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

CWP No.5508 of 2016 (O&M)

Date of Decision: 13.04.2023

HAWA SINGH

.....Petitioner

Vs

STATE OF HARYANA & ORS

.....Respondents

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

Present: Mr. Ashok Kumar Khubbar, Advocate
for the petitioner.

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

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 letter dated 20.08.2010 issued by the respondent No.1 and consequential recovery notice dated 14.09.2015 issued by the respondent No.2 being illegal. The recovery is sought to be effected after 6 years of the retirement of the petitioner.

[2]. When the petitioner was working as an Inspector in Haryana Police, he was awarded Police Medal for Gallantry in the year 2007. At the relevant time of retirement of the petitioner

there was a Government Policy dated 12.06.2003 for granting one year extension to the non-gazetted Police Officers/Personnel, who had received different Police Medals subject to certain conditions. For the category of Police Medal for Gallantry, one year extension in service was to be granted. The petitioner retired on 31.01.2008. On 01.02.2008, service benefit thereby extending the service of the petitioner by one year on account of Police Medal for Gallantry was given. During currency of extended benefit of one year of service, the petitioner was promoted to the post of Deputy Superintendent of Police on 29.08.2008 and was granted annual increment on 01.07.2008.

[3]. Vide Government instructions dated 12.06.2003, the State Government had decided to grant extension in service beyond the age of superannuation to those non-gazetted Police Officers, who were recipients of Police Medals subject to physical fitness and other conditions. In the category of Police Medal for Gallantry, one year extension in service was to be provided. Vide memo of even number dated 21.10.2004, provision was made to grant incentive to DSPs who are awardees of Police Medals for different categories of Medals.

[4]. The aforesaid Government instructions dated 21.10.2004 were reconsidered by the Government in the

instructions dated 31.05.2010 by deciding to grant incentive of extension in service for a maximum period of one year beyond superannuation to such gazetted non-IPS DSP/Addl. SPs, who are recipients of police medal in exceptional cases. So far as the instructions dated 12.06.2003 are concerned those remained intact throughout.

[5]. The respondent-Department on the basis of some other case decided in different jurisdiction commented upon the benefit to be an incentive and after superannuation there is no need to extend further incentives in the shape of grant of usual increment and promotion to the next rank during the extended period. On the basis of letter dated 20.08.2010 passed in the context of CWP No.6411 of 2010 in case of Inspector Mam Chand No.A/69, a show cause notice was issued to the petitioner proposing to withdraw the annual increment granted w.e.f. 01.07.2008.

[6]. Notice of motion was issued on 01.04.2016 with an interim order of stay of recovery. Evidently, after extension in service of one year, the petitioner was promoted to the post of Deputy Superintendent of Police on 29.08.2008. Even prior thereto, annual increment was granted to him w.e.f. 01.07.2008. While granting service benefit of extension in service for one year on account of Police Medal for Gallantry, there was no

such recital that the benefit is in the form of incentive. It was only in the letter memo dated 21.10.2004 applicable to gazetted non-IPS DSP/Addl. SPs, the word 'incentive' was introduced.

[7]. The petitioner had already retired w.e.f. 31.01.2009. The benefit of extension in service and annual increment came to be granted in favour of the petitioner during extended period of service. It is not a case of re-employment. The grant of additional time would amount to continuity in service tenure of the petitioner for a period of one year. In case of re-employment, the employee is to be hired back and that is only after lay off. In case of continuity, there is no such element. The extension in service cannot be equated with re-employment of the petitioner and the benefit accrued to him during extended period would be the normal consequences of his service benefits and his service would have been presumed to have not been put to an end by any stretch of imagination. In this regard reference can be made to the judgment of Division Bench of this Court in **Manjit Walia vs. State of Punjab and others' 2003(5) SLR 553.**

[8]. The impugned show cause notice dated 14.09.2015 came to be issued after a period of six years of retirement of the petitioner. The benefit was accrued to the petitioner not on account of any fraud or misrepresentation done by him, rather

the same was a policy decision and was implemented *qua* the petitioner on account of his achievement of Police Medal for Gallantry.

[9]. For the reasons recorded hereinabove, I deem it appropriate to accept this writ petition, thereby quashing the impugned letter dated 20.08.2010 issued by the respondent No.1 and recovery notice dated 14.09.2015 issued by the respondent No.2 being illegal.

April 13, 2023

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No