

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.No. 24145 of 2011

Reserved On : November 16, 2015

Pronounced On : 01.12.2015

Suresh Chand Petitioner

vs.

The State of Haryana and others Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

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Present : Mr. Namit Kumar, Advocate
for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

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DEEPAK SIBAL, J. :

The petitioner joined the service of the respondent State of Haryana on 30.11.1988 as Constable – Wireless Operator. While on service, on 30.11.1996, an FIR under various Sections of the IPC was registered against him. On the basis of the lodging of the aforementioned FIR, on 13.01.1997, the petitioner was suspended. In the trial, which ensued, the petitioner was convicted and sentenced. The petitioner

challenged his conviction before this Court by way of an appeal, but while the same was pending, vide order dated 05.06.2003, under provisions of Rule 16.2(1), Volume 2 of the Punjab Police Rules, on account of his conviction, he was dismissed from service.

The above mentioned appeal, filed by the petitioner in this Court to challenge his conviction, was allowed on 20.05.2009, resulting in his acquittal. In spite of the acquittal by this Court, on 11.12.2009, a charge-sheet was served upon the petitioner for the acts of omission and commission on his part, which were based on the allegations of the FIR lodged against him on 30.11.1996. A disciplinary inquiry followed, in which the petitioner was exonerated. The Punishment Officer considered the Inquiry Report and vide order dated 03.05.2010, ordered withdrawal of the dismissal order against the petitioner. However, the period of service of the petitioner from the date of his suspension till the date of passing of order dated 03.05.2010 was ordered to be considered as dies-non. It is this part of the order, which the petitioner challenges through the present petition.

I have heard learned counsel for the parties and with their able assistance, have also gone through the record of the case.

Once through a judgment of this Court, which has attained finality, the petitioner has been acquitted all of the criminal charges and on the same basis, he has also been exonerated in the departmental inquiry, then for the period the petitioner was suspended and dismissed, he cannot

be denied full pay and allowances as Rule 7.3 (2) of the Punjab Civil Services Rules, Volume-I (as applicable to the State of Haryana) (hereinafter referred to as – the Rules), comes to his rescue. The relevant portion of Rule 7.3 is reproduced below :-

“ALLOWANCES ON REINSTATEMENT

7.3 (1) *When a Government employee, who has been dismissed, removed, compulsory 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 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 92 Punjab Civil Services Rules (Volume-I, Part-I) (Chapter-VII) (Haryana State) 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 failing 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 failing 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 case in hand, not only has been the petitioner acquitted of the criminal charge, which formed the basis of his suspension and later dismissal, but in the departmental inquiry, which inquired into the alleged misconduct on the part of the petitioner, which formed the basis of his suspension and ultimate dismissal, resulted in his exoneration. The Inquiry Report was accepted by the Punishing Authority. Once the respondents have themselves exonerated the petitioner, then there can be no reason in law or in fact to deny him the benefit enshrined under Rule 7.3 of the Rules.

The above view of mine finds support from a catena of judgments of this Court. In **Ishwar Singh vs. State of Haryana and others – 2012 (2) SCT 209**, while considering a similar issue, it was held as

under :-

“10. Under Rule 7.1 a Govt. 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 Govt. employee remained dismissed or removed or compulsory retired or under suspension. Sub rule 2 of Rule 7.3, however, specifically prescribes that in the event a Govt. employee who had been dismissed, removed or compulsorily retired has been fully exonerated, on 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 3 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 2. Sub rule 7.5 also specifically prescribes that in the event a Govt. employee is acquitted of the blame and it is proved that the official's liability arose from the circumstances beyond control or the detention being held by the

competent authority to be unjustified, is entitled to full salary. In the present case, though, the appellant was involved in a criminal case, however, the High Court while deciding the criminality of the appellant found that charge against him was unjustified and he was exonerated of all the charges. Based upon the findings of the criminal court the appellant has been reinstated but without the back wages for the period he remained out of service. Learned Single Judge, however, allowed 25% of the balance wages to the petitioner for the period he remained under suspension that means for the period of suspension he has been granted full wages which establish that the learned Single Judge was satisfied that the suspension of the petitioner was unjustified. Learned Single Judge, however, declined the claim of the appellant for wages for the period he was dismissed from service till his acquittal even without recording any reasons for such a declaration of disentitlement. Learned Single Judge has further allowed the full wages from the date of his acquittal till the date of his reinstatement on account of delay on the part of the respondents to take a decision.

11. *From the perusal of the order*

impugned in the writ petition i.e. Dated 26.11.2010, whereby petitioner has been reinstated, it also appears that the entire period the petitioner remained out of service has been treated as continuity in service. Thus, to deprive him of the wages is 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 even while treating the entire period as continuity in service.

12. *A similar issue came up for consideration before the Hon'ble Supreme Court in case of **Brahma Chandra Gupta v. Union of India**, 1984 AIR (SC) 380 : 1984 Lab 177, wherein it has been noticed as under:-*

"6..Keeping in view the facts of the case that the appellant was never hauled up for departmental enquiry, 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 to 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...

*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 similar issue has observed as under:-*

*"8.In our this view, we are supported by the judgement of this Court in the case of **Maha Singh v. State of Haryana and another**, 1993 (8) Service Law Reporter 1'88: 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 Judgements 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 suspensions 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."

13. Applying the ratio of the aforesaid judgements, we are of the considered opinion that appellant's dismissal was purely on his conviction in the criminal case, where he has been acquitted by the High Court with the finding that the charge is improbable. No other allegation of misconduct is attributable to the appellant nor any such misconduct has been established in any departmental inquiry or otherwise found by the disciplinary/ competent authority. There is no valid ground for denying him the wages for the period he remained out of service on account of criminal proceedings/ conviction."

To the same effect are the following judgments of this

Court in :-

1. Kanwal Singh vs. State of Haryana and another – 2011 (1)

SLR 29 ;

2. **Karambir Singh vs. State of Haryana and another – C. W. P. No. 26435 of 2014** – decided on **18.05.2015** and
3. **Surjit Singh vs. State of Haryana and others – C. W. P. No. 1326 of 2013** – decided on **30.04.2015**.

In view of the facts, as narrated above and the position of law, as authoritatively settled by this Court through the aforementioned judgments, the present writ petition is allowed and the petitioner is held entitled to grant of full salary and allowances from 13.01.1997 till 03.05.2010 i.e. the period when the petitioner has been kept out of service on account of his conviction, which was ultimately set aside by this Court in appeal.

The writ stands allowed in the above terms.

(DEEPAK SIBAL)
JUDGE

Pronounced On : 01.12.2015

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