

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

**CWP No.5139 of 2014 (O&M)
Date of decision: 21.05.2015**

Mahesh Kumar Gupta

..Petitioner

Versus

Uttar Haryana Bijli Nigam Ltd.

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see judgment?Yes**
- 2. To be referred to reporters or not?Yes**
- 3. Whether the judgment should be reported in the Digest?Yes**

Present: Mr. R.K. Malik, Sr. Advocate with
Mrs. Rimple Sohi Kadyan, Advocate
for the petitioner.

Mr. P.S. Poonia, Advocate
for the respondent.

Daya Chaudhary, J.

CM-1955-2015

This application is for placing on record written statement as well as Annexure R-1 on behalf of respondent.

Application is allowed and written statement on behalf of respondent along with Annexure R-1 is taken on record.

CWP-5139-2014

The present writ petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of

certiorari to quash the impugned order dated 10.10.2013 (Annexure P-7), vide which, the petitioner has been denied full salary of suspension period and also for the period from the date of dismissal i.e., 08.07.2004 till the date of superannuation i.e., 28.02.2011 and for grant of consequential benefits as well.

The petitioner was appointed as Thermal Operator on work-charge basis in the month of March 1979 and, thereafter, he was appointed on regular basis in September 1979 and was promoted as Assistant Executive Engineer in the year 1991.

A criminal case under Prevention of Corruption Act was registered against him on 19.03.2001 and he, therefore, was suspended. On being convicted and sentenced by the trial Court in the aforesaid case vide judgment dated 13.09.2003, he was dismissed from service on 08.07.2004.

Aggrieved against the said judgment of conviction and order of sentence passed by the trial Court, the petitioner filed an appeal before the Appellate Court, which was allowed on 12.12.2012 and judgment of conviction and order of sentence passed by the trial Court was set-aside.

On being acquitted by the Appellate Court, he filed a representation to grant him full salary during the period he remained under suspension as well as for the period, he remained out of job. A request was also made to consider his case for promotion as Executive Engineer/Superintendent Engineer from the date his juniors

were promoted. It is also relevant to mention here that the date of birth of petitioner is 25.02.1953 and he was to retire on 28.02.2011.

In pursuance to the representation moved by the petitioner, he was granted provisional pension but he was denied subsistence allowance more than 50% during suspension period as well as salary and other allowances from the date of dismissal i.e., 08.07.2004 till the date of superannuation i.e., 28.02.2011, which is subject matter of challenge in the present writ petition.

Learned counsel for the petitioner submits that the petitioner was suspended and thereafter was dismissed from service because of his conviction in a criminal case but subsequently, he was acquitted by the Appellate Court and thus, entitled for full salary for the suspension period as well as of the period from the date of dismissal till the date of superannuation. Learned counsel also submits that the petitioner is also entitled for promotion from the date his juniors have been promoted along with all consequential benefits. Learned counsel for the petitioner has also relied upon judgment of Hon'ble the Supreme Court in **Joginder Singh vs. Union Territory of Chandigarh & Ors., Civil Appeal No.2325 of 2009 decided on 11.11.2014** as well as judgments of this Court in **R.S. Randhawa vs. State of Punjab and others, 1997(3) RSJ 318 and Ram Kumar vs. State of Haryana and others, CWP No.1847 of 2009 decided on 08.01.2014** in support of his contentions.

Learned counsel for the respondent submits that not only

the petitioner was suspended but he was arrested in criminal case i.e., FIR No.201 dated 17.03.2001 registered under Sections 7 and 13 of the Prevention of Corruption Act, 1988 (hereinafter called as 'PC Act') as he has demanded and accepted ₹2000/- as bribe in connection with the process of application of one Madan Mohan Bansal for extension of load upto 15 KW. He was convicted by the trial Court and was sentenced to undergo RI for a period of three years with fine with default clause. After conviction and sentence, he was dismissed from service. Learned counsel for the respondent further submits that the petitioner was acquitted by the Appellate Court by giving benefit of doubt as the complainant was turned hostile as he did not support the case of the prosecution. Learned counsel also submits that all retiral benefits have been released with regard to pension along with arrears of the salary. The intervening period has been treated as duty period for the purpose of pensionary benefits with 50% allowances. He has not been granted salary for the period he remained dismissed from service. Learned counsel for the respondent also submits that since the petitioner has not worked during that period and as such, he is not entitled for full salary. It is also the argument of learned counsel for the respondent that on acquittal in a criminal case, the benefits for which he was entitled, have already been released. Learned counsel for the respondent has relied upon judgment of this Court in **Balbir Singh vs. State of Haryana and others, 2014(3) SCT 451** in support of his arguments

as in that case, it has been held that the petitioner is not entitled for the salary for the period, he could not work because of lodging of FIR or conviction.

