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AT CHANDIGARH

Date of Decision : August 29, 2024

.. Petitioner

Versus

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Onkar Rai, Advocate, for the petitioner.

Mr. Swapan Shorey, Deputy Advocate General, Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present writ petition, the grievance of the petitioner is that certain period of service for which the petitioner remained out of service prior to reinstatement, has not been treated as qualifying service for computing the pensionary benefits, which act on the part of the respondents is arbitrary and illegal.

2. As per the facts mentioned in the petition, the petitioner joined as a Conductor in the Punjab Roadways on 02.06.1969. The petitioner was suspended on 24.02.1987 and ultimately, his services were terminated on 03.03.1988. The petitioner filed an appeal against the said order and the order dated 03.03.1988 was modified by the Appellate Authority on 25.05.1992 (Annexure P-1) modifying the punishment of dismissal with

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stoppage of four annual increments with cumulative effect. The period for which the petitioner remained out was to be counted as a leave without pay. The petitioner re-joined the service in pursuance to the order passed by the Appellate Authority and ultimately retired from service on 31.05.2007.

3. The grievance of the petitioner is that while calculating the qualifying service, the period from 24.02.1987 to 06.08.1992 has not been taken into account as a qualifying service which is arbitrary and illegal and the respondents are liable to be directed to grant the petitioner the benefit of service while computing the pensionary benefits.

4. Upon notice of motion, the respondents have filed the reply wherein, it has been mentioned that the petitioner remained suspended from 24.02.1987 till 02.03.1988 and thereafter, his services were terminated on 03.03.1988, which order was modified by the Appellate Authority on 25.05.1992 by substituting the punishment of dismissal with that of stoppage of four annual increments with cumulative effect hence, once the petitioner remained out of service from 24.02.1987 to 06.08.1992, the said period has rightly been ignored to be treated as qualifying service for computing the pensionary benefits.

5. I have heard learned counsel for the parties and have gone through the record with their able assistance.

6. First of all, it may be noticed that the period for which the benefit has not been given to the petitioner to be treated as qualifying service starts from 24.02.1987 onwards whereas, on the said date, the petitioner was in service but was merely under suspension. His services were only terminated on 03.03.1988. Once the petitioner remained in

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service and was being paid subsistence allowance upto 03.03.1988, it cannot be said that even the said period cannot be treated as part of service hence, the respondents wrongly excluded the period from 24.02.1987 to 03.03.1988 as a qualifying service.

7. Even otherwise, after the dismissal order dated 03.03.1988 was modified by the Appellate Authority on 25.05.1992 with that of stoppage of four increments, the order terminating the services of the petitioner became invalid. Once the petitioner was reinstated in service, it was not to be treated as fresh appointment but the appointment continued with the modified punishment. Hence, for the period the petitioner remained out of service (i.e. from 03.03.1988 till 06.08.1992), only the salary was not required to be paid but the said service could not have been ignored to be treated as qualifying service.

8. As per the judgment of the Division Bench of this Court in ***CWP No.6293 of 1997 decided on 21.09.1988 titled as Banwari Lal vs. State of Punjab***, it has been held that where a person whose services were terminated, has been reinstated with continuity but without back wages, the said service has to be treated as a valid service to be treated as qualifying service. Even the period which has been treated as leave without pay has to be taken into account towards length of service and his pay to be fixed accordingly.

9. Even otherwise, in the present case, the period of service for which the petitioner remained out, he has been granted the benefit of increment. Once the increment has been granted to the petitioner for the period he remained out of service though notionally, the said period has to

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be treated as a qualifying service for computing the pensionary benefits. Therefore, keeping in view the facts and circumstances of the present case, the period which the petitioner remained out of service on account of punishment, which was later on modified i.e. 24.02.1987 till 06.08.1992, is to be treated as qualifying service for computing the pensionary benefits.

10. The respondents are directed to re-calculate the pensionary benefits of the petitioner by taking into account the period from 24.02.1987 to 06.08.1992 as a qualifying service. The petitioner will also be entitled for arrears of pensionary benefits including the arrears of pension admissible.

11. As the respondents denied the petitioner the benefit for which the petitioner was entitled for and the petitioner has been made to litigate, even on the arrears, the petitioner will also be entitled for interest @ 6% per annum from the date the amount became due till the actual payment of the same. Let the order be complied with within a period of eight weeks of the receipt of copy of this order.

12. The present writ petition is allowed in above terms.

August 29, 2024
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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