

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

248

CWP-9583-2019 (O&M)
Date of decision: 29.04.2024

Daljit Singh Bhagta

....Petitioner

Versus

State of Punjab and Another

....Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Inayat Khullar, Advocate for the petitioner

Mr. Swapan Shorey, DAG Punjab

AMAN CHAUDHARY. J.

1. The prayer in the present petition is for quashing the impugned letter dated 12.10.2018 vide which the period of service from 07.04.2015 to 05.01.2016, when the petitioner was alleged to be absent from duty and from 06.01.2016 to 28.02.2017 i.e. the period, during which he remained under suspension, has been ordered to be treated as leave of kind due.
2. Learned counsel restricts his claim only for grant of pay and allowances for the period that has been treated as on duty by the impugned letter. He submits that the petitioner was promoted as Principal vide order dated 01.11.2013, w.e.f. 15.02.2010, Annexure P-4, and issued a chargesheet on 11.08.2015, which culminated in his exoneration and so did the subsequent one dated 08.03.2017, vide order dated 27.06.2018. The period he remained under suspension during pendency of the departmental proceedings in the second charge-sheet, was ordered to be considered as without pay leave, vide order dated 12.10.2018. However, the benefits of pay and allowances have not been granted to the petitioner, to which he is entitled to, in terms of Rule 7.3-B of Punjab Civil

Services Rules, Volume I Part I, including his notional promotion with effect from

26.06.2001.

3. On the contrary, learned State counsel submitted that the impugned letter was rightly passed on account of being absent unauthorisedly for more than a year, by affording an opportunity to the petitioner and after following due procedure. Thus, the present petition deserves to be dismissed.

4. Heard learned counsel on either side.

5. It would be apposite to make a reference to Rule 7.3-B *ibid*, as has been placed reliance on by the petitioner reads thus:

“7.3-B. (1) When a Government employee who has been suspended is reinstated or would have been so re-instated but for his retirement on superannuation while under suspension the authority competent to order re-instatement shall consider and make a specific order –

(a) regarding the pay and allowance to be paid to the Government employee for the period of suspension ending with re-instatement or the date of his retirement on superannuation, as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Notwithstanding anything contained in rule 7.3 or rule 7.3-A, where a Government employee under suspension dies before the disciplinary or court proceedings instituted against him, are concluded, the period between the date of suspension and the date of death shall be treated as spent on duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled, had he not been suspended, subject to adjustment in respect of subsistence allowance already paid.

(3) Where the authority competent to order re-instatement is of opinion that the suspension was wholly unjustified, the Government employee shall, subject to the provisions of sub-rule (8), be paid the full pay and allowances to which he would have been entitled, had he not been suspended: Provided that where such authority is of opinion that the termination of the proceedings instituted against the Government employee, had been delayed due to reasons directly attributable to the Government employee, it may, after giving him an opportunity to make his representation and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government employee shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.

(4) In a case falling under sub-rule (3), the period of suspension shall be treated as a period spent on duty for all

purposes.”

6. While considering the aforesaid provision, the Division Bench of this Court, in **Gurcharan Singh vs. State of Punjab**, CWP-12854-1999, wherein the petitioner was placed under suspension for more than four years, on the basis of an anonymous complaint but came to be reinstated only after the categoric orders of the Financial Commissioner (Revenue), Punjab, vide judgment dated 06.01.2003, directed the respondents to treat the period of suspension as that spent on duty, by observing and holding thus:

“...The anonymous complaint on the basis of which the petitioner was ordered to be suspended was found to be frivolous and baseless. Therefore, there is no justification in withholding full salary of the petitioner during the period of suspension. Under Rule 7.3B of the Punjab Civil Services Rules Volume I Part I, the respondents were required to take a decision as to how the period of suspension was to be treated. The relevant rule is as follows :-

XX

XX

XX

A perusal of the aforesaid Rule shows that the petitioner was entitled to be paid full pay and allowances. A false and fabricated complaint had been made against him. On enquiry by the Head of the Department, it was found to be false and fabricated. The petitioner was directed to be reinstated. No adverse comment was made against the petitioner. The petitioner was in no way responsible for any delay in the decision taken by respondent No. 1 for filing the complaint. Therefore, the case of the petitioner is squarely covered under Rule 7.3B (1)(3). By virtue of sub- rule (4) it was incumbent on the respondents to order that the period of suspension shall be treated as period spent on duty for all purposes.

