
(2013) 09 P&H CK 0027
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 7082 of 2012

Rishi Parkash

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 25-09-2013

Acts Referred:

Citation : (2014) 1 SCT 548

Hon'ble Judges : Ajay Tewari, J

Bench : Single Bench

Advocate : S.K. Sharma, for the Appellant; Shruti Goyal, A.A.G., Haryana, for the Respondent

Final Decision : Disposed Off

Judgement

Ajay Tewari, J.—This petition has been filed for issuance of directions to the respondents to release all the remaining retiral benefits. The petitioner joined as Patwari with the Revenue department on 24.11.1984. He was promoted as Field Kanungo on 01.07.1991. He was further promoted as Naib Tehsildar on 01.01.1996. Thereafter, he was charge-sheeted under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 on 11.10.2002 by the respondent No. 2. The petitioner submitted a reply to the charge-sheet on 14.11.2002. The inquiry officer submitted detailed inquiry report in the office of respondent No. 2 holding that the charges levelled against the petitioner are not proved and a minor mistake or error has been committed by him. The petitioner during his suspension retired on attaining the age of superannuation on 31.07.2006. The respondent No. 2 had filed charge-sheet against the petitioner on 10.11.2006. On 03.12.2007, the respondent No. 1 issued show cause notice to the petitioner to impose a cut of 10% on the pension of the petitioner. The respondent No. 1 thereafter on 10.07.2008 decided to drop the show cause notice and further ordered that all retiral benefits i.e. full pension and gratuity may be released. In case FIR No. 20 dated 12.10.2000 the petitioner was convicted for offences punishable under Sections 217, 218, 418 & 120-B IPC but acquitted for offences

u/s 13(1)(d) of the Prevention of Corruption Act, 1988. Under the order of quantum of sentence, the Special Judge instead of sentencing the petitioner released him on probation for good conduct in terms of Section 4 of the Probation of Offenders Act, 1958 for one year without supervision. Thereafter, the petitioner filed a writ petition bearing CWP No. 7440 of 2010 which was disposed of on 27.04.2010 with a direction to the competent authority to take decision on the representation of legal notice served by the petitioner within three months. The dispute in this case has admittedly now narrowed down to the issue of consideration of the period of suspension of the petitioner.

2. In the written statement, it has been mentioned as follows:-

It has been clearly laid down in Rule 7.3(5) of Civil Services Rules, Volume - I, Part - I that in case the Government employee is found guilty, the suspension period 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. It is worthwhile to mention here that in view of the merits of the case the suspension period from 02.11.2000 to 15.7.2003 and from 12.12.2005 to 31.7.2006 has not been treated as duty by the competent authority.

3. Learned counsel for the petitioner points out that this averment is not entirely correct because vide order dated 03.09.2010 the following decision was taken by the competent authority:-

..The decision regarding suspension period of the officer i.e. from 02.11.2000 to 15.07.2003 and 12.12.2005 to 31.07.2006, will be taken according to the decision of appeal filed by him in the Hon"ble Punjab and Haryana High Court..

4. Learned counsel for the petitioner has argued that though he filed an appeal in this Court yet even if that appeal is deemed to be dismissed still the suspension period of the petitioner has to be treated as duty period in view of Section 12 of the Probation of Offenders Act, 1958 which is as follows:-

12. Removal of disqualification attaching to conviction:-

Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of Section 3 or Section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law.

Provided that nothing in this section shall apply of a person who, after his release u/s 4, is subsequently sentenced for the original offence.

5. I find considerable weight in the arguments of learned counsel for the petitioner. In the present case, the departmental inquiry held that the charges against the petitioner were not proved and at the most the petitioner has committed a mistake. In the criminal case, the petitioner has been released on probation. As per Section 12, under the benefit of the order of probation the petitioner would not suffer disqualification attaching to the conviction.

Consequently, the respondents cannot refuse to decide the question on the ground that the appeal is pending. In the circumstances, the order dated 03.09.2010 (Annexure P-9) is set aside to the extent that its quoted above and the respondent No. 1 is directed to consider the case of the petitioner, if necessary by deeming that the appeal filed by the petitioner has been dismissed, and pass a fresh order with regard to the suspension period. Since the petitioner has retired as far back as on 31.07.2006 the respondent No. 1 shall take a final decision within a period of one month from the date of receipt of a certified copy of this order and, in case the petitioner is found entitled to the relief claimed the same be released to him within a period of one month thereafter. If any due relief is not released within the aforesaid period the petitioner would be entitled to claim the same with interest @ 8% p.a. from the date of his retirement till payment.

Petition stands disposed of in the above terms.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.