

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 22633 of 2012

Date of decision: 22.09.2015

Balbir Kumar

....Petitioner(s)

Versus

State of Punjab & another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.Sanjay Kaushal, Sr. Advocate
with Mr.Aman Dhir, Advocate, for the petitioner.

Mr.A.P.S.Mann, Addl.A.G., Punjab.

G.S.SANDHAWALIA, J. (Oral)

Challenge in the present writ petition is to the order dated 22.02.2012 (Annexure P9), by which, the petitioner has been denied his full salary from 04.11.1996 to 05.07.2011 (i.e., the date of his joining duty), which is the period of his remaining out of service due to the criminal Court's conviction dated 04.02.2002.

Admittedly, the petitioner was terminated from service solely on the basis of the conviction recorded by the Special Judge, Ferozepur under the Prevention of Corruption Act, 1988, since the petitioner had been sentenced for 2 years and a fine of ₹2000/- had been imposed vide order dated 05.09.2003. On account of his acquittal by this Court in CrI.Appeal No.306-SB of 2002 dated 17.11.2010 (Annexure P6), the petitioner was reinstated in service vide order dated 30.06.2011 (Annexure P7) and resultantly, the petitioner joined his service on 06.07.2011 (Annexure P8).

The petitioner has been denied the arrears of salary by respondent No.1, vide order dated 22.02.2012, for the reasons which read as under:

“6. Now after the reinstatement of Dr. Balvir Kumar, Medical Officer, into Govt. service, he has been granted the period of 04.11.96 to 05.07.2011, the duration of termination/dismissal for all purposes except for the purpose of salary (04-09-14 years placement and pension). The said doctor will not be granted any arrears in salary except for what he has already taken during the said duration.”

In the written statement filed, the defence of the State is that the period was to be counted for placements after 4-9-14 years of service and the grant of pension, but on the basis of 'no work no pay', the petitioner was not entitled for backwages.

The matter is no longer *res integra*. The issue has been decided by this Court in CWP No.5228 of 2011 titled *Const. Sukhchain Singh Vs. The State of Punjab & others*, decided on 25.03.2013 and CWP No.22023 of 2012 titled *Sucha Singh Vs. State of Punjab & others*, decided on 11.09.2013. In the later case also, no separate departmental proceedings had been initiated and the question was whether the petitioner could be denied the full pay and allowances from the date of dismissal till the date of reinstatement. Reference was made to Rule 7.3 of the Punjab Civil Services Rules, Vol.I, Part I, Chapter VII, to hold that a Government employee is to be given full pay and allowances upon his reinstatement, having been fully exonerated. Rule 7.3(1) reads as under:

“7.3. (1) When a Government employee, who has been dismissed, removed or compulsorily 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 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, 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) Whether the authority competent to order reinstatement 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:

Provided that where such authority is of opinion that the termination of the proceedings instituted against the Government employee had been delayed due to reasons directly attributable to the Government employee it may, after giving him an opportunity to make representation and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government employee shall, subject to the provisions of sub-rule (7), be paid for the period of such delay only such amount (not being the whole) of pay and allowances as it may determine."

Counsel for the State has relied upon the judgment of the Apex Court in **Union of India & others Vs. Jaipal Singh 2004(1) SCC 121** to submit that the person who had been convicted and on his own account, had been kept out of job, backwages could not be granted.

A perusal of the said judgment would go on to show that the attention of the Apex Court was not drawn to Rule 7.3 and the requirement of the respondents to pass the appropriate orders and take a decision for the period the petitioner remained out of job and the wording of the said section.

Resultantly, the present writ petition is allowed. The petitioner would be entitled for his pensionary benefits for the period pertaining to 04.11.1996 to 05.07.2011. The said amount be disbursed to him within a period of 3 months from the date of receipt of a certified copy of this order. The claim of counsel for the petitioner for interest is denied as it was never specifically raised in the writ petition and even otherwise, keeping in view the fact that there was a valid reason for the respondents to keep away the petitioner from service on account of his

conviction, the petitioner is not entitled for claiming any interest as the denial from work was on a valid basis and it was only on account of his acquittal and in the absence of any departmental proceedings, the petitioner has been held entitled for his consequential benefits.

22.09.2015

sailesh

(G.S. SANDHAWALIA)
JUDGE