

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

SWP No.2578/2012

Sher Singh, Aged 54 years
S/O Sh. Balak Rak
R/O Village Salal,
Tehsil & District Reasi.

..... Petitioner(s)

Through: Mr. Sandeep Singh, Advocate.

Vs

1. National Hydroelectric Project Corporation
Ltd., through its Chief (Human Resources),
Establishment, NHPC Office Complex,
Sector 33, Faridabad (Haryana)

..... Respondent(s)

2. Executive Director (R-1),
JDA Commercial Complex, Narwal, Jammu.

3. General Manager, Dulhasti Power Station,
Kishtwar (J&K).

4. Manager (Mechanical) Incharge Human
Resources Department, Pakul Dul HE Project,
Sector II, Chenab Nagar, Kishtwar (J&K)

Through: Mr. A. P. Singh, Advocate.

CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE

JUDGMENT

03.07.2025

01. Petitioner- Sher Singh, through the medium of instant petition, has prayed
for the following reliefs:

- i) Certiorari for quashing the Order No. NH/PDHEP/HR/PF(03)10/5210-17 dated 27.06.2011 passed by respondent No.4 and Order No.NH/ED(R-1)/Law-14/2011/1648 dated 29.03.2011 passed by respondent No.2.
- ii) Mandamus commanding the respondents to treat the petitioner as on duty without any break during the period he remained in jail and pay him full pay and allowance of that period.

02. Petitioner has asserted that while he was working as Beldar (Spl) with the respondent-NHPC in Pakal Dul Hydroelectric Project at Kishtwar on his transfer from Salal Power Station, he proceeded on casual leave w.e.f. 06.04.2009 to 13.04.2009; that during this period, he was implicated in a false case registered vide FIR No.55/2009 at Police Station Reasi for the murder of one Lachhan Devi and finally the trial Court of learned Principal Sessions Judge, Reasi acquitted him on 15.10.2010; that immediately after being released from jail, he joined his duty on 20.10.2010 and came to know that he had been suspended by the respondent w.e.f. 17.04.2009, without holding any enquiry; that his suspension was revoked by the respondent-Corporation vide impugned Order No.NH/PDHEP/HR/PF(03)10/5210-17 dated 27.06.2011 treating his service while in custody as 'on duty' without any break. Petitioner, however, alleged that his pay and other allowances were not paid to him, for the period of his incarceration.
03. Petitioner has assailed the impugned order asserting that he was entitled, as a workman, to full pay and allowances, to which he would have been entitled to, as if he had not been suspended, less the subsistence allowance already paid to him; that he was entitled to full wages for the period of about 1½ years during which he remained in judicial custody in a criminal case. It was finally prayed that the respondents be directed to pay him full pay and allowances for that period.
04. Pursuant to notice, the respondents filed reply/objections, stating therein that the petitioner had involved himself in a murder case registered vide FIR No.55/2009 at Police Station, Reasi and had been acquitted later vide judgment dated 15.10.2010; that the petitioner on his acquittal from the

charges in the criminal case and release from the custody, on his reporting back was reinstated to his job, paid salary for the period he had worked with the respondent-Corporation in Pakal Dul Project in Kishtwar; that the petitioner had been unable to render service on account of his arrest and incarceration and was thus, not entitled to back wages and it was finally prayed that the petition be dismissed.

05. From the pleadings of the parties, the facts as emerged, shorn of minute detail, are that petitioner while serving as Beldar (Spl) with the respondent-NHPC Ltd., when he was on leave, was arrested in a criminal case registered at Police Station, Reasi and remained in judicial custody till he was acquitted by the trial Court; the petitioner was taken back into the service on his acquittal, however, he was not paid the salary and allowances for the period he had remained in custody by the respondents and the petitioner is aggrieved of the denial of such relief to him. Thus the short point, which falls for the consideration of this Court in the instant petition is that as to whether an employee, who on his arrest in a criminal case suffers incarceration/ custody till his trial, on his/her acquittal, is entitled to receive salary and other allowances attached to it. The matter is required to be examined in the context of this question.
06. The Hon'ble Apex Court has dealt with the subject in two cases titled **'Ranchhodji Chaturji Thakore Vs. The Superintendent Engineer, Gujarat Electricity Board'** reported in **1996 (11) SCC 603**; and **'Union of India and Ors. Vs. Jaipal Singh'** reported in **2004 (1) SCC 121** relied by the respondents. The Apex Court in case titled **'Ranchhodji Chaturji Thakore Vs. The Superintendent Engineer, Gujarat Electricity Board'** reported as **1996 (11) SCC 603**, having identical facts to the case

