

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.1059 of 2015

Date of Decision: 24.8.2015

Ashok Puri

...Petitioner

Versus

State of Punjab

... Respondent

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. D.S.Patwalia, Senior Advocate with Mr. D.S.Patwalia,
Advocate, for the petitioner.

Dr. (Ms) Puneet Kaur Sekhon Additional A.G., Punjab.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

1. The petitioner joined service in the police department on March 25, 1980 as a probationer directly recruited on the post of Assistant Sub Inspector of police. Thereafter, he was promoted to the post of Sub Inspector on October 20, 1984 after qualifying the Upper School Course. The petitioner as per seniority was further promoted as Inspector of Police on December 06, 1989 due to the reason that the petitioner was a highly meritorious person in the opinion of the police department rating him an outstanding policeman, he was further promoted on fast track to the post of Deputy Superintendant of Police in the out of turn quota (ORP) in the year 1993. He was regularized in the rank on February 2, 1994.

2. It is his say that that during the course of performance of his

duties while deployed to contain the menace of drugs in Punjab he had registered a number of cases under the Narcotic Drugs and Psychotropic Substances Act, 1985 and for criminal offences under the Indian Penal Code, 1860 against highfalutin offenders due to which reason the petitioner was targeted by the political leadership involved with the drugs mafia to show him down. A brief note of the cases registered against these political leaders and high-ups by the petitioner during his tenure at Jagraon are mentioned by him are the ones's below:-

“i) Sh. Pritam Singh Akhara (Congress) was arrested under N.D.P.C. Act, P.S. Sidhwan Bet, as 5 bags of Poppy husk were recovered from him.

ii) Sh. Inderjit Jhanji, District Vice-President, Congress, Ludhiana, was arrested U/s 7 E.C. Act for selling Urea in black, by the Jagraon Police.

iii) Sh. Ravinder Kumar Neta was arrested in case U/s 188 IPC, P.S.Jagraon as a revolver was recovered from him. His wife is Municipal Commissioner, Jagraon and his uncle Ram Murti was the President of the Municipal Committee.

iv) Sh. Hardev Singh Sandhu, President Kirti Kissan Union, Punjab was involved in murder case and he was declared as P.O. during the tenure of petitioner.”

3. He says that in the year 2000 when the petitioner was posted as Deputy Superintendent of Police, Sub Division, Jagraon a false case was foisted on him for allegedly committing rape on a minor girl called 'X'. As a result an FIR No.34 dated 19.2.2000 under Section 376A, 343, 120B, 506 IPC and Arms Act was registered in Police Station Jagraon on the complaint of one Gurbachan Singh, a *Ragi* [hymn singer] brother of the prosecutrix. The final report was submitted to the trial court by the police. The charges were framed. The Sessions trial lasted 14 years in the Court of the learned

Additional District Judge, Ludhiana where the prosecution failed on February 29, 2012.

4. That due to the above mentioned cases registered by the petitioner against high-ups and the fact that the mentioned persons were patronized by one Sh. Jaskaran Singh, the then SSP Jagraon, the services of the petitioner were terminated by resort to the culling provisions of Article 311(2)(b) of the Constitution of India vide dismissal order dated March 07, 2000 (P-1). In view of the order dated March 07, 2000 departmental inquiry against the petitioner was dispensed with and the order was passed completely arbitrarily without affording any opportunity of hearing to the petitioner. His appeal against the dismissal order failed before the appellate authority.

5. Aggrieved by the order of dismissal and the appellate order the petitioner approached this Court by filing Civil Writ Petition No. 13410 of 2006, which petition was disposed of vide order dated June 25, 2006 granting liberty to the petitioner to approach this Court at the appropriate stage in case criminal proceedings pending against him reached a favorable conclusion and if he was acquitted of the charge.

6. On February 29, 2012 the Learned Additional Sessions Judge, Ludhiana acquitted the petitioner of the criminal charges framed against him. He was declared innocent of the crime. A copy of the order dated February 29, 2012 passed by the Ld. Additional Session Judge, Ludhiana acquitting the petitioner is annexed to the petition and has been read. Consequently the petitioner staked his claim to reinstatement to service with all consequential benefits.

