



CWP-26019-2021 (O&M) & connected case

109(2 cases)

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

(1)

**CWP-26019-2021 (O&M)
Date of Decision: 08.08.2024**

Parveen Kumar

.....Petitioner

Versus

Ld. District and Sessions Judge, District Court Complex, Fazilka& another

.....Respondents

(2)

CWP-1239-2022 (O&M)

Parveen Kumar

.....Petitioner

Versus

Ld. District and Sessions Judge, District Court Complex, Fazilka and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Petitioner in person.

Ms. Sukriti Gupta, Advocate,
for the respondents.

MAHABIR SINGH SINDHU. J.

Short replies dated 07.08.2024 filed on behalf of respondent No.2
in both the cases are taken on record. Copies supplied to the other side. Registry
to tag the same at appropriate place.

This order shall dispose off afore-mentioned both writ petitions
filed by the same petitioner.

2. In CWP-26019-2021, challenge has been laid to the order dated
08.02.2021 (P-1), passed by the Appellate Authority [under Rule 14(1) of the



Punjab Subordinate Courts Establishment (Recruitment and General Conditions of Service) Rules, 1997], whereby Service Appeal No. 75 of 2019 filed by the petitioner was dismissed and the punishment for stoppage of two increments with cumulative effect was maintained.

3. In CWP-1239-2022, petitioner has sought direction to the respondent to pay him the salary from the date of his dismissal till re-joining on his duty. Also seeking modification of order dated 08.02.2021 passed by the Appellate Authority whereby Service Appeal No. 76 of 2019 filed by the petitioner was accepted and the order of dismissal was set aside, however, the salary for the dismissal period was withheld.

Facts in CWP-26019-2021

4. In pursuance to his appointment, petitioner joined the office of learned District and Sessions Judge, Fazilka-respondent No. 1 as Peon on 03.01.1992. When he was posted in the Court of learned Civil Judge (Junior Division), Fazilka, petitioner did not report for duty on 11.02.2017.

5. Also necessary to mention here that it was a Gazetted holiday, being second Saturday, however, 11.02.2017 was observed as working day on account of National Lok Adalat. As the petitioner was absent; therefore, his explanation was called.

6. Respondent No. 1 found that explanation was not satisfactory, and a result thereof, petitioner was charge-sheeted. Sh. Amit Kumar Garg, the then Chief Judicial Magistrate, Fazilka was appointed as Inquiry Officer to conduct regular departmental inquiry in the matter.

7. In the departmental inquiry, petitioner was indicted vide Report dated 23.03.2019. As noticed above, punishment of stoppage of two increments with cumulative effect was imposed upon the petitioner by respondent No. 1.



8. Feeling dissatisfied, petitioner filed service appeal No.75 of 2019, but the same was dismissed vide impugned order dated 08.02.2021 (P-1); hence writ petition (CWP-26019-2021).

Facts in CWP-1239-2022

9. Petitioner was indicted on the allegations that he moved a false complaint against learned Civil Judge (Junior Division), Fazilka to the High Court. He was charge-sheeted and departmental enquiry, culminated into his dismissal from service vide order dated 22.08.2019.

10. On appeal, the dismissal was set aside by the Appellate Authority vide order dated 08.02.2021, passed in Service Appeal No. 76 of 2019. However, the salary for the relevant period was withheld on the principle of “No work no pay”; thus writ petition No. 1239 of 2022.

Arguments in both the cases

11. Petitioner, who is present in person, has submitted that his absence from duty was not intentional; rather the factum of reporting for duty on 11.02.2017 was not notified to him.

12. As regards service appeal No. 76 of 2019, it is submitted that once the dismissal order has been found to be bad, the necessary corollary would be to grant him the consequential benefits.

13. Petitioner has furnished an undertaking dated 08.08.2024 to the effect that in future, there shall be no recurrence on his part. The undertakings in both the cases are taken on record. Registry to tag the same at appropriate place.

14. *Per contra*, learned counsel for the respondent opposes the prayer of the petitioner while submitting that service appeals filed by the petitioner have been rightly disposed off, and no interference is warranted by this Court.



15. Heard the petitioner in person; learned counsel for respondent and perused the paper book.

Findings in CWP-26019-2021

16. Paper-book reveals that petitioner has been working as a Peon with respondent No. 1 since 03.01.1992. The entire service record to his credit is unblemished, except the incident in question. The contentious issue raised by the petitioner is that no intimation for reporting on duty for 11.02.2017 was given to him; nor did he sign in token thereof. In other words, plea of the petitioner is that he was oblivious of his duty on the relevant date.

