

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

**Regular Second Appeal No.3305 of 2013 (O&M)
Date of decision: 10.09.2015**

The District Manager Hafed and another

.....Appellants

Versus

Satpal Gupta and another

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ravinder Malik, Advocate,
for the appellants.

Mr. V.B. Aggarwal, Advocate,
for the respondents.

Ritu Bahri, J.

CM No.8882-C of 2013

For the reasons mentioned in the application, delay of 214 days in
filing the appeal is condoned.

RSA No.3305 of 2013 (O&M)

Defendant Nos.1 and 2-appellants have come up in regular second
appeal against the judgment of reversal dated 09.10.2012 passed by the
Additional District Judge, Kurukshetra, whereby appeal filed by the
plaintiff-respondent No.1 against the judgment and decree dated 10.08.2011
has been accepted and his suit for declaration has been decreed.

Satpal Gupta-plaintiff (respondent No.1 herein) was was
appointed as Field Inspector (Junior) at Pundri, District Kaithal under the
defendants-appellants. Later on, he was promoted as Field Inspector
(Senior) in 1978. On 13.11.2000, he was placed under suspension and

thereafter, he was compulsorily retired on 27.06.2003. A charge-sheet was issued to him on 14.08.2001, to which, he gave his reply explaining the true facts. Thereafter, a departmental enquiry was conducted and the enquiry report was given on 24.06.2003. A criminal case FIR No.146 dated 09.12.2000 was registered against him. However, he was acquitted in that case vide judgment dated 27.05.2005 passed by the Additional Sessions Judge, Kaithal. During the suspension period, initially 50% of the salary was released to the plaintiff-respondent No.1 and thereafter, it was enhanced to 75%. After acquittal in the criminal case, the plaintiff was seeking grant of full salary for the period during which, he remained under suspension.

Upon notice, defendants-appellants filed written statement and controverted the allegations levelled by the plaintiff-respondent No.1 in his plaint.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the plaintiff is entitled to a decree for declaration that the impugned order dated 05.09.2005 is illegal, null and void?
OPP
2. If issue No.1 is proved, whether the plaintiff is entitled to a decree for mandatory injunction as prayed for? OPP
3. Whether the plaintiff has no locus-standi and cause of action to file and maintain the present suit? OPD
4. Whether the suit is hopelessly time barred? OPD
5. Whether the civil court has no jurisdiction to try and entertain the present suit? OPD
6. Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD

7. Whether the suit of the plaintiff is not maintainable? OPD

8. Relief.

The plaintiff-respondent No.1 was placed under suspension w.e.f. 13.11.2000 till 27.06.2003. Vide order dated 05.09.2005, this period was treated as 'non duty period' and restricted to the subsistence allowance already paid to him. After going through the evidence led by the parties, the trial Court held that even after acquittal in the criminal case, he was not entitled to the relief of treating the suspension period as 'duty period', as he was acquitted by giving him the benefit of doubt.

On appeal, the lower appellate Court referred to Rule 7.3 of the Punjab Civil Services Rules (for short 'CSR Rules'). Relevant Rule 7.3 (2) and Note-9 are reproduced as under:-

“7.3 (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, 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.”

“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 the 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.”

As per the impugned order dated 05.09.2005 (Ex.P9), suspension period of the plaintiff from 13.11.2000 to 27.06.2003 (date of compulsory retirement) was treated as 'non duty'. While interpreting Rule 7.3 (2) of CSR Rules and Note-9, the lower appellate Court held that the defendant-

appellants had admitted before the Court that the plaintiff had been given

clean chit in the departmental enquiry and report of the Enquiry Officer had been admitted by the competent authority i.e. Managing Director, HAFED. In the criminal case also, the plaintiff had been acquitted. As per Rule 7.3 (2) of CSR Rules, where the competent authority is of the view that the employee had been fully exonerated, then the suspension would be wholly unjustified and the Government employee is to be given full pay and allowances, to which he would have been entitled, had he not been dismissed, removed, compulsorily retired or suspended.

In the present case, since after holding a departmental enquiry, the plaintiff was exonerated and report of the Enquiry Officer was accepted by the competent authority i.e. Managing Director, HAFED, then as per Rule 7.3 (2) of CSR Rules, the suspension period had to be treated as period spent on duty. It has been further clarified in Note-9 above that where a suspended employee is acquitted by a Court of law and if the order of reinstatement is passed after a gap of time, then full pay and allowances have to be given from the date of acquittal to the date of re-joining duty and that period is to be counted as 'on duty' for all intents and purposes from the date of suspension/removal/dismissal to the date of acquittal. Judgment of the trial Court, in view of Rule 7.3 (2) and Note-9, was set aside and the suit of the plaintiff-respondent No.1 was decreed. The period of suspension w.e.f. 13.11.2000 to 27.06.2003 was treated to be a period spent on duty and full pay and allowances for the said period were ordered to be given to the plaintiff along with interest @ 12% per annum from the date of institution of the suit till the actual payment.

The facts not in dispute between the parties are that vide judgment dated 27.05.2005 passed by the Additional Sessions Judge, Kaithal, the

him. He was also given clean chit in the departmental enquiry.

After going through the impugned judgment passed by the lower appellate Court, the suit of the plaintiff-respondent No.1 has been rightly decreed after appreciating the evidence in the right perspective. No illegality, much less perversity, has been found in the impugned judgment.

No substantial question of law arises for consideration.

Dismissed.

10.09.2015
ajp

(RITU BAHRI)
JUDGE