

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

Regular Second Appeal No. 3543 of 2012(O&M)

Date of Decision: November 6 , 2015.

Prithvi Singh

..... APPELLANT (s)

Versus

State of Haryana and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. R.N.Lohan, Advocate
for the appellant.

Mr. Ram Tilak Redhu, DAG, Haryana
for the respondents.

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?

LISA GILL, J.

Present appeal has been preferred by appellant – Prithvi Singh impugning judgment and decree dated 02.05.2012 passed by learned District Judge, Sirsa whereby judgment and decree dated 23.11.2010 in appellant's favour passed by learned Civil Judge (Junior Division), Sirsa has been partially set aside.

Brief facts of the case are that, appellant – Prithvi Singh was appointed as a conductor with the Haryana Roadways, Sonapat Depot, Sonapat

on 28.02.1980. Being an employee of the Haryana Roadways, his services were governed by the provisions of the Haryana Civil Services (Punishment and Appeal) Rules, 1987. Consequent to registration of FIR No.513 dated 01.11.1988, under Sections 302/148/149 IPC, Section 25 of the Arms Act and Section 5 of the Terrorists and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as the 'TADA' Act) at Police Station Fatehabad, plaintiff-appellant was arrested on 06.11.1988. He was placed under suspension vide order dated 06.11.1988 by General Manager, Haryana Roadways, Sirsa Depot, Sirsa. Appellant was convicted by the learned Sessions Judge, Hisar for the offences punishable under Sections 302/149 IPC and sentenced to undergo rigorous imprisonment for life, besides, pay a fine of ₹2,000/-.

Criminal Appeal No.390-DB of 1997 was preferred by the appellant alongwith co-accused challenging his conviction and sentence. Division Bench of this Court vide judgment dated 27.09.2006 set aside the conviction of the appellant and acquitted him while affording benefit of doubt while upholding conviction of some of the accused. Special Leave Petition preferred by the State of Haryana was dismissed by the Hon'ble Supreme Court on 09.03.2007.

During the pendency of the criminal case, appellant was released on bail on 06.08.1989. He reported for duty to General Manager, Haryana Roadways, Sirsa Depot, Sirsa. He was transferred to Haryana Roadways, Fatehabad Depot, Fatehabad in May, 1996 while under suspension. On his conviction, he was again incarcerated and released on bail on 06.08.1997. His sentence being suspended during the pendency of appeal, appellant reported to

General Manager, Haryana Roadways, Fatehabad Depot, Fatehabad. He was transferred to Chandigarh Depot on 27.08.2004 while under suspension and then transferred to Fatehabad Depot again where he joined on 01.11.2004. Appellant was reinstated in service vide order dated 13.06.2007 after dismissal of the Special Leave Petition filed by the State challenging his acquittal. Vide order dated 01.05.2008 suspension period of the appellant was restricted to subsistence allowance released to him while not allowing any additional increment, revision of pay etc. Aggrieved therefrom, notice under Section 80 of the Code of Civil Procedure was served by the appellant upon the respondents. Getting no relief from the authorities, he preferred civil suit claiming full pay and allowances for the entire suspension period alongwith interest. He also claimed additional increments due to him as well as revised pay-scale.

Claim of the appellant-plaintiff was resisted by the respondents on the ground that he was placed under suspension due to registration of a criminal case not connected with the respondent-department. In such a situation, respondent-department was well within its rights to withheld the benefits claimed by the appellant-plaintiff.

Learned trial court culled out the following issues:-

1. Whether the plaintiff is entitled for decree of declaration as prayed for? OPP
2. If issue No.1 is decided in favour of the plaintiff whether then plaintiff is entitled to consequential relief of mandatory injunction as prayed for? OPP
3. Whether the suit is barred by limitation? OPD
4. Whether suit of the plaintiff has no cause of action to file the present suit? OPD

5. Whether the plaint is not maintainable in the present form? OPD
6. Relief.

On considering the facts and circumstances as well as the evidence on record, learned trial court decreed the suit filed by the appellant-plaintiff holding him entitled to receive full pay and allowances for the period he was placed under suspension as well as additional increment w.e.f. 01.07.1992, revised pay-scale as well as the increments claimed.

