

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-1412-2024
Date of Decision: 23.01.2024

Pardeep Kumar ...Petitioner

Versus

State of Punjab and Others ...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Amrik Singh, Advocate for the petitioner
Mr. Aman Dhir, DAG, Punjab

JAGMOHAN BANSAL, J. (Oral)

1. With the consent of both sides, the captioned petition is taken up for final hearing today itself.
2. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 26.02.2019 (Annexure P-3) and order dated 16.08.2022 (Annexure P-7) whereby benefit of increment for the period from 11.04.1984 to 07.03.1989 has been declined to the petitioner.
3. The petitioner joined respondent i.e. Punjab Police on 17.12.1981 as Constable and he was discharged from service on 11.04.1984. He challenged order of discharge before the Civil Court which dismissed plaint of the petitioner. The petitioner preferred an appeal before the District Judge which came to be allowed vide order dated 08.10.1988 (Annexure P-1) passed by Additional District Judge, Patiala. The respondent-department was directed

to permit the petitioner to join his duty within 15 days. The respondent preferred RSA No.2786 of 1988 before this Court which vide judgment dated 31.07.2015 partially modified order of the first appellate court. This Court while disposing of second appeal held that in view of principle of “*no work no pay*”, the petitioner would not be entitled to arrears of salary for the period from 11.04.1984 to 07.03.1989. It was further held that the said period would be counted for the purpose of continuity of service and other benefits which would accrue to the petitioner. The relevant extracts of the judgment dated 31.07.2015 read as:

"Though for the reasons noticed above, this Court is not inclined to interfere with the judgment of the Lower Appellate Court yet the fact remains that the plaintiff has not worked from the date of discharge i.e. 11.4.1984 to 7.3.1989 and in such circumstances he would not be entitled for any arrears of salary for the above mentioned period on the basic principle of 'no work no pay' and merely because he had chosen to litigate successfully he cannot be entitled for the above said financial benefits. However, the said period would be counted for the purpose of continuity of service and any other benefit which would accrue to the plaintiff.

Resultantly, the present appeal is partly allowed with the above said modifications."

4. The petitioner retired on 31.08.2021 on attaining the age of superannuation. The petitioner has been granted benefit of continuity of service qua aforesaid period, however, respondent vide orders dated 26.02.2019 (Annexure P-3) and 16.08.2022 (Annexure P-7) has formed an opinion that the petitioner is not entitled to benefit of increment for the aforesaid period. The opinion of the Additional Director General of Police, Technical Services, Punjab, Chandigarh is based upon advice of Deputy

Controller (F&A). The office of Controller (F&A) has formed an opinion that in view of judgment of Apex Supreme Court in ***A.P.S.R.T.C and another v. S. Narsagoud, (2003) 2 SCC 212***, the petitioner is not entitled to increment for the aforesaid period. The order dated 16.08.2022 reads as:

“With regard to the application submitted by Retired ASI/LR Pardeep Kumar No.3/T.S.S dated 30/05/2022, an opinion has been taken from the Deputy Controller(Finance and Accounts), according to whose opinion " No arrears of salary is to be paid to the employee from 11/04/1984 to 07/03/1989 because during this period this employee has not done any work and the principle of ‘No Work No Pay’ applies, but this period of the employee will be counted for continuous service and will also be counted for other benefits which will be available to him later on i.e. pensionary benefits. Here the principle of ‘No Work No Pay’ applies and salary of this period is not to be paid to the employee. Therefore, the benefit of annual increments cannot be given to the employee. In this regard, the Hon'ble Supreme Court has been held that the benefit of annual increments cannot be given during unauthorized absence.

On the basis of opinion of Deputy Controller (Finance and Accounts), no action is required to be taken on application given by you. Information is being sent to you.”

5. Counsel for the petitioner asserts that petitioner in terms of judgment dated 31.07.2015 of this Court is not entitled to salary for the period from 11.04.1984 to 07.03.1989, however, petitioner is entitled to notional increments. The respondent has wrongly placed reliance upon judgment of Supreme Court in ***S.Narsagoud (supra)***. The respondent cannot travel beyond judgment of this Court in RSA and case of the petitioner is not of unauthorized absence from duty.

6. Mr. Aman Dhir, DAG, Punjab submits that while disposing of regular second appeal, this Court has held that the petitioner is not entitled to financial benefits for the period he did not work. The petitioner on account of discharge from duty did not work from 11.04.1984 to 07.03.1989, thus, petitioner is not entitled to notional increments besides salary for the said period.

7. On being confronted with judgment passed by Hon'ble Supreme Court in *S. Narsagoud (supra)*, Mr. Aman Dhir, learned State counsel expressed his inability to controvert the fact that aforesaid judgment is applicable where an employee is guilty of unauthorized absence from duty whereas petitioner was not guilty of unauthorized absence from duty.

8. I have heard the arguments of learned counsels for the parties and perused the record with their able assistance.

9. From the perusal of record, it comes out that petitioner was discharged from duty on 11.04.1984. He remained out of service till 07.03.1989. He rejoined service after passing of order by first appellate Court. This Court while adjudicating regular second appeal modified order of first appellate Court to the extent of salary for the aforesaid period. Though the petitioner was made disentitled to arrears of salary, yet, it was held that aforesaid period would be counted for the purpose of continuity of service and any other benefit which would accrue to the petitioner. Any other benefit includes notional increment. The respondent-department has declined claim of the petitioner, relying upon paragraph 9 of the judgment of Apex Court in *S. Narsagoud (supra)*. Paragraph 9 of the judgment reads as:

“9. We find merit in the submission so made. There is a difference between an order of reinstatement accompanied by a simple direction for continuity of service and a direction where reinstatement is accompanied by a specific direction that the employee shall be entitled to all the consequential benefits, which necessarily flow from reinstatement or accompanied by a specific direction that the employee shall be entitled to the benefit of the increments earned during the period of absence. In our opinion, the employee after having been held guilty of unauthorised absence from duty cannot claim the benefit of increments notionally earned during the period of unauthorised absence in the absence of a specific direction in that regard and merely because he has been directed to be reinstated with benefit of continuity in service.”

10. From the perusal of aforesaid paragraph, it is quite evident that an employee who is guilty of unauthorized absence from duty cannot claim benefit of increments notionally earned during the period of unauthorized absence. Concededly, case of the petitioner is not case of unauthorized absence from duty. The petitioner was discharged from duty and he was reinstated on the intervention of Court. It is apt to notice that Apex Court has not created absolute bar for granting notional increment. The case of the petitioner is not case of unauthorised absence from duty and as per judgment of this Court in aforesaid RSA, he is not entitled to salary for the period of discharge, however, he is entitled to all other benefits which accrues to him. The petitioner, in view of judgment dated 31.07.2015 of this Court, which has become final between the parties, cannot be denied benefit of notional increment. The stand of the respondent is misconceived and deserves to be rejected.

11. In the wake of above facts and findings, this Court is of the considered opinion that impugned orders dated 26.02.2019 (Annexure P-3) &

16.08.2022 (Annexure P-7) are not sustainable and deserve to be set aside and accordingly set aside. Respondent(s) are directed to re-consider case of the petitioner within three months from today and release benefit of notional increments.

12. Disposed of in above terms.

(JAGMOHAN BANSAL)
JUDGE

23.01.2024
Mohit Kumar

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>