

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

2025:PHHC:062763-DB



Civil Writ Petition No. 6903 of 2021 (O&M)

Reserved on: 30.01.2025

Pronounced on : 13.05.2025

Sanjeev Jindal

.....Petitioner

versus

Punjab and Haryana High Court and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE
HON'BLE MR. JUSTICE SUMEET GOEL, JUDGE**

Present : Mr. Abhishek Sharma, Advocate and
Mr. Abhishek Jindal, Advocate, for the petitioner.

Mr. Ranjit Singh Kalra, Advocate and
Ms. Mona Yadav, Advocate, for respondent No.1.

Mr. Naveen S.Bhardwaj, Addl. Advocate General, Haryana
for respondent No.2.

Ms. Anmolpreet Kaur, Advocate for
Mr. Harneet Singh Oberoi, Advocate, for respondent No.3.

SHEEL NAGU, CHIEF JUSTICE

Writ as well as supervisory jurisdiction under Articles 226/227 of the Constitution of India is invoked to assail the order dated 14.05.2019 (Annexure P-15) and letters dated 24.06.2020 and 23.12.2020 (Annexures P-18 & P-20) issued by respondent No.1 directing the petitioner to deposit the amount of pension received by him from 13.08.2012 to 28.02.2019 which is founded upon the letter of the Accountant General of Haryana.

2. The petitioner being a member of Haryana Superior Judicial Services filed this petition. Having been initially appointed on substantive basis as Judicial Magistrate (Junior Division) on 09.10.1987, petitioner was thereafter promoted substantively in the Haryana Superior Judicial Services on 31.05.2002.

2.1 Bases on certain allegations against the petitioner of having passed an order of bail with oblique motive, a charge-sheet was issued on 21.08.2010 to which the petitioner replied on 12.10.2010. Inquiry proceedings culminated by submission of report by the Enquiry Officer dated 30.09.2011 finding the charge to be proved. This was followed by issuance of show cause notice to the petitioner who responded thereto leading to infliction of penalty of compulsory retirement vide order dated 17.08.2012 (Annexure P-11). This penalty was assailed in Civil Writ Petition No. 20000 of 2012 which was allowed on 29.08.2018 by setting aside the penalty order and directing reinstatement of petitioner in Haryana Superior Judicial Services with continuity of service but without back wages with further observation that in case the petitioner is not reinstated on or before 30.11.2018, he shall be entitled to claim salary w.e.f. 01.12.2018. Consequently, the order dated 29.08.2018 passed by the Division Bench of this Court was upheld by the Apex Court on 14.01.2019 (Annexure P-13) by dismissal of Special Leave Petition filed by High Court. The petitioner was accordingly reinstated vide order dated 22.02.2019 (Annexure P-14).

3. Singular question which soliciting an answer is as to whether the demand for refund of pension received by the petitioner from the date of order of compulsory retirement i.e. 13.08.2012 till 28.02.2019 (date of reinstatement) is justified or not.

4. A bare perusal of the order passed by a Division Bench of this Court by which the penalty of compulsory retirement was set aside reveals that besides denying back wages to the petitioner, he was given the benefit of continuity of service for the purpose of computing retiral benefits meaning thereby the said period from the date of compulsory retirement till reinstatement ought to be counted as qualifying service for computing retiral benefits. Thus, for all practical and legal purposes except for grant of salary, the period of absence from duty till reinstatement has been treated as on duty.

5. Learned counsel for the petitioner is unable to point out any enabling provision in the Pension Rules or otherwise which supports the cause of the petitioner. The prayer of the petitioner of retention of pension received from the date of compulsory retirement till reinstatement is incongruous and contradictory to the direction of co-ordinate Bench of this Court in treating the absence period as qualifying service albeit sans back wages.

6. If the prayer of the petitioner is accepted, then this Court would become party to undue enrichment in favour of the petitioner. Once the petitioner successfully challenged the order of penalty of compulsory retirement and was granted relief *inter-alia* of continuity of service then seeking or retaining pension for the same period, is untenable in the eyes of law.

7. Learned counsel for the High Court has drawn attention of this Court to a judgment rendered by Division Bench of Gujarat High Court in **Special Civil Application No. 6532 of 2010 (*Hasmukh son of Prabhudasbhai Rajjada vs. Union of India and others*)** involving somewhat similar factual matrix as contained herein holding that the plea of retention of pension on one hand and the relief flowing from the order of reinstatement run

contrary to each other. The relevant portion of the judgment of Gujarat High Court cited supra is reproduced hereinbelow:-

“7. We agree with the stand of the Railways that, if the petitioner wanted to enjoy the benefit of appellate order reducing the penalty, he ought to have surrendered the post retiral benefits received by him under the order of compulsory retirement. The petitioner could not have insisted on reinstatement in service while still retaining sizable amounts received from the Railways under the order of compulsory retirement. The railways was, therefore, justified in not allowing him to resume the duty till he repaid the same. The petitioner’s stand that in that case he ought to have been paid pension is also not tenable. The Appellate Authority, had reversed the order of compulsory retirement. The employee was, therefore, to be reinstated in service with reduced penalty. He, therefore, had to surrender the benefits and resume duty. His plea for pension would run counter to the appellate order directing the reinstatement and his own stand that he ought to have been reinstated in service. Even if the petitioner, due to financial constraints, may have received the retiral benefits pursuant to the order of compulsory retirement, while still challenging the said order, within some reasonable period or at any rate in installments had the onus to deposit the entire amount with reasonable interest with railway administration. He could simply not have insisted on reinstating while still retaining the post retiral benefits. The two concepts are run incongruent to each other.”

8. Leaned counsel for the petitioner has drawn attention of this Court to various decisions rendered by the Apex Court as well as various High Courts in *State of Punjab and others vs. Rafiq Masih (white washer) etc. 2015(4) SCC 334; Thomas Daniel vs. State of Kerala and others 2022 SCC Online SC 536; Dr. Ishar Singh vs. State of Punjab and another, CWP No. 4970 of 1988 decided on 12.01.1993 by Punjab and Haryana High Court; and Sanjayh Devidasrao Paithane vs. State of Maharashtra and another*

2015(6) SCT 134 (Bombay), which according to this Court are based on distinct factual matrix and do not relate to the issue raised herein.

9. In view of above, no case for interference is made out and the present petition stands dismissed.

**(SHEEL NAGU)
CHIEF JUSTICE**

**(SUMEET GOEL)
JUDGE**

13.05.2025

ravinder

Whether speaking/reasoned	√Yes/No
Whether reportable	√Yes/No