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

CWP-23752-2016

Date of Decision: 20.02.2023

Gurdeep Singh

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Arun Takhi, Advocate,
for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

The present writ petition has been filed under Article 226/227 of the Constitution of India for issuance of a writ, order or direction especially in the nature of *certiorari* for quashing the impugned order dated 23.11.2015 (Annexure P-19) passed by respondent No.2 thereby treating the suspension period from date 03.10.1999 to 16.06.2003 as non-duty period and further to quash the impugned order dated 21.01.2016 (Annexure P-20) which is an order passed by the Appellate Authority upholding the aforesaid order dated 23.11.2015 passed by respondent No.2 being illegal, arbitrary, *mala fide*, non-speaking and also being against the settled preposition of law.

Learned counsel for the petitioner has submitted that it is a case where the petitioner was appointed as Maths Master on *ad hoc* basis on 21.10.1976 and thereafter, his service was regularized on 01.10.1980.

Thereafter, he retired on 15.11.2010. However, while he was in service, he was served with charge-sheet vide Annexure P-1 and thereafter, disciplinary proceedings commenced and inquiry was held. In the inquiry, the petitioner was exonerated and thereafter, the competent authority disagreed with the inquiry officer and after issuing Show Cause Notice to him passed a punishment order for stoppage of three annual increments with cumulative effect vide Annexure P-5 dated 09.12.2005 while he was in service and thereafter, he filed statutory appeal before the Appellate Authority and the learned Appellate Authority vide Annexure P-16 dated 05.06.2015, allowed the appeal and set aside the order of punishment and came to the conclusion that no charges were found to be proved against the petitioner and regarding disagreement by the competent authority, no solid facts are reflected to prove moral turpitude. However, in the aforesaid order passed by the Appellate Authority, it was also directed for the purpose of orders pertaining to suspension period and for the purpose of retiral benefits, he may submit his new application to the competent authority. The Appellate Order was passed in the year 2015 after the petitioner had retired.

Learned counsel for the petitioner further submitted that thereafter, the petitioner submitted a fresh application to the competent authority, but vide impugned order Annexure P-19, the competent authority on 23.11.2015 directed that the suspension period of the petitioner shall be treated as non-duty period and he will be entitled to be paid only the subsistence allowances which he has already received. Thereafter, he filed an appeal against the aforesaid order which was however dismissed by way of impugned order dated 21.01.2016 vide Annexure P-20.

Learned counsel for the petitioner submitted that although there

were two prayers made in the present petition. The first prayer was pertaining to counting of *ad hoc* service for the purpose of pensionary benefits which has already been counted and he has no grievance with regard to the same. The only issue which survives in the present petition is pertaining to treating of the suspension period as non-duty period which has been passed vide impugned order Annexure P-19.

Learned counsel for the petitioner submitted that the action of the respondents was totally arbitrary and against the law. He further submitted that Firstly, the petitioner had already retired on 15.11.2010 and his punishment order has already been set aside by the Appellate Authority, and therefore, the suspension period ought to have been considered as duty period for the purpose of paying the benefits to the petitioner because there was no separate order passed by the authority at that point of time treating his period to be a non-duty period nor the same has been so passed by the competent authority at the time when his order of punishment was passed pertaining to imposing of punishment of withholding of three annual increments with cumulative effect. He further submitted that in the absence of any such order, the suspension period ought to have been treated as the duty period once the punishment order itself has been set aside by the Appellate Authority. Secondly, once the petitioner has already retired on 15.11.2010, the employer-employee relationship ceased to operate and now the impugned order which has been passed on 23.11.2015 after a period of five years, by which his suspension period has been treated to be a non-duty period is without the authority of law. The competent authority ought not have passed the aforesaid order after the retirement of the petitioner because it was not a case of an order which was in continuation of any disciplinary

proceedings, but it was a fresh order passed at the inception level, and therefore, the order was without jurisdiction. Thirdly, a perusal of the impugned order (Annexure P-19) would show that it is a totally non-speaking and cryptic order. A perusal of the order would also show that neither any reason has been given nor any fact has been discussed by the Director, Education Department (Sr. Sec.), Punjab and the only reason which has been given is that the charge under which the petitioner was placed under suspension is very serious charge. He submitted that the charge itself has been set aside by the Appellate Authority and punishment order has also been set aside. There is no basis as to why on this ground alone the suspension period has been treated as non-duty period and when he filed an appeal against this order, then the Appellate Authority has passed a totally cryptic and non-speaking order which is also liable to be quashed.

On the other hand, Ms. Akshita Chauhan, learned DAG, Punjab stated that when the punishment order was set aside by the Appellate Authority, the petitioner was granted liberty to move a fresh application to the competent authority for the purpose of seeking benefit of suspension period and retired benefits and it was in view of the aforesaid order passed by the Appellate Authority that the said application was considered by the competent authority i.e. the Director Education Department (Sr. Sec.), Punjab by which the suspension period was treated to be a non-duty period, and therefore, there is no illegality on the part of the respondents.

I have heard the learned counsel for the parties.

The aforesaid facts are not in dispute. The issue involved in the present case is that after the retirement of the petitioner i.e. on 15.11.2010,

the impugned order (Annexure P-19) has been passed on 23.11.2015 i.e. after about five years. This order has been passed merely on the basis of the fact that when the Appellate Authority had set aside the order of punishment qua the petitioner vide Annexure P-16, then only a liberty was granted to him to file a fresh application to the respondent-Authority. This Court is of the view that the Director, Education Department (Sr. Sec.), Punjab was not competent nor having any authority of law to pass any order after the retirement of the petitioner pertaining to the nature of the suspension period. At the time when the petitioner was suspended or even at the most before his retirement according to the learned counsel for the parties, no order was passed pertaining to the same. Rather on the other hand, the punishment order of the petitioner has already been set aside by the Appellate Authority, since according to the Appellate Authority, the charges were not proved against him and there was no solid reason for Punishing Authority regarding moral turpitude. The reason given by the Director, Education Department (Sr. Sec.), Punjab vide Annexure P-19 is that the charges against him were very serious in nature and that is why his suspension period is to be treated as non-duty period. Such kind of ground or reason given by the aforesaid officer is totally wrong and illegal and also contrary to the orders passed by the Appellate Authority by which the order of punishment was set aside with a finding that there was no solid ground of moral turpitude.

Apart from the above, after a period of 5 years of the retirement, no such kind of order could have been passed by the Director, Education Department (Sr. Sec.), Punjab as employer-employee relationship ceased to operate after the retirement of an employee. It is not a case where the authority has been exercised by virtue of Rule 2.2(b) of the Punjab Civil

Services Rules but it is a case where after 5 years of retirement by passing an impugned order, his suspension period has been treated as non-duty period on the ground that the charges were serious in nature and the punishment order had already been set aside by the Appellate Authority.

In view of the above, the present petition is allowed. The impugned orders vide Annexures P-19 & P-20 are hereby set aside. The respondents are directed to calculate the amount of arrears pertaining to his suspension period and pay to the petitioner along with interest @ 6% p.a. within a period of four months from today.

20.02.2023

(JASGURPREET SINGH PURI)
JUDGE

Bhumika

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| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |