

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Regular Second Appeal No.3288 of 2007
Date of decision : 06.05.2015**

Shobha Ram Raturi ...Appellant
versus

UHBVNL & others ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. K.G.Chaudhary, Advocate for the appellant.

Mr. Mohnish Sharma, Advocate for the respondents.

RITU BAHRI, J (Oral)

The appellant/plaintiff has come up in regular second appeal against the judgment of reversal dated 11.04.2007 whereby the Additional District Judge, Kurukshetra accepted the appeal of the UHBVNL and set aside the judgment dated 31.07.2006 passed by the Civil Judge (Sr.Divn.), Kurukshetra whereby the suit of the plaintiff had been decreed.

The plaintiff had faced a criminal trial for an offence under Section 7/13 of the Prevention of Corruption Act, in which he was acquitted. After acquittal, vide orders dated 21.01.1999 and 16.01.2004, his period of suspension with effect from 07.08.1996 to 05.11.1998 was treated as leave of kind due. The trial Court by making reference to the instructions dated 03.10.1997 (Ex.D3) held that the plaintiff had not faced the trial for criminal breach of trust or

fabrication and hence the instructions would not be applicable to his case for treating his suspension period. The relevant portion of the instructions read as under:-

“When a Government servant is prosecuted for commission of defalcation of public funds and fabrication of records and said prosecution had culminated into acquittal, he cannot be made entitled to reinstatement with grant of all consequential benefits along with backwages etc. as a matter of course if the conduct alleged is the fabrication for prosecution, though it may end in acquittal on appreciation or lack of sufficient evidence..... When the suspension period of the employee, charged for committing criminal breach of trust was treated to be suspension pending the trial and even after acquittal, he was reinstated into service, he would not be entitled to the consequential benefits of nine increments and also not entitled to be treated as on duty from the date of suspension till the date of the acquittal for purpose of computation of pensionary benefits etc.”

The substantial question of law arises for consideration in the appeal is “whether the plaintiff is entitled to full arrears of salary on reinstatement after being acquitted in criminal trial?”

No departmental inquiry/charge sheet was pending against the plaintiff as admitted by Dharam Pal Sharma DW1. The suit was decreed and the impugned orders were set aside and plaintiff was held entitled to treat his suspension period for 07.08.1996 to 05.11.1998 as duty period. The lower appellate Court on appeal, set aside the judgment of the trial Court and held that the impugned instructions Ex.D3 were applicable to the case of the plaintiff and the competent authority had discretion to pass any order on the suspension period

after the acquittal of the plaintiff under the criminal trial.

After the admission of this case, counsel for the appellant has placed on record a judgment passed by this Court (Annexure A-2) in the case of **Mani Ram Goel Vs. Uttar Haryana Bijli Vitran Nigam and another decided on 03.09.2001.** While deciding the similar issue reference was made to Rule 7.5 of CSR held that on acquittal from the criminal proceedings, the plaintiff was entitled to reinstatement with full wages and his suspension period will have to be treated as duty period with all intents and purposes. Reference was made to a Division Bench judgment in civil writ petition No.18048 of 1999 titled as **Hukam Singh Vs. State of Haryana & anr.** decided 23.11.2000, whereby it was held that Rule applicable in the case of plaintiff is 7.5 and not 7.3 of the CSR. Relevant part of that judgment reads as under:-

“7. At this stage, we deem it necessary to advert to Rule 7.3 of the Punjab Civil Services Rules as applicable to Haryana State (for short "the Rules"). Sub-rules (1) and (2) of Rule 7.3 of the Rules reads as under: -

7.3 (1) When a Government employee, who has been dismissed, removed, compulsorily 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 be treated as a period spent on duty.

(2) Whether 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 which he would have been entitled, had he not been dismissed, removed, compulsorily retired or suspended, as the case may be."

Rule 7.5 of the Rules also assumes importance. In this connection, reference can well be made to Rule 7.5 of the Rules which deals with suspension during pendency of criminal proceedings and effect thereafter. It reads as under :-

"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 period 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 principle laid down in rule 7.2) for such period 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 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 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."

It is abundantly clear that Rule 7.3 of the Rules is the general rule, while in case a person is acquitted, it is specific Rule 7.5 of the Rules that would be attracted. The law is well settled that special Rule will always taken precedence over the general rule and consequently it must follow that under Rule 7.5 of the Rules, referred to above, the petitioner was entitled to the full back wages because, as mentioned above, the

earlier decisions referred to above have little application in the present case.”

A Division Bench of this Court in the case of **General Manager Operation Circle, Dakshin HBVN, Narnal Vs. Mathura Dass Gupta, 2012 (4) SCT 7**, held that in case of Prevention of Corruption Act where an employee had been acquitted, he was entitled to reinstatement and consequential benefits. An employee cannot be denied salary on the principle of “no work no pay” as the employee although was willing to work was kept away by the authorities for no fault of his. In the case before the Division Bench no departmental action had been initiated against the employee Mathura Dass Gupta and the Division Bench in the LPA filed by Dakshin Haryana Bijli Vitran Nigam by reference to in the case of **Union of India Vs. K.V.Jankiraman etc., 1991 (3) SCT 317**, where it was that when an employee is completely exonerated in criminal/disciplinary proceedings and is not visited with the penalty even of censure indicating thereby that he was not blameworthy in the least, he should not be deprived of any benefits including the salary of the promotional post. The normal rule of “no work no pay” is not applicable to such cases where the employee although he is willing to work is kept away from work by the authorities for no fault of his. Another Division Bench of this Court in the case of **Chander Singh Dalal Vs. Haryana Dairy Development Co-op. Fed. Ltd., Chandigarh, 2008 (3) SCT 33**, held that in a case of an employee who had faced a trial under Section

408 IPC and was acquitted, the charges of embezzlement could not be proved and after his acquittal he was entitled to be reinstated with continuity in service and all consequential benefits. Relevant part is reproduced below:-

“.....The petitioner was removed from service because of criminal prosecution against him. Once he is acquitted therein, he is entitled to be reinstated into service. Similar view was taken by a Division Bench of this Court in the case reported as Shashi Kumar v. Uttri Haryana Bijli Vitran Nigam 2005 (1) Service Cases Today 577. The argument of the learned Counsel for the respondents that the acquittal of the petitioner is not honourable one because it has been recorded by the Additional Sessions Judge, Jhajjar, on account of certain technical flaws like non-mentioning of the articles in the Stock Register, entrustment of articles to the petitioner having not been proved etc., does not legally hold the field. In the case of Shiv Kumar Goel v. State of Haryana (2007-1)145 P.L.R. 190, a Division Bench of this Court observed that if the Criminal Court recorded finding that there was no evidence to prove the charge of corruption against the employee, notwithstanding observations as to acquittal by benefit of doubt, it will be considered honourable acquittal. It has further been observed that his benefits of pay and allowances over and above subsistence allowance cannot be forfeited still observing him guilty of the same Charges.”

In view of the law laid down by the Hon'ble Supreme Court as well as the consistent view taken by the Division Bench of this Court, the appeal is allowed and the judgment dated 31.07.2006 is allowed and judgment and decree passed by the lower appellate Court is set aside and a direction is given to the respondents to treat the suspension period from 07.08.1996 to 05.11.1998 as duty period for all intents. The respondents are further directed to pay to the appellant

full pay and arrears of the period during which he remained on suspension alongwith interest @ 9% per annum as per the judgment of the Civil Judge (Sr. Divn.), Kurukshetra dated 31.07.2006.

Regular second appeal is allowed.

06.05.2015
Vinay

(RITU BAHRI)
JUDGE