Respondent-State of Haryana and others preferred an appeal against the said decision. Learned District Judge, Sirsa partly accepted the appeal while modifying the impugned judgment and decree dated 23.11.2010 to the extent that appellant-plaintiff would be entitled to back wages from the date of his acquittal by this Court i.e., 27.09.2006. Continuity of service was afforded and period of suspension would not constitute a break in service. It is further observed that appellant would be entitled to make a representation for the grant of ACP and other benefits which would be released to appellant-plaintiff if he is found entitled as per law after his acquittal from the High Court. Aggrieved therefrom, appellant-plaintiff, Prithvi Singh has preferred the present appeal.

Learned counsel for the appellant vehemently argues that as per rule 7.5 of the Punjab Civil Services Rules, volume I, Part I as applicable to Haryana, once an employee is acquitted of the charge against him, he is entitled to receive fully salary and allowances which he would have received but for his suspension. It is contended that no departmental proceedings were ever initiated against the appellant. His services were not terminated on account of his conviction but he was placed under suspension. He was allowed to draw

subsistence allowance while under suspension throughout till his acquittal by this Court.

It is also contended that principle of 'no work no pay' is not applicable in the present case because the appellant was always willing to work but was kept away by the authorities for no fault of his. Learned counsel for the appellant relies on decisions of Division Bench of this Court in **Shashi Kumar v. Uttri Haryana Bijli Vitran Nigam and another, 2005(1) RSJ 718** and **Shiv Kumar Goel v. State of Haryana and another, 2007(1) SCT 739** to say that the moment the criminal charge fails in a court of law, the person deemed to be acquitted of the blame and it is futile to expect a finding of either honourable acquittal or complete innocence in a judgment of acquittal. Reliance is also placed on **Kanwal Singh v. State of haryana and another, 2011(1) SLR 29** as well as **Balraj Goyal v. Haryana Financial Corporation, 2010 (3) SCT 574** to buttress the appellant's case.

Per contra, learned counsel for the State submits that the learned District Judge, Sirsa has rendered a correct judgment and decree while relying on the judgment of Hon'ble Supreme Court in **Union of India v. Jaipal, 2004 (2) SLR 251**. He also relies on the decision of Hon'ble Supreme Court in **Ranchhodji Chaturji Thakore v. The Superintendent Engineer, Gujarat Electricity Board, 1997(1) SLR 14**. It is, thus, prayed that the impugned judgment and decree passed by the learned District Judge, Sirsa be upheld.

I have heard learned counsel for the parties and gone through the file as well as the judgments cited.

Facts in this case are not disputed. Question which arises for

consideration is whether the appellant is entitled to full salary and allowances for the entire suspension period i.e., from 06.11.1988 till his reinstatement on 13.06.2007.

It is not in dispute that appellant was placed under suspension on registration of FIR No.513 dated 01.11.1988, under Sections 302/148/149 IPC, Section 25 of the Arms Act and Section 5 of the TADA Act. He was convicted for the offences punishable under Sections 302/149 IPC by the trial court on 03.04.1997. Pursuant to his conviction by the trial court, he was taken into custody and released after suspension of his sentence on 06.08.1997. He was reinstated in service on 13.06.2007. Vide order dated 01.05.2008, it was directed that appellant would not be entitled to any other benefit except subsistence allowance which he had received during the period of his suspension. At this juncture, it is beneficial to refer to Rule 7.3 of the Punjab Civil Services as applicable to Haryana at that time, which reads as under:-

“7.3(1) When a Government employee, who has been dismissed, removed or compulsory retired, or suspended, is reinstated, or would have been reinstated but for his retirement on superannuation 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, 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 to which he would have been entitled, had he not been dismissed, removed, compulsorily retired or suspended, as the case may be. (*emphasis added*)

(3) In other cases, the Government 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) of 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 a case falling under sub-rule (2) the period of absence from duty shall 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.

