

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 18618 of 2012

DATE OF DECISION: 27.4.2015

Amir Singh

.....Petitioner

Versus

State of Punjab and another

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspaper 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. S.K. Arora, Advocate
for the petitioner.

Mr. Amit Chaudhary, Addl. A.G., Punjab.

DAYA CHAUDHARY, J.

The prayer made in the present petition is for quashing of impugned order dated 16.9.2011 (Annexure P-2) passed by respondent No.2, whereby, suspension period of the petitioner has been treated as leave of the kind due, without issuing any show cause notice and without affording any opportunity of hearing as well as order dated 3.10.2011 (Annexure P-3) passed by respondent No.2, whereby, sanction has been accorded for treating 444 days as earned leave and 8 days as half pay leave and exhausting the same by treating the suspension period as “leave of the kind due”.

Briefly, the facts of the case are that the petitioner was working

as Senior Assistant in the respondent-Department. He was placed under suspension vide order dated 6.11.2009 on having been booked in case FIR No. 61 dated 22.9.2009 registered under Section 302 IPC at Police Station Sadiq, District Faridkot. After facing trial, the petitioner was acquitted of the charge vide judgment dated 9.11.2010 passed by Sessions Judge, Faridkot. On acquittal, the petitioner submitted an application dated 6.12.2010 requesting respondent No.2 to reinstate him in service. Meanwhile, the petitioner attained the age of superannuation on 31.1.2011. However, the petitioner was reinstated in service vide order dated 16.9.2011. The period of suspension w.e.f. 6.11.2009 to 31.1.2011 was ordered to be treated as "leave of the kind due".

Orders dated 16.9.2011 (Annexure P-2) and 3.10.2011 (Annexure P-3), vide which, the period of suspension has been treated as leave of the kind due are subject matter of challenge in the present writ petition.

Learned counsel for the petitioner contends that neither any notice nor any opportunity of hearing was afforded to the petitioner and impugned orders have been passed contrary to the provisions of Rule 7.3 (b) (i) of Punjab Civil Services Rules, Volume I, Part I (hereinafter referred to as 'the Rules'), which governs determination of allowances paid to the suspended employee on his reinstatement. Learned counsel for the petitioner further contends that the Government employee is granted benefit of conversion of earned leave into money upto a maximum period of 300 days. The object of amending Rule 8.21 of the Rules is to provide an incentive to the employees to devote more time in Government service and to compensate those employees who do not avail a particular amount of leave during their service. Learned counsel has also relied upon the

Division Bench judgment of this Court in **Mai Chand Vs. Uttri Haryana**

Bijli Vitran Nigam and others 2008 (4) SCT 387 and **Bikkar Singh Vs. Punjab Water Supply and Sewerage Board and another** 2013 (2) PLR 819, in support of his contentions.

Learned counsel for the respondent-State submits that the period of suspension cannot be treated as duty period as the petitioner has remained absent from his duty because of lodging of FIR under Section 302 IPC. The period of suspension has rightly been considered as "leave of the kind due". Learned State counsel further submits that the submissions made by learned counsel for the petitioner are contrary to the record as the petitioner was given notice dated 24.5.2011 before taking any decision with regard to suspension period and the reply filed by him was also considered. The employer was not at fault and was not even the complainant in the FIR case. Learned counsel also submits that in view of ratio of judgments of this Court as well as of Hon'ble the Apex Court, the petitioner is not entitled for treating period of suspension as duty period only on the ground that he was acquitted of the charge levelled against him. Learned counsel for the respondent-State has also relied upon the judgments of Hon'ble the Apex Court in the case of **Krishnakant Rahunath Bibhavnekar Vs. State of Maharashtra and others** 1997 (3) SCC 633 and **Union of India and others Vs. Jaipal Singh** 2004 (1) S.C.T. 108 in support of his contentions.

Heard the arguments advanced by learned counsel for the parties and have also gone through the documents available on record.

Rule 7.2 (1) deals with grant of allowances paid to the employee during period of suspension. Rule 7.3 (1) provides allowances to be paid on reinstatement to a suspended employee, which is reproduced here being relevant for resolving the controversy in dispute:-

7.3.(1) When a Government employee, who has been

dismissed, removed or compulsory retired, is reinstated as a result of appeal, revision or review, or would have been so reinstated but for his retirement on superannuation while under suspension or not, the authority competent to order re-instatement 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 including the period of suspension, preceding his dismissal removal or compulsory retirement, 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 competent to order re-instatement is of opinion that the Government employee, who had been dismissed, removed or compulsorily retired, has been fully exonerated, the Government employee shall, subject to the provisions of sub-rule (6), be paid his full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended, prior to such dismissal, removal or compulsory retirement, 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.

