salary of the suspension period and the same has to be treated as part of the service for all intents and purpose. Accordingly, this writ petition is *allowed*. The order passed by the Director, Public Instructions dated 13.11.2017 so far as it discounts the suspension period from 05.11.2009 to 24.10.2013 for all purposes is held to be illegal and the same is quashed and set aside. The suspension period of service shall now be counted for all purposes and the benefits shall be released for the said period within a period of three months.

[9] No costs.

(SANJEEV PRAKASH SHARMA)
JUDGE

01.12.2023
'Rajneesh'

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