(2013) 05 P&H CK 0160

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 12269 of 2011

Sushila Jain	APPELLANT
Vs	
State of Haryana and Others	RESPONDENT

Date of Decision: May 23, 2013

Citation: (2013) LabIC 3238 : (2013) 4 SCT 241

Hon'ble Judges: Tejinder Singh Dhindsa, J

Bench: Single Bench

Advocate: S.K. Bhardwaj, for the Appellant; Harish Rathee, D.A.G., for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Tejinder Singh Dhindsa, J.

The petitioner was appointed as a Primary Education Officer with the Haryana State Education Department on 14.11.1974. Her services were regularized on 1.1.1980. The petitioner earned promotions to the post of Head Mistress on 11.1.1988 and as Principal on 31.1.1991. While the petitioner was posted as Sub Divisional Education Officer, Panipat, a complaint was filed against her on the basis of which FIR No. 17 dated 5.4.2002, under Sections 7/13 of the Prevention of Corruption Act, 1988 was registered against her at Police Station SVB (H), Rohtak. The petitioner was placed under suspension on 12.9.2002, but was re-instated with effect from 12.12.2002. A Departmental Promotion Committee considered the cases of eligible employees for promotion to HES Class-I in the year 2002 but the petitioner was ignored on account of the pendency of the criminal proceedings initiated on account of filing of FIR No. 17 dated 5.4.2002. Vide judgment dated 12.5.2008, passed by the Special Judge, Panipat, the petitioner was acquitted of the charges levelled against her. The petitioner, accordingly, submitted a representation for promotion to HES Class-I with effect from the date her juniors had been so promoted. In such representation, the petitioner took a specific stand that she had been ignored only on account of pendency of the criminal proceedings and she having earned acquittal was entitled for promotion retrospectively. Order dated 19.9.2008, Annexure P2, was passed by

respondent No. 1 whereby the suspension period of the petitioner i.e. 12.9.2002 to 12.12.2002 was ordered to be treated as duty period for all intents and purposes. Vide order dated 31.12.2008, Annexure P3, passed by respondent No. 1, the petitioner has been promoted to HES Class-I in the grade of Rs. 10,000-325-13,900 w.e.f. 25.7.2003. However, in the light of condition No. 5 of such order, the petitioner has been held entitled to the benefit of pay fixation and seniority from the date of such retrospective promotion but not the actual arrears for the period in question. The petitioner thereafter raised a claim to be granted actual arrears for the period 25.7.2003 till 31.12.2008 but the same has been rejected vide memo dated 18.8.2009, Annexure P5, citing the principle of ''No Work No Pay''.

2. It is in the light of such factual backdrop that the present writ petition has been filed impugning the memo dated 18.8.2009, Annexure P5, and raising a claim that the petitioner be released the salary/arrears for such period i.e. 25.7.2003 to the actual date of promotion.

3. Learned counsel appearing for the petitioner has vehemently argued that the solitary basis for denying the petitioner the benefit of promotion to HES Class-I in the year 2003 was the pendency of the criminal proceedings and the petitioner having earned acquittal in FIR No. 17 dated 5.4.2002 was vested with the right not only to be promoted retrospectively with effect from the date her juniors were promoted but was also entitled to all consequential benefits in the nature of salary for such period. In support of such contention, learned counsel has placed reliance upon the following judicial pronouncements:

1. Kanwar Lal Sharma Vs. State of Haryana and Others, ; and

2. Hukam Singh Vs. State of Haryana and another

4. Mr. Harish Rathee, learned Senior Deputy Advocate General, Haryana would contend that the petitioner has not discharged her duties on the promotional post for the period in question and, accordingly, would argue that she is not entitled to the payment of salary for such period. A further argument has been raised that even though there is a challenge to memo dated 18.8.2009, Annexure P5, yet the arrears of salary had been denied by virtue of condition No. 5 contained in the order dated 31.12.2008, Annexure P3, and to which no challenge has been raised in the instant writ petition.

5. The short question that would require determination in the light of the facts of the present case would be as to whether the employer/Department can be saddled with the liability of payments of arrears of salary pertaining to the promotional post for a period the employee was not promoted on account of pendency of criminal proceedings wherein such proceedings had not been initiated at the behest of the Department itself?

6. The admitted position is that a complaint had been filed against the petitioner under the provisions of Prevention of Corruption Act. It is not the case that the criminal prosecution had been initiated against her in pursuance to any complaint having been lodged by the respondent-Department. Even though the case of the petitioner had been considered by the duly constituted Departmental Promotion Committee in the year 2003 itself, yet she could not be promoted on account of the pendency of the criminal proceedings. Subsequently, upon acquittal, the petitioner has been promoted to HES Class-I retrospectively from the year 2003 and has also been granted the benefit of pay fixation and seniority. Even the suspension period has been ordered to be treated as the period spent on duty for all intents and purposes. In such factual backdrop, the petitioner would not be entitled to the payment of arrears of salary for a period that she has not discharged her duties and responsibilities against the promotional post.

7. A question as regards payment of salary to an employee whose services had been terminated on account of conviction in criminal proceedings and having thereafter been reinstated upon acquittal and wherein the prosecution leading to the conviction was not at the behest of the employer/Department came up for consideration before the Hon''ble Apex Court in the case of Union of India (UOI) and Others Vs. Jaipal Singh, and it was held in the following terms:--

If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest or by department itself, perhaps different considerations may arise. On the other hand, if a citizen the employee or a public servant got involved in a criminal case and if after initial conviction by the trial court, he gets acquittal on appeal subsequently, the department cannot in any manner be found fault with for having kept him out of service, since the law obliges, a person convicted of an offence to be so kept out and not to be retained in service. Consequently, the reasons given in the decision relied upon, for the appellants are not only convincing but are in consonance with reasonableness as well. Though exception taken to that part of the order directing reinstatement cannot be sustained and the respondent has to be re-instated, in service, for the reason that the earlier discharge was on account of those criminal proceedings and conviction only, the appellants are well within their rights to deny back wages to the respondent for the period he was not in service. The appellants cannot be made liable to pay for the period for which they could not avail of the services of the respondent. The High Court, in our view, committed a grave error, in allowing back wages also, without adverting to all such relevant aspects and considerations. Consequently, the order of the High Court in so far as it directed payment of back wages are liable to be and is hereby set aside.

8. This Court is of the considered view that the same principle would apply even to the facts of the present case.

9. For the reasons recorded above, I find no infirmity with the decision of the respondent-Department in denying to the petitioner the arrears of salary for the

period in question i.e. 25.7.2003 to 7.1.2009. Writ petition dismissed.