



CWP-16402-2021 (O&M)

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

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CWP-16402-2021 (O&M)
Date of Decision: 16.10.2024

Satbir Singh

...Petitioner(s)

Versus

State of Haryana and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present:- Mr. Parveen Kumar, Advocate for the petitioner

Mr. Harish Rathee, Sr. DAG, Haryana

TRIBHUVAN DAHIYA, J. (Oral)

The petition has been filed seeking a writ of *certiorari* quashing the order, dated 31.05.2021, Annexure P-6, whereby the petitioner has been dismissed from service with retrospective effect from 13.08.2008. Further, a direction has been sought seeking release of all service benefits to him, including arrears of subsistence allowance and GPF, with interest.

2. As per facts apparent on record in brief, the petitioner joined service as Chowkidar/Peon in the Department on 30.05.1990. He was transferred as Peon to Vocational Education Institute, Rohtak, vide order dated 20.08.1991, Annexure P-1, and continued working as such. While in service, an FIR 139 dated 05.04.1996 under Section 376/506 IPC was registered against him in Police Station Civil Lines, Rohtak. On this account, he was placed under

suspension vide order dated 12.04.1996, Annexure R-1. Trial of the case

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resulted in his conviction vide judgment/order, dated 06.05.1998, passed by Additional Sessions Judge, Rohtak, and was sentenced to undergo rigorous imprisonment for a period of seven years. The appeal against conviction filed by the petitioner, CRA No.460-SB of 1998 titled *Satbir v. State of Haryana*, was decided by this Court, vide judgment dated 13.08.2008, upholding the conviction and reducing the sentence to four years.

2.1. It is claimed that the petitioner was paid subsistence allowance by the Department only up to 30.06.2009. He kept on making representations for payment of subsistence allowance thereafter, but to no effect. Later, he submitted an affidavit dated 16.05.2017, Annexure P-4, seeking release of the allowance. Not getting any response from the Department, he sought information under the Right to Information Act, 2005, and finally received a communication, dated 03.07.2018, Annexure P-5, from the First Appellate Authority under the Act informing that he stood suspended from service without there being any order of termination against him; still the subsistence allowance was not paid. The impugned order of termination was subsequently passed on 31.05.2021 dismissing him from service under the Haryana Civil Services (Punishment and Appeal) Rules, 1998, with effect from 13.08.2008.

3. In this factual background, learned counsel for the petitioner contends that the order of dismissal is *per se* illegal as the petitioner cannot be terminated from service from a retrospective date. It has only been done with *mala fide* intention to deprive him of due service benefits, including subsistence allowance, for the period prior to dismissal. He has referred to judgment passed by this Court in *Ex. Constable Satinder Pal Singh v. State of Punjab*, 2002 (1) SCT 614, in support of the contention.

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4. Learned State counsel, on the contrary, contends that the impugned order, dated 31.05.2021, is only a communication informing the petitioner that he stands dismissed from service with effect from 13.08.2008. And, therefore, it cannot be declared illegal on account of retrospectivity.

5. Heard.

6. As per undisputed facts on record, the petitioner joined service as Chowkidar/Peon on 30.05.1990. On account of lodging of FIR under Sections 376, 506 IPC against him on 05.04.1996, he was placed under suspension on 12.04.1996. Later, he was convicted of the offences vide judgment dated 06.05.1998, and the period of sentence was reduced from seven to four years by this Court by deciding his appeal against conviction. The petitioner remained under suspension but was paid subsistence allowance only up to 01.07.2009. Thereafter, neither the allowance was paid, nor were his services terminated, as the impugned dismissal order was passed on 31.05.2021. Although the Department was well within its rights to take a decision regarding dismissing the petitioner from service on account of his conviction vide judgment dated 06.05.1998, which was never stayed during pendency of the appeal, but no such decision was taken for reasons best known to them. Accordingly, he remained in service till dismissal on 31.05.2021, and became entitled to due service benefits on that account. Dismissal of an employee from service can only be from the date of the order, and not from an anterior date as has been done by the respondents vide the impugned order which, accordingly, is unsustainable. The contention by learned State counsel that the order is only a communication informing the petitioner about his dismissal from service with effect from 13.08.2008, is without substance. The order does not indicate thus in any

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manner; besides, learned counsel has not been able to show any order of dismissal passed by the Department on 13.08.2008.

7. Regarding the proposition of law that an order of dismissal cannot be made effective retrospectively, a reference can be made to the judgment rendered in *Ex. Constable Satinder Pal Singh* case, holding as under:

9. In view of the above settled proposition of law, a Division Bench of this Hon'ble Court in Rajinder Singh's case (supra) held that order of dismissal cannot be passed with retrospective effect. We are in respectful agreement with the view expressed by the Division Bench of this court in Rajinder Singh's case (supra) and have no hesitation in holding that the order of dismissal cannot be made operative retrospectively. The relationship of master and servant can be brought to an end only from the date of the order or from a subsequent date thereto. Besides that, the petitioner would be treated as member of the force on the rolls of the police till the date of dismissal. He would also gain certain benefits in terms of service and consequential relief. To take away such right with retrospective effect is not permissible in law.

8. Resultantly, the impugned order of dismissal, dated 31.05.2021, is hereby set aside only to the extent it has been given effect to from 13.08.2008, and the petitioner is held entitled to all due benefits, including subsistence allowance, up to the date of dismissal from service; the respondents are directed to release the same to him within a period of four weeks from receiving a certified copy of this order.



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9. Pending application(s), if any, also stand(s) disposed of as having been rendered infructuous.

(TRIBHUVAN DAHIYA)
JUDGE

16.10.2024
Payal

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