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2024:PHHC:013399

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-2033-2024

Date of decision: 31.01.2024

MALKIT SINGH

...PETITIONER

Vs.

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Sandeep Kumar, Advocate
for the petitioner.

Mr. Inderpreet Singh Kang, AAG, Punjab.

JAGMOHAN BANSAL, J (ORAL)

1. The petitioner through the instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 22.09.2023 (Annexure P-6) to the extent, petitioner while reinstating, has been denied benefit of back wages on the principle of 'No Work-No Pay'.

2. The petitioner on 11.08.1992 joined Punjab Police as a Constable. The petitioner w.e.f. 24.12.2001 was promoted on the post of Head Constable. A case of embezzlement of funds was unearthed and petitioner came to be dismissed from service vide order dated 25.08.2006. The said order was passed after conducting regular departmental inquiry. The petitioner preferred an appeal before Appellate Authority against the said order which was dismissed vide order dated 14.05.2007 passed by Deputy Inspector General of Police, Chandigarh. The petitioner preferred revision before Inspector General of Police which came to be dismissed vide order dated 02.08.2007 passed by I.G., P.A.P., Jalandhar Cantt. The petitioner further preferred representation before

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Additional Director General of Police which was also dismissed vide order dated 21.08.2008. The petitioner preferred CWP No. 12944 of 2009 before this Court seeking setting aside of orders passed by departmental authorities. This Court vide order dated 30.05.2023 directed the respondents to consider case of petitioner in the light of case of Bikram Singh. It is apt to mention here that Bikram Singh was dismissed like petitioner and he was reinstated vide order dated 16.03.2023 passed by Commandant, 82 Batalian, PAP, Chandigarh. The authorities while reinstating Bikram Singh specifically mentioned that he would not be entitled to back wages on the principle of 'No Work-No Pay'. The relevant extracts of the order dated 16.03.2023 passed in the case of Bikram Singh and order dated 30.05.2023 passed by this Court read as under:-

Order dated 16.03.2023

"In this case, I have carefully examined the service record of dismissed employee according to the order of Hon'ble court as well as the opinion given by the Legal Advisor. This dismissed employee has admitted, while giving reply to the show Cause notice in departmental inquiry that he has appended signature on the blank forms on the asking of accountant whereas the dismissed employee was fully aware that if he will put signature on the blank forms of TA, then amount can be drawn from the government treasury. He has violated the Punjab Police Rules. In this case, as per the order dated 16.01.2023 passed by the Hon'ble Punjab and Haryana High Court and opinion given by the Legal Advisor office of ADGP State Arm Police, Jalandhar, he can be reinstated in services. Thereafter after reading the order passed by Hon'ble Punjab and Haryana High Court, Chandigarh and point No. 16.2 of the Punjab Police Rules, I am reinstating this employee in services w.e.f. 16.03.2023 (F.N.). As per the order passed by the Hon'ble Supreme Court of India in other cases, the principle of "No work No pay" is applicable on this employee. Therefore this employee will not be entitled to get any claim for the period when he was not in service and this employee will also not be entitled to get seniority.

Order be entered into order book and a copy of this order be supplied to Constable Bikram Singh NO. 82/672 (Old) on free of cost.

*Sd/- Balwinder Singh, PPS
Commandant, 82nd Battalion, PAP,
Chandigarh.*

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Order dated 30.05.2023

11. *From reading of aforesaid precedents, it can be thus concluded:-*

(i) Where delinquent employees are facing similar charges, they need to be treated as par.

(ii) Wherever the treatment is discriminatory, the same would be an act of discrimination and arbitrariness and cannot be sustained being forbidden by Article 14 of the Constitution of India.

(iii) Wherever there is an arbitrary action tantamounting to denial of equality as guaranteed by Article 14 of the Constitution of India, the Court must intervene and quash the discriminatory action.

(iv) In the matters involving embezzlement, a person accused of mere negligence cannot be more guilty than the person accused of embezzlement. Meaning thereby a person charged with principal offence is always more guilty than the one charged with negligence.

12. *In view of settled law as stated above, all the petitions stand allowed. Respondents are directed to reconsider the case of the petitioners in the light of Bikram Singh's case supra within a period of 8 weeks from the date of receipt of certified copy of this order."*

3. Pursuant to orders of this Court, the respondents passed fresh order dated 22.09.2023 whereby petitioner was reinstated, however, applying the principle of 'No Work-No Pay' back wages were denied.

