

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP No.14275 of 2012

Randhir Singh ... Petitioner

Versus

State of Haryana and others ... Respondents

2. CWP No.23842 of 2013

Phul Wati ... Petitioner

Versus

State of Haryana and another ... Respondents

Date of Decision: 17.08.2016

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. R.K. Malik, Sr. Advocate,
with Mr. Ramandeep Singh, Advocate,
for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

RAJIV NARAIN RAINA, J.

1. In a consolidated judgment but heard and decided together, the present petition and the accompanying petition in CWP No.23842 of 2013 titled *Phul Wati v. State of Haryana and another* are disposed of, but both the cases are dealt with in their points of departure on facts, separately but by common order. By an interim order dated May 21, 2015 passed in CWP No.23842 of 2013 the same was ordered to be heard with the present

petition. However, what is common to both the cases is that Randhir Singh's case involved a charge of murder while Phul Wati late husband's case involved attempt to murder in the setting of section 498-A of the IPC. Randhir Singh was acquitted by the Supreme Court while the husband of Phul Wati, late Satbir Singh was convicted by the Sessions Court but acquitted by the High Court in 2009. In both the cases reinstatement was ordered after acquittal. The claims in the two petitions is for salary for the period spent during suspension till dismissal on conviction and also for payment of subsistence allowance from the date of suspension till dismissal and for full salary during the period between dismissal and acquittal including arrears of balance of the subsistence allowance, if pending. The claim is for all consequential benefits during the period that Randhir Singh and Phul Wati's husband remained out of service. Hereafter, the two cases are taken up separately for discussion.

CWP No.14275 of 2012

2 It may not be necessary to traverse the entire gamut of facts which appear no longer relevant for the purposes of relief sought which is for setting aside the orders passed by the authorities denying service benefits to Randhir Singh including salary, subsistence allowance etc. during the suspension period from March 29, 1985 to March 01, 2001. A few of the essential facts are that on March 29, 1985 the services of petitioner were placed under suspension due to involvement in a criminal case registered against him under sections 148/149/323/324 and 307 IPC.

The charge under section 307 was converted into section 302 of the IPC.

The petitioner faced trial pleading not guilty. The petitioner was convicted under section 148/149/302 IPC by the learned Sessions Judge, Bhiwani on October 08, 1985. The conviction was upheld by this Court but the concurrent findings of both the Courts below were set aside by the Supreme Court in appeal. The petitioner was acquitted of the charges. The operative part of the judgment of the Supreme Court dated March 02, 2001 reads as follows:-

“In the light of what is stated above, after deeper consideration, detailed examination of evidence and probabilities of the case, in the light of the arguments advanced by the learned counsel on either side, we have no hesitation in holding that the Sessions Court as well as the High Court have concurrently and manifestly erred in convicting and sentencing the accused. In a case like this it is our duty to interfere with the impugned judgment and order to do substantial justice.

Under these circumstances and in view of the discussion made above, we have no hesitation in holding that the prosecution has failed to establish the guilt of the accused beyond reasonable doubt. Hence we set aside the judgment and order of the Sessions Court as affirmed by the High Court. Accordingly, these appeals are allowed and the accused are acquitted and their bail bonds shall stand discharged.”

3. A distinction will have to be kept in mind between establishing “guilt beyond reasonable doubt” and acquittal by giving the “benefit of doubt”. The petitioner was not acquitted by giving him the benefit of doubt. I emphasize this only for the reason that in the impugned order dated July 19, 2010 passed by the District Education Officer, Bhiwani on the petitioner's plea for service benefits including full salary for the period of

suspension till reinstatement, the following words are recorded and underlined by the Officer in his order which are not true, and which read in extract as underneath:-

“It is worth-while to mention here that in the present case “Although the petitioner was acquitted in the criminal case by the Hon'ble Apex Court by giving benefit of doubt to the petitioner, as the prosecution has failed to establish the guilt of the accused/petitioner, beyond reasonable doubt, yet it can not be said that the petitioner has been falsely involved or he was not present case at the time of occurrence.”

4. This is a gross misreading of the judgment of the Supreme Court and corrupts the order by a false assumption which tends to derail the mind of the authority to a pre-determined end. However, the introduction of this idea in the impugned order and impact on the relief will be considered later during the course of the present judgment.

