

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

**CWP No.2403 of 2013
Decided on : 16.11.2015**

Suresh Kumar

... Petitioner

Versus

Secretary, Department of Education, Punjab and others

... Respondents

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

Present : Mr. Satish Goel, Advocate, for the petitioner.

Mr. APS Mann, Addl. AG, Punjab.

G.S. Sandhawalia , J. (Oral)

Prayer in the present writ petition is for quashing of the order dated 03.11.2011 (Annexure P8), passed by respondent No.2, whereby the suspension period of the petitioner from 17.08.1988 to 09.10.2007 has been treated as period not spent on duty for each and every intent, under Rule 7.3-B(7) of the Punjab Civil Services Vol. 1, Part-I (hereinafter, referred to as 'Rules'). The reasoning given by the said respondent is that the petitioner was being tried under Sections 307, 325, 148, 149 IPC and since he had remained in custody for more than 48 hours and even though he had been acquitted by giving the benefit of doubt but he was not entitled for the said benefits. Accordingly, no amount was held to be payable to him over the amount already paid as subsistence allowance.

Counsel for the petitioner has vehemently relied upon the provisions of Rule 7.3-B of the Rules to submit that the petitioner is entitled for treating the said period as on duty and is also entitled for the full allowances for the said period.

To appreciate the controversy in question, it would be necessary to examine the facts of the present case, as to whether the petitioner is entitled for the financial benefits for over two long decades as admittedly, he has not contributed, in any manner, to the State, for the time he had been placed under suspension, i.e. from 17.08.1988 till the date of his retirement, i.e. 10.10.2007.

It is not disputed that the FIR was lodged on 03.08.1988 under the above-mentioned provisions and on account of the petitioner being taken in custody on 17.08.1988, he was placed under suspension and was granted bail on 22.08.1988. The petitioner was, thereafter, acquitted after a decade on 14.11.1998. Nothing has been placed on record to show that the petitioner filed any representation and brought it to the notice of the State that he is entitled for reinstatement. It is a matter of record that the said judgment of acquittal was the subject matter of appeal and revision before this Court, at the instance of the State and the complainant. The acquittal order, in favour of the petitioner was upheld on 04.05.2007 (Annexure P3) whereas in the case of the other co-accused it was interfered with. He had been

reinstated on 04.10.2007 (Annexure P4), and the suspension period was to be decided subsequently, which has now been done vide the impugned order.

The reasoning given by the State, as such, regarding the issue of acquittal on the ground of doubt is without any justification. The Addl. Sessions Judge has held that the case of the prosecution is full of doubt and not proved against the accused. The said judgment was, however, modified to the extent that the benefit of doubt given to other co-accused was not justified. However, in case of the petitioner, it was considered safe to give the benefit of doubt.

The issue of benefit of doubt has been deliberated upon by several Division Benches of this Court and reference can be made to **Bhag Singh Vs. Punjab & Sind Bank 2005 (6) SLR 464** wherein it has been held that there is no concept of honourable acquittal and if the guilt is not established, the person is entitled for acquittal. Relevant portion of the judgment reads as under:-

The expression "honourable acquittal" has been considered by a Division Bench of the Madras High Court in the case of Union of India v. Jayaram, AIR 1960 Madras 325. In that case, Rajamannar, C.J. delivering the judgment observed as under:-

"There is no conception like "honourable acquittal" in Criminal P.C. The onus of establishing the guilt of accused is on the prosecution and if it fails to

establish the guilt beyond reasonable doubt, the accused is entitled to be acquitted.

Clause (b) of Article 193 of the Civil Service Regulations which says that when a Government servant who was under suspension is honourably acquitted, he may be given the full salary to which he would have been entitled if he had not been suspended applies only to the case of departmental inquiry.

Where the servant was suspended because there was a criminal prosecution against him, and he was acquitted therein, and reinstated he is entitled under the general law, to the full pay during the period of his suspension. To such a case Article 193(b) does not apply."

12. As noticed earlier, the petitioner has been acquitted in both the criminal cases as there was no evidence of his participation in any undesirable activity. Therefore, the petitioner was reinstated in service."

The said issue has further been deliberated upon by two Division Benches of this Court in **Shashi Kumar Vs. Uttar Haryana Bijli Vitran Nigam & another 2005 (1) SCT 576** and **Shiv Kumar Goel Vs. State of Haryana & another 2007 (1) SCT 739**, and it has been held that the employee is entitled for reinstatement.