7. On acquittal, the petitioner again knocked the door of this Court for justice by filing C.W.P. No.11695 of 2013 challenging the order dated

May 2, 2013 vide which the representation of the petitioner for reinstatement and consequential benefits following acquittal was rejected by the competent authority with the Under Secretary, Home (H) informing the petitioner that:-

*“(1). With reference to your representation on the above...which has been received in this office on 10.10.2012.
(2). In connection with the subject cited matter, after carefully perusing the representation given by you, it has been decided to file the same.”*

8. The said writ petition was allowed by order dated November 25, 2013 remanding the case to the competent authority for reconsideration and for passing a fresh speaking order regarding the claim of the petitioner to reinstatement in service with consequential benefits. The remand proceedings were directed to be decided in two months by a well reasoned and speaking order. The relevant portion of the order is reproduced below:

“Having heard learned counsel for the parties at length and having perused the pleadings on record, I am of the considered view that there has been a complete non-application of mind at the hands of the respondent-authorities in having passed the impugned order dated 2.5.2013 (Annexure P-9). The judgement of acquittal dated 29.2.2012, passed by the Additional Sessions Judge, Ludhiana is on record. Undoubtedly, in the concluding portion of the judgement the Additional Sessions Judge has observed that benefit of doubt has been granted to the accused i.e. the present petitioner, yet, it was incumbent upon the competent authority to have examined the entire judgement, the evidence adduced on record and the findings recorded by the competent court in relation to the charges levelled against the petitioner. Such exercise has not been undertaken by the competent authority.

That apart, the reliance placed upon the judgement passed by the Hon'ble Apex Court in S.Samuthiram's case (supra), is totally misplaced. In the facts of that case not only criminal proceedings but even a departmental inquiry had been

initiated against the official concerned and which had finally culminated in the passing of an order of dismissal. The question that had been considered by the Hon'ble Apex Court was as to whether mere acquittal of an employee by a Criminal Court would have any impact on the disciplinary proceedings that stood initiated and finalized by the department. In the facts of the present case the conceded position of fact is that no departmental proceedings had been conducted against the petitioner. The judgement in S.Samuthiram's case (supra), as such, would have no applicability to the facts of the present case.

Accordingly, the present writ petition is allowed. The impugned order dated 2.5.2013 (Annexure P-9) is set aside. The matter is remanded back to the respondent-authorities/competent authority for reconsideration and passing of a fresh order as regards the claim of the petitioner seeking reinstatement. Suffice it to observe that such order that has now been directed to be passed, would be a well reasoned and speaking order.

Let such exercise be completed within a period of two months from the date of receipt of a certified copy of this order.

Petition allowed in the aforesaid terms.”

9. Thereafter, the respondent vide order dated May 28, 2014 was reluctantly reinstated the petitioner to service in remand proceedings but has been denied the consequential seniority and back wages or arrears of pay for the period post-dismissal and till reinstatement. The period of about twelve years of dismissal and end of the criminal trial have been declared dies non which means that the period is blacked-out for all intents and purposes depriving him of seniority and monetary benefits. This was the long period he suffered the agony of criminal trial which was beyond his control.

10. This conclusion has been arrived at by the disciplinary authority despite noticing that the petitioner has been acquitted on merits and not by giving any benefit of doubt to him.

“In view of the above said findings of the Sessions Judge,

Ludhiana in his order, Sh. Ashok Puri, P.P.S, D.S.P (Suspended) is not exonerated on basis of benefit of doubt in Case No. 34 dated 19.02.2000 u/s 376, 342, 120-B, 506 IPC P.S. Jagraon for raping minor girl on pistol point but he has been exonerated on basis of true facts.”

11. Aggrieved by loss of seniority and denial of back wages the petitioner repeatedly represented to the respondent authority against the impugned part of the order to consider his claim for back wages and seniority informing the authority competent to decide impressing upon the Principal Secretary Home, Punjab that he had been implicated in a false case and was honourably acquitted of the charge and stood reinstated in service as well but was wrongfully denied the consequential benefits.