5. The case against the petitioner arose in a land dispute with a neighbour in his native village. The criminal trial faced by the petitioner till his acquittal was in relation to allegations which had indisputably no direct nexus with his employment in the Education Department where he taught in one of the schools as a Physical Training Instructor.

6. It may be noticed that on reinstatement to service on February 22, 2002 the petitioner had earlier brought CWP No.5786 of 2002 to this Court impugning two cryptic orders passed by the Director, Secondary Education, Haryana issued on February 21, 2002 and endorsed and served on the petitioner on February 22, 2002 reinstating him to service w.e.f.

March 02, 2001 (the date of the judgment of the Supreme Court) and

allowing the period of absence as period spent on duty for all intents and purposes w.e.f. March 02, 2001 but adverse to the interest of the petitioner sanctioning the suspension period from March 29, 1985 to March 01, 2001 as leave of the kind due. The petitioner felt aggrieved by these orders. On receipt of the orders of Director, Secondary Education, Haryana the District Education Officer, Bhiwani being the competent authority sought guidance and on advice received from Government modified the order regarding leave of the kind due to cover the entire period of suspension i.e. from March 29, 1985 to March 01, 2001. It was these two orders which were impugned in CWP No.5786 of 2002 which at one stage was referred to Full Bench on the moot issue. The Full Bench ultimately passed judgment dated April 19, 2010 on finding that order (Annex P-3) and the formal consequential order (Annex P-4) was devoid of reasons taking into account the fact that the respondents were required to address the circumstances of the case and, therefore, the Full Bench held the question need not be answered because it was for the respondent in the first instance to pass a reasoned order on the basis of Rule 7.5 read with Rule 7.3 of the Punjab Civil Services Rules, Volume 1 Part 1 as applicable to Haryana. Consequently, a direction was issued to the competent authority to pass a reasoned order in accordance with law and in case it went against him, he was free to assail it as per law.

7. As a result of the directions issued by the Full Bench the detailed impugned order was passed by the authority on July 19, 2010 at Annex P-2. The claim of the petitioner based on Rule 7.5 and Rule 7.3

stands turned down by the District Education Officer, Bhiwani. To reach the conclusion the authority noticed the provisions of Rule 7.3 and Rule 7.5 and applied the law declared in Supreme Court judgments delivered in Ranchhodji Chaturji Thakore v. The Superintendent Engineer, Gujrat Electricity Board, AIR 1997 SC 1802, K. Ponnammamma (Smt) v. State of Kerla, (1996) 9 SCC 36, Union of India v. Jaipal Singh, AIR 2004 SC 1005 and Baldev Singh v. Union of India and others, (2005) 8 SCC 747. The authority was of the view that right to reinstatement, on acquittal, does not carry with it an implication that back wages must be paid in all circumstances. The grant of back wages would obviously depend upon the admitted facts and circumstances of each case.

8. The legal position in cases of acquittal and rights claimed for the period of trial either for salary for the suspension period or following dismissal on the grounds of conviction and acquittal by a court of law seems to be, that if the criminal charge is brought by the employer by a police complaint made by its officers addressed to the police or by registration of a First Information Report which leads to trial, then on failure to bring home the criminal charge the employee would ordinarily be entitled to full salary for the period he was kept out of service. However, if the criminal charge is not related to employment and is due to a private dispute which led to the trial then Government cannot be burdened with past salary for no fault of it and then the principle of no work no pay would well apply to deprive claimant of money. This is the ratio of the judgments noticed in the impugned order and has rightly been applied to the case in hand covering

amply the subject matter constituting the *lis*.

9. The arguments in the present case have largely centered on Rule 7.3 and 7.5 of the PCS Rules. Rule 7.3 enjoins on the competent authority duty to pass a specific order with regard to payment of salaries and allowances after reinstatement of Government employee by keeping in view the circumstances of the case, while Rule 7.5 deals with suspension during pendency of criminal proceedings and its effect on arrears of salary.