In the present case, the petitioner has remained under suspension because of registration of criminal case but subsequently he was acquitted of the charges by the trial Court. The petitioner is claiming that the period during which he remained suspended be treated as duty period. Rule 7.5 of the Rules provides that in case any Government employee against whom proceedings have been initiated either for his arrest or on a criminal charge or he is detained under any law providing for preventive detention should be considered as under suspension for any period during which he is detained in custody or is undergoing imprisonment and is not allowed to draw any pay and allowances other than subsistence allowance, which is granted in accordance with the principles laid down in Rule 7.2 of the Rules till final conclusion of the proceedings initiated against him or till he is released from detention or allowed to rejoin his duty. An adjustment of his allowance for such period should thereafter be made according to the circumstances of the case. He

is paid full salary in case the employee is acquitted of the charge or it is proved that the officer's liability arose from circumstances beyond his control or the detention being held by the competent authority to be unjustified. Rule 7.5 of the Rules is reproduced as under:-

"7.5 An employee of Government against 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 allowance for such periods should there after be made according to the circumstances of the case, the full amount being given only in the event of the officer being acquitted of the 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."

The structure in the Rule is built around acquittal from blame

on a criminal charge or if it is proved that the official's liability arose from circumstances beyond his control or the detention being held by the competent authority to be unjustified. The petitioner was acquitted of the charge of murder and thereafter he was reinstated. Accordingly, there is no automatic right to claim back-wages and other financial benefits on reinstatement for the period spent out of service on dismissal, on conviction. It will depend on the facts and circumstances of each case. Hon'ble the Apex Court in the case of **Jaipur Vidyut Parsaran Nigam Limited and others Vs. Nathu Ram** 2010 (1) SCT 227 dealt with the case of casual labour working in Rajasthan State Electricity Board. He was caught while accepting bribe by the Anti Corruption Bureau which resulted into his suspension and registration of a criminal case. He was convicted and sentenced for one year by the trial Court for committing offences punishable under various provisions of IPC read with provisions of Prevention of Anti Corruption Act, 1947. The trial Court acquitted the Helper of the charges framed against him and he was reinstated but denied backwages. In such circumstances, the Court held that the circular issued by the Nigam provided that the employee could be deemed to be notified to full pay and allowances for the period from the date of acquittal to the date of reinstatement.

Similarly, in **Dakshin Haryana Bijli Vitran Nigam, Narnaul. Vs. Mathura Dass Gupta** 2012 (4) SCT 7, the Division Bench of this Court dealt with the same issue for grant of consequential benefits on acquittal from criminal charge by this Court. It was said that normal rule of "No work no pay" is not applicable to cases where an employee although willing to work is kept away from discharging labour to justify salary by the authorities for no fault of his then he would be entitled to consequential benefits. In this case, the FIR was registered against Mathura Dass Gupta

under Section 7 of the PC Act. The trial Court's conviction was set aside by this Court by stating that the employer had a direct role in the charges arising out of relationship of master and servant in the background of corruption charges. On failure of prosecution in bringing home the charge, it could be said that the employee was kept out of work by act of the employer and therefore the question would arise of grant of salary for the period he was deprived of performing his duty. Same view was taken in **Shashi Kumar Vs. Uttri Haryana Bijli Vitran Nigam** 2005 (1) SCT 576.

In cases of criminal nature, which leads to police remand and judicial custody; facing trial and conviction in a criminal offence would be in deprivation of employer's rights of availing the services of such person not by their own action but by an act of the employee. In such circumstances, the theory of fault becomes relevant. In such circumstances, the employer has nothing to do as the accused-employee is convicted or acquitted is to blame or not to blame himself. The State exchequer cannot lightly be burdened for acts which do not originate in the employer nor over which it has any control. The employer has left with no option but only to wait and watch for the end of the criminal trial held. This view has been observed by this Court in the case of **Balbir Singh Vs. State of Haryana and others** 2014 (3) SCT 451.

Similarly in **Jaipal Singh's case (supra)**, Hon'ble the Apex Court has dealt with the issue where the employee was convicted under Section 302 IPC by the trial Court but he was acquitted by the High Court in appeal. Thereafter he claimed backwages upon reinstatement for the period he remained out of service due to involvement in criminal case. The observation made by Hon'ble the Apex Court is reproduced 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 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 [ins. Ranchhodji Chaturji Thakore v. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar & Anr., AIR 1997 SC 1802], 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 reasons 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."

In view of the facts as well as the position of law explained above, I find no infirmity in the impugned order i.e. in treating the period of

suspension as “leave of the kind due”. Accordingly, I find no merit in the contentions raised by learned counsel for the petitioner and the petition being devoid of any merit is hereby dismissed.

27.4. 2015
pooja

(DAYA CHAUDHARY)
JUDGE