

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.No. 6663 of 2012

Reserved On : November 16, 2015

Pronounced On : 01.12.2015

Ishwar Singh Petitioner

vs.

State of Haryana and another 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. R. K. Malik, Senior Advocate
with Mr. Kuldeep Sheoran, Advocate
for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

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DEEPAK SIBAL, J. :

The petitioner, who was serving the respondents as Election Tehsildar, on registration of a criminal case against him, was suspended on 07.07.2006. In the trial, which ensued, he was acquitted and on such acquittal, was reinstated on 23/24.11.2009, but during the time, when the petitioner was suspended, junior to the petitioner namely Hari Chand Jagga was promoted as Assistant Chief Electoral Officer, subject to the decision of

the criminal case pending against the petitioner.

On being reinstated, the petitioner was issued charge-sheet on the same allegations, which formed basis of the criminal charge. In the departmental inquiry, which followed, the petitioner was exonerated. On such exoneration, the Punishing Authority, while accepting the Inquiry Report, ordered that the suspension period of the petitioner from 07.07.2006 till 23/24.11.2009 would be considered as leave of the kind due.

Through the present petition, the petitioner seeks full pay and allowances for the period of his suspension, as also promotion with effect from the date his junior had been promoted.

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

Once in the criminal case, which formed the basis of suspension of the petitioner, he stands acquitted and the departmental inquiry based on the same charges exonerated him, which has been accepted by the Punishing Authority, there can be no reason to deny the petitioner full pay and allowances for the period of his suspension. In this regard, Rule 7.3 (1) (2) of the Punjab Civil Services Rules, Volume-I (as applicable to the State of Haryana) (hereinafter referred to as – the Rules), and Rule 7.5 of the Rules may be referred to, which are as under :-

“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, which he would have been entitled, had he not been dismissed, removed, compulsorily retired or suspended, as the case

may be.

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SUSPENSION DURING PENDENCY OF CRIMINAL PROCEEDINGS, OR PROCEEDINGS FOR ARREST FOR DEBT, OR DURING DETENTION UNDER A LAW PROVIDING FOR PREVENTIVE DETENTION

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 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 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 allowances 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."

This Court, in **Surjit Singh vs. State of Haryana and others** –

C. W. P. No. 1326 of 2013 – decided on **30.04.2015**, has held as under :-

"10. Under Rule 7.1, a Government 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 Government employee who remained dismissed or removed or compulsorily retired or under suspension. Sub Rule (ii) of Rule 7.3, however, specifically prescribes that in the event of a Government employee who had been dismissed, removed or compulsorily retired and has been fully exonerated, upon 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 (iii) 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 (ii). Rule 7.5 specifically prescribes that in the event of a Government employee acquitted of the blame and it is proved that the official's liability arose from circumstances beyond control or the detention being held by the competent authority to be unjustified, he would be entitled to full salary.

11. *In the facts of the present case, the petitioner was involved in a criminal case, but this Court while examining the appeal preferred by the petitioner against an order of conviction, found that the charge against him was unjustified and, accordingly, acquitted him. Based upon the judgment of acquittal, the petitioner has been reinstated in service, but without salary for the period he remained out of service. Perusal of the*

order of reinstatement dated 16.9.2011, Annexure P2, would reveal that the petitioner has been held entitled to all benefits pertaining to the dismissal period except salary. The decision of the competent authority to deprive the petitioner of the wages would be seen as 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 inspite of treating the entire period towards continuity in service.

12. In *Brahma Chandra Gupta v. Union of India*, 1984 AIR (SC) 380, the Hon'ble Supreme Court while examining a similar issue had observed as under:

“6.....Keeping in view the facts of the case that the appellant was never hauled up for departmental enquiry, that he was prosecuted and has been ultimately acquitted, and on being acquitted 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

not 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.....”

13. *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 the scope of Rule 7.5 of the Punjab Civil Service Rules had held as under:-*

*“8. In our this view, we are supported by the judgment of this Court in the case of **Maha Singh v. State of Haryana and another, 1993 (8) Service Law Reporter 188: 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 Judgments 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 suspension 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."

14. *Such view has thereafter been noticed and followed by the Division Bench of this Court in **LPA No.1660 of 2011** titled as **Ishwar Singh v. State of Haryana and others**, decided on 17.11.2011.*

15. *In the case of **Union of India and others v. Jaipal Singh** (supra), the Hon'ble Supreme Court had dealt with the issue in a case arising from conviction of an employee under Section 302 of the Indian Penal Code by the trial Court, but acquitted by the High Court in appeal and its effect on backwages upon reinstatement*

for the period the employee was out of service due to involvement in a criminal case and had observed 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 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, 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 reason 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."