10. On notice served, the respondents have appeared and put in their reply to contest the case. The State maintains that on the first conviction recorded by the Sessions Judge, Bhiwani on October 08, 1985 the services of the petitioner would be deemed to be terminated from the date of conviction. They submit that the criminal case related to a private affair and the action was not departmental. The department was in no way connected with the criminal case nor had its officers any role to play in the episode and therefore, the State cannot be saddled with financial liability of payment of back wages for the period when the petitioner was out of service following conviction by court. Other service benefits of service may however accrue notionally, for instance, seniority, to bring pay at par with junior official, pension etc. etc. The department asserts that it has given to the petitioner what were his legal rights, that is, of reinstatement to the previous post with effect from the date of acquittal and by a subsequent order the entire period falling between March 29, 1985 to March 01, 2001 has been sanctioned as leave of the kind due which action is legal and valid and not open to criticism to invalidate the impugned orders.

11. The scheme provided in the Punjab Civil Service Rules, Volume 1 Part 1 as applicable to Haryana is embedded in Rule 7.1 to Rule 7.3 and Rule 7.5 of the PCS Rules which are reproduced and would read as under:-

“CESSATION OF PAY AND ALLOWANCES ON REMOVAL OR DISMISSAL.

7.1. The pay and allowances of a Government employee who is dismissed or removed from service cease from the date of such dismissal or removal.

“ALLOWANCES DURING PERIOD OF SUSPENSION

7.2 (1) A Government employee under suspension shall be entitled to the following payments, namely:

(i) xx xxx xxx

(ii) In the case of any other Govt. employee-

(iii) A subsistence allowance at an amount equal to the leave salary which the Government employee would have drawn if he had been on leave on half-pay, and in addition dearness allowance, if admissible, on the basis of such leave salary:

Provided that where the period of suspension exceeds six months, the authority which made or is deemed to have made the order of suspension shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of the first six months as follows:-

(i) the amount of subsistence allowance may be increased by a suitable amount not exceeding 50 per cent of the subsistence allowance admissible during the period of the first six months, if in the opinion of the said authority, the period of suspension has been prolonged for reasons to be recorded in writing, not directly attributable to the Government employee.

(ii) the amount of subsistence allowance may be reduced by a suitable amount, not exceeding 50 per cent of the subsistence allowance admissible during

the period of the first six months, if in the opinion of the said authority, the period of suspension has been prolonged due to reasons to be recorded in writing, directly attributable to the Government employee.

(iii) The rate of dearness allowance will be based on the increased, or as the case may be, the decreased amount of subsistence allowance admissible under clauses (i) and (ii) above.

(b) Any other compensatory allowance admissible from time to time on the basis of pay of which the Government employee was in receipt on the date of suspension subject to the fulfillment of other conditions laid down for the drawl of such allowances.

(2) No payment under sub-rule (1) shall be made unless the Government employee furnishes a certificate, and the authority which made or is deemed to have made the order of suspension is satisfied that he is not engaged in any other employment, business, profession or vocation:

Provided that in the case of Government employee dismissed, removed or compulsorily retired from service, who suspension from the date of such dismissal or removal or compulsory retirement and who fails to produce such a certificate for any period or periods during which he is deemed to be placed or to continue to be under suspension, he shall be entitled to the subsistence allowance and other allowances equal to the amount by which his earnings during such period or periods as the case may be fall short of the amount of subsistence allowance and other allowances that would otherwise be admissible to him are equal to or less than the amount earned by him nothing in this proviso shall apply to him.”

“ALLOWANCES ON REINSTATEMENT

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 while under suspension the authority competent to order 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 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 the opinion that the Government employee has been fully exonerated or, in 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, has he not been dismissed, removed or compulsorily retired or suspended 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.

“Suspension during pendency of criminal proceedings, or proceedings for arrest for debt, or during detention under a law providing for preventive detention.

7.5. An employee of Government against whom 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 allowances for such periods should thereafter be made according to the circumstances of the case, the full amount being given only in the event of the officer being acquitted of blame or (if the proceedings taken against him were for his arrest for debt), of it 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.”

