

(2015) 10 P&H CK 0136

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 2102 of 2001 (OandM) in CWP No. 10622 of 2008 (OandM),
COCN Nos. 2106 of 2009 and 876 of 2013

Sukhdev Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 16-10-2015

Acts Referred:

Constitution of India, 1950 — Article 215
Contempt of Courts Act, 1971 — Section 10, 12

Citation : (2015) 10 P&H CK 0136

Hon'ble Judges : Jitendra Chauhan, J.

Bench : Single Bench

Advocate : Sanjiv Sharma, Advocate, Amicus Curiae, for the Appellant; Luvinder Sofat, AAG, for the Respondent

Final Decision : Disposed Off

Judgement

Jitendra Chauhan, J.

This judgment of mine shall dispose of Civil Writ Petition Nos. 2102 of 2001, CWP No. 10622 of 2008, COCN No. 876 of 2013 and COCN No. 2106 of 2009 filed by Sh. Sukhdev Singh.

In CWP No. 2102 of 2001, the petitioner prayed for implementation of order giving pensionary benefits to the petitioner by giving him the benefit of military service.

In CWP No. 10622 of 2008, the petitioner has prayed for issuance of a writ of certiorari quashing the order 13.05.2008 passed by respondent No. 2 and the order dated 17.04.2007 passed by respondent No. 3 ordering a recovery of Rs. 1,21,445/- from the petitioner.

In COCN No. 2106 of 2009, the petitioner prays for pressing the contempt proceedings against the respondents who have passed the order dated 20.10.2009 for recovery of Rs. 1,21,445/- and did not comply with the order

dated 05.05.2009 passed by this court in CWP No. 2102 of 2001.

In COCP No. 876 of 2013, the petitioner prays for issuance of contempt petition under Section 10 and 12 of the Contempt of Courts Act, 1973 read with Article 215 of the Constitution of India for issuance of contempt proceedings against the respondents for not providing any relief of pensionary benefits and other arrears of service benefits and for not complying with the directions issued by this Court vide order dated 04.02.1988 in CWP No. 1257 of 1986.

The facts:--

1. The synoptical resumption of factual position is that the petitioner had joined the Indian Army on 19.01.1963 and took part in the War of 1965, 1971 and served upto 01.11.1978 when he was boarded due to the disability on account of injury which the petitioner suffered during the 1971 war.

2. The petitioner after being discharged from the Army on account of disability was appointed as Clerk in the Health Department with the Punjab Government on 19.09.1979 vide order dated 31.08.1979 and after serving in the Health Department of Punjab Government the petitioner retired on 31.05.1998 as Junior Assistant.

3. The petitioner was not granted the benefit of Army services rendered by him during the emergency period for the purpose of seniority, promotion, increments and was also deprived of the seniority for which he was entitled under the De Mobilized Armed Forces Personnel (Reservation of vacancies in the Punjab State Non Technical Services) Rules, 1968. The petitioner feeling aggrieved approached this Court by filing CWP No. 1257 of 1986 titled as Sukhdev Singh v. State of Punjab and the said writ petition was allowed vide order dated 04.02.1988, wherein this Court had directed that the services of the petitioner may be regularized as Clerk by taking the date of his entry into service on 19.01.1963 and to maintain the continuity of his service from the said date onwards for the purpose of increments, fixation of pay and by treating him on duty from 20.04.1984 to 19.06.1985 and further the Military Service rendered by the petitioner during the emergency period from 19.01.1963 to 10.01.1968 and from 03.12.1971 to 25.03.1997 and also grant the petitioner handicapped allowances which were permissible to the handicapped employees of the Punjab Government as per Rules and assign the benefit of seniority as Clerk from his entry into service and also the benefits of promotion on the basis of his length of service and also to deliver all his documents relating to Military Service, Pension, Bank Passbook which were in the custody of the respondents and the said observation made by this Court was to be complied with within a period of three months from the date of passing of the order.

4. The respondents assailed the impugned order before this Court by filing LPA No. 319 of 1988 State of Punjab v. Sukhdev Singh and the said LPA filed by the Government of Punjab was partly accepted and the order of the Hon''ble Single Judge to the extent of granting benefit in the matter of seniority, pension etc. for

the service rendered by the petitioner in the Armed Forces from 03.12.1971 till the lifting of emergency as well as the order regularizing the services of the petitioner by treating him on duty from 20.04.1984 to 18.06.1985 was set aside and a direction was issued to the State of Punjab to dispose of the Departmental Enquiry within a period of six months. Suffice is to submit that the other two reliefs granted to the petitioner were upheld.

