

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

CWP No. 9732 of 2015
Date of decision: 29.10.2015

Mukhtiar Singh

....Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

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

Present: Mr. Veneet Sharma, Advocate,
for the petitioner.

G.S.SANDHAWALIA, J. (Oral)

The petitioner seeks the quashing of the order dated 28.12.2011 (Annexure P-4) passed by respondent no. 2 vide which, the suspension period of the petitioner has been ordered to be treated as the period of leave without pay and for a further direction that the period of suspension of the petitioner be treated as a period spent on duty for all intents and purposes including pay and allowances with consequential benefits.

Vide the impugned order, the Director, State Transport has declined the said benefit on the ground that the petitioner has remained in police custody/jail and, therefore, the suspension period has been sanctioned as period spent on leave without pay.

The admitted case of the petitioner is that an FIR dated 14.09.2008 was lodged under Section 302 IPC against the petitioner, due to which, he was suspended from that date till 30.04.2010, when he attained the age of superannuation. Thereafter, the petitioner was acquitted on 25.08.2011 by the Additional Sessions Judge, Amritsar (Annexure P-2).

Counsel for the petitioner has vehemently argued that in view of Rule 7.3 of the Punjab Civil Service Rules, Volume-I, Part-I, he is entitled for the full pay and allowances since he has been fully exonerated.

The said submission is not acceptable. A perusal of the judgment of acquittal would go on to show that the petitioner was in custody even on the date of acquittal. Thus, it is apparent that he remained in custody from the date of the lodging of the FIR i.e. 14.09.2008 which is also the date of suspension. During the period of trial, he reached the age of superannuation on 30.04.2010. Thus, for the said period from the lodging of the FIR till his superannuation he continued in custody. In such circumstances, he cannot be held to be entitled to any pay and allowances, as now claimed. The suspension period has been rightly sanctioned as period spent on leave without pay. The Apex Court in ***Union of India vs. Jaipal Singh, 2004 (1) SCC 121*** specifically held that the State cannot be made liable to pay for the period when it could not avail the services of the employee and set aside the order of the High Court whereby, back wages were allowed. The relevant portion reads thus:-

“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.”

Accordingly, there is no merit in the present writ petition and the same is dismissed.

29.10.2015
shivani

(G.S. SANDHAWALIA)
JUDGE