IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No.18916 of 2012 Date of decision: 3/10/2013

Virender Singh Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR.JUSTICE AJAY TEWARI

Present: Mr. R.K. Malik, Sr. Advocate

with Mr. Samrat S. Malik, Advocate

for the petitioner.

Ms. Shruti Goyal, A.A.G., Haryana.

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporters or not?

3. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (Oral)

This petition has been filed against the order dated 08.09.2010 (Annexure P-5) whereby the claim of the petitioner for seeking pensionary benefits was denied and order dated 03.04.2012 (Annexure P-8) whereby the statutory appeal of the petitioner was dismissed and against the order dated 14.08.2012 (Annexure P-9) whereby the statutory revision filed by the petitioner was dismissed.

Brief facts of the case are that the petitioner was enrolled as a Constable on 05.11.1981 and he was dismissed from service on 09.04.1992 due to his absence without permission. The appeal filed by the petitioner

against the dismissal order was rejected on 16.07.1992. The revision petition filed by the petitioner was also dismissed on 13.08.1993. Thereafter, the petitioner filed a writ petition bearing C.W.P. No.11264 of 1993 and by judgment and order dated 17.05.2010 this Court set aside the three impugned orders and issued a direction to the punishing authority to pass fresh order of punishment after taking into consideration the 11 years service rendered by the petitioner and his right to pension. Thereafter, the impugned order dated 08.09.2010 (Annexure P-5) was passed. The petitioner again filed a writ petition bearing C.W.P. No.20310 of 2010 which was decided on 05.05.2011 and it was held that:-

"On due consideration of the matter, I am of the considered opinion that order dated 8.9.2010 is an appealable order and ordinarily an appeal ought to have been filed. The petition is thus disposed of with liberty to the petitioner to file an appeal against order dated 8.9.2010 before the competent authority who will evaluate the law laid down by this Court regarding the grant of pension if a person has completed 10 years of service. In the eventuality of an appeal being filed by the petitioner, the same shall be disposed of on merits without holding the factor of delay against him and in the light of the judgments of this Court rendered qua affordability of pension to a dismissed employee who has put in more than 10 years of service. The petitioner shall file an appeal within a period of 4 weeks from the date of receipt of the copy of the order and in such an eventuality, the same shall be disposed of as expeditiously as possible."

The petitioner filed an appeal under Rule 16.29 of the Punjab Police Rules before the Inspector General of Police, Hisar. The said appeal was dismissed vide impugned order dated 03.04.2012 (Annexure P-8). Even the statutory revision petition before the Director General of Police, Haryana was dismissed vide impugned order dated 14.08.2012 (Annexure P-9). Hence, the present petition.

The argument of learned senior counsel for the petitioner is that now on two occasions this Court had held that though the petitioner did not deserve to be continued in service yet it had also set aside the dismissal order passed by the authorities since the only misconduct against the petitioner was of absence of 7 months and this misconduct cannot be termed to be gravest act of misconduct so as to justify dismissal. On two occasions the respondents had declined the claim of the petitioner for the grant of pension only on the ground that the petitioner did not have 20 years service. Learned senior counsel for the petitioner has further argued that the period of 20 years service is important only for the purpose of seeking voluntary retirement but would have no relevance in the case like the present, more so since this Court had repeatedly indicated that it would be for the respondents to consider the gravity of the single misconduct of 7 months' absence against the previous record of the petitioner as also the fact that he had enough service to have earned the pension. In his submission, the respondents have repeatedly misdirected themselves in considering the case of the petitioner for pension only against the parameters provided for voluntary retirement. Learned senior counsel for the petitioner has relied

upon the judgment of this Court in the matter of *Dhan Singh v. State of Haryana and others*, 2009(2) SLR 40, wherein the following observations have been made:-

"17......However, the authorities have not applied their mind and not taken into consideration the length of service of the petitioner and his right to pension while awarding the punishment. It has been stated by the petitioner in ground of this petition that he has rendered 11 years 9 months service. No rule has been brought to our notice that the petitioner is not entitled to any pensionary benefits for rendering about 12 years of service. Giving consideration to the length of service, the right to pension is inherent under Rule 16.2 itself and thus it cannot be ignored."

