

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CIVIL WRIT PETITION NO.1326 OF 2013

RESERVED ON: FEBRUARY 05, 2015

DATE OF DECISION: APRIL 30, 2015

Surjit Singh

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.RK Malik, Senior Advocate with
Ms.Rimple Sohi, Advocate for the petitioner.

Mr.Ravi Pratap, Assistant Advocate General, Haryana.

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TEJINDER SINGH DHINDSA, J.

The petitioner, who was serving on the post of Patwari under the Revenue Department, State of Haryana, was placed under suspension on 13.5.1996 on account of involvement in a criminal case under the Prevention of Corruption Act (for short 'the Act'). He was reinstated on 19.9.1996 pending the outcome of criminal proceedings. Petitioner was convicted under Section 7 of the Act vide judgment dated 18.7.2000 passed by the learned Additional Sessions Judge, Yamuna Nagar and sentenced to one year imprisonment and a fine of ₹8,000/-. Based upon such conviction, the petitioner was dismissed from service vide order dated 14.8.2000.

2. An appeal filed by the petitioner against the judgment

of conviction was allowed by this Court in the light of judgment dated 6.12.2010 at Annexure P1 in Criminal Appeal No.677-SB of 2000. In consequence of the judgment of acquittal dated 6.12.2010, the Collector, Yamuna Nagar issued orders dated 16.9.2011, Annexure P2, reinstating the petitioner back in service w.e.f. 18.7.2000. The petitioner, however, was held not entitled to the salary for the period he remained out of service.

3. Challenge in the instant writ petition is to the order dated 16.9.2011, Annexure P2, confined to the extent that the petitioner has been denied the arrears of salary for the period that he had remained out of service.

4. Learned Senior counsel appearing for the petitioner would submit that the petitioner was implicated in a false case and it was on account of his conviction that he had been dismissed from service. It is contended that the order of conviction having been set aside by this Court and the petitioner having been reinstated, there would be no justifiable basis to deny to him the full pay and allowances for the entire period that he remained out of service. Towards raising the claim for grant of complete arrears of salary for the period in question, reliance has been placed upon Rules 7.3 and 7.5 of the Punjab Civil Service Rules, Volume I, as applicable to the State of Haryana.

5. Per contra, learned State counsel would contend that the petitioner had been reinstated upon his order of conviction being set aside, but the Department cannot be saddled for the backwages in relation to a period when he was out of service.

The principle of 'no work no pay' has been invoked. Reliance has

been placed by the learned State counsel towards such submission upon the judgment of the Supreme Court of India in **Union of India and others v. Jaipal Singh, 2004(1) SCT 108** as also judgment dated 28.11.2013 rendered by a Co-ordinate Bench of this Court in **Civil Writ Petition No.26122 of 2013** titled as **“Balbir Singh v. State of Haryana and others**, and which stands affirmed in **LPA No.514 of 2014** decided on 13.8.2014.

6. Learned counsel for the parties have been heard at length.

7. The factum of the petitioner having been dismissed from service based solely upon conviction and no separate departmental proceedings having been initiated by the respondent-Department and further the petitioner having been reinstated in service upon order of conviction having been set aside, stands admitted.

8. The question that arises for consideration is as to whether the petitioner could be denied his full pay and allowances for the period that he remained out of service?

9. It would be appropriate to examine in the first instance the scheme of Rules governing the issue in question. Relevant extract of Rules 7.1 to 7.5 of the Punjab Civil Service Rules, Volume I, as applicable to the State of Haryana reads as under:

“CESSATION OF PAY AND ALLOWANCES ON REMOVAL OR DISMISSAL.

7.1. The pay and allowances of a Government employee who is dismissed or removed from service cease from the date of such dismissal or removal.