16. *The principle of 'no work no pay' was applied in the case of **Jaipal Singh** (supra) in a situation where the employee faces trial on allegations which had nothing to do with the course of his employment. Under such circumstances, the State Exchequer was held not to be burdened for acts on the part of the employee and over which the employer did not have any control. It was precisely such distinction that had weighed with the Coordinate Bench in*

Balbir Singh's case (supra) while denying backwages to the employee concerned who while working as a Conductor with the Haryana Roadways was convicted in a criminal case for offences punishable under Sections 148, 149, 307 and 302 of the Indian Penal Code and was subsequently acquitted. The judgment in Balbir Singh's case (supra) having come up for scrutiny in an intra court appeal, the view was affirmed by the Division Bench by observing thus :

“The alleged offence was committed by the appellant not during the course of his employment, but it was committed in the village, when he was not on duty. There was no fault of the employer. It was the wrong of the appellant himself, which dragged him in the criminal litigation. If in that criminal case, for want of evidence, the appellant has been given benefit of doubt, the employer, with whom the appellant had not worked during the period of his dismissal from service, cannot be compelled to pay salary for the said period. The principle of 'no work no pay', in our opinion, is applicable in

*the present case and for that period,
the appellant is not entitled for the
salary.”*

*17. In the considered view of this Court,
the distinction drawn by the Hon'ble Supreme
Court in **Jaipal Singh's** case (supra) and
thereafter noticed and followed in the case of
Balbir Singh (supra), would rather support the
claim put forth by the present petitioner.”*

To the same effect is another judgment of this Court in **Smt.
Poonam Rani vs. Uttar Haryana Bijli Vitran Nigam Ltd. - 2008 (1)
SCT 819**, wherein it was held as under :-

*“7. Learned Additional Chief Judicial
Magistrate, Jind, has ordered acquittal of the
petitioner after threadbare examination of the
evidence. It has been noticed that the prosecution
has miserably failed to connect the accused with
the commission of offences for which they have
been charge-sheeted. It has further been noticed
that no guilt can be attributed to the accused and
due to lack of evidence charges are not
sustainable against them. In such circumstances,
it can hardly be said that the acquittal of the*

*petitioner is not honourable. As such, contention of the learned counsel for the Nigam, to the contrary, cannot be accepted. The petitioner was suspended because of criminal prosecution against her. Once she is acquitted therein and reinstated into service, she is entitled to full pay during the period of her suspension. Similar view was taken by a Division Bench of this Court in the case reported as **Shashi Kumar v. Uttar Haryana Bijli Vitran Nigam and another, 2005(1) Service Cases Today 577.***

*In the case of **Shiv Kumar Goel v. State of Haryana and another, 2007(1) Service Cases Today 739,** also a Division Bench of this Court observed as under :-*

“If the Criminal Court recorded finding that there was no evidence to prove the charge of corruption against the charged employee, notwithstanding observations as to acquittal by benefit of doubt, it will be considered honourable acquittal. His benefits of pay and allowance over and above subsistence allowance cannot be forfeited still observing him

guilty of the same charges.””

Besides, in this case the Inquiry Officer had completely exonerated the petitioner by holding that there was no doubt of any kind against her integrity and that none of the witnesses produced by the Presenting Officer pointed towards involvement of the petitioner in the incident of robbery.

For the aforesaid reasons, we are of the considered view that the petitioner is entitled to be reinstated in service with all consequential benefits. We quash the impugned orders dated March 13, 2006 (Annexure P-14) and dated July 17, 2006 (Annexure P-16). The respondents are directed to reinstate the petitioner into service with full back wages. No order as to costs.

Petition allowed.”

The above view has also been consistently followed by this Court in **Maha Singh vs. State of Haryana – 1994 (1) SCT 154**, **Hukam Singh vs. State of Haryana and another – 2001 (2) SCT 696**, **Kanwal Singh vs. State of Haryana and another – 2010 (3) SCT 464**, and **Ram Dhari vs. State of Haryana and others – C. W. P. No. 2658 of 2010 –**

decided on **05.01.2011**.

Having regard to the aforesaid I am of the considered view that the petition deserves to succeed. Consequently, the writ petition is allowed and the petitioner is held entitled to full pay and allowances during the period he remained under suspension.

Ordered accordingly.

(DEEPAK SIBAL)
JUDGE

Pronounced On : 01.12.2015
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