He has further relied upon the judgment of this Court in the matter of *Rajinder Kumar v. State of Haryana and others*, passed in C.W.P. No.16511 of 1997, decided on 26.05.2009, where also in a similar circumstances this Court had set aside the order whereby the employee had been dismissed without considering his case for pension.

Learned senior counsel for the petitioner has further argued that since the original order of dismissal had been set aside on two occasions it would be deemed that the petitioner is now have 29 years of service and has relied upon the judgment in the matter of *Radha Ram v. Municipal Committee, Barnala and another, (1983) 85 P.L.R. 21*, wherein the Full Bench of this Court held as follows:-

"Once the relief of setting aside or quashing the order of termination has been granted, or a declaratory decree has been passed to the similar effect, it necessarily follows that the employee in the eye of law continues to be in service and as a necessary consequence thereof would be entitled to all the emoluments flowing from that status. He must be deemed to be in a position identical with that existing prior to the passing of the order of termination of his service. The emoluments of the post are a logical consequence of setting aside the order of termination."

Learned senior counsel for the petitioner has further relied upon the judgment of this Court in the matter of *Satbir Singh Constable v. The Director General of Police, Haryana and others*, passed in CWP No.11500 of 1997, decided on 11.01.2013 to contend that in the facts and circumstances mentioned above the petitioner is entitled for pension for his qualifying service. He has further argued that dismissal order with retrospective effect was invalid and illegal and therefore the impugned orders cannot stand in the eyes of law.

Learned Assistant Advocate General has argued that after the direction of this Court the case of the petitioner had been considered and there is no allegation that any officer was biased against him and consequently no interference is called for.

In my opinion, the views expressed by both the sides are too extreme. Keeping in mind the entire conspectus of facts brought out above, the action of the respondents in not considering the claim of the petitioner for pension is unwarranted. However, the claim that the petitioner should

get pension for 29 years is also unjustified. It may be noticed that in the first writ petition filed by the petitioner bearing CWP No.11264 of 1993 this Court even while setting aside the dismissal order had specifically mentioned as follows:-

"The order of reinstatement of the petitioner in service shall remain in abeyance till the passing of fresh order."

Consequently, the petitioner can not claim that his service should be counted as 29 years.

The parameter for judicial interference in matters of punishment was laid down in case of <u>Union of India and another</u> v.

S.S. Ahluwalia, 2007(7) SCC 257, wherein it has been held as follows:

".... The scope of judicial review in the matter of imposition of penalty, as a result of disciplinary proceedings, is very limited. The Court can interfere with the punishment only if it finds the same to be shockingly disproportionate to the charges found to be proved. In such a case, the Court is to remit the matter to the disciplinary authority for reconsideration of the punishment. In an appropriate case, in order to avoid delay the court can itself impose lesser penalty....."

Keeping in view the nature of allegations, I am convinced that the punishment imposed is disproportionate to the charges levelled against the petitioner. The authorities have not applied their mind and not taken into consideration the length of service of the petitioner and his right to pension while awarding the punishment. No rule has been brought to the notice of this Court that the petitioner is not entitled to any pensionary

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benefits for rendering more than 10 years of service. Giving consideration

to the length of service, the right to pension is inherent under Rule 16.2

itself and thus it cannot be ignored. The authorities having failed to adhere

to the rule while awarding punishment renders the impugned orders of

punishment illegal and unwarranted. It is also settled law that when a

relevant provision is given a go by, it amounts to arbitrary exercise of power

and such an order is not sustainable.

In view of the above circumstances, I deem it appropriate to set

aside the order dated 08.09.2010 (Annexure P-5), order dated 03.04.2012

(Annexure P-8) and the order dated 14.08.2012 (Annexure P-9) and to

convert it into an order of compulsory retirement w.e.f. 09.04.1992 i.e. the

date of dismissal. Ordered accordingly. The respondents are directed to

process the case of the petitioner for release of retiral benefits for his

qualifying service in accordance with the rules and release the same within a

period of two months from the date of receipt of a certified copy of this

order. In case any due amount/s are not paid within the aforesaid period the

petitioner would be entitled to claim the same with interest @ 8% p.a. from

the date of retirement to the date of 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.

(AJAY TEWARI) JUDGE

October 3, 2013

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