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

**CWP No.17505 of 2018 (O&M)
Date of Decision: 13.03.2023**

SATPAL THROUGH HIS LRS

.....Petitioner(s)

Vs

STATE OF HARYANA AND ORS

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Deepak Girotra, Advocate and
Mr. Rishabh Goyal, Advocate
for the petitioner(s).

Mr. Naveen Singh Panwar, D.A.G., Haryana.

Mr. Ravi Sharma, Advocate
for the respondent No.4.

RAJ MOHAN SINGH, J.(Oral)

[1]. The petitioner has preferred this writ petition for the issuance of an appropriate writ in the nature of certiorari, quashing the impugned order dated 15.11.2016 passed by the respondent No.2 thereby retiring the petitioner compulsorily from service w.e.f. 09.12.2013 i.e. the date on which order of dismissal of the petitioner from service was passed on earlier occasion and treating the period from 17.09.2010 to 09.12.2013 as the period under suspension and allowing only subsistence allowance to be paid as per rules.

[2]. The petitioner has also assailed the order dated 11.01.2017 passed by the respondent No.3 after retirement of the petitioner thereby modifying the earlier orders and refixing the pay of the petitioner with retrospective effect.

[3]. The grievance of the petitioner is that the petitioner was implicated in a criminal case bearing FIR No.473 dated 24.12.2002 under Sections 323, 324, 148, 149, 506, 452 IPC, Police Station Sadar Kurukshetra. The petitioner was convicted by the trial Court vide judgment of conviction and order of sentence dated 18.09.2010. The appeal filed by the petitioner dismissed by the Court of Sessions on 11.01.2013. The petitioner was never suspended during the trial conducted before the trial Court. After dismissal of his appeal by the Court of Sessions, the petitioner was arrested on 11.01.2013. The petitioner remained in custody for about three months and after that the sentence of the petitioner was suspended by the High Court in CRR No.277 of 2013.

[4]. After order of suspension of his sentence, the petitioner went to join his duties on 08.04.2013 but the respondent No.2 suspended the petitioner w.e.f. 11.01.2013 on the ground of his conviction vide order dated 04.04.2013. In due course, order of dismissal of the petitioner from service was passed on 09.12.2013 against which the petitioner remained unsuccessful in statutory appeal which was dismissed vide order dated

01.07.2015 by the respondent No.1.

[5]. Feeling aggrieved against the order of dismissal and order passed by the Appellate Authority, the petitioner filed CWP No.15307 of 2015. The High Court was pleased to allow the same by setting aside the order of dismissal and a direction was issued to the respondents/competent authority to reconsider the case of the petitioner on the parameters of conduct which led to the conviction. The competent authority was also required to consider the case of the petitioner by converting dismissal order into one of compulsory retirement from services, if the petitioner's services for the last 30 years are otherwise found to be unblemished having no adverse service history or red ink entry justifying loss of 30 years of service in Haryana Roadways. This was so observed particularly in view of the fact that the course of one episode of a quarrel with a neighbour gone out of hand in the village. The order dated 08.09.2016 passed in aforesaid case has attained finality.

[6]. After the aforesaid order, the respondent No.2 has passed order dated 15.11.2016 thereby ordering compulsory retirement of the petitioner from service w.e.f. 09.12.2013 i.e. the date on which the competent authority had passed the order of dismissal of the petitioner from service. The period from 17.09.2010 till 09.12.2013 was ordered to be treated as suspension period, for that only subsistence allowance was to

be paid as per rules.

[7]. The first grievance of the petitioner is that vide the impugned order dated 15.11.2016, the period from 17.09.2010 till 11.01.2013 has been ordered to be the period under suspension, particularly when the petitioner had actually worked for the said period and had also drawn monthly salary thereof. The said period cannot be treated to be the period under suspension in view of order dated 04.04.2013 passed by the respondent No.2, specifically suspending the petitioner w.e.f. 11.01.2013 on coming to know about the factum of his conviction by the trial Court. At the most the petitioner could have been placed under suspension from 11.01.2013 to 09.12.2013. Secondly, while passing the order dated 11.01.2017 i.e. after retirement of the petitioner, no show cause notice was issued to him thereby modifying the earlier orders, when the petitioner was in service.

[8]. Perusal of the stand taken by the respondents-State would show that the period from 17.09.2010 to 09.12.2013 has been treated to be the period under suspension taking into consideration the law that the orders of dismissal are to be passed prospectively. Evidently the order of dismissal has already been converted into an order retiring the petitioner compulsorily from service w.e.f. 09.12.2013 i.e. the date of

dismissal of the petitioner which was passed on earlier occasion. By treating the petitioner to be under suspension for the period 17.09.2010 to 11.01.2013 against subsistence allowance would be an act of giving subsistence allowance over and above the salary drawn by the petitioner for the said period particularly in the light of the fact that the competent authority on coming to know about the factum of conviction of the petitioner even passed an order dated 04.04.2013 thereby suspending the petitioner w.e.f. 11.01.2013 only.

[9]. In the light of aforesaid factual position, the order dated 15.11.2016 passed by the respondent No.2 is liable to be set aside to the extent of putting the petitioner under suspension for the period 17.09.2010 to 11.01.2013. The impugned order is accordingly modified thereby treating the period from 11.01.2013 to 09.12.2013 to be the period under suspension.

[10]. So far as the second grievance is concerned, the order dated 11.01.2017 is found to have been passed after compulsory retirement of the petitioner without issuing him any show cause notice for modification of his pay for the period when the petitioner was in service. Any reduction in pay structure of the petitioner would require the petitioner to be heard in accordance with law. The implementation of the order dated 11.01.2017 by passing the order dated 24.01.2017 would also be on questionable note as the same is found to be in

violation of the principle of natural justice. Accordingly the orders dated 11.01.2017 and 24.01.2017 are liable to be quashed, however with liberty to the competent authority to pass a fresh order after associating the petitioner in accordance with law. Since the petitioner has died, therefore, his legal representatives would be entitled to be heard, if any action is contemplated by the respondents/competent authority in accordance with law.

[11]. For the reasons recorded hereinabove, this writ petition is disposed of.

March 13, 2023

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No