(2020) 02 P&H CK 0162

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 16054 Of 2015

Naresh Kumar Mehta	APPELLANT
Vs	
Haryana Urban Development Authority And Others	RESPONDENT

Date of Decision : 18-02-2020

Acts Referred:

Punjab Civil Service Rules, Volume I — Rule 7.3, 7.5
Punjab Civil Service Rules, Volume II — Rule 2.2(b), 2.2(c), 9.14, 9.15

Citation : (2020) 02 P&H CK 0162

Hon'ble Judges : Nirmaljit Kaur, J

Bench : Single Bench

Advocate : R.K. Malik, Anupama Sharma

Final Decision : Allowed

Judgement

Nirmaljit Kaur, J

The first prayer in the present writ petition is that the suspension period of the petitioner from 09.08.2005 to 22.03.2006 be considered as duty period

for all intents and purposes.

The petitioner was suspended from service on 09.08.2005 due to his involvement in a criminal case. He was reinstated on 17.03.2006 and joined on

23.03.2006. Subsequently, he was acquitted by the Special Judge, Jhajjar, vide order and judgment dated 06.12.2011.

Reliance is placed on the judgment rendered by this Court in the case of Surjit Singh Vs. State of Haryana and another, CWP No.1326 of 2013,

decided on 30.04.2015. While relying on the various judgments rendered by Hon'ble the Apex Court including the judgment rendered by Hon'ble the

Apex Court in the case of Union of India and others Vs. Jaipal Singh, 2004 (1) SCT 108 as also the judgment rendered in the case of Balbir Singh Vs.

State of Haryana and others, CWP No.26122 of 2013, against which LPA No.514 of 2014 was also dismissed, the learned Single Bench in the case

of Surjit Singh (supra) held that the respondents were bound to consider the suspension period as a duty period for all intent purposes by holding in

para Nos.19 and 20 as under:-

â??19. The criminal trial that the present petitioner has faced and which has finally culminated in his acquittal was in relation to allegations having

direct nexus with the work and functions in the course of his employment. The petitioner having been absolved of such allegations and charges he

would be vested with the right to full pay and salary for the period he remained out of service by applying the ratio of aforenoticed judgments and in

the light of the relevant statutory provisions i.e. Rules 7.3 and 7.5 of the Punjab Civil Service Rules, Volume I, as applicable to the State of Haryana.

20. For the reasons recorded above, writ petition is allowed. Order dated 16.9.2011, Annexure P2, is modified to the extent that the petitioner is held

entitled to full pay and allowances for the period that he had remained out of service on account of his conviction. Let such benefit be calculated and

released to the petitioner within a period of two months from the date of receipt of a certified copy of this order.â??

No legal proposition contrary to the same has been pointed out.

Accordingly, the first prayer of the petitioner deserves to be allowed and the respondents shall now consider and accordingly pass appropriate order

qua the suspension period from 09.08.2005 to 22.03.2006 as duty period.

The second prayer of the petitioner is to count his service from 20.04.1973 to 11.09.1978 as qualifying period for the purpose of pension while he was

working in the Food and Supply Department.

Reliance is placed on the judgment rendered by this Court in the cases of Dev Dutt Vs. Haryana Urban Development Authority, Panchkula through

its Chief Administrator and others, CWP No.20912 of 2008, decided on 05.09.2011 and Puran Singh Vs. State of Haryana and others, CWP No.6966

of 2013, decided on 06.04.2015, placed on record as Annexures P-3 & P-4 to contend that the case of the petitioner is identical. It is not disputed that

the review against the judgment rendered in the case of Dev Dutt (supra) has also been dismissed and neither any LPA was filed. Meaning thereby,

the said judgments have attained finality.

The only argument raised by learned counsel for the respondents is that it was a fresh appointment and therefore, the past services rendered by the

petitioner cannot be counted. However, the said argument cannot be sustained in the facts of the present case. Admittedly, the petitioner too was

retrenched from the Food and Supply Department but was finally absorbed in the present department on 14.06.1979.

Moreover, it is not disputed that the petitioner namely Dev Dutt in the case of Dev Dutt (supra) as well as the petitioner namely Puran Singh in the

case of Puran Singh (supra), were also appointed in HUDA alongwith the present petitioner and their writ petitions stand allowed. There is nothing to

distinguish the case of the present petitioner with that of the petitioners therein. Hence, his case squarely covered by the judgments in the case of Dev

Dutt and Puran Singh (supra).

In view of the above, the second prayer of the petitioner too deserves to be allowed. Accordingly the period from 20.04.1973 to 11.09.1978 is ordered

to be considered as qualifying period for the purpose of pension.

With respect to the grant of interest, learned counsel for the respondents argued that the delay was not on account of the fault of the respondents but

on account of two charge-sheets pending against the petitioner, which were finally decided on 28.06.2016. However, the same does not help as the

respondents could not have held back the pension and leave encashment after the retirement of the petitioner. If at all, only gratuity could have been

withheld in view of the judgment rendered by the Division Bench of this Court in the case of B.S. Gupta Vs. Uttar Haryana Bijli Vitran Nigam

Limited and others, 2006 (8) SLR 690, decided on 23.11.2006, wherein, it was held in para 2 as under:-

â??2. After hearing learned counsel, we find that the claim made by the petitioner is meritorious. A Full Bench of this Court in the case

â??Dr.Ishwar Singh v. State of Punjabâ? 1994(3) RSJ 543 considered the provisions of Rules 9.14, 9.15, 2.2(b) and 2.2(c) of the Punjab Civil Service

Rules, Volume II and after detailed discussion in para 81 has concluded as under:-

â??81. As a result of the above discussion, I would conclude as under-

(i) The Government has no right to withhold or postpone pension or the payment on account of commutation of pension. The State is bound to release

100 per cent pension at the time of superannuation, may be provisionally.

(ii) The Government can withhold the gratuity other retiral benefits except pension or postpone payment of the same during pendency of an enquiry.

(iii) Pension cannot be adversely affected before a finding of guilt is returned.

(iv) The Government can initiate departmental enquiry after long lapse before retirement, rather there is no limitation for initiating the departmental

enquiry from the date of incident before retirement. The delay and the explanation for the same may reasonable be taken note of keeping in view its

likelihood to cause prejudice to the delinquent if the enquiry is challenged in appropriate proceedings.

(v) The enquiry proceedings cannot be quashed solely on the ground of long pendency.

(vi) There is no effect of superannuation on the pendency of the enquiry proceedings.

(vii) The recovery of the Government dues can be made from gratuity or other retiral benefits onlyâ??.

It is thus obvious that the pension of the petitioner cannot be withheld or postponed nor any other benefit could be denied to him merely because some

departmental proceedings or criminal proceedings are pending. Therefore, the writ petition deserved to be allowed as no further discussion on the

aforementioned issue would be necessary.â??

In view of the above, the present writ petition is allowed. The respondents shall accordingly revise the pension in view of the above reliefs granted to

the petitioner and pay the arrears within three months from the date of receipt of certified copy of this order alongwith interest @ 6% per annum from

the date it was due till it is finally paid. In case, the needful is not done within three months, the respondents are liable to pay the same with interest @

12% from the expiry of three months.

