

(1996) 12 P&H CK 0017
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4137 of 1991

Matu Ram (Dead) through his LRs and Others	APPELLANT
Vs	
The State of Punjab and Another	RESPONDENT

Date of Decision : 19-12-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 408

Citation : (1997) 116 PLR 108

Hon'ble Judges : V.K. Bali, J

Bench : Single Bench

Advocate : Balram Gupta, for the Appellant; A.G. Masih, AAG, for the Respondent

Judgement

V.K. Bali, J.—Matu Ram Sahi, who died during the pendency of this writ and has been substituted by his legal representatives, through present petition filed by him under Article 226 of the Constitution of India, sought issuance of writ in the nature of mandamus directing the respondents to consider his various claims i.e. seniority, promotion, increments and pay for the period he remained out of service in pursuance of his suspension having been involved in a criminal case.

2. The facts so far as the same are relevant to decide this writ reveal that the petitioner joined the Co-operative department in the erstwhile Pepsu State on May 27, 1949 as Sub Inspector. He was promoted as Inspector w.e.f. 11.3.1952. Thereafter, his services were merged in the State of Punjab in the year 1956. While working as such, in the year 1968 he was involved in a case u/s 408 of the Indian Penal Code that came to be registered against him vide F.I.R. No. 64 dated August 20, 1968 in City Police Station, Moga. The charge against him was that he had misappropriated an amount of Rs. 2158.67 Ps. while working in the Moga Central Consumers Co-op. Stores Ltd., Moga as General manager. He was taken into custody by the police and after his arrest he was served with the order of suspension. The prosecution did not put up challan in the Court for about 7

years and the same was put up in the year 1975. The learned Magistrate trying the case, however, acquitted him vide his judgment dated December 13, 1978. On his acquittal, he represented to the Registrar, Co-operative Societies, Punjab to reinstate him with all consequential benefits. Consequently, an order reinstating him into service as Inspector was passed by the Registrar Co-operative Societies on May 5, 1980. A copy of the order aforesaid has been placed on record as Annexure P-4 which shows that petitioner was reinstated subject to departmental inquiry pending against him. It is the case of the petitioner that it is only in the year 1969 that he was issued with one charge-sheet and he had sent a reply of the same immediately and thereafter he had not heard anything with regard to said charge-sheet till date. According to the petitioner the department was satisfied with his reply. On the stated broad facts it is pleaded and so argued by the learned Counsel for the petitioner that petitioner was not only entitled to reinstatement but also entitled to his pay and other allowances for the period he remained under suspension pending trial against him. The petitioner was also entitled to be promoted to the next higher post/posts in accordance with his seniority but nothing was done in the matter towards any of his claims as detailed above, thus, constraining him to file the present writ.

3. In the reply filed on behalf of respondents 1 and 2 it has been pleaded that on receipt of judgment dated December 13, 1978, passed by Judicial Magistrate Ist Class, Moga, the matter was examined thoroughly and decision was taken to proceed against the petitioner departmentally as he used the money of the Moga Central Coop. Consumers Store Moga as General Manager for his own purposes. A case of moral turpitude was also pending against the petitioner with regard to incident when the petitioner was sitting in the office of Store on July 18, 1968, under the influence of liquor. He was medically examined by the S.D.O. and according to the medical report he was profusely smelling of liquor. He was completely intoxicant and was under the influence of the alcohol. His gait was staggering and pupils dilated and speech slurring. Therefore, he was directed vide Registrar Cooperative Societies letter dated November 7, 1968, to submit his reply to the charge sheet served upon him and that reply from him was still awaited. Due to non-receipt of his reply, the decision with regard to his selection, grade, treating period of suspension and payment of arrears etc. including promotion could not be taken. The respondents have blamed the petitioner for non-completion of the inquiry pending against him and for that precise reason alone the decision with regard to other benefits as detailed above, it is the case of the respondents, had not been taken.

4. I have heard the learned counsel for the parties and gone through the records of the case. It is proved that petitioner was acquitted by Judicial Magistrate Ist Class in a case registered u/s 408 of Indian Penal Code against him. It is not disputed that consequent upon his acquittal, the petitioner was reinstated into service. On reinstatement the law enjoined upon respondents to deal with the case of the petitioner with regard to his various service benefits like pay for the

period he remained under suspension when he was facing the criminal trial as also his other allowances and increments as well to consider him for promotion to the next higher post as per seniority and as per record. This exercise should not have been stalled or given a complete go by on the plea that departmental inquiry against the petitioner and others with regard to same incident which was subject matter of the trial or other one was still pending. If the petitioner had not filed reply to the show cause notice or charge-sheet, as is the case of the respondents, it was not at all difficult for the department to take further action in the matter in accordance with law. The department was not without powers to take the enquiry to its logical end by proceeding against the petitioner ex-parte. Such a course was not adopted and instead various benefits that the petitioner might have been entitled to consequent upon his re-instatement, were kept in abeyance till such time the enquiry against him was to be concluded.

5. It was, of course, open to the department to proceed against the petitioner despite his acquittal in the criminal case and on conclusion of enquiry to pass adverse orders against him but till such time the adverse orders were passed against him, the department could not withhold his monetary claims or other benefits like promotion to the next higher post by simply saying that he was not cooperating with, the enquiry. As mentioned above, despite non-cooperation shown by the petitioner, the department could still conclude the enquiry.

6. In view of the discussion made above, a direction is issued to the respondents to decide the case of the petitioner with regard to his various benefits as fully detailed above pursuant to his reinstatement and pass final orders with regard to same within two months from today. If after consideration it is found that the petitioner is entitled to pay for the period he remained under suspension when he faced trial in a criminal case or that he is entitled to promotion follow up orders be passed within 15 days from the said date i.e. within two months from today. As the petitioner, as mentioned above, has died, whatever benefits, which would be now only monetary, would go in the hands of his legal representatives duly brought on records of the case.