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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-31234-2018 (O&M)
Date of Decision: 05.10.2023

Nachhatter Singh

. . . . Petitioner

Vs.

State of Punjab and others

. . . . Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr. Vijay Kumar Jindal, Sr. Advocate with
Mr. Akshay Jindal, Advocate and
Mr. Arman Goyal, Advocate, for the petitioner.

Mr. Vishnav Gandhi, DAG, Punjab.

SANJEEV PRAKASH SHARMA, J.(Oral)

1. Brief facts of the present case are that the petitioner was posted in the Central Jail as warder and it was alleged that with his connivance, convict Jarnail Singh brought one thousand intoxicant tablets from tower no.2 while on duty.
2. An FIR was registered against the petitioner and departmental proceedings were also initiated. Initially, the petitioner was dismissed from service holding that it is not reasonable and practical to hold an inquiry. Against the said order, writ petition was filed before this Court wherein order was passed directing that his appeal against the said dismissal order be decided expeditiously. The appeal was allowed and he was reinstated in service and joined the duty on 07.01.2015.
3. Another writ petition was filed by the petitioner for seeking backwages for the period of his dismissal. The Court passed an order on

21.05.2015 with directions to the respondents to consider and decide the claim of the petitioner as set out in his representation, whereafter the Additional DG Police (Prisons) passed an order stating that although the petitioner was acquitted in the criminal case, he was found guilty in the departmental inquiry proceedings and there being a different standard of proof required to be adopted in departmental proceedings, the dismissal period from 09.04.2013 to 26.12.2014 would not be counted as duty time for service benefits.

4. In departmental inquiry, the proceedings were undertaken afresh after the petitioner was reinstated and after giving him opportunity of hearing, the petitioner was again dismissed from service on 10.06.2015. He preferred a departmental appeal but the same was rejected on 19.11.2015.
5. The petitioner again preferred a writ petition no. CWP-3233-2016 against the dismissal order dated 10.06.2015. The writ petition was dismissed leaving it open for the department for considering the question of punishment and converting dismissal to compulsory retirement.
6. The said order was challenged in appeal in LPA no.703 of 2016 which was dismissed on 02.05.2016, whereafter the respondents passed an order on 22.05.2017 converting the punishment of dismissal to that of compulsory retirement, and it was further directed that the period of ex-employee w.e.f. 10.06.2015 to 26.04.2017 would be calculated in the pensionary benefits.

7. However, the petitioner has again preferred this writ petition with a prayer to count the period of service from 09.04.2013 to 26.04.2017 for pensionary benefits. Learned counsel submits that as the punishment of dismissal has been set aside and he has been now compulsorily retired, he would be entitled to the counting of the entire period of service, and the dismissal order or its effect will have no consequence for the pensionary benefits. It is submitted that the respondents had themselves reinstated the petitioner and in view thereof, he was entitled to the said benefits.
8. *Per contra*, the respondents have filed their affidavit and pointed out that as the period from 09.04.2013 to 26.12.2014 stood already decided by the orders of the Additional DG Police (Prisons), and the Court had not interfered with the said order, there was no occasion to count the said period for the purpose of pension. Further, the principle of no work no pay is required to be applied and the government servant who does not discharge his duties is not entitled to pay arrears. The period of dismissal from 09.04.2013 up to the date the petitioner joined services i.e. 23.01.2015 therefore ought not be counted as period for service benefits, since he did not discharge his duty during this period. However, after the reinstatement, the period of service has been counted.
9. I have considered the submissions.
10. The petitioner, as noticed above, was dismissed from service on 09.04.2013 applying Article 311(2)(b) of the Constitution of India, but on appeal, the said order was set aside and he was directed to be

reinstated with departmental inquiry to be conducted. Question arises whether the said period is required to be counted for the purpose of qualifying service for pension.

11. In the opinion of this Court, although the petitioner having remained away from duty may not be entitled to any pay or allowances for the said period, but since the order of dismissal dated 09.04.2013 having been set aside, its effect shall become void and the period from 09.04.2013 upto 26.12.2014 shall have to be treated as part of service for the purpose of counting the total qualifying service for pension.

12. The submission of the respondents about the principle of no work no pay to be applied is wholly misconceived as the said principle is only with respect to payment of salary for the intervening period, and not for the purpose of counting the qualifying service.

13. Qualifying service as envisaged in the service Rules essentially means the total service which is to be counted for treating whether what pension should be paid to an employee. If there is a break in the service, the earlier period of service also loses its sanctity. Such is neither the intention of the order nor can the same be interpreted in the manner as done by the respondents. The period of service has to be counted continuously, more so, as the order of dismissal was set aside in appeal.

14. The petition therefore succeeds and is accordingly *allowed*. Respondents are directed to count the entire period of service as qualifying service for the purpose of pension. Pension be also accordingly calculated and released.

15.However, it is made clear that no financial benefits shall be accrued to the petitioner for the period when he was not in service.

16.All pending applications also stand disposed of accordingly.

(SANJEEV PRAKASH SHARMA)
JUDGE

October 05, 2023

Mohit goyal

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