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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-34905-2019

Date of Decision: 02.02.2024

Chandgi Ram Mittal

..... Petitioner

Versus

Housing Board Haryana and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Karan Bhardwaj, Advocate
for the petitioner.

Mr. Ashwani Talwar, Advocate
for respondent No.1.

Mr. Kapil Bansal, DAG, Haryana
for respondent No.2/State.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present writ petition has been filed under Article 226/227 of the Constitution of India for issuance of an appropriate writ in the nature of *certiorari* for quashing the order dated 19.09.2017 (Annexure P-2) and order dated 25.05.2018 (Annexure P-4) passed by respondent No.1 vide which the claim of the petitioner for the payment of one month salary in lieu of LTC for the Block Year 2012-2015 has been rejected.

2. The controversy involved in the present case is that the petitioner was working as Executive Engineer in the respondent-Housing Board Department and while he was in service he was issued charge-sheet and disciplinary proceedings commenced which ultimately resulted in an order of compulsory retirement on 16.08.2013. There was another

departmental proceedings pending against the petitioner which culminated into an order of dismissal of the petitioner on 18.02.2014 which was after the order of compulsory retirement. The petitioner filed the statutory appeals against both the orders of punishment which were allowed by the Appellate Authority on 08.05.2014. The respondent-Department assailed the order of Appellate Authority by filing of the writ petition before this Court bearing CWP-12381-2014 which was ultimately withdrawn by the Department on 22.10.2016. However, in the meantime, the petitioner has attained the age of superannuation and retired on 31.10.2015. Thereafter, on 11.08.2016 the respondent-Department passed an order of withdrawal of both the orders of dismissal and of compulsory retirement. The aforesaid facts and the dates are admitted facts and are not disputed by the learned counsel for the petitioner. The only issue involved in the present case is that the petitioner while in service under the Rules was entitled for one month salary in lieu of non-availing of LTC in the Block Year of 2012-2015. Vide Annexure P-2, the petitioner has been denied the aforesaid benefit of one month salary only because of the reason that during that period he did not apply for the same which under the Rules, it was mandatory for him to have applied for the same.

3. Learned counsel for the petitioner submitted that the action of the respondent-Department in passing the impugned order (Annexure P-2) was totally arbitrary and contrary to the rules. He further submitted that it is not in dispute that the petitioner was otherwise entitled for one month salary in lieu of the LTC, had he been in service and had applied for the same during the aforesaid period but difficulty arose in the present case was that

although it was mandatory for him to have applied for the aforesaid benefit but the same could have been applied for from 01.01.2012 to 31.12.2015 i.e. for a period of four years at any point of time, but he was compulsorily retired by way of a punishment order on 16.08.2013 and therefore, in this way, he worked for one year and eight months only after the aforesaid date of 01.01.2012 and ultimately the order of compulsory retirement was extinguished because not only his appeal against the order was allowed but also the Department itself had withdrawn the aforesaid order on 11.08.2016 and once he was not in service and thereafter, when he was reinstated notionally and he continued till 31.10.2015, when he attained the age of superannuation and retired then the remaining period ought to have been made available to the petitioner but practically it was not available to him because of the wrongful action on the part of the respondent by passing of the punishment order against him which was ultimately withdrawn by them in due course and therefore, on this ground itself the petitioner cannot be non-suited for grant of the aforesaid benefit.

4. Mr. Ashwani Talwar, learned counsel for respondent No.1/Department submitted that so far as the facts and dates as aforesaid, the same are not in dispute but he submitted that the petitioner was in service for at least 1 year and 8 months and he could have applied for the aforesaid benefit of one month salary in lieu of LTC but he did not do so and it was necessary for him to have filed an application for the same which he did not file and therefore, he was not granted the aforesaid benefit.

5. I have heard the learned counsel for the parties.

6. The only short point involved in the present case is that as to

whether the petitioner, who did not apply for the aforesaid benefit of one month salary in lieu of LTC within the block year starting from 01.01.2012 to 31.12.2015 could be denied the benefit of the same in view of the peculiar facts and circumstances of the present case. The petitioner was in service from 01.01.2012 till 16.08.2013 when he was compulsorily retired. The aforesaid order of compulsory retirement was set aside in statutory appeals filed by the petitioner and ultimately the orders were withdrawn by the Department on 11.08.2016. Therefore, the petitioner could not consume the entire period of four years for being in service but ultimately he has been reinstated notionally and he has been retired on attaining the age of superannuation on 31.10.2015. In this way, it cannot be said that the petitioner ought to have applied which he has not applied. The stand taken by the learned counsel appearing on behalf of respondent No.1 based upon reply filed by the respondent-Department and the reasoning given in the impugned order (Annexure P-2) is totally arbitrary and perverse. It was beyond the control of the petitioner to have applied from 16.08.2013 to 31.10.2015 and majority of the time was lost because of the order of his compulsory retirement which ultimately was withdrawn by the respondent-Department itself and therefore, such benefit cannot be denied to the petitioner only on the ground that he did not apply for the entire period of four years.

7. In view of the aforesaid facts and circumstances, the present petition is allowed. The impugned order (Annexure P-2) is hereby set aside. The respondent-Department shall now pay the aforesaid benefit of one month salary in lieu of LTC to the petitioner by ignoring the fact that he had

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not applied for the same as it was beyond the control of the petitioner, along with interest @ 6% per annum within a period of 3 months from today.

02.02.2024
Bhumika

(JASGURPREET SINGH PURI)
JUDGE

1. Whether speaking/reasoned:
- Yes/No
2. Whether reportable:
- Yes/No