

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.1728 of 2006
Date of decision : 22.07.2015

Janardhan Dass Sharma

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Anurag Goyal, Advocate with
Mr. Lalit Rishi, Advocate for the petitioner.

Mr. Rajneesh Chadwal, DAG, Haryana.

AMIT RAWAL, J. (Oral)

Challenge in the present petition is to the impugned order dated 10.02.2005 (Annexure P-3), whereby the petitioner on acquittal on 27.08.2001, had been taken back into the service on 27.08.2003 but all retiral benefits have been given from the date of acquittal and not from the date of suspension.

Mr. Anurag Goyal, learned counsel for the petitioner submits that the petitioner was appointed as Sub Inspector on 10.12.1969 and was falsely implicated in the FIR registered under Section 7/13 of the Prevention of Corruption Act and simultaneously was placed under suspension on

14.12.1993.

Vide judgment dated 29.11.1994, he was convicted for two years and accordingly on 02.08.1996 he was dismissed from service. The order of conviction was challenged in the appeal which was resultantly allowed and was acquitted on 27.08.2001. Vide impugned order dated 10.02.2005, petitioner had been taken back into service but all the benefits have been given from the date of acquittal not from the date of suspension.

In support, he has relied upon judgments dated 26.04.2013 of this Court rendered in *CWP No.15977 of 2012 titled as Piara Singh Vs. State of Punjab and ors.* and 2007(1) SCT 739, *Shiv Kumar Goel Vs. State of Haryana & another* to contend that even in case of benefit of doubt, the petitioner is entitled to all retiral benefits from the date of termination minus subsistence allowances.

He further submits that Rule 7.3(2) of Punjab Civil Services Rules Volume 1 Part 1 clearly envisages that where the employee is exonerated, he shall be entitled for even full pay and allowances to which he would have been entitled, had he not been dismissed, removed, compulsorily retired or suspended prior to such dismissal and there is no allegation against the petitioner that his termination or dismissal was directly attributed to him.

He further submits that as per Note 9, it is the authorities which has to pass the specific order where the Government employee would be entitled for the allowances from the date of acquittal or suspension. The petitioner has been denied all the benefits from the date of suspension and have been given only from the date of acquittal.

Mr. Rajneesh Chadwal, DAG, Haryana submits that order impugned in the present petition is sustainable in law and had been passed in accordance with provision of Rule 7.3(3)(5) of Punjab Civil Services Volume 1 Part 1.

I have heard learned counsel for the parties and appraised the paper book.

In order to decide the issue in controversy, it would be apt to reproduce Rule 7.3 along with Note 9. Same be read as under:-

“7.3 (1) When a Government employee, who has been dismissed, removed, compulsorily retired, or suspended, is reinstated, or would have been reinstated but for his retirement or superannuation the authority competent to order the reinstatement shall consider and make a specific order:-

(a) regarding the pay and allowances to be paid to the Government employee for the period for his absence from duty, occasioned by suspension and/or dismissal, removal or compulsory retirement ending with his reinstatement on or the date of his retirement on superannuation as the case may be, and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Where the authority mentioned in sub-rule (1) is of opinion that the Government employee has been fully exonerated or, in the case of suspension, that it was wholly unjustified, the Government employee shall be given the full pay and allowances to which he would have been entitled, had he not been dismissed, removed, compulsorily retired or suspended, as the case may be.

(3) In other cases, the Government employee shall be given such proportion of such pay and allowances as such

competent authority may prescribe.

Provided that the payment of allowances under sub-rule (2) or sub-rule (3) shall be subject to all other conditions under which such allowances are admissible.

Provided further that such proportion of such pay and allowances shall not be less than the subsistence and other allowances admissible under rule 7.2.

(4) In a case falling under sub-rule (2) the period of absence from duty shall be treated as a period spent on duty for all purposes.

(5) In a case falling under sub-rule (3) the period of absence from duty shall not be treated as a period spent on duty unless such competent authority specifically directs that it shall be so treated for any specified purpose.

Provided that if the Government employee so desires, such authority may direct that the period of absence from duty shall be converted into leave of any kind due and admissible to the Government employee.”

“Note 9 - Where a Government employee under suspension is acquitted by a Court of Law and the order reinstating him is passed some time after the date of acquittal, full pay and allowances have to be paid from the date of acquittal to the date of re-joining duty and the period counted as duty for all purposes whereas for the period from the date of suspension/removal/dismissal to the date of acquittal he is to be allowed pay and allowances as directed by competent authority under sub-rule (2) or sub-rule (3) of this rule and the period treated as duty or non-duty under sub-rule (4) or sub-rule (5) of this rule, as the case may be.”

There is substance in the contention made by the learned
counsel for the petitioner inasmuch as that by now it is settled law that

where the person has been honourably acquitted, he is entitled to pay and salary, i.e. full pay allowances from the date he had been suspended.

The Division Bench of this Court in Shiv Kumar Goel's case has clearly lays down, to examine the matter where even after registration of the FIR, disciplinary proceedings had also initiated against the delinquent employee and found that after acquittal of the delinquent employee charge-sheet issued to him based on the facts and allegations in FIR was not permissible. Rule 7.3 lays down a comprehensive procedure for arriving at a conclusion as to how the period of suspension has to be treated.

Learned Single Bench of this Court also had an occasion to ponder upon provisions of Rule 7.3 (Supra) while arriving at a finding that once an employee has been exonerated from the Departmental enquiry, he would be entitled to pay and allowances for the period he remained out of service. In the instant case, the Department did not even initiate the Departmental proceedings. It is only on the basis of conviction that services of the petitioner were terminated. The impugned order rejecting the claim of the petitioner vis-a-vis granting of benefit from the date of suspension provides that since petitioner was not honourably acquitted, therefore, period from the date of suspension till the date of acquittal would not be treated as period spent on duty. Such observations in my view is totally fallacious, much less, erroneous, nucleus, arbitrary, illegal and thus not sustainable accordingly hereby quashed. The language of Rule 7.3 is clear and unambiguous. It clearly provides that once employee has been honourably acquitted, he is entitled to full pay and allowances from the date of termination if not suspended or from the date of suspension.

Accordingly, the writ petition is allowed.

The petitioner shall be entitled to full pay and allowances from the period he remained suspended minus subsistence allowances till the date of acquittal. The pay of the petitioner be fixed. The arrears be calculated and paid to the petitioner within a period of three months from the date of receipt of certified copy of the order.

22.07.2015

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**(AMIT RAWAL)
JUDGE**