Heard arguments of learned counsel for the petitioner as well as of counsel for the respondent and have also perused the impugned order as well as other documents on the file.

The case of the petitioner is that he is entitled for all the benefits including full salary for the period, he remained under suspension and for the period from the date of dismissal till the date of superannuation as well as promotion from the date his juniors have been promoted. He further prays for re-fixation of his pension after considering all the benefits as he has been acquitted of the charge by the Appellate Court. The department has rejected the claim of the petitioner on the ground that he is not entitled to full salary or other benefits as he did not work during that period.

For resolving the controversy in hand, Rules 7.2 (1), 7.3(1) and 7.5 of the Punjab Civil Service Rules are relevant, which are reproduced as under: -

“Rule 7.2 (1) deals with grant of allowances paid to the employee during period of suspension. Rule 7.3 (1) provides allowances to be paid on reinstatement to a suspended employee, which is reproduced here being relevant for resolving the controversy in dispute:-

7.3.(1) When a Government employee, who has been dismissed, removed or compulsory 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 re-instatement 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) Where the authority competent to order re-instatement 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.

(3) In other cases, the Govt. employee shall be given such proportion of such pay and allowances as such competent authority may prescribe:

Provided that the payment of allowances under sub-rule (2) or sub-rule (3) shall be subject to all other conditions under which such allowances are admissible.

Provided further that such proportion of such pay and allowances shall not be less than the subsistence and other allowances admissible under rule 7.2.

(4) In case falling under sub-rule (2) the period of absence from duty shall not be treated as a period spent on duty for all purposes.

(5) In a case falling under sub-rule (3) the period of absence from duty shall not be treated as a period spent on duty unless such competent authority specifically directs that it shall be so treated for any specified purpose:

Provided that if the Government employee so desires, such authority may direct that the period of absence from duty shall be converted into leave of any kind due and admissible to the Government employee.

7.5 An employee of Government against 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 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 periods 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 there after be made according to the circumstances of the case, the full amount being given only in the event of the officer being acquitted of the 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."

As per provisions of Rule 7.5, in case of acquittal from criminal charge, or if it is proved that the liability of officer arose from circumstances beyond his control or his detention being held by the competent authority to be unjustified, a specific provision has been made under the rules.

In the present case, the petitioner was acquitted by giving benefit of doubt. Although, there is no difference between the "acquitted honourably" and "acquitted by giving benefit of doubt" but in service law, the meaning is different. The difference between the acquittal on merits and acquittal by giving benefit of doubt has been interpreted in different manner. The difference has been explained recently in judgment of Hon'ble the Apex Court in **New Delhi vs. Mehar Singh, 2013(4) SCT 311.**

Similarly in **Union of India & Ors. vs. Jaipal Singh, 2004 (1)SCT 108**, the issue before Hon'ble the Apex Court was that in case of conviction of an employee under Section 302 IPC and his subsequent acquittal by the High Court in an appeal, whether he is

entitled to back wages upon reinstatement for the period, he remained out of service due to involvement in a criminal case or not. It was 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 as 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 [ins. **Ranchhodji Chaturji Thakore v. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar & Anr., AIR 1997 SC 1802**], 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 reasons 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."

Even in another judgment of **Joginder Singh's case** (**supra**) Hon'ble the Apex Court has held as under: -

"However, adverting to the criminal proceeding initiated against the appellant, we would first like to point out that the complainant did not support the case of the prosecution as he failed to identify the assailants and further admitted that the contents of the Section 161 of Cr.P.C. statement were not disclosed to him and his signatures were obtained on a blank sheet of paper by the Investigating Officer. Further, Sajjan Singh, who was an eye-witness of the case, who was also injured, had failed to identify the assailants. Both the witnesses were declared hostile on the request of the prosecution. The learned Additional Sessions Judge, Bhiwani held that the prosecution case has not been able to prove in any way the allegations against the appellant. Thus, the learned Judge held that the prosecution had miserably failed to prove the charges leveled against the appellant in the criminal proceedings. Therefore, we are in agreement

*with the findings and judgment of the learned Additional Sessions Judge and are of the opinion that the acquittal of the accused from the criminal case was an honourable acquittal. Learned counsel has rightly placed reliance upon the decision of this Court in **Deputy Inspector General of Police & Anr. v. S. Samuthiram, (2013) 1 SCC 598**, and its relevant para is extracted as under: -*

*“24. The meaning of the expression “honourable acquittal” came up for consideration before this Court in **RBI v. Bhopal Singh Panchal**. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions “honourable acquittal”, “acquitted of blame”, “fully exonerated” are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression “honourably acquitted”. When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.”*

Further Hon'ble the Apex Court has held that an acquittal is an “honourable” acquittal in every sense and purpose. The accused should not be deprived from being appointed to the post, in the public employment by declaring him as unsuitable to the post even though he was honourably acquitted in criminal case registered against him.

