

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

**Civil Writ Petition No. 13367 of 2012
Date of Decision: 16.2.2015**

Pawan Kumar

.....Petitioner.

Vs.

District & Sessions Judge, Hisar and others

.....Respondents.

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Rajesh Hooda, Advocate
for the petitioner.

Mr. Raman B. Garg, Advocate
for respondents No.1 and 2.

Mr. Ashok Singh Chaudhary, Additional A.G. Haryana.

RAMESHWAR SINGH MALIK J. (ORAL)

Feeling aggrieved against the impugned order dated 15.1.2011 (Annexure P-3) passed by the learned District & Sessions Judge, Hisar, whereby his suspension period was ordered to be treated as 'leave of the kind due', on his reinstatement in compliance of the judgment of acquittal, petitioner has approached this Court by way of instant writ petition under Article 226/227 of the Constitution of India, seeking a writ in the nature of Certiorari. Petitioner has also challenged the orders Annexures P-4 and P-5, whereby he was

denied the pension.

Notice of motion having been issued, joint written statement has been filed on behalf of respondents No.1 and 2. A separate written statement has been filed on behalf of respondent No. 3.

Learned counsel for the petitioner submits that the impugned order was patently illegal because it was self contradictory. He further submits that once the petitioner has been fully exonerated by the appellate court and in compliance thereof, he was reinstated in service, respondent No.1 had no authority to treat suspension period of the petitioner as leave of the kind due. He also submits that the resultant effect of the impugned order Annexure P-3 was that petitioner was denied even the benefit of pension vide orders Annexures P-4 and P-5. In support of his contentions, learned counsel for the petitioner relies on the following judgments of the Hon'ble Supreme Court, Madhya Pradesh High Court, Rajasthan High Court as well as this Court:-

1. Brahma Chandra Gupta Vs. Union of India, AIR 1984 SC 380
2. Deputy Inspector General of Police and another Vs. S. Samuthiram, 2013 (3) SLR 554 (SC)
3. Bibhuti Bhushan Chaudhary Vs. Union of India and another, (1997) 11 SCC 373
4. Hukam Singh Vs. State of Haryana and another, 2001 (2) SCT 696 (P&H)
5. Tota Singh Vs. Punjab State Electricity Board and others, 2007 (3) SCT 793 (P&H)
6. Harpal Singh Vs. Haryana Vidyut Prasaran Nigam Limited and others, 2008 (1) SCT 733 (P&H)
7. Ragbhar Dayal Vs. State of Punjab, 2002 (4) SCT 178 (P&H)
8. Krishan Sewak Vs. State of Haryana and another, 1997 (2) CLJ

(service) 355 (P&H)

9. Mewa Singh (Retd) (Driver) Vs. Chairman, PRTC and others, 2007

(4) SCT 602 (P&H)

10. O.P.Sindhvani Vs. State of Haryana and another, 2009 (4) SCT 62 (P&H)

11. Ravinder Singh Vs. State of Punjab, 1997 (1) SCT 494 (P&H)

12. Dr. M.L.Kamra and others Vs. State of Haryana and others, 2009 (6) SLR 577 (P&H)

13. Union of India (UOI) Vs. Mohd. Sharif Khan, 2006 (4) MPHT 140

14. Maha Singh Vs. State of Haryana, 1994 (1) SCT 154 (P&H)

15. Mohan Singh Bhati Vs. State of Rajasthan 1997 (3) SCT 65. (Raj. H.C.)

He prays for setting aside the impugned orders, by allowing the present writ petition.

Per contra, learned counsel for respondents No.1 and 2 submits that since the petitioner was not completely exonerated of the allegations levelled against him, his suspension period was rightly ordered to be treated as leave of the kind due. He further submits that since the petitioner was suspended due to his involvement in an excise matter, which has nothing to do with the performance of his duties with the respondent-department, he himself was responsible for it. To substantiate his arguments, learned counsel for respondents No.1 and 2 places reliance on the two judgments of the Hon'ble Supreme Court in **Management of Reserve Bank of India, Delhi Vs. Bhopal Singh Panchal, 1994 (1) SCC 541; Ranchhodji Chaturji Thakore Vs. The Superintending Engineer, Gujarat Electricity Board, 1997 AIR (SC) 1802** and one judgment of this Court in **Sat Pal Dhawan Vs. State Bank of India,**

H.O. (Staff Deptt) and others, 2012 (3) SCT 441. Finally, he prays for dismissal of the writ petition.