On this account, the reasoning given by the respondents that the acquittal was on the benefit of doubt, is not sustainable and the petitioner is, thus, entitled for the benefits for the said period to be spent on duty, as has been provided under Rule 7.3-B of the Rules, which reads as under:-

7.3-B (1) When a Government employee who has been suspended is reinstated or would have been so re-instated but for his retirement on superannuation while under suspension the authority competent to order re-instatement shall consider and make a specific order-

(a) regarding the pay and allowance to be paid to the Government employee for the period of suspension ending with re-instatement 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) xxxxxxxx

(3) Where the authority competent to order re-instatement is of opinion that the suspension was wholly unjustified, the Government employee shall, subject to the provisions of sub-rule (8), be paid the full pay and allowances to which he would have been entitled, had he not been suspended :

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 his representation and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government employee shall be paid for the period of such delay only such amount {not being the Whole} of such pay and allowances as it may determine.

The reading of the Rule would go on to show that the period of suspension till reinstatement has to be specifically decided and a specific order has to be made whether the same is to be treated as period spent on duty or not. Thus, the reasoning given by the respondents having been held to be not justified, necessarily the same must be treated as spent on duty for all other

purpose except for financial benefits pertaining to full salary for the said period for the reasons given below.

The subsequent issue which arises for consideration is that whether the petitioner is entitled for the balance allowances during the said period and the full back wages without having contributed to the State, in any manner and even not having raised any demand after his acquittal on 14.11.1998. Nothing has been brought on record by the petitioner that he had filed any representation for reinstatement during his suspension period and the fact that he was entitled for reinstatement. The reinstatement order has, thus, been, passed only when this Court had decided the matter, after a period of 9 years from acquitted by the trial Court, on 04.10.2007, as noticed above. Immediately, thereafter, the State, on 10.10.2007, took the petitioner back in service and admittedly, he is continuing on extension even today.

In such circumstances, the benefit of balance pay and allowances which the petitioner, now, is seeking, apart from what he was entitled for on account of having remained under suspension, cannot be claimed as a matter of right. The Apex Court in **Union of India & others Vs. Jaipal Singh 2004 (1) SCC 121** has held regarding this issue. In the said case, this Court had allowed the writ petition and directed reinstatement with full back wages and consequential benefits, on account of the employee

being involved in a criminal case, which had eventually ended acquittal. It was, accordingly, held that the appellants could not be made liable to pay for the period for which they could not avail of the services of the respondent. Relevant observations reads as under:-

“4. On a careful consideration of the matter and the materials on record, including the judgment and orders brought to our notice, we are of the view that it is well accepted that an order rejecting a special leave petition at the threshold without detailed reasons therefore does not constitute any declaration of law by this Court or constitute a binding precedent. Per contra, the decision relied upon for the appellant is one on merits and for reasons specifically recorded therefore and operates as a binding precedent as well. On going through the same, we are in respectful agreement with the view taken in [1996] 11 SCC 603 (supra). 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 it 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, 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 re-instatement cannot be sustained and the respondent

has to be re-instated, in service, for the reason that the earlier discharge was on account of those criminal proceedings and conviction only, the appellants are well within their rights to deny back wages 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 back wages also, without adverting to all such relevant aspects and considerations. Consequently, the order of the High Court in so far as it directed payment of back wages are liable to be and is hereby set aside.

5. The respondent will be entitled to back wages from the date of acquittal and except for the purpose of denying the respondent actual payment of back wages, that period also will be counted as period of service, without any break. The re-instatement, if not already done, in terms of the order of the High Court will be done within thirty days from today.

The appeal is allowed and disposed of on the above terms.

Appeal allowed.”

Accordingly, in view of the binding precedent of the Apex Court, it is held that the petitioner is not entitled for the monetary benefits and he is only entitled to get the said period treated as period spent on duty, for all intents and purposes, for calculating his service benefits, for the purpose of seniority and pension etc.

In such circumstances, the present writ petition is allowed, to the limited extent that the period mentioned above i.e. from 17.08.1988 to 09.10.2007, is to be treated as period spent on

duty, for all intents and purposes, but the petitioner shall not be entitled for the full financial benefits, for the said period.

NOVEMBER 16, 2015

Naveen

**(G.S. SANDHAWALIA)
JUDGE**