ALLOWANCES DURING PERIOD OF SUSPENSION

7.2 (1) A Government employee under suspension shall be entitled to the following payments, namely:

(i) xx xxx xxx

(ii) In the case of any other Govt. employee-

(iii) A subsistence allowance at an amount equal to the leave salary which the Government employee would have drawn if he had been on leave on half-pay, and in addition dearness allowance, if admissible, on the basis of such leave salary:

Provided that where the period of suspension exceeds six months, the authority which made or is deemed to have made the order of suspension shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of the first six months as follows:-

(i) the amount of subsistence allowance may be increased by a suitable amount not exceeding 50 per cent of the subsistence allowance admissible during the period of the first six months, if in the opinion of the said authority, the period of suspension has been prolonged for reasons to be recorded in writing, not directly attributable to the Government employee.

(ii) the amount of subsistence allowance may be reduced by a suitable amount, not exceeding 50 per cent of the subsistence allowance admissible

during the period of the first six months, if in the opinion of the said authority, the period of suspension has been prolonged due to reasons to be recorded in writing, directly attributable to the Government employee.

(iii) The rate of dearness allowance will be based on the increased, or as the case may be, the decreased amount of subsistence allowance admissible under clauses (i) and (ii) above.

(b) Any other compensatory allowance admissible from time to time on the basis of pay of which the Government employee was in receipt on the date of suspension subject to the fulfillment of other conditions laid down for the drawl of such allowances.

(2) No payment under sub-rule (1) shall be made unless the Government employee furnishes a certificate, and the authority which made or is deemed to have made the order of suspension is satisfied that he is not engaged in any other employment, business, profession or vocation:

Provided that in the case of Government employee dismissed, removed or compulsorily retired from service, who suspension from the date of such dismissal or removal or compulsory retirement and who fails to produce such a certificate for any period or periods during which he is deemed to be placed or to

continue to be under suspension, he shall be entitled to the subsistence allowance and other allowances equal to the amount by which his earnings during such period or periods as the case may be fall short of the amount of subsistence allowance and other allowances that would otherwise be admissible to him are equal to or less than the amount earned by him nothing in this proviso shall apply to him.

ALLOWANCES ON REINSTATEMENT

7.3(1) When a Government employee, who has been dismissed, removed or compulsory retired or suspended, is reinstated or would have been reinstated but for his retirement on superannuation while under suspension the authority competent to order 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 shall be treated as a period spent on duty.

(2) Where the authority mentioned in sub rule (1) is of the opinion that the Government employee has been

fully exonerated or, in 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, has he not been dismissed, removed or compulsorily retired or suspended as the case may be :

(3) In other cases, the Govt. 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 case falling under sub-rule (2), the period of absence from duty shall not 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.

SUSPENSION DURING PENDENCY OF CRIMINAL PROCEEDINGS, OR PROCEEDINGS FOR ARREST FOR DEBT, OR DURING DETENTION UNDER A LAW PROVIDING FOR PREVENTIVE DETENTION.

7.5. An employee of Government against whom proceeding 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 periods 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 it 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."

10. Under Rule 7.1, a Government employee becomes disentitled to pay and allowances on his dismissal or removal from service. Rule 7.2 deals with the payment of subsistence allowance to an employee placed under suspension. Rule 7.3 (i) empowers the competent authority to decide in respect to the period of a Government employee who remained dismissed or removed or compulsorily retired or under suspension. Sub Rule (ii) of Rule 7.3, however, specifically prescribes that in the event of a Government employee who had been dismissed, removed or compulsorily retired and has been fully exonerated, upon reinstatement, he shall be paid full pay and allowances to which he would have been entitled to, had he not been dismissed, removed or compulsorily retired or suspended. Sub Rule (iii) of Rule 7.3 further provides for treating the entire period of suspension preceding dismissal, removal or compulsory retirement as a period spent on duty for all purposes in a case covered under Sub Rule (ii). Rule 7.5 specifically prescribes that in the event of a Government employee acquitted of the blame and it is proved that the official's liability arose from circumstances beyond control or the detention being held by the competent authority to be unjustified, he would be entitled to full salary.