12. In CWP No.1326 of 2013 decided on April 30, 2015 in *Surjit Singh v. State of Haryana and another*, learned single judge has aptly summarized the provisions of these rules as follows which can hardly be better put and is thus extracted:-

“Under Rule 7.1, a Government employee becomes disentitled to pay and allowances on his dismissal or

removal from service. Rule 7.2 deals with the payment of subsistence allowance to an employee placed under suspension. Rule 7.3 (i) empowers the competent authority to decide in respect to the period of a Government employee who remained dismissed or removed or compulsorily retired or under suspension. Sub Rule (ii) of Rule 7.3, however, specifically prescribes that in the event of a Government employee who had been dismissed, removed or compulsorily retired and has been fully exonerated, upon reinstatement, he shall be paid full pay and allowances to which he would have been entitled to, had he not been dismissed, removed or compulsorily retired or suspended. Sub Rule (iii) of Rule 7.3 further provides for treating the entire period of suspension preceding dismissal, removal or compulsory retirement as a period spent on duty for all purposes in a case covered under Sub Rule (ii). Rule 7.5 specifically prescribes that in the event of a Government employee acquitted of the blame and it is proved that the official's liability arose from circumstances beyond control or the detention being held by the competent authority to be unjustified, he would be entitled to full salary."

13. In Brahma Chandra Gupta v. Union of India, AIR 1984 SC 380

the Supreme Court while dealing with the issue observed as under:-

"6...Keeping in view the facts of the case that the appellant was never hauled up for departmental enquiry, that he was prosecuted and has been ultimately acquitted, and on being acquitted he was reinstated and was paid full salary for the period commencing from his acquittal, and further that even for the period in question the concerned authority has not held that the suspension was wholly justified because 3/4th of the salary is ordered to be paid, we are of the opinion that the approach of the trial court was correct and unassailable. The learned trial Judge on appreciation of facts found that this is a case in which full amount of salary should have been paid to the appellant on his reinstatement

for the entire period. We accept that as the correct approach..."

14. In *Jaipal Singh* case (Supra), the Supreme Court observed in a case of conviction of an employee under section 302 IPC and sentence which was set aside on appeal, what would the effect be on right to back wages on reinstatement to service for the period the employee was out of service due to involvement in a criminal case. It was held:-

"...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 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, 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 reason 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 advertting 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."

where the offence charged was committed in a village and not during the course of employment or while on duty. Then the employer is not at fault not having initiated the proceeding nor having been recompensed for labour not worked to justify salary. Dismissal was the natural consequence of conviction for a heinous offence.

16. To the contrary, in cases of trials under the Prevention of Corruption Act, 1988 or for offences under the Penal Code, the fallout of a failed trial is treated differently since demand and acceptance of bribe in performance of public duty or breach of trust etc. is alleged in discharge of official duties and if the trial collapses for lack of evidence or by giving the benefit of doubt by a court of law, then salary for the period when the charged official was facing trial and for the period the employee was either placed under deemed suspension or suspension and was forced to remain out of service, then the monetary value of labour withheld by act of employer has to be paid back because it was the employer that brought the charge and the prosecution failed to establish guilt. There are exceptions to this rule such as where prosecution witnesses retract their statements, or the criminal case is settled on a compromise, or witnesses suborned etc. then discretionary powers may be exercised by the authorities to pry open the evidence to examine the conduct which led to the conviction.

17. In the present case, the criminal charge had no nexus with the duties and responsibilities of the petitioner in the course of his employment. *Surjit Singh's* case was under the Prevention of Corruption Act and, therefore, the Coordinate Bench allowed the petition and granted the relief.

The judgments relied upon by Mr. Malik in his compendium to the Court are cases involving trials mostly in corruption cases where the criminal law was set in motion by the State and are thus distinguishable on facts and law from the present case and would offer no aid.

18. A fine distinction would also have to be kept in mind where the dismissal on registration of a criminal case and conviction recorded by the first or second court, as the case may be, are set aside by a superior court then it would be the conduct which led to the conviction that becomes relevant in view of Article 311 (2) (a) of the Constitution of India. But what is true for awarding punishment of dismissal following conviction on a criminal charge is somewhat distinct from the right to salary for the period of trial till acquittal. These two steps are not to be mixed up, that is, one of a right to be measured in the scale of conduct which led to the conviction whosoever initiated the criminal proceedings while the other is of the right to back wages for the period of absence by force of circumstances. In the present case, dismissal is not involved as the petitioner was kept under continued suspension recorded by Sessions Court and thereafter the High Court. He was reinstated till much after, when acquitted by the Supreme Court and his rights would flow from the date of the last judgment.