17. There is no quarrel that Inquiry Officer has returned a finding to the effect that petitioner was notified about reporting on duty, but despite that, he did not come present. It has also come on record that explanation given by the petitioner was not found satisfactory by the punishing authority; nor the appellate authority agreed with the same.

18. This Court, while entertaining present writ petition Article 226 of the Constitution, will not enter into this factual matrix with respect to reporting for duty by the petitioner on the fateful day, as present proceedings are neither an appeal; nor revision against the punishment order.

Findings in CWP-1239-2022

19. Before proceeding further, it would be necessary to reproduce the charge-sheet as under:-

"2. That you made a complaint dated NIL, in a shape of unattested affidavit against Sh. Neeraj Goyal, Civil Judge (Jr. Division), Fazilka, in the Hon'ble High Court.

3. That the Hon'ble High Court vide letter No.2579/RHC (8) dated 25.4.2017, sent a complaint dated NIL in a shape of unattested affidavit made by you against Sh. Neeraj Goyal, Civil Judge (Jr. Division), Fazilka. On your complaint, the comments received from Sh. Neeraj Goyal, Civil Judge (Jr.



Division), Fazilka were sent to the Hon'ble High Court, vide this office letter No.60-C dated 23.5.2017. Thereafter, the Hon'ble High Court vide its letter No.6227/RHC(8) dated 24.11.2017 has asked the undersigned to take suitable action against you for making false allegations in the complaint.

4. That every Government employee is required to maintain devotion to his duty, but you have committed grave misconduct in performance of your official duties by making false allegations in the complaint against Sh. Neeraj Goyal, Civil Judge (Jr. Division), Fazilka, in the Hon'ble High Court."

A bare perusal of the charge-sheet reveals that same is vague, inasmuch as the falsity in complaint dated—nil moved by the petitioner against the then Civil Judge (Junior Division), Fazilka has not been mentioned; nor does the same can be deciphered from record. Thus, the Appellate Authority was right while observing that charge-sheet is vague and this Court is fully in agreement with the view taken by learned Appellate Authority. Resultantly, the charge-sheet does not stand the test of judicial scrutiny. Moreover, there is no material on record to prove that complaint filed by the petitioner against the then Civil Judge (Junior Division) was false. Thus, the dismissal order of petitioner has rightly been set aside by learned Appellate Authority; however, it erred while withholding salary of the petitioner. Hence, learned Appellate Authority was not right while applying the principle of “No work no pay”. It is not a case where the petitioner on his own chose to sit idle; rather it was on account of his dismissal order.

20. To view it from another angle, once the foundational order of dismissal from service was found to be bad in law and the consequential proceedings were set aside; as a necessary consequence, petitioner cannot be denied salary for the relevant period. To hold it expressly, petitioner cannot be



denied the benefit of salary for the period of dismissal, once the order is set aside and as such, superstructure is bound to fall.

21. Be that as it may, petitioner has given two separate undertakings that he shall remain careful in future and there would be no recurrence on his part while discharging the duties. For reference, the relevant part of one undertaking is recapitulated as under:-

“I Parveen Kumar (Aadhaar Card No. 6725-1872-7211) Mobile No. 94173-97595 aged about 51 years attached with the court of Sh. Jagmohan Singh Sanghe, Ld. Additional District and Ld. Session Judge, Fazilka, permanent resident of #B-III, 1474, Street No.2, Nai Abadi, Abohar, District Fazilka-152123 working as Usher do hereby submit that as per my previous act of not responding to the call of Hon’ble Sh. Neeraj Goyal Ld. JMIC, Fazilka which was due to inadvertently that I was actually called, I sincerely regret and undertake which full assurance that in future there shall be no such mistake on my part. I further undertake and assure my sincere co-operation and sincere effort to perform my duty even in better way. There will be no complaint ever in future from myself relating to my work and conduct.”

CONCLUSION:-

22. As already noticed, the petitioner has tendered two separate undertaking(s) dated 08.08.2024, pledging to mend himself for the future as he has realised his guilt. He has prayed for taking a lenient view in the matters while submitting “No recurrence” in future. Consequently, this Court is of the opinion that ends of justice shall be better served if the petitioner is afforded a chance to improve himself and conform to the rules of law; thus, the writ petitions deserve acceptance.



23. As a result of the above, both the writ petitions are allowed partly; the impugned orders dated 08.02.2021, passed in service appeal Nos. 75 and 76 of 2019 are modified to the extent that instead of passing the punishment of stoppage of two increments with cumulative effect, petitioner is “censured” for the future and he is held entitled to the salary along with all emoluments from the date of his dismissal till the date of his re-joining the service.

24. Ordered accordingly.

25. A photocopy of this order be placed on the file(s) of connected case(s).

Pending application(s), if any, shall also stand disposed off.

08.08.2024
SN

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable: Yes/No