

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

205

CWP-14690-1998

Decided on : May 02, 2024

GURPAL SINGH (since deceased) through his Legal Representatives.

..... Petitioners

Versus

STATE OF PUNJAB AND OTHERS

..... Respondents

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. J.S. Toor, Advocate with
Mr. Adhiraj Toor, Advocate for the petitioner.

Mr. Surya Kumar, AAG, Punjab.

Mr. Harsh Chopra, Advocate for Respondent No.3.

NAMIT KUMAR, J. (Oral)

1. The petitioner has approached this Court by way of filing the instant petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* for modifying the impugned order dated 03.07.1998 (Annexure P-13), whereby his claim for release of wages for the period from 01.03.1991 to 31.05.1991 and 05.01.1993 to 23.02.1997, has been rejected and further a writ of *mandamus* has been sought for directing the respondents to release the back wages of pay, CPF/GPF fund etc. from 01.03.1991 to 31.05.1991 and 05.01.1993 to 23.02.1997, along with interest.

2. The brief facts leading to the filing of the present petition, as have been pleaded in the writ petition, are that the petitioner had joined the Indian Army as a soldier on 23.01.1958 and retired as honorary Captain on 31.01.1986

and thereafter he applied for the post of Service Engineer in PEPSU Road Transport Corporation (in short 'PRTC'), Patiala, where he was selected and appointed on the said post, vide order dated 18.06.1987 (Annexure P-1).

3. It is the case of the petitioner that he suffered a heart attack in the months of January, 1991 and then February, 1991 and he proceeded on three months' sanctioned medical leave from 01.03.1991 to 31.05.1991, and since he remained unwell, therefore, he sent about twelve leave applications alongwith medical certificates to his superior officers. Meanwhile, he was issued charge-sheet dated 01.10.1991, wherein he was charged for three charges i.e. (i) 'misconduct'; (ii) 'willful and continuance absence from duty from 01.06.1991' and (iii) 'to disregard office rules and break the laws'. After holding the departmental enquiry in terms of relevant rules, the petitioner was dismissed from service vide order dated 09.01.1995 (Annexure P-6), against which he preferred an appeal before the appellate authority but the same was not adjudicated upon and he was constrained to file CWP No.17656 of 1996, before this Court, whereby Respondent No.3 was directed to decide the appeal, within two months and vide order dated 20.02.1997 (Annexure P-8), the same was partly allowed and the abovesaid order of dismissal was modified to the extent of Punishment of "stoppage of four annual increments with cumulative effect" and it was further ordered that the period he remained absent and out of service be treated as "absence from duty" and consequently the petitioner was reinstated in service on 24.02.1997 as 'Service Engineer' and he retired, as such, on 31.05.1997. Thereafter, he submitted mercy appeal dated 28.07.1997 to the Board of Directors of PRTC, claiming balance allowances for the period from 01.03.1991 to 23.02.1997, however, the said appeal / representation was rejected vide impugned order dated 03.07.1998 by stating as under:-

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As per available record, Shri Gurpal Singh proceeded on leave with effect from 1.3.1991. As per orders passed by the Managing Director, PRTC, Shri Gurpal Singh was given Earned Leave for 3 days i.e. from 1.3.1991 to 3.3.1991, half pay leave from 4.3.1991 to 29.4.1991 (57 days), and without pay leave from 30.4.1991 to 31.5.1991 (32 days). His application for further extension of leave was rejected by the competent authority and he was charge-sheeted on 3.10.1991 for misconduct, and wilful absence from duties. The enquiry proceedings were then initiated against him and as a result of these proceedings he was dismissed from service w.e.f. 9.1.95. However, the matter was reconsidered following a directive from the Punjab and Haryana High Court. The Board of Directors in their meeting held on 24.1.1997 reduced the punishment of dismissal to the stoppage of four increments with cumulative effect. It was also decided that period of his "absence from duty and out of service" be treated as absent from duty.

Shri Gurpal Singh stated that on summoning by the Enquiry Officer, he had appeared before him on 5.1.93 and he had been regularly appearing before the Enquiry Officer in all-subsequent proceedings. He should, therefore, be treated as on duty and paid salary for the period. He also stated that he had given his joining report in the Corporation on 5.1.1993. The examination of the record, however, does not prove that any joining report was given by him on 5.1.93 or on later date. The simple appearance before the Enquiry Officer does not amount to his being present on duty. Shri Gurpal Singh cannot, therefore, be regarded as on duty although he may have appeared before the Enquiry Officer. Later on, he remained under suspension from 3.5.1993 to 9.1.1995 and he was dismissed on 9.1.95. He was out of service from 10.1.97 to 23.2.97 when the Board decided to reinstate him after awarding punishment of stoppage of four annual increments with cumulative effect. Shri Gurpal Singh admitted that he had been paid the subsistence allowance for the period of suspension. In the decision taken by the

Board on 23.2.97, it is very clear that he shall not be given anything for the period of absence from duty or for the period when he was out of service. Since, Shri Gurpal Singh has not been exonerated by the Board, the Board was fully competent to take such a decision. The period of suspension or the period when he was out of service cannot be treated as on duty for any purpose. Shri Gurpal Singh has been paid for the period for which leave was sanctioned to him on full pay or half pay. It is very clear, therefore, that the decision taken by the Board of Directors is in accordance with the material on record. Shri Gurpal Singh is not entitled to any further benefits as demanded by him vide his application dated 13.3.1997. As such his application is, therefore, liable to be rejected and I order accordingly.