19. The Court is called upon to decide whether the petitioner has a right to full salary and other consequential benefits for the period claimed. There can be no doubt that on reinstatement the period has been ordered to be regarded as one on duty for all intents and purposes and that would appear to restore rights to past accrued seniority, besides some other rights.

But I think such a claim would not automatically translate into a right to payment of back wages. Accordingly, reliance placed by Mr. Malik on the decision of the learned Single Judge of this Court in CWP No.1847 of 2009 in case *Ram Kumar v. State of Haryana and others*, decided on January 08, 2014 is not appropriate as the case is clearly distinguishable on facts and the legal principle involved therein although it was a case of acquittal on a charge of murder and does not appear to the mind of this Court to be a correct statement of the law in the light of the Supreme Court judgments noticed even by the competent authority to reject the claim of the petitioner.

20. Conduct of the petitioner has nothing whatsoever to do with his right to salary as the same is regarding reinstatement which has taken place even before the petition was brought. The right to back salary will necessarily have to be separated from right to seniority, right to pension and some other service benefits on the touchstone of the applicable legal principle enunciated in *Ranchhodji Chaturji Thakore, Jaipal Singh and Brahma Chandra Gupta* line of cases.

21. While culling out the legal principles involved in a case of the present kind in its fact situation, it can be said with some certainty that this case involves a private dispute for which the State Exchequer cannot be burdened by way of back wage for acts of employee embroiling himself in a criminal case over which the employer could have no control and nor was the State the author of the tidings on the fateful day. Thereafter, it could do only what the law demanded of it. There appears also a clear distinction between cases of mere suspension following a criminal charge and arrest

and a case of recorded conviction holding the field till it was set aside by a Superior Court. If the State initiates criminal action it must pay the consequences of a failed trial. If the Government did not initiate the criminal action it cannot be compelled to pay back wages for work not done because salary is paid for work done and to compensate due performance of duties attached to a public post carrying a pay scale and allowances. Salary of an employee in Government service is apportioned and appropriated by the Legislature in a Budget duly passed by the Assembly and the High Court must maintain financial discipline in the rules and in the Constitution and avoid creation of unjustified financial liability on the State for none of its fault, and may depart only for scrupulously lawful reasons when the case cries out for justice denied and the law demands, wherever those cases arise for consideration. This appears to me to be plain common sense principle for which no artful debate is required to introduce needlessly the well worn principles such as “no work no pay” or to maintain that mere reinstatement to service washes off the past entirely, to bring an undue benefit to an employee who suffers his own acts of commission and omission which are criminal in nature. In this case the employer did not deprive the petitioner of his right to work and to earn salary. The petitioner deprived himself of that right by the nature of the disability by operation of rules. Salary has to be earned by due performance of work and when money comes from the treasury every paisa has to be accounted for and justified by the administrator and the court. Rules 7.3 and 7.5 leave reasonable flexiplay in the authorities to act thereunder in public interest. The claim for back wages

is not considered tenable in the present case and the prayer has to be turned down. So also subsistence allowance would cease to be a right from the date of conviction by operating legal fiction. The issue has been dealt with specifically by the Supreme Court in Depot Manager, A.P. State Road Transport Corporation, Hanumakonda v. V. Venkateswarulu and another etc., 1994 (2) RSJ 681 (SC). The Supreme Court held that it is open to the competent authority to withhold payment of full salary for the suspension period on justifiable grounds.

22. I would, therefore, not think the present to be a fit case for interference and award of relief claimed and on the other hand would rather dismiss it as one without any substance.