In the present case, the petitioner was suspended and dismissed from service because of his conviction in the criminal case.

Thereafter, he was acquitted by the Appellate Court. The stand of the petitioner is that his juniors have been promoted and he is entitled not only for promotion but also for other consequential benefits. The intervening period has been treated as duty period for the purpose of pensionary benefits with 50% allowances but he has not been granted full salary for that period. The claim has been rejected only on the ground that the petitioner did not work during that period and as such, he is not entitled for full salary as the respondent-employer was not at fault.

In case of criminal nature, which leads to Police remand and judicial custody; facing trial and conviction in a criminal offence would be in deprivation of employer's rights of availing the services of such person not by their own actions but by an act of the employee. In such circumstances, the theory of fault becomes relevant as the employer has nothing to do if the accused-employee is convicted or acquitted and he cannot be blamed for that. The State exchequer cannot lightly be burdened for acts which do not originate from the employer as it has no rule or control. The employer/State Government is left with no option but only to wait and watch for the outcome of the criminal trial. This view has been observed by this Court in the case of **Balbir Singh's case (supra).**

Even in Division Bench judgment of this Court in **Mahabir Singh vs. State of Haryana and others, 2011(2) SLR 638,** it has been held as under: -

“6. A perusal of the aforesaid Rule shows that if a Government employee has been arrested on a criminal charge then he is deemed to be under suspension for the period during which he is detained in custody or is undergoing imprisonment. In such a situation, he is not allowed to draw any pay and allowance other than subsistence allowance that may be granted in accordance with the provision of Rule 7.2 of the Rules for such period until the final termination of the criminal proceedings initiated against him or until he is released from the detention followed by reinstatement. The rule further provides that adjustment of his allowances for the period of suspension in the aforesaid eventuality has to be made according to the circumstances of each case. According to the illustration of the rule the full amount of pay and allowances could be given only if the Officer is completely acquitted of blame or if it is proved that the officer's liability arose from circumstances beyond his control or the detention was found to be unjustified by the competent authority.” (emphasis applied)

A reference has also been made to the judgment of Hon'ble the Supreme Court in **Ranchhodji Chaturji Thakore's case (supra)**, where the Court had proceeded to observe that the question of back wages could be considered where an employee was

prevented unlawfully from discharging his duties and for this, his conduct becomes relevant and as such, the conduct has to be seen with regard to his involvement in the crime which ultimately, led to his acquittal. The Court while observing liability of the State dealing with a case where the order of conviction had already been passed for an offence on the basis of which, the employee was kept out of service. The Government cannot be fastened with liability for an act and conduct of an employee, which cannot directly be attributable to the Government.

In the present case, the petitioner was involved in the criminal case because of his own fault and not because of the fault of his employer as an FIR was registered against him under Prevention of Corruption Act. He was convicted by the trial Court and was subsequently, acquitted by the Appellate Court.

The procedure in criminal case is totally different from the departmental proceedings and the accused in criminal case can be acquitted on technical ground as it is for the prosecution to prove the charge against the accused beyond the reasonable doubt whereas in the departmental proceedings, the procedure is totally different. Had the petitioner been involved in the case at the instance of his employer or respondent-department, it could have safely been stated that the employer was at fault but the employee was not at fault in any manner. In the present case, the petitioner remained out of service during pendency of the criminal proceedings for which, the employer

cannot be held liable and as such, the petitioner has no right to claim full salary for the period he did not work.

In view of the facts as mentioned above, it is apparent that the petitioner cannot claim full salary for the period he did not work as per the principle of 'no work no pay'. The petitioner cannot claim wages for the period he did not work. He would be entitled for the salary and other benefits for the period when his conviction was set-aside till his superannuation. However, there are other retiral benefits due to him for which, the petitioner is held entitled.

Accordingly, the present writ petition is partly allowed and the petitioner is held entitled for all the benefits for the period from the date of dismissal i.e., 08.07.2004 to the date of superannuation i.e., 28.02.2011 excluding the salary for the period from the date of suspension till the date of acquittal. The respondents are directed to refix the pension and to grant all benefits, if not released.

21.05.2015
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(DAYA CHAUDHARY)
JUDGE