5. After the passing of the order by this Court vide order dated 08.12.1989 the respondents issued fresh instructions on 23.06.1998 regarding grant of benefit of second emergency in civil services and as per the said instructions the benefit of the period of second emergency from 03.12.1971 to 27.03.1977 was also declared as Military Service for the purposes of the Rules and thus the benefit of second emergency was also required to be given to Army Personnel under 1965 Rules, thus, the petitioner was entitled to the benefit of the Military Services rendered during the second emergency (Annexure P-2).

6. In pursuance to the second part of the order passed by this Court in LPA, wherein the departmental enquiry was held against the petitioner and vide order dated 18.03.1991 stoppage of two annual increments with cumulative effects and also not granting salary from 20.04.1984 to 18.06.1984 was passed. In this regard, the petitioner filed Civil Suit at Amritsar and the same was decreed and the said order was declared illegal, null and void and directions were issued to pay the salary to the petitioner for the period 20.04.1984 to 18.06.1985 and was further directed that the said period may be treated the leave of kind due. The order in the said suit was passed on 28.08.1998. Respondents preferred an appeal before the First Appellate Court and the same was dismissed vide order dated 12.01.2000. However, relief was modified and it was mentioned that the leave of kind due as held by the learned Trial Court would include the leave without pay if the petitioner did not have leave to his credit and the petitioner feeling aggrieved assailed the impugned order by filing RSA No. 1388 of 2000 titled Sukhdev Singh v. State of Punjab.

7. Vide order dated 15.06.1987, pay of the petitioner was fixed in selection grade of 510-940 and the selection grade was fixed at Rs. 1040/- w.e.f. 01.10.1984 and the said fact was not challenged by the State in the LPA which attained finality.

8. The application of leave furnished by the petitioner from 09.05.1988 to 18.05.1988 given by the petitioner was misplaced and was marked absent and to deduct his pay and without issuing any show cause notice the pay of the petitioner was deducted and was not allowed to attend the office.

9. The petitioner filed CWP No. 5090 of 1988 seeking mandamus for payment of arrears of pay by granting him the selection grade and for restraining the respondents from harassing and victimizing the petitioner from marking him absent and the respondents in their written statement took specific stand that the claim regarding salary had been a subject matter of earlier writ petition No.

1257 of 1984 and thus the claim filed by the petitioner was barred by res judicata and it was admitted by the respondents that fixation of pay of the petitioner at 1040 w.e.f. 01.10.1986 had attained finality and in violation of the orders the respondents reduced the salary of the petitioner and also in violation of the Government instructions from time to time. For ready reference Annexure P-3 to P-5 and the reduction of salary was stayed and the writ petition was admitted. The abovesaid CWP No. 5090 of 1998 was disposed of by this Court on 09.08.06 by issuing directions to the respondents to issue comprehensive show cause notice to the petitioner as to why the petitioner's pay was not correctly fixed and also stating therein the amount, if any, recoverable from the petitioner. The order dated 09.08.06 further stated that the the petitioner be given personal hearing by the Director, Health and Family Welfare, Punjab and the effect of any judgment earlier passed by this Court was also required to be incorporated in the show cause notice. Thereafter, the Director was to pass a comprehensive order by deciding the issue raised by the petitioner.

10. In spite of legal notice filed by the petitioner on 12.06.2000 praying for his pensionary benefits and in reply the respondents made reference to the LPA which shows that the respondents ignored the Government Instructions according to which the petitioner was entitled for the benefits of second emergency and no benefits were released to the petitioner.

11. On 05.05.2009 in CWP No. 2102 of 2001, a statement was made by the counsel that he does not press the writ petition in view of the order passed in CWP No. 10622 of 2008 titled Sukhdev Singh v. State of Punjab. It is mentioned here that CWP No. 2102 of 2001 is the petition filed by the petitioner for his grievance.

12. The petitioner had filed CWP No. 10622 of 2008 challenging the impugned order dated 13.05.2008 and order dated 17.04.2008, whereby the respondents had ordered the recovery of Rs. 1,21,445/- and vide order dated 05.05.2009 the said order was set aside and the respondents were directed to comply with the directions of this Court by passing a speaking order in accordance with law and the costs of Rs. 10,000/- was imposed. On non compliance of the order dated 05.05.2009 against both the decisions in CWP No. 2102 of 2001 and CWP No. 10622 of 2008 a COCP No. 2106 of 2009 was filed. That the petitioner on 28.08.1990 received an undated chargesheet with the allegation that the petitioner has drawn an excess amount of Rs. 68,082.35 by fixing his pay wrongly and claiming handicapped allowance. The petitioner filed a detailed representation. Feeling aggrieved the petitioner filed CWP No. 5090 of 1988 which was disposed of with the direction to issue comprehensive show cause notice and in response to this the petitioner was issued a show cause notice with a recovery of Rs. 1,21,445/-. Against the said impugned order the petitioner filed writ petition No. 10622 of 2008 which was decided on 05.05.2009 wherein the impugned orders dated 13.05.2008 and 17.04.2008 were set aside and directions were issued to pass a speaking order and further the respondents

were imposed Rs. 10,000/- as cost.