4. Counsel for the petitioner submits that petitioner could not work because of fault of the employer. The petitioner was always ready and willing to work, however, respondents did not avail services of the petitioner and he was dismissed from service in violation of Rule 16.2 of Punjab Police Rules, 1934 (for short 'Rules'). The petitioner was not guilty of grave misconduct, hence, he could not be dismissed from service. The petitioner has been reinstated because conduct of petitioner was not falling within purview of Rule 16.2 of the Rules.

5. Per contra, State counsel submits that petitioner was dismissed from service after conducting regular departmental inquiry. The appeal of the petitioner was dismissed and he filed revision as well as representation before Higher Authorities. All the Authorities dismissed claim of the petitioner. He was

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reinstated in view of judgment of this Court and there was no direction to pay back wages.

6. I have heard counsels for the parties and with their able assistance perused the record.

7. The conceded position emerging from record is that the petitioner worked with respondents-department from 1992 to 2006 and he was dismissed from service after conducting regular inquiry. The petitioner unsuccessfully preferred appeal before Appellate Authority. The petitioner further preferred revision as well as representation before higher police authorities. The revision as well as representation of the petitioner was dismissed. This Court vide order dated 30.05.2023 directed the respondents to reconsider case of the petitioner in the light of Bikram Singh's case. In the case of Bikram Singh, in view of principle of "No Work-No Pay" he has not been paid back wages. The foundation of order dated 30.05.2023 passed by this Court was parity. The petitioner like Bikram Singh has been reinstated and denied back wages like 'Bikram Singh'.

8. The petitioner relying upon judgment of this Court in "**Ram Singh Vs. State of Punjab 1992(3) SCT 448**" and judgment of Supreme Court in "**B.D. Gupta Vs. State of Haryana 1973(3) SCC 149**" is claiming that he was not at fault, thus, he should be paid salary for the period he remained dismissed from service. The claim of the petitioner deserves to be rejected on two counts i.e. principle of constructive res judicata as well as principle of 'No Work-No Pay'.

9. This Court vide order dated 30.05.2023 directed the department to reconsider case of the petitioner in the light of Bikram Singh's case. In the order dated 30.05.2023, the order passed by department in the case of Bikram Singh was duly reproduced. In the case of Bikram Singh benefit of back wages has been denied on the principle of 'No Work-No Pay'. The petitioner was well

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aware of this fact while arguing his writ petition before this Court. The Court did not ask the department to extend benefit of back wages. The petition was allowed on the ground of parity and petitioner was reinstated on the same ground. Bikram Singh has not been extended benefit of back wages and petitioner has been reinstated in the light of orders passed by this Court as well as order in the case of Bikram Singh.

10. The petitioner in his Civil Writ Petition No. 12944 of 2019 specifically prayed for back wages but this Court while disposing of said petition did not ask respondents to grant back wages which amounts to denial of his claim, thus, claim of the petitioner is hit by principle of constructive res-judicata. For the ready reference prayer clause of the CWP No. 12944 of 2019 is reproduced as below:-

“Civil writ petition under Article 226 of the Constitution of India praying for the issuance of a writ, order or direction in the nature of certiorari quashing the impugned orders dated 25.08.2006 (Annexure P-9), whereby the petitioner has been imposed a very harsh punishment of dismissal from service and the impugned order dated 14.05.2007 (Annexure P-11); dated 02.03.2007 (Annexure P-13); dated 19.05.2008 (Annexure P-15); and dated 20.02./05.03.2009 (Annexure P-17) passed by the respondent police authorities dismissing the appeals/revisions filed by the petitioner before them by passing illegal and arbitrary orders without any application of mind and without considering the proper facts and circumstances of the case.

And

For issuance of a writ, order or direction in the nature of mandamus directing the respondents to take back the petitioner in service and give him all benefits including all arrears of his salary and other allowances due to the petitioner.

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And

For issuance of such other writ, order or direction in favour of the petitioner, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

From the perusal of above quoted prayer clause of the writ petition, it comes out that petitioner had specifically prayed for back wages but no relief qua said prayer was granted. It is settled principle of law that relief claimed by a party when not granted, shall be deemed to have been refused and this refusal cast a bar upon a party to bring a fresh proceeding as being hit by principles of res judicata.

11. Apex Court in ***Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya***, (2013) 10 SCC 324 has laid down certain parameters while considering the case of a delinquent employee qua back wages. The relevant extracts of the judgment are reproduced below:

38. The propositions which can be culled out from the aforementioned judgments are:

38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.2. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

38.3. Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically

plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

38.5. The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimising the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

38.6. In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalisation of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer i.e. the employee or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin Works (P) Ltd. v. Employees [Hindustan Tin Works (P) Ltd. v. Employees, (1979) 2 SCC 80 : 1979 SCC (L&S) 53] .