11. In the facts of the present case, the petitioner was involved in a criminal case, but this Court while examining the appeal preferred by the petitioner against an order of conviction, found that the charge against him was unjustified and,

accordingly, acquitted him. Based upon the judgment of acquittal, the petitioner has been reinstated in service, but without salary for the period he remained out of service. Perusal of the order of reinstatement dated 16.9.2011, Annexure P2, would reveal that the petitioner has been held entitled to all benefits pertaining to the dismissal period except salary. The decision of the competent authority to deprive the petitioner of the wages would be seen as an inherent contradiction. On the one hand, the petitioner has been reinstated being fully exonerated and, on the other hand, he has been deprived of his wages inspite of treating the entire period towards continuity in service.

12. In **Brahma Chandra Gupta v. Union of India, 1984 AIR (SC) 380**, the Hon'ble Supreme Court while examining a similar issue had observed as under:

“6.....Keeping in view the facts of the case that the appellant was never hauled up for departmental enquiry, that he was prosecuted and has been ultimately acquitted, and on being acquitted he was reinstated and was paid full salary for the period commencing from his acquittal, and further that even for the period in question the concerned authority has not held that the suspension was wholly justified because 3/4th of the salary is ordered to be paid, we are of the opinion that the approach of the trial court was correct and unassailable. The learned trial Judge on appreciation of facts found that this is a case in

which full amount of salary should have been paid to the appellant on his reinstatement for the entire period. We accept that as the correct approach.....”

13. Even a Division Bench of this Court in the case of **Hukam Singh v. State of Haryana and another**, 2001(2) SCT 696, while considering the scope of Rule 7.5 of the Punjab Civil Service Rules had held as under:-

*“8. In our this view, we are supported by the judgment of this Court in the case of **Maha Singh v. State of Haryana and another**, 1993 (8) Service Law Reporter 188: 1994 (1) SCT 154 (P&H). Same view was expressed by this Court in the case of **Lehna Singh v. 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.”*

14. Such view has thereafter been noticed and followed by the Division Bench of this Court in **LPA No.1660 of 2011** titled as **Ishwar Singh v. State of Haryana and others**, decided on 17.11.2011.

15. In the case of **Union of India and others v. Jaipal Singh** (supra), the Hon'ble Supreme Court had dealt with the issue in a case arising from conviction of an employee under Section 302 of the Indian Penal Code by the trial Court, but acquitted by the High Court in appeal and its effect on backwages upon reinstatement for the period the employee was out of service due to involvement in a criminal case and had observed as under:

".....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 reinstated, 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 backwages 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 backwages also, without adverting to all such relevant aspects and considerations. Consequently, the order of the High Court insofar as it directed payment of backwages are liable to be and is hereby set aside."

16. The principle of 'no work no pay' was applied in the case of **Jaipal Singh** (supra) in a situation where the employee faces trial on allegations which had nothing to do with the course of his employment. Under such circumstances, the State Exchequer was held not to be burdened for acts on the part of the employee and over which the employer did not have any control. It was precisely such distinction that had weighed with the Coordinate Bench in **Balbir Singh's** case (supra) while denying backwages to the employee concerned who while working as a Conductor with the Haryana Roadways was convicted in a criminal case for offences punishable under Sections 148, 149, 307 and 302 of the Indian Penal Code and was subsequently acquitted. The judgment in **Balbir Singh's** case (supra) having come up for scrutiny in an intra court appeal, the view was affirmed by the Division Bench by observing thus:

"The alleged offence was committed by the appellant not during the course of his employment, but it was committed in the village, when he was not on

duty. There was no fault of the employer. It was the wrong of the appellant himself, which dragged him in the criminal litigation. If in that criminal case, for want of evidence, the appellant has been given benefit of doubt, the employer, with whom the appellant had not worked during the period of his dismissal from service, cannot be compelled to pay salary for the said period. The principle of 'no work no pay', in our opinion, is applicable in the present case and for that period, the appellant is not entitled for the salary."

