

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

208

CWP-28251-2017

Date of Decision :-07.12.2023

Lal Chand

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. B.K. Bagri, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

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Harsimran Singh Sethi, J. (Oral)

1. In the present petition, challenge is to order dated 25.01.2016 (Annexure P-6) passed by the respondents by which, the benefit of back wages was denied to the petitioner after being reinstated in service.

2. Learned counsel for the petitioner submits that keeping in view the fact that after filing the present petition, the petitioner has already retired from service on attaining the age of superannuation on 30.06.2018, the only prayer of the petitioner is for the release of his pensionary benefits for which, he is entitled for in respect of the service rendered by him.

3. Facts leading to the said claim are that the petitioner was appointed as driver with the Hayana Roadways on 09.03.1988. While performing his duties as such at bus No.HR-26/1146, the petitioner met with an accident on 23.03.1990 and an FIR was registered against him. Keeping in view the accident, as the fault was being attributed to the petitioner,

respondent-department terminated the services of the petitioner against which order of termination of service, the petitioner had preferred an appeal.

4. Meanwhile, in the criminal proceedings which were initiated against the petitioner due to the accident, petitioner was convicted by the Judicial Magistrate, Kathua on 29.08.1995 but on an appeal preferred by the petitioner, he was acquitted by the District and Sessions Judge, Kathua on 25.05.1996.

5. After the acquittal in criminal proceedings, the petitioner pursued the departmental appeal, which he had filed before the respondents against the order of termination on 26.11.1991 with a request to reinstate him in service but the said appeal was rejected by the Additional Transport Commissioner, Haryana vide order dated 04.12.2012.

6. Thereafter, the petitioner preferred a mercy appeal before the respondent No.1 on 27.02.2013, which appeal was allowed by respondent No.1. vide order dated 25/27-01-2016 and the order dated 04.12.2012 passed by the Additional Transport, Commissioner was set aside with the direction to the authority concerned to decide the appeal of the petitioner afresh.

7. Keeping in view the order passed by respondent No.1, respondent No.2- Director State Transport, Haryana passed the order dated 11.03.2016 with the direction that petitioner will be reinstated in service but without back wages for the period starting from 1991 till his joining i.e. 15.03.2016. The petitioner in compliance of the order dated 11.03.2016 joined the service. Present petition has been filed claiming the back wages for the said period but the said relief has already been not pressed by the petitioner as the only relief prayed/pressed is that pensionary benefits of the petitioner be released.

8. Upon notice of motion, respondents have filed reply. Learned counsel for the respondents submits that all the benefits for which the petitioner is entitled for have already been released to him keeping in view the number of years the petitioner had actually discharged the duties. Learned counsel for the respondents submits that no further benefit is required to be given to the petitioner.

9. Learned counsel for the petitioner submits that the service of the petitioner has only been counted from the year 2016 onwards and he has not been granted any pension/pensionary benefits on the ground that petitioner had less than 10 years of service to his credit hence, the respondents are liable to be directed that the period of total service which the petitioner had rendered is to be taken as qualifying service for computing his pensionary benefits and the rules, which are being relied upon by the respondents in their reply are liable to be ignored.

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

11. It is a matter of fact that the petitioner was appointed with the respondent-department as far back as in 1988 and after the period of only 03 years in service, his services were terminated by the respondents on 31.10.1991. It is a matter of record that said termination order was withdrawn by the respondents and the petitioner was reinstated in service keeping in view the order dated 11.03.2016 passed by the Director, Department of Transport, Haryana. A bare perusal of the said order shows that the petitioner was reinstated in service but without back wages. Merely that the petitioner has not been given benefit of back wages does not mean that his earlier service, which he had rendered, will also be washed out qua

the grant of pensionary benefits. The only consequence of the order will be that the petitioner will not be getting any back wages for the period he remained out of service, which has no relation with the grant of benefit of counting his total service as qualifying service for computing his pensionary benefits. Once, the petitioner has been reinstated in service, he is deemed to have been in service starting from 1988 onwards and he is to be given benefit of service starting from 09.03.1988 till 30.06.2018 i.e. the date of his retirement but only for the purpose of computing his pensionary benefits.

12. Keeping in view the facts and circumstances noticed hereinbefore, claim of the petitioner qua the grant of benefit of total service rendered by him from 09.03.1988 till 30.06.2018 i.e. the date he attained the age of superannuation and retired, as qualifying service for computing his pensionary benefits is allowed.

13. Let the pensionary benefits for which, the petitioner is held entitled for by taking into consideration the total length of service rendered by him from 09.03.1988 till 30.06.2018 i.e. the date he attained the age of superannuation and retired, be calculated and released to the petitioner within a period of two months from the date of receipt of copy of this order along with arrears of pension/pensionary benefits.

14. No other argument has been raised.

December 07, 2023

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(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No