on hand, held that the petitioner being involved in an offence under Section 302/34 IPC and later-on acquitted, had disabled him from rendering service on account of conviction and incarceration in jail, the petitioner was not entitled to back wages. Relevant extract of the said judgment is reproduced as under:-

“3.The reinstatement of the petitioner into the service has already been ordered by the High Court. The only question is: whether he is entitled to back wages? It was his conduct of involving himself in the crime that was taken into account for his not being in service of the respondent. Consequent upon his acquittal, he is entitled to reinstatement for the reason that his service was terminated on the basis of the conviction by operation of proviso to the statutory rules applicable to the situation. The question of back wages would be considered only if the respondents have taken action by way of disciplinary proceedings and the action was found to be unsustainable in law and he was unlawfully prevented from discharging the duties. In that context, his conduct becomes relevant. Each case requires to be considered in its own backdrop. In this case, since the petitioner had involved himself in a crime, though he was later acquitted, he had disabled himself from rendering the service on account of conviction and incarceration in jail. Under these circumstances, the petitioner is not entitled to payment of back wages. The learned single Judge and the Division Bench have not committed any error of law warranting interference.”

The Apex Court again in case titled **Union of India and Ors. Vs. Jaipal Singh** reported in **2004 (1) SCC 121**, replying upon the afore stated judgment, held as under:-

“4. On a careful consideration of the matter and the materials on record, including the judgment and orders brought to our notice, we are of the view that it is well accepted that an order rejecting

a special leave petition at the threshold without detailed reasons therefore does not constitute any declaration of law by this Court or constitute a binding precedent. Per contra, the decision relied upon for the appellant is one on merits and for reasons specifically recorded therefor and operates as a binding precedent as well. On going through the same, we are in respectful agreement with the view taken in 1996 (11) SCC 603 (supra). 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 as 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 re-instatement 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 advertent 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.”

07. Since the petitioner was arrested in a criminal case as he had involved himself and the respondent-Corporation had no role either in registration of a criminal case against him or in his custody, therefore, in view of the

law laid down by the Apex Court in the afore stated judgments, more so when an employee or a public servant on his acquittal, the employer cannot in any manner be found fault with for having kept him out of service since the law obliged an under trial to be so kept out and not to be retained in service. Otherwise also, petitioner had not worked for the period of more than 1 ½ years due to his custody and in the considered opinion of this Court, is not entitled to the back wages. Had the custody of the petitioner been due to the respondent-employer, in that situation the things would have been different as in case of departmental inquiry with regard to misconduct etc.

08. Viewed thus, it is held that the petitioner an employee of the respondent-Corporation, who had undergone custody as an under-trial, in a criminal case, is not entitled to salary and allowances for that period. The plea in this behalf made by the petitioner, is thus found to be misconceived and is hereby rejected.
09. Learned counsel for the petitioner, having reconciled to the legal position of the case, submits that since the petitioner has superannuated from his service, the respondent-Corporation be directed to release his pensionary benefits, to which he is entitled on his retirement. Since no such plea is subject matter of this petition, no positive direction with regard to this plea can be passed on the submission of learned counsel for the petitioner. The petitioner shall be at liberty to move a representation to the respondent-Corporation for grant of terminal benefits on his superannuation and the respondent-Corporation shall consider the same. If the petitioner does not succeed in his endeavour, he shall be entitled to work out and avail the available legal remedy.

10. The petition is disposed of as **dismissed**, along with connected CM.

(M A Chowdhary)
Judge

Jammu
03.07.2025
Narinder

Whether the order is speaking: Yes/No.
Whether the order is reportable: Yes/No.