7. With regard to the period of the alleged absence from 11.1.1993 to 16.8.1995 and from 21.12.1995 to 20.1.1997, the petitioner is also entitled to the entire salary. The petitioner was sent from pillar to post looking for posting orders. Therefore, he cannot be deprived of the salary which he would have otherwise earned. This apart, the Enquiry Officer has given a finding that the charge of absence against the petitioner is not proved. Therefore, the petitioner is entitled to the salary for the aforesaid period. Similarly, the petitioner is entitled to all the consequential benefits after being given the promotion from 28.6.1995 when persons junior to him were promoted as Kanungos. Non-consideration of the case of the petitioner when persons junior to him were promoted, is violative of Articles 14 and 16 of the Constitution of India.

8. In view of the aforesaid discussion, the writ petition is

allowed. The respondents are directed to treat the period of suspension from 22.6.1988 to 10.1.1993 as period spent on duty. The petitioner is held entitled to full pay and allowances for the aforesaid period. The petitioner is held entitled to arrears of salary from 22.6.1988 to 30.8.1989. The petitioner is also entitled to full pay and allowances for the period from 11.1.1993 to 16.8.1995 and 21.12.1995 to 20.1.1997. The respondents are directed to calculate the amounts due to the petitioner on the basis of the aforesaid directions within a period of two months from the receipt of a certified copy of this order. The amount shall be paid to the petitioner with 12 per cent interest from the date the amounts became due to the date of payment. No costs.”

7. In **Ram Kumar vs. H.V.P.N.L.**, CWP-9550-2000, decided on 26.9.2001, wherein the petitioner, charge-sheeted while being placed under suspension and no departmental enquiry having been held against him, was reinstated into service however, the period of his absence from duty was ordered to be treated as leave of kind due. The Division Bench, while discussing Rule 7.3 *ibid*, observed that, “A perusal of the aforesaid Rule reveals that it is within the purview of the competent authority to determine how the period during which an employee remained under suspension is to be treated. In case an employee is fully exonerated, he would be entitled to full pay and allowances, for the period during which he had remained under suspension. At the present juncture, it cannot be stated that the petitioner has been found guilty of any of the charges levelled against him the charge - sheet dated 03.12.1998. In fact, no regular departmental enquiry has been held against the petitioner consequent upon the issuance of the aforesaid charge - sheet. As such as of now, no order detrimental to the interest of the petitioner can be passed, so as to curtail his emoluments during the period he remained under suspension. In the aforesaid view of the matter, it is clearly arbitrary on the part to the authorities without arriving at a finding of guilt against the petitioner to curtail his emoluments during the period, he remained under suspension. Rule 7.3 of the Punjab Civil Service Rules does not enable the competent authority to pass any such order. Thus viewed, the impugned order

dated 12.04.1999 to the extent that the petitioners service during the period of suspension has been treated as "on leave of the kind due" is liable to be set aside."

8. Undeniably, in the present case, even after the petitioner was exonerated in their disciplinary proceedings initiated against him, the period he remained under suspension, which though ought to have been, in terms of Rule 7.3B *ibid* and the judgment referred to hereinabove, treated as duty, yet was as leave of the kind due. It thus suffers from infirmity.

9. As a fallout of the aforesaid, the present petition is allowed. The impugned letter dated 12.10.2018 is hereby set aside and the period when the petitioner remained out of service is directed to be counted as that on duty, in the wake of which, the consequential benefits of refixation of pay, pension, arrears etc. to follow. Needful be done within a period of two months, from the date when a certified copy of the judgment is received by them.

(AMAN CHAUDHARY)
JUDGE

29.04.2024
M.Kamra

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