Note. 1 to 8 xxx xxx xxx

Note 9. Where a Government employee under suspension is acquitted by a Court of Law and the order reinstating him is passed some time after the date of acquittal, full pay and allowances have to be paid from the date of acquittal to the date of re-joining duty and period counted as duty for all purposes whereas for the period from the date of suspension/removal/dismissal to the date of acquittal he is to be allowed pay and allowances as directed by competent authority under sub rule (2) or sub rule (3) of this rule and the period treated as duty or non duty under sub rule (4) or sub rule (5) of this rule, as the case may be.

Note 10 and 11 xxx xxx xxx”

Hon'ble Supreme Court in Jaipal's case (supra) has specifically

observed as under:-

“..... If the 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.”

In this context, suspension of the appellant is clearly justified. His services were admittedly not terminated. Thus in this situation to say that the appellant is entitled to full salary and allowances would not be justified. It is only if the suspension of the petitioner is found to be unjustified that the appellant can be held entitled to the full salary and allowances. Appellant was admittedly involved in a case for offence punishable under Section 302 IPC as well as provisions of the TADA Act and Arms Act. He was convicted by the trial court. Doubtlessly he has been acquitted by this Court and acquittal has attained finality, however this by itself does not render the impugned judgment unjustified or unreasonable. Hon'ble Supreme Court in **Gurpal Singh v. High Court of Judicature for Rajasthan, 2013(1) SLR 417** while considering a case of similar nature has held the suspension of an employee during the pendency of trial to be justified. In the abovesaid case, after acquittal of the employee by the trial court continuance of his suspension during the pendency of the appeal before the High Court was also held to be justified. Employee in that case was

held entitled to salary and other allowances with effect from the date appeal against acquittal was dismissed by the High Court.

In the instant case, benefit has been afforded to the appellant from the date of his acquittal i.e., 27.09.2006 till his reinstatement by the learned District Judge. He has been held entitled to the full salary and allowances for the said period. It cannot be denied that the appellant because of the reason of his own involvement in the criminal case was not able to render service. Department was nowhere responsible for keeping him away from his duties. Criminal proceedings were not at the behest of the department. Subsistence allowance was being paid during this period. Suspension of the appellant during the entire period was clearly justified keeping in view gravity of the charge for offence of causing the death of two persons. This Court acquitted the appellant finding that the prosecution was unable to prove the charges beyond reasonable doubt against him as well as two others. Conviction of five co-accused was upheld.

It has been held by the Hon'ble Supreme Court in Ranchhodji Chaturji's case (supra) that each and every case requires to be considered in its own backdrop. There cannot be a strait-jacket formula to say that each and every case where the employee is ultimately acquitted would be entitled to full salary and allowances. Hon'ble Supreme Court in Gr. Hyderabad Municipal Corpn. v. M. Prabhakar Rao, 2011(4) SCT 46 has observed that,

“..... even where the employee is acquitted of the charges in the criminal trial for lack of evidence or otherwise, it is for the competent authority to form its opinion whether the suspension of the employee was wholly unjustified and so long as such opinion of

the competent authority was a possible view in the facts and circumstances of the case and on the materials before him, such opinion of the competent authority would not be interfered by the Tribunal or the Court.”

In these circumstances, view taken by the learned District Judge, Sirsa is correct that the appellant-plaintiff is entitled to full salary and allowances from the date of his acquittal i.e., 27.09.2006 only and not for the entire period of suspension. Period of suspension has been directed to be treated as period of service without any break. It is informed that entire back wages from the date of acquittal i.e., 27.09.2006 have been released on 31.10.2012.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity which warrants interference in the impugned judgment dated 02.05.2012. However in view of the above, it is appropriate that except the amount of full salary and allowances for the period in question all other consequential benefits as the appellant is entitled to as per rules, be afforded to the appellant in a time bound manner.

It is directed that the competent authority should work out the same expeditiously and necessary benefit be released to the appellant-plaintiff preferably within a period of four months from the date of receipt of certified copy of this judgment.

Appeal is accordingly disposed of.

November 6 , 2015.
'om'

(LISA GILL)
JUDGE