17. In the considered view of this Court, the distinction drawn by the Hon'ble Supreme Court in **Jaipal Singh's** case (supra) and thereafter noticed and followed in the case of **Balbir Singh** (supra), would rather support the claim put forth by the present petitioner.

18. In the present case, the petitioner was serving on the post of Patwari under the Revenue Department, State of Haryana. Allegations against the petitioner were raised by the complainant, namely, Ajmer Singh that he had purchased a property under sale-deed dated 21.6.1995 from one Kasturi Devi and upon approaching the accused (present petitioner) for mutation of entry in the revenue records, the petitioner being the Patwari of the revenue village concerned had demanded a sum of ₹1,500/- from the complainant. The judgment of acquittal passed by this Court dated 6.12.2010 has been placed on record as Annexure P1. Relevant excerpt of the judgment reads as follows:

"16. It is true that under Section 20 of the P.C. Act

once the prosecution establishes that something was accepted followed by demand, unless the contrary is established it will have to be presumed that such acceptance was towards the discharge of his official duty as gratification.

17. In the case on hand, the very demand made by the accused about 11 months earlier to the trap was found very shaky and unbelievable. The demand made by the accused on the date of trap was not at all established by the prosecution. Therefore, no presumption can be raised under Section 20 of the P.C. Act that the acceptance was towards the discharge of official duty as gratification.

18. No explanation was furnished by the prosecution as to why no independent witness was associated for the purpose of trap laid by it. The non-association of any independent witness to the trap in the background of serious discrepancies found in the evidence of PW-1 as to the demand made by the accused is found to be fatal to the case of the prosecution.

19. The complainant has an interest in the case launched against the accused. The Peon, who was associated for the purpose of trap is also interested in this case in as much as the accused was booked by his own State Vigilance Bureau. Therefore, it is totally unsafe to base conviction of the accused on the evidence of the complainant and the Peon, attached to

the State Vigilance Bureau.

20. The mere recovery of the amount from the possession of the accused would not establish the case under Section 7 of the P.C. Act. The specific demand made by the accused and the acceptance of bribe were not established by the prosecution. As already held, there is no material worth mentioning to establish the case that there was a demand of bribe and acceptance of the same by the accused.

21. xxxxxxxxxxxx

22. In the instant case, PW-7 has not even stated that there was actually a demand on 13.05.1996 when he parted with the money to the accused. Of course during the course of cross-examination PW-7 would state that he informed the accused that he had brought the money for the purpose of entry of mutation in the revenue records. He had also not stated that he had brought the money as demanded by him for the purpose of mutation of entry in the revenue records. Further it is totally unbelievable that he informed the accused that he brought the money for the purpose of mutation of entry in the revenue record after about 11 months.

23. For all these reasons, I find that the trial court has placed undue reliance upon the evidence of PW6 and PW7 and held that there was a demand of bribe and acceptance of the same by the accused. It is found

that the prosecution has come out with an artificial story after about 11 months of the alleged demand made by the accused. Therefore, the accused is entitled to acquittal."

19. The criminal trial that the present petitioner has faced and which has finally culminated in his acquittal was in relation to allegations having direct nexus with the work and functions in the course of his employment. The petitioner having been absolved of such allegations and charges he would be vested with the right to full pay and salary for the period he remained out of service by applying the ratio of aforenoticed judgments and in the light of the relevant statutory provisions i.e. Rules 7.3 and 7.5 of the Punjab Civil Service Rules, Volume I, as applicable to the State of Haryana.

20. For the reasons recorded above, writ petition is allowed. Order dated 16.9.2011, Annexure P2, is modified to the extent that the petitioner is held entitled to full pay and allowances for the period that he had remained out of service on account of his conviction. Let such benefit be calculated and released to the petitioner within a period of two months from the date of receipt of a certified copy of this order.

21. Petition is allowed in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

APRIL 30, 2015
SRM

Note: *Whether to be referred to Reporter? Yes/No*