23. It may, however, be noticed before parting that Mr. Malik has relied on a string of judgments cited in his favour, other than the ones dealt with above. These are in cases:- (1). CWP No.1377 of 2015 titled *Narender Kumar son of Shri Jagdish Chand v. Dakshin Haryana Bijli Vitran Nigam Ltd. and others*, decided on 27.07.2016; (2) CWP No.26435 of 2014 titled *Karambir Singh v. The State of Haryana and another*, decided on 18.05.2015; (3) CWP No.4239 of 2011 titled *Sarjo Devi v. State of Haryana and another*, decided on 16.05.2012; (4) LPA No.1580 of 2011 titled *General Manager Operation Circle, Dakshin Haryana Bijli Vitran Nigam, Narnaul and others v. Mathura Dass Gupta*, decided on 10.02.2012; (5) CWP No.6131 of 2012 titled *Sucha Singh v. State of Punjab and others*, decided on 12.09.2013; (6). CWP No.5228 of 2011 titled *Const. Sukhchain Singh v. The State of Punjab and others*, decided on 25.03.2013; (7) CWP

No.6663 of 2012 titled *Ishwar Singh v. State of Haryana and another*, decided on 01.12.2015; (8) CWP No.4465 of 2015 titled *Ranbir Singh v. D.H.B.V.N.L and others*, decided on 02.03.2016 and CWP No.9139 of 2015 titled *Dr. Anil Kumar Ranga v. State of Haryana*, decided on 14.01.2016. I have profited from reading them but do not find any support to answer this case and have found it neither necessary or of any importance to deal with each of them separately only add heft to the order.

24. I may, in passing add that I had occasion to deal with and consider various aspects of the moot issue of back wages and payment of full suspension allowance as are broadly involve in this case in the light of past binding precedent directly on the point covering the subject in a case involving criminal offences framed under sections 148/149, 203 read with section 149 and section 307 as well as for committing murder [Section 302 of the IPC] as against a claim for back wages and subsistence allowance made by a similarly placed employee on acquittal in Balbir Singh v. State of Haryana and others, 2014 (3) S.C.T. 451 and found the applicable rule to be utilized is the “fault theory”. Which party could be attributed fault would be the one who pays or loses, depending. In para.11, I had the occasion to observe as follows:-

“11. In cases involving criminal acts leading to police remand and judicial custody and thereafter accused faces trial and is convicted of criminal offences 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 for which it pays salary for work done out of public funds and thus cannot be compelled to pay for no fault of it. Therefore, fault theory becomes relevant. Who

was at fault? If the Government initiates action and fails it must pay. If the employee gets into trouble, suffers jail and faces trial which has nothing to do with the employer, is convicted or acquitted he has only himself to blame. The State exchequer cannot be lightly burdened for acts which do not originate in the employer nor over which it has any control. The employer/State Government in this case can only watch and wait for the end of the criminal trial held.”

25. Ms. Shruti Jain Goyal had informed the Court during hearing of the case on July 21, 2016 on a statement recorded in the interim order that against my judgment, LPA No.514 of 2014 was dismissed on August 13, 2014 and the SLP (Civil) No.32766 of 2014 carried by Balbir Singh was rejected on December 08, 2014 by the Supreme Court. I have no reason to depart from the view in this case for reasons obvious. I may mention though it may not be a significant fact to meet the ends of this case that the petitioner retired from service of the respondent department in December 2012 and is a pensioner.

26. Accordingly, this petition is dismissed.

CWP No.23842 of 2013

27. Phul Wati has brought this petition claiming monetary benefits towards full salary coming from her late husband Sh. Satbir Singh, Ex-Circle Head Draftsman, Irrigation Department, Haryana. The legal principles involved in the case above would apply to this case and require no repeat performance.

28. It would suffice to notice a few relevant facts of this case. Satbir Singh was involved in a criminal case in FIR No.24 dated October

23, 2002 registered with the police under sections 307, 498-A and 506 of

IPC. He was placed under suspension from January 28, 2003 to October 22, 2003. He was convicted by the Additional Sessions Judge, Fast Track Court, Sonapat and sentenced to imprisonment vide judgment dated October 15, 2004. The petitioner was again placed under suspension on October 05, 2004 to November 16, 2005. Dismissal followed conviction vide order dated November 17, 2005. Late Satbir Singh's criminal appeal to this Court succeeded on September 17, 2009. On acquittal he was reinstated to service on May 24, 2010 but sadly died during service on December 10, 2010. After various representations made vide order dated 5/12.11.2012 the competent authority passed an order regularizing the period of 2314 days as leave without pay subject to the condition that employee would not get salary for the period he remained out of service pending trial. This order is impugned in *Phul Wati*.