12. The respondent thereafter rejected the representation filed by the petitioner vide impugned order dated January 05, 2015 which is subject matter of challenge in this petition. The petitioner pleads that the order is completely illegal, arbitrary and non-speaking. It is a repeat performance of the order May 2, 2013 if not worse. It is a memo addressed by the State Government to the Director General of Police, Punjab. It decides the fate of the petitioner from March 7, 2000 to May 29, 2014. It is therefore reproduced in its material part as below:-

“You are informed that the request of Sh. Ashok Puri, P.P.S., D.S.P No P.R./3 after considering by the competent authority has been decided to be filed. Said official be informed at your level.”

13. The first argument of the petitioner is that the stand taken by the respondents in their written statement in response to the petition is in fact contrary to the order dated May 28, 2014 wherein the State itself have taken the view that the petitioner was exonerated on the basis of true facts and not on the basis of any benefit of doubt. The first paragraph of the preliminary

submissions of the respondent is reproduced below:

“That the petitioner was dismissed under the provisions of Article 311 (2) of the Constitution of India for alleged crime of rape of a minor girl at pistol point and misbehavior of not obeying the lawful orders of his Senior Officers for not receiving notice and also absenting himself from duty. The petitioner was acquitted from the charge of rape by giving the benefit of doubt. Therefore the petitioner is not entitled to full back wages under the provisions of Rule 7.3 of the Punjab Civil Services Rule, Volume-1 part-1.”

14. It is contended by Mr. D.S.Patwalia learned senior counsel appearing for the petitioner that the reasons in the aforesaid paragraph adverse to the interest of the petitioner that they are in complete contrast to State's own order passed by the Home Secretary i.e. order dated May 28, 2014 as also the order passed by this Court (P-10) and the said action is in clear contempt of the orders of this Court. The operative part of the first order of this Court in 2006 reads as follows:

"Learned counsel for the petitioner states, that the impugned order of dismissal from the service was passed against the petitioner on account of allegations leveled against the petitioner which were the subject matter of FIR No.34 dated 19.02.2000 registered at Police Station Jagraon. He further states that a trial initiated against the petitioner in furtherance of aforesaid FIR is in progress and near finalization. In view of the above, learned counsel for the petitioner states that liberty should be granted to the petitioner to seek reinstatement in service in case the petitioner is acquitted from the trial being conducted against him. Prayer is allowed. Liberty is granted to the petitioner to approach the competent authority, if he is acquitted in the criminal proceedings pending against him.

Disposed of accordingly."

15. The second contention of the petitioner is that the allegations levelled against him in the FIR were not proved. He was not held guilty of

the charge. He stood honourably acquitted from the Criminal case vide order dated February 29, 2012 (Annexure P-7) passed by the learned trial Court. The acquittal of the petitioner is on the basis of merit and not on the basis of any benefit of doubt. The said fact is also further reiterated in the order passed by the respondents themselves dated May 28, 2014 (P-11) at page 116 of the paper-book. Therefore, the submission made presently is that once the petitioner has been acquitted on merits, the impugned order denying the petitioner his seniority and consequential benefits is not sustainable in the eye of law. The findings of the criminal court recorded in the relevant part of the judgment of acquittal are in the following terms:-

“1. A perusal of the cross examination of the prosecutrix further depicts that earlier also Shri Inderjit Jhanji, Sh.Kamaljit Khanna, Shri Sher Singh and Shri Gurdip Singh Moti had accompanied her on 24.05.2000 and the presence of those persons was marked by the Court when that fact was brought to the notice of the Court upon and application filed by the accused.

“1. Thus it appears that the present case was got registered at the behest of the above said persons and infact no such occurrence had ever occurred.

Thus it appears that the present case was got registered by the prosecutrix at the instance of Shri Inderjit Jhanji and other persons due to the registration of the above said case against Inderjit Jhanji.

2. Thus there is ample evidence on the record that at the time of medical examination of the prosecutrix she was having pregnancy of 22 weeks. But neither the prosecutrix nor any other witness examined by the prosecutrix has provided any explanation as to how and under what circumstances the prosecutrix had become pregnant.

