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

CWP-4622-1997

Date of Decision: 10.12.2024

Bijender Singh

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. A.P. Bhandari, Advocate for the petitioner.

Ms. Rajni Gupta, Addl. AG, Haryana.

Mr. Dhananjay Mittal, Advocate for respondent No.2.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *mandamus* directing the respondents to release the backwages of the petitioner as the respondents are not releasing the same.

2. Learned counsel for the petitioner submitted that it is a case where the services of the petitioner were terminated by the respondent-Municipal Corporation, Faridabad on 23.07.1986 and at that point of time, the petitioner was not a regular employee and was working on *ad hoc*/work charge basis. He further submitted that similarly other employees were also affected by the action of the respondent and in this way, separate writ petitions were filed before this Court. He referred to the writ petition bearing CWP-4797-1986 filed by the petitioner vide Annexure P-1 which was allowed in terms of the connected writ petition i.e. CWP-5340-1984 and the same is also attached along with the present writ petition as Annexure P-1



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Colly. which was allowed by a Co-ordinate Bench of this Court on 15.05.1989. He also submitted that a perusal of the aforesaid judgment dated 15.05.1989 passed in CWP-5340-1984 would show that the writ petition was allowed and the order of terminating the services of the petitioner was set aside and the petitioner was directed to be reinstated forthwith with continuity of service with all benefits. It was further directed that the petitioner will also be entitled for costs. He submitted that thereupon the respondents did not implement the aforesaid judgment and the petitioner had filed a contempt petition which was disposed of because during the pendency of the contempt petition, the petitioner was reinstated in service in the year 1991. He further submitted that now the present petition has been filed seeking grant of backwages from the date of the termination of the petitioner till the date of his reinstatement. He also submitted that the petitioner has been paid an amount of Rs.34,141/- on account of arrears of annual increments, pay difference and arrears of pay from the period of November, 1989 to May, 1993 onwards in the pre-revised scale of pay. He submitted that since the services of the petitioner were terminated w.e.f. 1989 and thereafter, has been reinstated and granted the benefit w.e.f. November, 1989 and therefore, he is entitled for backwages from the date of his termination till the date of reinstatement.

3. On the other hand, Mr. Dhananjay Mittal, learned counsel appearing on behalf of respondent No.2 while referring to the reply filed by respondent No.2 submitted that the judgment passed by a Co-ordinate Bench of this Court has since been implemented in *toto* and has referred to Para No.10 & 11 of the reply by stating that the petitioner has been paid



Rs.34,141/- on account of arrears of annual increments, pay difference and arrears of pay from the period of November, 1989 to May, 1993 onwards in the pre-revised scale of pay. While referring to the aforesaid para, he further submitted that however from the period of 01.01.1986 to October, 1989, the petitioner was not on duty and hence the principle of 'no work no pay', will follow and he is not entitled for payment of the arrears of pay difference and increment arrears for the aforesaid period i.e. 01.01.1986 to October, 1989 in the revised pay-scale of Rs.750-940/-. He also submitted that the benefit of increments w.e.f. 01.01.1986 has already been granted to the petitioner. He submitted that thereafter even the petitioner has been regularized and has retired from service.

4. Learned counsel for respondent No.2 also submitted that earlier when the petitioner filed a writ petition, which was allowed by a Co-ordinate Bench of this Court as aforesaid, the only direction was that the petitioner was directed to be reinstated forthwith with continuity of service with all benefits but there was no order pertaining to grant of backwages. He further submitted that in this way a Co-ordinate Bench of this Court had not granted the backwages to the petitioner and now the present petition has been filed which is a successive writ petition and the same is not even maintainable and also hit by the Rule of constructive *res judicata* as well. He submitted that in view of the above, the present petition is liable to be dismissed.

5. I have heard the learned counsels for the parties.

6. The dispute in the present case is as to whether the petitioner is entitled for grant of backwages from the year 1986 i.e. from 23.07.1986 which is the date of his termination till November, 1989 or not. The



petitioner was terminated on 23.07.1986 which was challenged by him in CWP-4797-1986 vide Annexure P-1 and the same was allowed in terms of CWP-5340-1984 which was filed by another set of similarly situated persons vide Annexure P-1 (Colly.). A Co-ordinate Bench of this Court on 15.05.1989 had allowed the petition and while setting aside the order of termination of service had also directed the respondents to reinstate the petitioner forthwith with continuity of service with all benefits.

7. Para No.10 & 11 of the reply filed by the respondents is reproduced as under:-

“That the contents of these paras are wrong and hence denied. It is submitted that the petitioner has been paid Rs.34,141/- on account of arrears of annual increments, pay difference and arrears of pay from the period of November, 89 to May, 93 onwards in the pre-revised scale of pay. However, from 1.1.86 to October, 89, the petitioner was not on duty and hence following the principle of no work no pay, the petitioner was not paid the arrear of pay difference and increment arrear from 1.1.86 to 10.89 in the revised pay scale of Rs.750-940/-. The benefit of increments w.e.f. 1.1.86 has already been given to him only.”

8. A perusal of the aforesaid reply filed by the respondents would show that after the passing of the aforesaid judgment, the respondents have implemented the aforesaid judgment and granted the arrears of annual increments, pay difference and arrears of pay from the period November, 1989 to May, 1993 onwards in the pre-revised pay scale. The only dispute in the present case is as to whether the petitioner is entitled for grant of



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backwages prior to allowing of the writ petition and also with effect from the date of termination order i.e. from the period 1986 to 1989. A perusal of the order passed by a Co-ordinate Bench of this Court would show that there is no specific direction pertaining to grant of backwages. The direction was pertaining to reinstatement of the petitioner in service with continuity of service with all benefits. As per Para 10 & 11 of the reply which has been reproduced above, the petitioner has been granted all the benefits regarding continuity of service with all benefits. The learned counsel for the petitioner has not disputed the same. There was no specific direction for grant of backwages to the petitioner.

9. After hearing the learned counsels for the parties, this Court is of the considered view that when the aforesaid judgment was passed vide Annexure P-1 there was no direction pertaining to grant of backwages and the petitioner has not been granted the aforesaid benefit, he could not have filed a successive writ petition only for the purpose of grant of the backwages. His remedy if at all would have been before the Court when the aforesaid judgment was passed and he could have taken the aforesaid plea before the aforesaid Court. The petitioner also did not file any application for modification or review of the aforesaid judgment and he accepted the same. Now the petitioner cannot file a successive writ petition only for the purpose of grant of backwages. Therefore, the present petition is devoid of merit and the same is hereby dismissed.

10.12.2024

*Bhumika***(JASGURPREET SINGH PURI)**
JUDGE

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