
(2012) 04 P&H CK 0017
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5713 of 2003

Mohan Lal

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 23-04-2012

Acts Referred:

Citation : (2013) 169 PLR 628

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : G.S. Gandhi, for the Appellant; Pardeep Virk, D.A.G., Haryana, for the Respondent

Final Decision : Allowed

Judgement

K. Kannan, J.—The writ petition contains a prayer for release of full salary for the petitioner from 01.03.1999 to 21.05.2001 when he was reinstated in service. The order of termination was made by the Civil Judge (Senior Division), Kurukshetra on 01.03.1999, which was set aside by this Court in the order passed in C.W.P. No. 4410 of 1999 by a Division Bench of this Court on 03.05.2001. Before this Court, it was conceded on behalf of the respondents that the order of termination was passed by a person, who had no authority to pass the impugned order and that the District Judge, who was the appointing authority alone could, have passed the order. The Bench had directed the matter to be remitted to the District Judge for undertaking the inquiry and passing appropriate orders in accordance with law. After the disposal of the case on 03.05.2001, the petitioner had been reinstated in service by an express order passed in the behalf on 21.05.2001. It so happened that in the inquiry that was concluded he was again found guilty of the charges attributed to him, culminated in dismissal from service. The petitioner's grievance is that from the date when he was terminated from service on 01.03.1999 through an illegal order passed by an authority, who was not competent till date when he was reinstated in service on 21.05.2001, he shall be paid the entire salary. This was considered on a plea made by him by the

District Judge vide an order passed on 09.10.2002 holding that in terms of the Rule 7.3 of the Punjab Civil Service Rules, Volume I, a Government servant, who had been dismissed but reinstated would on such reinstatement receive a benefit that could come through a specific order regarding pay and allowances to be paid to the Government employee for the period of his absence. Sub-Rule 2 of the aforesaid rules provides that if the competent authority was of the opinion that the employee had been fully exonerated, he should be given full pay and allowance and sub-rule 3 lays down that in other cases, the Government employee shall be given such proportion of pay and allowances as such the competent authority may prescribe. Adverting to these provisions, the learned District Judge held that the petitioner had not been fully exonerated and, therefore, he was not entitled to full pay and allowances.

2. I would find the reasoning to be erroneous and the reliance on Rule 7.3 was inappropriate. The said rule would apply only in cases where an order is passed against a person terminating the service, who is subsequently reinstated and there would arise no issue of the competency of the officer, who passed such an order. An error in reasoning that might require setting aside an order dismissing an employee would give rise to two situations. One, where a person is honorably exonerated and second, where a person is given a benefit of doubt. These two situations have been dealt with by two different provisions contained through sub-rule 2 and sub-rule 3, respectively. A different legal incident would be, if the original order of termination is illegal and does not merely suffer from error in reasoning. The illegality attached to this order is by the fact that it was passed by an officer, who was incompetent. It was not an order passed by the District Judge, whose order was later set aside or modified. This order was passed by a subordinate judge, who was not an appointing authority and if he had been kept out of service from the year 1999 to 2001 when he was reinstated, it must be taken that he was illegally kept out of service. There is no ground for denying full wages to the petitioner. The petitioner is entitled to full wages, in the manner sought for and the same shall be paid with interest @ 6% per annum from the date when it fell due till the date of payment. This payment shall be made within a period of 8 weeks from the date of receipt of copy of the order. The writ petition is allowed on the above terms.