

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(101)

CM-21784-CWP-2023 and
CM-21785-CWP-2023 in/
CWP-11672-2016
Date of Decision : January 08, 2024

Om Parkash

.. Petitioner

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Aryavart, Advocate, for the petitioner.
Mr. Harish Nain, Assistant Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-21784-CWP-2023

Present application has been filed for condonation of delay of
34 days in filing the restoration application.

Keeping in view the averments made in the application, which
are duly supported by an affidavit, the same is allowed. Delay of 34 days in
filing the restoration application is condoned.

CM-21785-CWP-2023

Present application has been filed for recalling the order dated
17.10.2023, by which, the present writ petition was dismissed for non-
prosecution.

Notice of the application to the counsel opposite.

Mr. Harish Nain, learned Assistant Advocate General, Haryana, who is present in Court, accepts notice on behalf of the respondents. He raises no objection for the grant of prayer as raised in the present application.

Keeping in view the averments made in the application, which are duly supported by an affidavit, the same is allowed. The order dated 17.10.2023 is recalled and the writ petition is restored to its original number and status.

CWP-11672-2016

1. In the present writ petition, the challenge is to the order dated 21.10.2015 (Annexure P-14) by which, the appeal filed by the petitioner has been allowed in part and with regard to the suspension period from 09.09.2011 to 16.04.2012, the same has been directed to be treated as a leave period.
2. Certain facts may be noticed for the correct appreciation of the issue in hand.
3. The petitioner was appointed as a Driver with the respondents on 17.01.1990 and has already retired from service on 30.09.2015. While the petitioner was in service, the petitioner was suspended on 09.09.2011 and a charge-sheet was issued to the petitioner under Haryana Punishment and Appeal Rules, on 29.09.2011. The allegation alleged against the petitioner was that the petitioner being the Driver was not driving the vehicle but the same was being driven by a private person unauthorizedly. During the pendency of the departmental proceedings, petitioner was reinstated in service on 16.03.2012. After conducting the disciplinary proceedings, the respondents passed an order dated 20.01.2015 (Annexure

P-12) holding the petitioner guilty of the allegations and a fine of Rs.5,000/-

was imposed upon the petitioner and with regard to the suspension period, it was mentioned that nothing more than the subsistence allowance already paid, will be paid to the petitioner.

4. Feeling aggrieved against the said order of punishment, the petitioner preferred an appeal, which was decided by the Appellate Authority vide impugned order 21.10.2015 (Annexure P-14) and by taking a lenient view, the punishment of fine imposed upon the petitioner vide order dated 20.01.2015 was withdrawn and the suspension period was treated to be the leave period.

5. Learned counsel for the petitioner argues that once the punishment of fine has been withdrawn, treating of the suspension period as leave period is contrary to the rules governing the aspect as once, the petitioner was treated to be on duty and was being paid subsistence allowance during the suspension period, the said period cannot be treated as leave period so as to treat the petitioner out of service during the said period.

6. Learned State counsel, on the other hand, submits that though it is a matter of fact that in appeal vide impugned order, the punishment of fine of Rs.5,000/- imposed upon the petitioner has been withdrawn but the Appellate Authority in its wisdom has directed that the suspension period be treated as leave period, hence, the petitioner cannot raise any grievance.

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

8. It may be noticed that after the conclusion of the departmental proceedings, it is within the jurisdiction of the employer to decide as to how the suspension period is to be treated. In case an employee is exonerated,

the employee becomes entitled for full pay for the suspension period but in case the employee has been held guilty, the decision as to how the suspension period is to be treated, is with the employer only.

9. In the present case, the petitioner was held guilty of the allegations and the punishing authority had imposed the punishment of imposition of fine of Rs.5,000/- and directed that nothing more than the subsistence allowance already paid, will be paid to the petitioner for the suspension period. The said punishment order has been modified in appeal by the respondents themselves as the fine imposed upon the petitioner has been withdrawn but while passing the said order, the period of suspension has been treated to be leave period. The impugned order dated 21.10.2015 is not in consonance with the rules governing the service as an employee while in suspension is also to be treated on duty for all intents and purposes for which purpose, he is paid subsistence allowance. The said subsistence allowance get increased in case the disciplinary proceedings are not completed in a time bound manner where the delay in completion of the disciplinary proceedings is attributable to the employer.

10. In the present case, it is a conceded fact that the petitioner was suspended for the period in question starting from 09.09.2011 to 16.04.2012. It is also a conceded position that for the said period the petitioner has been paid the subsistence allowance. Once the petitioner has been paid the subsistence allowance and has been treated to be on duty, treating the said suspension period as leave period will be amounting to a punishment for the reason that in case the suspension period is treated as leave period, the same will be taken out of the earned leave, which leave period the petitioner can get encashed at the time of his retirement.

11. The only jurisdiction with the respondents while treating the

suspension period is as to whether or not, keeping in view the facts and circumstances of a particular case, the petitioner becomes entitled for full salary for the period in question keeping in view the outcome of the disciplinary proceedings. In the present case, the petitioner though was held guilty of the allegations alleged and the punishing authority had treated the suspension period to mean that nothing more than the subsistence allowance will be paid hence, the order passed by the punishing authority was rightly passed but the same has been modified by the Appellate Authority vide impugned order dated 21.10.2015 without giving any reason.

12. In case the suspension period is to be treated as leave period then even the subsistence allowance paid will also be recovered, which will amount to a punishment itself and cannot be allowed. As per the settled principle of law, even during the suspension period, charged officer cannot be allowed to leave the headquarter fixed and is required to mark his/her presence. That being the factual aspect required to be followed by a suspended officer, and for remaining at the headquarter, suspension allowance is to be paid, same period cannot be treated as leave period. Punishing authority rightly passed an order qua suspension period that nothing more than the subsistence allowance already paid, will be given to the petitioner.

13. Keeping in view the facts and circumstances of the present case, the impugned order dated 21.10.2015 (Annexure P-14) passed by the Appellate Authority is only modified to the extent that the suspension period of the petitioner will be treated as per the order passed by the punishing authority to mean that nothing more than the subsistence allowance will be paid to the petitioner.

14. The present writ petition is disposed of in above terms.

January 08, 2024
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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