
(2015) 05 P&H CK 0203

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 21785 of 2014

Om Parkash

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 11-05-2015

Acts Referred:

Citation : (2015) 05 P&H CK 0203

Hon'ble Judges : Amit Rawal, J

Bench : Single Bench

Advocate : V.D. Sharma, for the Appellant; Hitesh Pandit, Addl.A.G., Advocates for the Respondent

Final Decision : Allowed

Judgement

Amit Rawal, J.—The challenge in the present writ petition is to the impugned condition mentioned in the promotion order dated 23.12.2011 (Annexure P-3) and as well as the rejection order dated 12.12.2013 (Annexure P-7), vide which the claim of the petitioner for arrears of pay on promotion as Inspector w.e.f. 26.5.2005 to 23.12.2011 had been rejected.

2. Mr. V.D. Sharma, learned counsel appearing for the petitioner submits that the said claim has illegally and erroneously been withheld by not noticing the provisions of sub-rule (2) of Rule 7.3 of the Punjab Civil Services Rules, Vol-I, Part-I (for short "the Rules"). He further submits that vide Annexure P-3, the petitioner had been promoted as Inspector w.e.f. 26.5.2005 when his junior has been promoted with a rider that he will not be entitled to claim any arrears. The relevant portion of the order is reproduced herein below:-

"The promotion of Sh. Om Parkash, Sub-Inspector is w.e.f. 26.05.2005, when his junior official was promoted. He will not be entitled for any arrear w.e.f. 26.05.2005 except the benefit of notionally pay fixation upto the date of joining as Inspector."

3. Learned counsel for the petitioner has further submitted that vide order dated

23.2.2012 (Annexure P-2), the Director General, Food and Supply, Haryana has passed an order on the premise that since the petitioner has been found innocent in the enquiry and the proceedings against him have been dropped, therefore, the rule, *ibid*, in case of suspension, if the employee had been fully exonerated, his suspension period will be treated as a period spent on duty for all purposes, but despite the said order, vide Annexure P-7, the Director General, Food and Supply rejected the claim of the petitioner on the ground of "no work no pay".

4. Mr. Hitesh Pandit, learned Addl.A.G. Haryana, appearing for the State submits that since the petitioner had not worked from 26.5.2005 to 23.12.2011, he is not entitled to arrears as there was a clear cut condition imposed in the order of promotion and, therefore, the petitioner is estopped from claiming the arrears. He further submitted that the petitioner was found guilty in FIR No. 444 dated 28.12.1995, in which he was awarded imprisonment of two years and fine of Rs. 5,000/- vide judgment dated 8.7.2004. However, the appeal filed by the petitioner was accepted and he was acquitted by the Addl. Sessions Judge, Kaithal. He further submitted that the pay of the petitioner was notionally fixed from the date of deemed promotion upto the date of his joining as Inspector.

5. I have heard the learned counsel for the parties and appraised the paper book.

6. Before advertng to the respective contentions of the learned counsel for the parties, it would be apt to reproduce Rule 7.3 of the Rules:--

"Rule 7.3(1) When a Government employee, who has been dismissed, removed, compulsorily 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 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, has 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 prescribed;

Provided that the payment of 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 falling 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 falling 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."

7. There is substance in the contention made by the learned counsel for the petitioner inasmuch as that by now it is settled law that where the enquiry proceedings have been dropped subsequently and the person has been exonerated, he is entitled to benefit of promotion and salary which was granted to the junior. In the instant case, as is evident from the order (Annexure P-3), the enquiry proceedings have been dropped and, there is already an order of the Director General, Food and Supply, Haryana to the effect that the petitioner is entitled to the benefit. The operative part of the order dated 23.2.2012 is extracted herein below:--

"I have perused the record available on the file and found that Sh. Om Parkash, Sub-Inspector was found innocent in the enquiry and therefore proceedings against him have been dropped. So as per the Rule 7.3 of Punjab Civil Service Rules Vol-I Part-I in case of suspension, if the employee has been fully exonerated his suspension period shall be treated as a period spent on duty for all purposes and I ordered accordingly."

8. Once there is already an order passed by the Director General, Food and Supply, Haryana, there was no occasion for the Deputy Director (Administration) to review the order and reject the case of the petitioner for claiming the arrears of pay and allowances for the period of notional promotion as Inspector on the principle of "no work no pay". The aforementioned action of the Deputy Director (Administration) is not only erroneous, illegal but against the mandate of judgment rendered by the Hon'ble Supreme Court in Union of India Vs. K.V. Jankiraman, etc. etc., AIR 1991 SC 2010 : (1991) 63 FLR 767 : (1991) 3 JT 527 : (1991) 2 LLJ 570 : (1991) 2 SCALE 423 : (1991) 4 SCC 109 : (1991) 3 SCR 790 followed by the Division Bench of this Court in Satyavir Singh Sekhawati v. State of Haryana and others, 2014(4) SCT 233. The Division Bench of this Court, while relying upon the judgment of various Court including the Hon'ble Supreme Court, held that where the enquiry proceedings have been dropped subsequently and the delinquent has been exonerated, he is entitled to the benefit of promotion and salary which were granted to the junior.

9. It is a matter of record that the petitioner was given the promotion w.e.f. 26.5.2005 when his junior was promoted. Under these circumstances, the

petitioner is held entitled to arrears of pay and allowances for the period of notional promotion as Inspector.

10. There is no merit in the contention raised by the learned State counsel that the respondent-authority has the power to withhold the arrears of pay and allowances of the petitioner on the principle of "no work no pay".

11. Sub-rule (2) of Rule 7.3 of the Rules clearly envisages that in case the Government employee had been fully exonerated or, in case of suspension, it would be wholly unjustified and the Government employee shall be given the full pay and allowances for which he would have been entitled, has he not been dismissed, removed, compulsorily retired or suspended.

12. Accordingly, the impugned condition mentioned in clause-1 of the promotion order dated 23.12.2011 (Annexure P-3) and the rejection order dated 12.12.2013 (Annexure P-7) are hereby quashed.

13. The writ petition is allowed and the petitioner is entitled to arrears of pay and allowances on promotion as Inspector w.e.f. 26.5.2005 to 23.12.2011.