

CM-20469-CWP-2023 in/and
CWP No. 18542 of 2022

2023:PHHC:153915

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(107+278)

CM-20469-CWP-2023 in/and
CWP No. 18542 of 2022
Date of Decision : 04.12.2023

Rajender Kumar

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. J.S. Maanipur, Advocate with
Mr. Joy Preet Meelu, Advocate for the petitioner.

Mr. Tapan Kumar Yadav, Deputy Advocate General,
Haryana.

Harsimran Singh Sethi J. (Oral)

1. In the present petition, the challenge is to the order dated 31.05.2022 (Annexure P-6) by which the petitioner has been denied the benefit of arrears of salary from the date of dismissal till the date of acquittal by the Criminal Court.

2. Learned counsel for the petitioner, at the outset, submits that during the pendency of the present petition, the petitioner has already been given the salary for the period he remained out of service, hence, he is not pressing the present petition. Learned counsel for the petitioner further submits that as the petitioner has already retired from service, he is not pressing his claim for the grant of full salary for the suspension

period but the period of suspension has not been taken into account as a qualifying service for computing the pensionary benefits, which is arbitrary and illegal.

3. Learned counsel for the respondents submits that in the present petition, no such grievance has been raised, hence, the question of adjudicating the same will not arise.

4. Certain facts needs to be mentioned herein for correct appreciation of the issue in hand.

5. While the petitioner was in service, he was involved in a criminal case for which five FIRs were registered against him. Though, initially the petitioner was convicted in those FIRs but in an appeal, the conviction was set-aside and the case was remanded back to the Judicial Magistrate for a fresh decision, wherein, the petitioner was acquitted by giving him a benefit of doubt.

6. During the time when the petitioner was facing the criminal charge, he remained under suspension from 18.01.2003 to 07.11.2010. The petitioner claimed the benefit of the salary for the suspension period in question but the same was declined by the respondents by the impugned order dated 31.05.2022 and though the period of suspension was treated to be the duty period but it was said that the petitioner will not be paid anything over and above the subsistence allowance already paid.

7. Learned counsel for the petitioner argues that once the petitioner has been acquitted in the criminal proceedings by a competent

court of law, even if the petitioner is not to be paid any amount beyond the subsistence allowance already paid, still the period of suspension will be treated as a qualifying service, which benefit is not being given to the petitioner for the reasons best known to the respondents.

8. Learned counsel for the respondents, on the other hand, submits that the said issue should be raised by the petitioner afresh by filing appropriate petition and not in the petition while challenging the order dated 31.05.2022 (Annexure P-6).

9. I have heard learned counsel for the parties and have gone through the record with their able assistance.

10. The petitioner is not challenging the validity of the impugned order dated 31.05.2022 (Annexure P-6) but submits that even if the said order is sustained in the eyes of law, the petitioner will be entitled for the benefit of treating the suspension period starting from 18.01.2003 till 07.11.2020 as a qualifying service for pensionary benefit, which benefit has not been given after the petitioner has retired from service.

11. It is a settled principle of law that the suspension period of an employee is to be decided keeping in view the outcome of the disciplinary proceedings, which are held against an employee. In the present case, there is no departmental proceeding, which was initiated against the petitioner but the petitioner was kept under suspension due to five FIRs, which were registered against him, which was within the jurisdiction of the department keeping in view the rules governing the

service. In those FIRs, the petitioner has already been acquitted though, by giving him a benefit of doubt.

12. The respondents in their wisdom have already passed the impugned order dated 31.05.2022 (Annexure P-6), wherein the respondents have mentioned that the petitioner will not be given any other amount except the subsistence allowance. Under these circumstances, once the petitioner has been paid subsistence allowance during the suspension period, the same has to be treated as a duty period for treating the same as a qualifying service for computing the pensionary benefits.

13. Learned counsel for the respondents has not been able to show any rule, according to which, when an employee has been acquitted by giving him benefit of doubt, even the suspension period is to be taken out for being treated as a qualifying service. In the absence of any such rule empowering the respondent-State to treat the suspension period as 'Dies Non', even where the employee has been acquitted by giving him a benefit of doubt, cannot be sustained in the eyes of law, hence, the present petition is disposed of with the direction that the suspension period from 18.01.2003 to 07.11.2010 will be treated as a duty period to be treated as a qualifying service for calculation of the pension/pensionary benefits.

14. If the said period has not been treated as a qualifying period for computing the pensionary benefits, the benefit of the same be given to

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the petitioner. Let the present order be complied with within a period of two months of the receipt of certified copy of this order.

15. Petition stands disposed of in above terms.

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Keeping in view the fact that the main petition is disposed of, the present application is allowed and personal appearance of respondent No. 2 is exempted.

December 04th, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No