The only inference which can be drawn from the above said facts is that the prosecutrix has not come up with the correct version has tried to conceal true facts and a suspicion is cast over the statement of the prosecutrix.

3. The prosecution has not adduced any evidence to

explain all these things and under these circumstances especially when the prosecutrix herself in her cross examination came up with the plea that it was only on the intervention of Sh. Kamaljit Khanna, Sh. Inderjit Jhanji and other persons she had agreed to make report, the false implication of accused Ashok Puri cannot be ruled out when earlier a criminal case was registered against Sh. Inderjit Jhanji as per copy of FIR. Ex. Dx.

4. *There is no sufficient evidence to prove that the accused Ashok Puri committed sexual intercourse with the prosecutrix in connivance with or in pursuance to criminal conspiracy with Darshan Singh and Mohan Kaur.*

5. *Thus it appears that the prosecutrix who as per her brother was having illicit relations with Krishan Kumar to whom she married later on got pregnant from said Krishan Kumar even before her marriage and due to the said fact that above said persons got an opportunity to use prosecutrix as a tool to get a false case registered against the accused."*

16. The third limb of the argument canvassed on behalf of the petitioner is that the basis on which the petitioner was initially dismissed from service in the year 2000 was passed without any cogent reason and a knee jerk reaction based on suspicion even before evidence came in and merely on account of registration of a false criminal case and extreme action taken was devoid of the principles of natural justice as before passing of the order no departmental enquiry was conducted nor was the petitioner ever given a chance to explain himself or rebut the allegations levelled against him.

17. The reason which has weighed in the mind of the appellate authority to support the adverse order passed by the disciplinary authority is in mistaken reliance on the Supreme Court ruling in **Deputy Inspector General of Police and others v. S. Samuthiram** reported in 2013 (1) RCR (Criminal) 329. This was a case of eve teasing of a married woman in the

company of her husband by a policeman who had consumed liquor and was apprehended by two policemen on a spot on the complaint of the lady and were on duty nearby in a cinema hall opposite the spot of alleged occurrence. The delinquent policeman was tried both departmentally and on an FIR but the criminal trial ended in acquittal of charge under Section 506 IPC read with the provisions of the Tamil Nadu Prohibition of Eve-Teasing Act, 1998 in which authority the Supreme Court culled out the principles interfacing criminal prosecution and disciplinary inquiries and it was held, while relying on past dicta, as a general principle of law holding that the former does not govern the latter proceedings which two are independent of each other and the Court can never overlook the fact that the standard of proof in a domestic enquiry and criminal enquiry is different. However, there may be cases where the complainant resiles from former statement or the prosecution is successfully castigated for non-production of key witnesses to the commission of offence which is a serious flaw in the conduct of criminal trial; where the possibility of winning over prosecution witnesses cannot be ruled out or the witnesses have turned hostile. Then the court will not lightly let the delinquent off the hook. On facts the Supreme Court found that the acquittal was only due to the fact that PW 1 and PW 2 turned hostile and other prosecution witnesses were not examined. The Supreme Court dealt with the meaning of “honourable acquittal” explaining the legal position in the following words:-

“21. The meaning of the expression ‘honourable acquittal’ came up for consideration before this Court in [Management of Reserve Bank of India, New Delhi v. Bhopal Singh Panchal](#) (1994) 1 SCC 541. In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle

an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions 'honourable acquittal', 'acquitted of blame', 'fully exonerated' are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression 'honourably acquitted'. When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.

22. *In R.P. Kapoor v. Union of India*, AIR 1964 SC 787, it was held even in the case of acquittal, departmental proceedings may follow where the acquittal is other than honourable. In *State of Assam and another v. Raghava Rajgopalachari* reported in 1972 SLR 45, this Court quoted with approval the views expressed by Lord Williams, J. in (1934) 61 ILR Cal. 168 which is as follows:

"The expression "honourably acquitted" is one which is unknown to court of justice. Apparently it is a form of order used in courts martial and other extra judicial tribunals. We said in our judgment that we accepted the explanation given by the appellant believed it to be true and considered that it ought to have been accepted by the Government authorities and by the magistrate. Further, we decided that the appellant had not misappropriated the monies referred to in the charge. It is thus clear that the effect of our judgment was that the appellant was acquitted as fully and completely as it was possible for him to be acquitted. Presumably, this is equivalent to what Government authorities term 'honourably acquitted'".