Similarly, learned counsel for respondent No.3, while supporting the arguments raised by learned counsel for respondents No.1 and 2, prays for dismissal of the writ petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that in the given fact situation of the present case, instant writ petition deserves to be allowed. To say so, reasons are more than one, which are being recorded hereinafter.

It is a matter of record and not in dispute that appeal filed by the petitioner against his conviction was accepted by the appellate court and the petitioner was ordered to be acquitted, vide judgment dated 15.7.2002. As a consequence of his acquittal, petitioner was reinstated in service. Thereafter, when the question arose for considering suspension period of the petitioner as well as period from the date of his acquittal till his reinstatement in service, learned District and Sessions Judge, Hisar, recorded positive findings in earlier part of the impugned order itself to the effect that the petitioner has been completely exonerated of the allegations levelled against him.

The relevant observations made by the learned District Judge, read as under:-

*“The facts and circumstances
enumerated above reveals that as directed by*

Hon'ble High Court vide its letter dated 11.1.2010, the matter in question is to be disposed of by this office in terms of Rule 7.3 of Punjab Civil Services Rules, Volume-I, Part-I. In this context, it is submitted that the case of above named official named Shri Pawan Kumar, the then Chowkidar falls within the ambit of Sub Rule 2 of Rule 7.3 of the Rules ibid, which is reproduced as under:-

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.

It is a matter of record that Shri Pawan Kumar, the then Chowkidar was placed under suspension vide order dated 26.8.2000 on account of his involvement and detention in a criminal case. He was held guilty under section 68 of the Punjab Excise Act and was sentenced to pay a fine of Rs. 200/- and in the fault to undergo imprisonment for 10 days by the trial court vide judgment/order dated 8.10.2001. However, the appeal filed by him was

accepted, vide judgment dated 15.7.2002 by the Appellate Court and he was completely exonerated of the allegations levelled against him. Subsequently, he was reinstated in service by the then District & Sessions Judge, Hisar, vide order dated 10.12.2002.

In this context, it is submitted that the above rule can be bifurcated and taken into consideration in two parts viz (i) the period from the date of suspension from 26.8.2000 till date of acquittal i.e. 15.7.2002 and (ii) the period from the date of acquittal i.e. 15.7.2002 till rejoining/reinstatement i.e. 9.12.2002. Since the official had been completely exonerated by the charges, his suspension can be treated as unjustified and as such he shall be given the full pay and allowances to which he would have been entitled, had he not been suspended. The same covers the 1st part and as per note 9 of aforesaid Rule 7.3. The subsequent period i.e. from the date of acquittal to reinstatement covers the 2nd part. Meaning thereby the official is legally entitled to full pay and allowances from the date of acquittal i.e. 5.7.2002 till 9.12.2002, on which date he was reinstated in service.”

A bare reading of the abovesaid impugned order would

show that earlier part of it, recording the categoric findings about complete exoneration of the petitioner from the allegations levelled against him, is not going hand in hand with the later offending part of the same impugned order. When a pointed question was put to the learned counsel for respondents No.1 and 2 in this regard, he had no answer and rightly so, because it was a matter of record. Having said that, this Court feels no hesitation to conclude that since the impugned order is not only self contradictory but arbitrary as well, the same cannot be sustained.

Further, since the impugned orders Annexures P-4 and P-5 are nothing but the resultant effect of passing of the impugned order Annexure P-3, the same also cannot be sustained. It is so said, because the true import of the statutory rule i.e. Rule 7.3 of the Punjab Civil Service Rule ('CSR' for short) Vol. I has not been properly appreciated by respondent No.1, while passing the impugned order, because of which all the three impugned orders Annexures P-3 to P-5, cannot be sustained.

The abovesaid view taken by this Court also finds support from more than one judgments relied upon by the learned counsel for the petitioner. Rule 7.3 of the CSR Vol.I Part I fell for consideration before the Division Bench of this Court in **Hukam Singh's case** (supra). After discussing the relevant judgments on the subject, the Division Bench of this Court made the following observations in para 7 and 8 of the judgment and the same can be gainfully followed in the present case:-

“At this stage, we deem it necessary to

adverts to Rule 7.3. of the Punjab Civil Services Rules as applicable to Haryana State (for short 'the Rules'). Sub-rules (1) and (2) of Rule 7.3 of the Rules reads 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 on 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 of 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 be treated as a period spent on duty.

(2) Whether 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.”