38.7. The observation made in J.K. Synthetics Ltd. v. K.P. Agrawal [(2007) 2 SCC 433 : (2007) 1 SCC (L&S) 651] that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three-Judge Benches [Hindustan Tin Works (P) Ltd. v. Employees, (1979)

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2 SCC 80 : 1979 SCC (L&S) 53] , [Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court, (1980) 4 SCC 443 : 1981 SCC (L&S) 16] referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman.”

[Emphasis Supplied]

12. The petitioner was dismissed from service by Competent Authority after conducting regular inquiry. The petitioner preferred an appeal before Appellate Authority which came to be dismissed. The petitioner preferred revision as well as representation before higher authorities which were also dismissed. The petitioner has been reinstated in view of judgment of this Court and foundation of judgment of this Court was ground of parity. The petitioner has not been found innocent by this Court or by authorities whereas petitioner has been reinstated on the ground of parity as well as re-consideration of Rule 16.2 of the Rules. For the ready reference, the relevant extracts of the impugned order are reproduced as below:-

“In this case, I have carefully examined the service record of dismissed employee. According to the order of Hon'ble Court as well as opinion given by the Legal Advisor. This dismissed employee has admitted while giving reply to the show cause notice in departmental inquiry that he has appended signature on the blank form on the asking of Accountant whereas the dismissed employee was fully aware that if he will put signature on the blank forms of T.A. then amount can be drawn from the Government Treasury. He has violated the Punjab Police Rules. In this case, as per the order dated 16.01.2023 passed by the Hon'ble Punjab and Haryana High Court and the opinion given by the Legal Advisor, office of ADGP, State Armed Police, Jalandhar, he can be reinstated in services. Thereafter, after reading the order passed by Hon'ble Punjab and Haryana High Court, Chandigarh and point No. 16.2 of the Punjab Police Rules, I am reinstating this employee in services w.e.f. 16.03.2023 (F.N.). As per the order passed by the Hon'ble Supreme Court of India in other cases, the principle of "No Work No Pay" is applicable on this employee. Therefore this employee will not be entitled to get any claim for the period when he was not in service and this employee will also not be entitled to get security.

The case of Head Constable Bikram Singh no. 82/32 Old is also of same nature. I have carefully examined the service

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record of this case. This dismissed employee is appointed as Constable on 11.08.1992 and he was promoted on the post of Head Constable on dated 24.12.2001. He was dismissed from the service vide dated 25.08.2006 (A.N.) on conclusion of the departmental inquiry vide order no. 16132-39/Steno dated 25.08.2006. Therefore, the order dated 30.05.2023 passed by Hon'ble Punjab and Haryana High Court, Chandigarh is not fit for filing the appeal as per the legal opinion of Ld. Advocate General, Punjab, Chandigarh. Thereafter, reading the order and point No. 16.2 of the Punjab Police Rules, I am reinstating this employee in services w.e.f. 22.09.2023 (F.N.). As per the order passed by the Hon'ble Supreme Court of India in other cases, the principle of "No Work No Pay" is applicable on this employee. Therefore this employee will not be entitled to get any claim for the period when he was not in service and this employee will also not be entitled to get security. Order be entered into order book and a copy of this order be supplied to Constable Malkit Singh No. 82/32 (Old) on free of cost."

13. From the perusal of above quoted findings of the authority, it is evident that petitioner was never found innocent rather he has been found guilty of commission of offence. The prime claim of the petitioner, at this stage, is that his conduct was not gravest misconduct. The gravity of offence may not be warranting dismissal from service but this question, at this stage, cannot be examined by this Court. The petitioner being member of armed force was duty bound to maintain high standard of integrity and sincerity. There was no fault on the part of employer. The petitioner alongwith other employees was dismissed because of his ill-deeds. The State exchequer would dole out if petitioner despite his fault is paid back wages. It is further apt to mention here that petitioner did not plead that during his long dismissal period, he was not gainfully employed. As per above-cited judgments, an employee is entitled to back wages, if there was fault on part of employer and employee was innocent and he was ready to work. The petitioner during the period in question admittedly did not work for the State-respondent and during the said period there were adverse orders passed by authorities against him. If the petitioner is granted pay for the period in question, all the orders passed by authorities would become meaningless, futile

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exercise and he would get salary without work. The petitioner could be entitled to salary, had this Court or any authority found the petitioner innocent which is not his case.

14. In the wake of above discussion and findings, this Court is of considered opinion that present petition deserves to be dismissed and accordingly dismissed.

31.01.2024
manoj

Whether speaking/reasoned
Whether reportable

[JAGMOHAN BANSAL]
JUDGE

Yes/No
Yes/No