

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

Civil Writ Petition No.26435 of 2014

Date of Decision: May 18, 2015

Karambir Singh

...Petitioner

Versus

The State of Haryana & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Rahul Sharma-I,Advocate,
for the petitioner.

Mr.Keshav Gupta, AAG, Haryana,
for the State.

AMIT RAWAL, J. (Oral)

The prayer in the present writ petition is for quashing of the order dated 4.8.2014 (Annexure P-6), whereby the petitioner has been reinstated into service on acquittal, but has been denied the consequential benefits, i.e., back wages and continuity of service.

It would be necessary to give brief facts of the case.

The petitioner was appointed as Havaladar Instructor on 5.3.1990 and he is stated to be falsely implicated in FIR No.429 dated 18.4.2002 under Sections 7 read with Section 13(1)(d) and 8 of the Prevention of Corruption Act. The Special Judge, Faridabad, vide judgment dated 8.10.2004, convicted the petitioner after noticing that the charges

against him have been proved and sentenced him to undergo imprisonment for one year and to pay a fine of ₹500/-. On the basis of the conviction, vide order dated 8.10.2004 the petitioner was dismissed from service. The order of conviction was challenged by the petitioner by filing an appeal, i.e., Criminal Appeal No.2129-SB of 2004. This Court, vide judgment dated 19.12.2013, acquitted the petitioner from the charges by setting-aside the judgment of conviction. In pursuance to the acquittal, the respondent authorities, vide order dated 4.8.2014 (Annexure P-6) reinstated the petitioner, however, denied him the benefit of continuity of service and back wages.

Mr.Rahul Sharma-I, learned counsel appearing for the petitioner submits that the offence for which the petitioner was tried is not the gravest which the petitioner can be said to have committed in his personal capacity. He has further relied upon Rule 7.3 of the Punjab Civil Services Rules, Part-I Volume-I as applicable to the State of Haryana to contend that the employee is entitled to continuity of service, full back wages and allowances in case he has been fully exonerated. He, thus, prays that the impugned order denying the benefit of back wages and continuity of service is not sustainable in the eyes of law. In support of his submission, the counsel has relied upon the judgments rendered in **Sucha Singh Versus State of Punjab and others, 2014(2) RSJ 370** and **M.P.Jindal Versus State Bank of Patiala and Ors., 2013(2) SLR 251.**

Mr.Keshav Gupta, learned Assistant Advocate General, Haryana appearing on behalf of the State submits that the petitioner is not entitled to back wages as well as continuity of service on the principle of

“no work no pay” and in support has relied upon **Ranchhodji Chaturji Thakore Versus The Superintendent Engineer, Gujarat Electricity Board, 1996(11) SCC 603, Baldev Singh Versus Union of India and others, 2008(5) SCC 747, Union of India and Ors. Versus Jaipal Singh, 2004(1) SCC 121 and Sat Pal Dhawan Versus State Bank of Patiala and Ors., 2013 (4) SCT 421.**

I have heard the learned counsel for the parties and appraised the paper book.

Before advertng to the rival contentions and the ratio decidendi culled out in the aforementioned judgments, it would be apt to extract relevant Rule 7.3, ibid, as under:-

“7.3(1) When a Government employee, who has been dismissed, remove, 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 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 Govt. employee has been fully exonerated or, in case of suspension, that it was wholly unjustified, the Govt. employee shall be given the full pay and allowances to which he would have been entitled, has he not been dismissed, removal, compulsorily retired or suspended, as the case may

be.”

On perusal of sub-rule (2) of Rule 7.3 extracted (supra), it is evident that where the employee has been fully exonerated, it would be unjustified to withheld the back wages and allowances, which the employee would have been entitled to.

In the instant case, since as per judgment dated 19.12.2013 (Annexure P-4), the petitioner has been fully exonerated, in essence, has been acquitted from the charges for which he was tried, he is entitled to continuity of service as no rule, much less, case law has been cited by the learned State Counsel to contend that the petitioner is not entitled to continuity of service. Accordingly, the petitioner is held entitled to the continuity of service.

As regards the grant of back wages, the argument of learned State counsel at the first instance appears to be very attractive and satisfactory, but on going through the facts and circumstances of each case, much less, the ratio decidendi culled out, this Court found that the aforementioned judgments have been rendered on the premise that the delinquent employee had indulged into criminal case in his private capacity and not in respect of the corruption charges. Though the Division Bench of this Court in Sat Pal Dhawan's case (supra), after discussing the facts and as well as the judgments of various Courts, found that the officer working in the Bank was suspended due to the commission of criminal offence under the Prevention of Corruption Act, but later on convicted and subsequently acquitted, therefore, he would not be held entitled to full back wages for the period he remained suspended. In the aforementioned judgment, the Bank

did not refer to any rules, which would have permitted respondent authorities to withhold the full back wages. However, the ratio decidendi culled out in the aforementioned judgment would not be applicable to the facts and circumstances of the present case, particularly on going through the plain and simple language of sub-rule (2) of Rule 7.3 (supra).

Since the petitioner has been fully exonerated from the charges, as per the rule, he would be entitled to full back wages, much less, allowances and in this regard, I draw support from the ratio decidendi culled out in M.P.Jindal's case (supra) inasmuch that in the instant case, the petitioner was straightway dismissed from service by invoking the provisions of Article 311 of the Constitution of India. Therefore, the principle of “no work no pay” will not be applicable in the present case as the petitioner was involved in a offence which was related to his employment. It was not for something done by him in his personal capacity. Accordingly, the impugned conditions imposed in the order of reinstatement are hereby quashed. The petitioner is held entitled to continuity of service and as well as back wages for the period he remained out of service.

The respondents are directed to release the benefits of the petitioners as expeditiously as possible, preferably within a period of three months from the date of receipt of certified copy of this order.

The writ petition is accordingly allowed.

May 18, 2015
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(AMIT RAWAL)
JUDGE