

2025-PUBLIC-001741-DD



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

**CWP-1394-2020(O&M)**

**Reserved on: 11.12.2024**

**Pronounced on: 09.01.2025**

**Sanjiv Kumar**

**...Petitioner**

**Vs.**

**State of Haryana and others**

**...Respondents**

**CORAM: HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE  
HON'BLE MR. JUSTICE ANIL KSHETARPAL**

**Present:** Mr. Sunil Kumar Nehra, Advocate  
Mr. Rohit Mahajan, Advocate  
for the petitioner.

Mr. Deepak Balyan, Addl. A.G., Haryana.

Mr. Ranjit Singh Kalra, Advocate  
for respondent No.2.

Mr. H.S. Oberio, Advocate  
for respondent No.3.

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**ANIL KSHETARPAL, J.**

**1.                      Factual Background:-**

1.1                      The petitioner, who was a former member of Haryana Superior Judiciary prays for issuance of a writ in the nature of certiorari to quash orders passed on 23.03.2017(Annexure P-12) and 17.07.2017 (Annexure P-13) while treating the petitioner's suspension period from 22.09.2011 to 18.02.2015 as leave of the kind due.

1.2                      In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed.

1.3 After the petitioner was suspended on 22.09.2011, a charge-sheet dated 26.04.2012 was served upon him. Reply to the charge-sheet was submitted on 11.06.2012, which was not found satisfactory, hence, the departmental enquiry was ordered, which concluded by the report dated 10.11.2014 (Annexure P-10). The Enquiry Officer concluded that the charges stood proved. On 12.11.2014, he applied for voluntary retirement, which was permitted by the State Government on 10.02.2015 on the recommendation of the High Court.

1.4 On 21.11.2015, the petitioner was given a show cause notice to which reply was submitted on 07.12.2015. Subsequently, the petitioner was given a personal hearing on 13.05.2016. Under the order of the Chief Justice, the enquiry report was supplied to the petitioner vide communication dated 08.07.2016 alongwith the show cause notice as to why the suspension period be not treated as a leave of the kind due, which was replied by the petitioner on 15.09.2016. Ultimately two orders were passed, which were conveyed to him. He was informed that his suspension period from 22.09.2011 to 18.02.2015 has been treated as leave of the kind due, whereas, vide communication dated 26.04.2017, he was supplied copy of details showing adjustment of leave of the kind due. In this writ petition, these two communications have been challenged.

1.5 Separate replies to the writ petition have been submitted by the respondent-State and the High Court.

2. **Arguments put forth by the learned counsel representing the parties:-**

2.1 Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book.

2.2 The petitioner's counsel while relying upon the Supreme Court's judgment in 'State of Haryana Vs. S.K. Singhal', 1999 (4) SCC 293 submits that the impugned order is not sustainable as the disciplinary enquiry proceedings were never taken to a logical end and the petitioner was permitted to retire. Hence, the petitioner is entitled to difference between subsistence allowance and his salary during the period in question.

2.3 *Per contra*, the respondents' counsels while referring to Rule 7.3 (3) of Chapter VII of Volume I Part I of the Punjab Civil Services Rules as applicable to Haryana submitted that the discretion lies with the competent authority to deny benefit of payment while ordering reinstatement because charges against the petitioner were proved by a disciplinary enquiry report and the petitioner applied for voluntary retirement only after knowing its contents.

### 3. Analysis & Discussion:-

3.1 Rule 7.3 of the aforesaid rules under the caption of "Allowances on Reinstatement" is regarding dismissal, removal and suspension, which is extracted as under:-

*" 7.3(1) When a Government employee, who has been dismissed, removed, compulsory retired, or suspended, is reinstated, or would have been reinstated but for his retirement on superannuation the authority competent to order the reinstatement shall consider and make a specific order:-*

*(a) regarding the pay and allowances to be paid to the Government employee for the period of his absence from duty, occasioned by suspension and/or dismissal, removal or compulsory retirement ending with his reinstatement on 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) Where the authority mentioned in sub-rule (1) is of opinion that the Government employee has been fully exonerated or, in the case of suspension, that it was wholly unjustified, the Government*