23. As we have already indicated, in the absence of any provision in the service rule for reinstatement, if an employee is honourably acquitted by a Criminal Court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely

different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say in the instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so.

24. We have also come across cases where the service rules provide that on registration of a criminal case, an employee can be kept under suspension and on acquittal by the criminal court, he be reinstated. In such cases, the reinstatement is automatic. There may be cases where the service rules provide in spite of domestic enquiry, if the criminal court acquits an employee honourably, he could be reinstated. In other words, the issue whether an employee has to be reinstated in service or not depends upon the question whether the service rules contain any such provision for reinstatement and not as a matter of right. Such provisions are absent in the Tamil Nadu Service Rules.

25. In view of the above mentioned circumstances, we are of the view that the High Court was not justified in setting aside the punishment imposed in the departmental proceedings as against the respondent, in its limited jurisdiction under Article 226 of the Constitution of India.”

18. But the facts in the present case are altogether different from the facts in *S. Samuthiram* case (supra) as correctly observed by this Court in the order dated November 25, 2013 in CWP 11695 of 2013 (P10) that

reliance on the judgment was misplaced as the ruling had no applicability to

the facts of the case of the petitioner. This part of the directions and reasoning of the Court has unfortunately been mulled over in the impugned order dated My 28, 2014. Instead the Home Secretary, Punjab in denying the consequential benefits has relied on the opinion of the Advocate General, Punjab recorded in the impugned order, which reads:-

"As per the latest judgment of Hon'ble Supreme Court titled as Deputy Inspector General of Police and others versus S. Samuthiram reported in 2013 (1) RCR (Criminal) 329, Hon'ble Apex Court held that the police personal, who is dismissed from service and later on acquitted by the Criminal Court of the same charges by giving benefit of doubt as the complainants turned hostile is not entitled for reinstatement in service because of acquittal in criminal case."

19. Preferring administrative opinion over and above the observations and directions of the Court in CWP 11695 of 2013 on the same point is clearly contumacious conduct on the part of the ex Home Secretary, Punjab. More so when that State was heard before the order was passed.

20. In the present case so far as the criminal trial is concerned the complainant did not resile and in fact lodged a false complaint as is clear from the judgment of the trial court acquitting the accused inter alia finding that the prosecutrix herself in her cross examination came up with the plea that it was only on the intervention of Sh. Kamaljit Khanna, Sh. Inderjit Jhanji and other persons that she had agreed to make the report, thus the false implication of accused Ashok Puri cannot be ruled out when earlier a criminal case was registered against Sh. Inderjit Jhanji as per copy of FIR. Ex. Dx. Besides the brother of the prosecutrix was on evidence that his sister, the prosecutrix, had illicit relations with one Krishan Kumar and was pregnant by 22 weeks on the date of the alleged occurrence. The trial court did not harbour benefit of doubt. The Home Secretary, Punjab read the

judgment correctly as one rendered without any benefit of doubt but affirmed the dismissal order as covered by the ruling in *S. Samuthiram* case which is in gross misreading of the case.

21. There is no greater danger than in blindly relying on judgments without applying mind to their true ratio which binds and is stare decisis. The Supreme Court speaking through Arijit Pasayat, J. in **Oriental Bank** case observed:-

*“11. Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: [State of Orissa v. Sudhansu Sekhar Misra and Ors.](#) (AIR 1968 SC 647) and [Union of India and Ors. v. Dhanwanti Devi and Ors.](#) (1996 (6) SCC 44). A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In *Quinn v. Leatham* (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are*

found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides.

12. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclids theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed:

The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

22. In Haryana Financial Corporation v. M/s Jagdamba Oil Mills,
AIR 2002 SC 834, the Supreme Court made observations on the principles of how to read judgments indicating as under:-

"Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

The following words of Lord Denning in the matter of applying precedents have become locus classicus:

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding

such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

23. It is a well settled proposition of law that if the reasons contained in an administrative order are found lacking in substance, or fester with incoherence or are not recorded in good faith and are used for oblique purposes to deny a person's rightful dues then the order must fall and be set aside by issuing a writ of certiorari. In the present case the competent authority has not applied his competent mind and has used the opinion of the Advocate General Punjab based on *S. Samuthiram* case. Therefore, irrelevant considerations have had a field day with a view to deprive the petitioner what has become his just dues when the mess created by a false implication has been cleared unequivocally by the Additional Sessions Judge, Ludhiana.

24. Most importantly, the original dismissal in the year 2000 was by resort to Art. 311 (2) (b) of the Constitution assuming that it was not reasonably practicable to hold an inquiry into the alleged incident. In *S. Samuthiram* case the State Government elected to follow both the options of a criminal trial and domestic inquiry, taking no chances. Therefore, no departmental inquiry was held on the same or similar charge, when it could well have been, but that course was not adopted. It is significant that in such circumstances the State Government pegged their hopes on the criminal trial alone from which test of fire the petitioner has returned like the phoenix but his career span was shortened effectively by 14 years of *banwas*.

25. As a result of the above discussion, the writ petition is allowed and the action of the State Government in declaring the period the petitioner

remained out of service as dies non is held illegal. The impugned orders May 28, 2014 (P-11) and January 5, 2015 (P-14) are held to be not legally sustainable in the eyes of law as they suffer from patent errors apparent on the face of record and fallacious reasoning. Reliance on *S. Samuthiram* case was wholly misplaced and unwarranted. The authority was grossly misread by the Advocate General, Punjab and then the Home Secretary, Punjab. That is the reason for this Court to have extensively dealt with the judgment of the Supreme Court even though it was most appropriately dealt with by the co-ordinate Bench in CWP 11695 of 2013 (supra) and distinguished.

26. Resultantly, the dismissal order dated March 7, 2000 (P-1) and all consequential actions taken [barring the part of the administrative order which reinstates the petitioner to service] are quashed. The petitioner will take with reinstatement all consequential benefits flowing therefrom, that is, both pecuniary and non-pecuniary including original seniority as though the orders were never passed.

27. Since the petitioner has been deprived of his rights declared by Courts since the year 2012 and the charge of rape was not only false but planted on the petitioner, as revealed in the judgment of acquittal, and he was compelled to take recourse to law against illegal orders passed at the highest level of Government in bad faith and without due application of mind the petitioner will take costs of the litigation which are assessed at Rs 1 lac payable to the petitioner with his other monetary dues to be calculated and paid to him within three months.

28. The State will be at liberty to recover costs from Harchand Singh, Under Secretary to Government of Punjab, Department of Home Affairs for filing a misleading counter affidavit dated July 29, 2015 where it is still

insisted that the petitioner was acquitted by giving him the benefit of doubt, which is a per se false statement contrary to judicial record and the view formed by the Principal Secretary, Home Affairs & Justice, Punjab himself on this issue that the acquittal was on merits, though his order is faulted for other reasons recorded above. However, liability would not be fastened except after affording a reasonable opportunity of hearing to the erring officers/officials of State Government. Needless to say that this direction as to costs would include the conduct of the author of the perverse order dated May 28, 2014 which he passed without reading the judgment of acquittal and the decision of the Supreme Court in *S. Samuthiram* case which has resulted in the litigation which could have been easily resolved in the Punjab Civil Secretariat. The question of apportionment of costs imposed, if would apply to the author of the perverse and irrational impugned order and then passing a non-speaking order dated January 5, 2015 scuttling the case would also need to be examined by the Chief Secretary, Punjab if the Principal Secretary, Home approved the draft reply of the State for filing in Court then what is the effect. A decision would accordingly be taken and communicated to the petitioner within reasonable time.

(RAJIV NARAIN RAINA)
JUDGE

24.08.2015
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