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The aforesaid dated 03.07.1998 (Annexure P-13) has been impugned in the present writ petition.

4. On issuance of notice of motion, written statement on behalf of Respondent No.3 has been filed wherein it has been stated that the petitioner was granted earned leave w.e.f. 01.03.1991 to 03.03.1991; half pay leave from 04.03.1991 to 29.03.1991 and without pay leave w.e.f. 30.04.1991 to 31.05.1991 and thereafter, he applied for extension of leave from 01.06.1991 but the same was rejected by the competent authority and he was informed accordingly.

5. Learned counsel for the petitioner submits that the petitioner is entitled for pay and allowances as he had joined the duty on 05.01.1993 i.e. the date he participated in the inquiry proceedings and he was given allowances during the suspension period w.e.f. 03.05.1993 to 09.01.1995 and he never absented himself from the inquiry proceedings, therefore, he is entitled to be considered on duty for the said period and the decision of the Board of Directors, vide which his 'absence from duty' and 'out of service period' has been ordered to

be treated as 'absent from duty' is liable to be set aside. He further submits that the petitioner is entitled to the pay and allowances for the period from 01.03.1991 to 31.05.1991 and 05.01.1993 to 23.02.1997 along with interest as the order of dismissal dated 09.01.1995 (Annexure P-6) has been modified to that of stoppage of four annual increments with cumulative effect and, therefore, the absence period attributed to the petitioner is required to be considered as duty period.

6. On the other hand learned counsel for the respondents submits that the claim of the petitioner has already been considered by the competent authority and a detailed speaking order dated 03.07.1998 (Annexure P-13) has been passed, which is self explanatory, and the petitioner is not entitled for the pay and allowances for the aforesaid claimed period.

7. I have heard learned counsel for the parties and perused the record.

8. A perusal of the impugned order dated 03.07.1998 (Annexure P-13) would show that the claim of the petitioner has thoroughly been considered by the Corporation wherein it has been stated that the petitioner proceeded on leave w.e.f. 01.03.1991 and he was granted earned leave for three days i.e. from 01.03.1991 to 03.03.1991; half pay leave from 04.03.1991 to 29.04.1991 and leave without pay from 30.04.1991 to 31.05.1991 and his application for extension of leave was rejected by the competent authority and informed accordingly and he was charge-sheeted on 03.10.1991 for misconduct and willful absence from duties. The enquiry proceedings were initiated against him and as a result of said proceedings, he was dismissed from service w.e.f. 09.01.1995. However, on appeal, the punishment order of dismissal was modified to that of stoppage of four increments with cumulative effect and it was also decided that the period of his 'absence from duty' and 'out of service' be treated as 'absence from duty'.

9. The Hon'ble Supreme Court in 'Managing Director, Uttar Pradesh Sahkari Gram Vikas Bank Limited Lucknow and another versus Chandra Bhan (Dead) and others', 2020 (1) SCT 312' while dealing with the same question, as involved in the instant petition, has held that 'so long as punishment remains, the employee is not entitled for full payment of salary for the period of suspension or salary for the period of dismissal till the reinstatement'. The relevant portion of the abvoesaid judgement is as under:-

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4. The first respondent (since deceased) was placed under suspension on charges of financial and other irregularities. After conducting departmental inquiry, the Appointing Authority dismissed the first respondent on 09.06.1997. Upon challenge to the order of dismissal dated 09.06.1997 by the first respondent before the High Court in C.M.W.P.NO.23033 of 1997, the High Court opined that the punishment was disproportionate and remanded the matter for reconsideration with regard to the quantum of punishment to be imposed upon the first respondent. Thereafter, the appellant-Bank cancelled the order of dismissal of the first respondent, but however imposed penalty of stoppage of five increments besides censure entry. On appeal by the first respondent, it was modified by the Chairman, Uttar Pradesh Cooperative Institutional Service Board, Lucknow, and instead of five increments only one increment was withheld along with censure. The first respondent has since superannuated and has been deceased. The matter is pursued by his legal representatives.

5. We have heard Mr. Sunil K. Jain, learned counsel appearing for the appellant and Mr. V.K. Shukla, learned senior counsel appearing for respondent no.1 and also perused the impugned judgment and the materials on record.

6. The punishment meted out to the first respondent has not been effaced. It is only the quantum of punishment which has been reduced. Reduction of punishment is completely different from exoneration of the charge. So long as the punishment remains the

question of full payment of salary for the period of suspension or salary for the period from dismissal till reinstatement does not arise. The principle of “no work no pay” shall also apply.

7. In view of above, the impugned judgment and order passed by the High Court is held to be unsustainable. It is set aside. The appeal is allowed. There shall be no order as to costs.

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10. In the present case, the major punishment of 'dismissal' has been modified to another major punishment of 'stoppage of four increments with cumulative effect', and therefore, the said period cannot be considered as 'duty period'.

11. In this view of the matter, no case is made out to interfere in the impugned order dated 03.07.1998 (Annexure P-13), while invoking jurisdiction under Articles 226/227 of the Constitution of India and consequently, the present petition is hereby dismissed, with no orders as to costs.

May 02, 2024
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(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No