13. In compliance of the order dated 05.05.2009 of this Court, the case of the petitioner was reconsidered and order dated 20.10.2009 was passed, wherein it was clarified to make recovery of Rs. 1,21,445/- from the petitioner. Feeling aggrieved, the petitioner filed CWP No. 20465 of 2010 and vide order dated 08.08.2011, the same was allowed. In compliance thereof, the respondents vide order dated 22.11.2011 withdrew the recovery order dated 20.10.2009 and leave encashment, ACP arrear and DCRG were paid to the petitioner along with interest @ 6% per annum. However, the petitioner filed the COCP No. 2527 of 2011 for non-compliance of the order dated 08.08.2011 and this Court disposed of the same with a consent of the petitioner that a Committee be constituted to hear the petitioner's claim and determine the same. The Committee scrutinised all the claims raised by the petitioner and after verifying the records concluded that the petitioner had joined the duty within one year after being discharged from the military service and as such the period was considered as joining period, accordingly, the Committee concluded this period is to be counted for pensionary benefits. All other claims were not found admissible, otherwise the petitioner had not demanded any other benefit from the Department before the Committee. In addition to this, the Committee has considered the case of the petitioner and found that vide letter dated 07.02.1992, he has already been granted the benefit of Ist emergency military service i.e. 4 years, 11 months and 23 days after his joining on 26.09.1974. In compliance of the decision of the Committee dated 08.05.2012, the Director, Health and Family Welfare, Punjab issued order dated 17.05.2012 to count the period for pension from his date of discharge i.e. 01.11.1978 from military service to the joining date as clerk in this Department i.e. 19.09.1979.

14. The learned amicus curiae inter alia contended that till date the department has not counted the military service rendered by the petitioner for the period from 19.01.1963 to 10.01.1968 and 03.12.1971 to 27.03.1977 (second emergency). He further contended that he has not been given the pensionary benefits of the period from 02.11.1978 to 18.09.1979 which interregnum was condoned by this Hon'ble Court. The petitioner claimed interest at the rate of two per cent per month on the recoverable amount.

15. On the other hand, the learned State Counsel contended that the petitioner was relieved from service on 01.11.1978 after being declared medically unfit. He joined the Government job, within a period of one year, on 19.09.1979 and he was superannuated on 31.05.1998. The learned State Counsel contended that all admissible financial benefits, for which the petitioner, was found entitled to have been already granted to the petitioner and nothing is due towards the department.

16. I have heard the learned amicus curiae, the learned State Counsel and gone through the bulky record with their able assistance.

17. From the record it emerges out that the petitioner has not been granted the benefit of Second National Emergency, which was in vogue from 03.12.1971 to 25.03.1977. This was the time, when our country was at war with Pakistan in the year 1971. The case of the petitioner is squarely covered by the D.B. judgment dated 13.11.2014, in CWP No. 17667 of 2013, titled as "Rajinder Singh v. State of Punjab and others, the operative part of which is reproduced below:--

"Accordingly, the writ petitions are partly allowed to the extent that the petitioners are held entitled to the grant of benefit of military service rendered by them during the Second National Emergency towards pension. However, they are held not entitled to the grant of any benefit of their military service rendered during the Second National Emergency towards increments."

18. Accordingly, the petitioner is held entitled to the grant of benefit of military service rendered by him during the Second National Emergency towards pension only.

19. The period from 01.11.1978 when he was relieved from service till 19.09.1978 when he joined the Government service cannot be counted as qualifying service, towards pension, as the petitioner remained out of job for this period. If the gap was condoned by this Court, it does not mean that increments would have been granted for this period also. So, this prayer is declined.

20. So far as interest is concerned, petitioner is held entitled to interest at the rate of six per cent per annum on the due amount from the date of his retirement till its payment.

21. COCP No. 2106 of 2009 and COCP No. 876 of 2013 are dismissed as there is no prima facie ground which could be said to be wilful disobedience of any order of this Court.

22. CWP No. 10622 of 2008 has already been decided on 05.05.2009. The Civil Miscellaneous filed in this CWP stands disposed of.

23. With the above observations, CWP No. 2102 of 2001 is disposed of with a direction that the respondents shall grant the benefits of the Second National Emergency to the petitioner towards pension within two months from the date of receipt of certified copy of this judgment, and, thereafter, to make the payment of arrears within one month thereafter along with interest at the rate of six per cent per annum from the date of his retirement till its payment.

24. It is made clear that other reliefs claimed, are, declined being not admissible to the petitioner.

25. The amount allowed by the Court be calculated and released to the petitioner within six weeks from the receipt of a certified copy of this judgment.

26. Allowed to the extent indicated above.