*employee shall be given the full pay and allowances to which he would have been entitled, had he not been dismissed, removed, compulsorily retired or suspended, as the case may be.*

*(3) In other cases, the Government employee shall be given such proportion of such pay and allowances as such competent authority may prescribe:*

*Provided that the payment of allowances under sub-rule (2) or sub-rule (3) shall be subject to all other conditions under which such allowances are admissible.*

*Provided further that such proportion of such pay and allowances shall not be less than the subsistence and other allowances admissible under rule 7.2.*

*(4) In a case failing under sub-rule (2) the period of absence from duty shall be treated as a period spent on duty for all purposes.*

*(5) In a case failing under sub-rule (3) the period of absence from duty shall not be treated as a period spent on duty unless such competent authority specifically directs that it shall be so treated for any specified purpose:*

*Provided that if the Government employee so desires, such authority may direct that the period of absence from duty shall be converted into leave of any kind due and admissible to the Government employee.”*

3.2 It is evident that Rule 7.3(1) would apply to those government employees who after being dismissed, removed, compulsorily retired or suspended from service were held entitled to reinstatement or were reinstated, but could not be reinstated due to superannuation on attaining the age of retirement i.e. they attained the retirement age.

3.3 Rule 7.3(2) would apply when the employee has been fully exonerated. In that situation the Government employee is entitled to full pay and allowances, as if the employee had never been dismissed, removed, or suspended.

3.4 Rule 7.3(3) deals with the remaining categories. It implies that if the cases do not fall in Sub Rule I or II then they fall in Sub Rule (3). However,

this Rule applies only if there is an order of reinstatement or the employee would have been reinstated but for his retirement on superannuation. However, the facts of the present case are totally different. Hence, Rule 7.3 is not applicable.

3.5 The judgment of *S.K. Singhal's* case (Supra) is not applicable to the facts of the present case because in the aforesaid case the dispute involved was with regard to deemed acceptance of request for retirement on expiry of notice period, which is not the case here. In that case the Court interpreted Rule 5.32 of Punjab Civil Service, Volume II as applicable to Haryana.

3.6 Learned counsel representing the respondent has also relied upon the judgment passed by a Division Bench of Bombay High Court (Goa Bench) in “Shri Domingos Savio Monteiro Cloves Da Costa vs. Agnel Polytechnic and others”, 2022 (2) MhLj 503. In this case the petitioner was permitted to voluntarily retire from service with retrospective effect because he was informed on 01.03.2013 that his request for voluntary retirement has been accepted with retrospective effect from 12.09.2011. In the peculiar facts of the case, the Court held that an order for grant of full salary to the petitioner between 12.09.2011 to 20.02.2013, is not justified as the petitioner did not work during this period.

3.7 In the matter at hand, the petitioner was not permitted to work because of the order of suspension. Moreover, the petitioner was unconditionally permitted to voluntarily retire from government service. Furthermore, after the voluntary retirement of the petitioner, when the disciplinary enquiry report was sent to the Vigilance/Disciplinary Committee, the proceedings were put on halt subject to condition that the same may be

27.04.2015. The respondents’ counsels have failed to put forth any other point to justify the impugned order.

4. Decision:-

4.1 Keeping in view the aforesaid facts and discussion, the writ petition stands allowed. Hence, the orders passed on 23.03.2017 (Annexure P-12) and 17.07.2017 (Annexure P-13) are set aside.

4.2 The petitioner is held entitled to difference in payable salary and subsistence allowance already paid. The respondents shall also release the pensionary benefits i.e. leave encashment and gratuity alongwith interest as per instructions issued by the Haryana Government from time to time.

4.3 The High Court shall have liberty to consider the enquiry report, if so advised.

4.4 All the pending miscellaneous applications, if any, are also disposed of.

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|------------|-----------------------------|---------------|
|            | (ANIL KSHETARPAL)           | (SHEEL NAGU)  |
|            | JUDGE                       | CHIEF JUSTICE |
| 09.01.2025 |                             |               |
| neeraj     | Whether speaking/reasoned : | Yes No        |
|            | Whether Reportable :        | Yes No        |