Rule 7.5. of the Rules also assumes importance. In this connection, reference can well be made to Rule 7.5. of the Rules which deals with suspension during pendency of criminal proceedings and effect thereafter. It reads as under:-

“An employee of Government against whom proceedings have been taken either for his arrest for debt or on a criminal charge or who is detained under any law providing for preventive detention should be considered as under suspension for any periods during which he is detained in custody or is undergoing imprisonment, and not allowed to draw any pay and allowances (other than any subsistence allowance that may be granted in accordance with the principles laid down in Rule 7.2) for such period until the final termination of the proceedings taken against him or until he is released from detention and allowed to rejoin duty, as the case may be. An adjustment of his allowances for such periods should thereafter be made according to the circumstances of the case, the full amount being given only in the event of the officer being acquitted of blame or (if the

proceedings taken against him were for his arrest for debt), of its being proved that the officer's liability arose from circumstances beyond his control or the detention being held by the competent authority to be unjustified." (emphasis added)".

It is abundantly clear that Rule 7.3. of the Rules is the general rule, while in case a person is acquitted, it is specific Rule 7.5 of the Rules that would be attracted. The law is well settled that special Rule will always take precedence over the general rule and consequently, it must follow that under Rule 7.5. of the Rules, referred to above, the petitioner was entitled to the full back wages because, as mentioned above, the earlier decisions referred to above have little application in the present case.

*In our this view, we are supported by the judgment of this Court in the case of **Maha Singh vs. State of Haryana and another, 1993 (8) Services Law Reporter 188: 1994 (1) SCT 154 (P&H)**. Same view was expressed by this Court in the cases of **Lehna Singh Vs. The State of Haryana and others, 1993 (3) Recent Services Judgments 119: 1994 (1) SCT 173 (P&H)**.*

Keeping in view the aforesaid, we have no

hesitation in holding that the impugned order cannot be sustained. In terms of Rule 7.5 of the Rules, on petitioner's being acquitted, he would be entitled to full salary and allowances for the period of suspension and dismissal. The impugned order Annexure P-7 is accordingly quashed. The petitioner can thereafter be considered for any further promotion that may be due in accordance with the rules. No order as to costs."

Again, the Hon'ble Supreme Court in Bibhuti Bhushan Chaudhary's case (supra) made the relevant observations in para 2 and 3 of the judgment, which aptly apply to the facts of the present case and the same read as under:-

"The petitioner was employed as Station Master in the Railways. By order dated 19-1-1962 he was placed under suspension on account of his failure to join duty at the place of transfer. The said order of suspension continued in operation till 8-5-1970 when the petitioner was allowed to join duty. He retired from service on attaining the age of superannuation on 31-1-1980. It appears that disciplinary proceedings had been initiated against the petitioner but the same could not be completed till he retired. The petitioner has been paid subsistence allowance for the period of suspension .

The learned counsel for the petitioner has confined his submissions to the computation of the pension payable to the petitioner and has urged that although the subsistence allowance has been paid to the petitioner for the a period of suspension the said period has been excluded from the qualifying service of the petitioner for the purpose of computing the pension payable to him. Having regard to the fact that the petitioner has been paid the subsistence allowance for the period of suspension, the said period of suspension could not be excluded from the qualifying service for the purpose of computing pension of the petitioner and the pension payable to the petitioner should be calculated by taking into account the said period of suspension as part of his qualifying service. It is, therefore, directed that the petitioner is entitled to count the period of suspension as part of his qualifying service for the purpose of computing the pension payable to him. The amount of pension payable to the petitioner should be reassessed on that basis and the amount of arrears found payable to the petitioner as a result of such reassessment shall be paid to the petitioner within a period of three months. The writ petition is disposed of accordingly. No orders as to costs. SLP (c) No.

10820 of 1988.

No other argument was raised

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned orders have been found patently illegal, the same cannot be sustained and are hereby set aside. Petitioner is declared entitled for all the service benefits on his reinstatement in service, including salary for the suspension period as well as after the date of acquittal by the appellate court.

Consequently, the respondent authorities are directed to do the needful within a period of three months from the date of receipt of certified copy of this order. If the needful is not done within the stipulated period, the petitioner shall be entitled for interest @ 9% per annum from the date when the amount became due till the actual payment thereof.

Resultantly, with the abovesaid observations made and directions issued, the instant writ petition stands allowed, however, with no order as costs.

(RAMESHWAR SINGH MALIK)
JUDGE

16.2.2015
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