29. Mr. Malik appearing for the petitioner submits that late Satbir Singh was dismissed due to a criminal case registered against him and once he has been acquitted he will be deemed to be entitled to full salary and allowances for the period of forced absence. He relies on the decision of the Division Bench of this Court in *Shashi Kumar v. UHBVN Limited*, 2005 (1) SCT 576 in the light of which ruling he canvasses before me that the impugned order is liable to be set aside to the extent it denies full wages for the suspension period as well as the period the husband of the petitioner remained out of service because of the dismissal order which was based on conviction and sentence on a criminal charge. In addition, he relies on the Division Bench judgment of this Court in LPA No.1660 of 2011 in *Ishwar*

Singh v. State of Haryana decided on November 17, 2011. These cases to my mind are distinguishable on facts and law. *Shashi Kumar* deals with a case of reinstatement after acquittal in a case of corruption in a trial under Section 7/13 of the Prevention of Corruption Act, 1988 which was initiated by the Nigam and, therefore, the Division Bench rightly allowed the petition and granted full salary etc.

30. *Ishwar Singh* (supra) is a case of conviction for offences under Section 279 and 338 of the IPC which was set aside in criminal revision. The case involved findings regarding conduct which led to the conviction and if those findings were improper, reinstatement would follow and therefore back wages. The dismissal order was based solely on the basis of conviction. No other factor was considered by the disciplinary authority while ordering the dismissal. The Court considered the effect of Rules 7.1 to 7.5 of the Punjab Civil Service Rules, Volume 1, Part 1. The learned Single Judge had declined the claim for wages for the period litigant was dismissed from service till the petitioner's acquittal even without recording any reason for such a declaration of disentitlement. However, the learned Single Judge had allowed full wages from the date of acquittal till the date of reinstatement on account of delay on the part of the respondents to take a decision. The State had passed an order of reinstatement granting the period the petitioner remained out of service to be treated as continuity in service. When continuity was given by the authority then it would follow that depriving wages would be inherent contradiction as pointed out by the Appellate Bench and for which reason a declaration was given that the

appellant would be entitled to full wages for the period the employee remained out of service on account of his conviction.

31. Phul Wati's husband was dismissed from service following conviction without entering upon the question of his conduct which led to the conviction, which deficiency was in negation of the procedural safeguards envisioned in Article 311 (a) of our Constitution. The case to some extent is somewhat different on facts from the earlier one in which Randhir Singh was not dismissed from service but was kept under continuous suspension due to his involvement in a criminal case in which trial he was convicted in 1985 and sentenced to imprisonment. Reinstatement in that case followed suspension but not dismissal. The suspension period in the case of Randhir Singh, to repeat, was from March 29, 1985 to March 01, 2001 which by any standards is pretty long. Hence, the contention based on conduct which led to the conviction is not available in Randhir Singh's case but is available in the present case where a dismissal order was passed and communicated and, therefore, the argument raised may at first glance appear available to Phul Wati but still a closer scrutiny would be required in concluding her case on the question of moulding actual relief. The periods of suspension of her husband and then from dismissal onwards are as follows:-

<i>"Sr. No.</i>	<i>Period</i>	<i>Remarks</i>
1.	28.1.2003 to 22.10.2003 (268 days)	He remained under suspension
2.	15.10.2004 to 16.11.2005 (396 days)	-do-
3.	17.11.2005 to 23.5.2010 (1648 days)	Dismissal period.

Total days=2314”

32. While the rule in Article 311 (2) (a) may win back reinstatement to service on conduct that led to conviction on a criminal charge but it would not bring with it the fortune of back wages. These are two disparate elements of the law which can marry only when the employer pulls the trigger of criminal proceedings in a work related issue and the target is not achieved when the man is found innocent of the crime alleged and framed for trial, the accused pleading not guilty. Right to back wages or arrears of salary depends on a different set of principles found in rules and judge made law and is not to be mechanically or automatically granted. See Supreme Court in Union of India v. Bihari Lal Sidhana, (1997) 4 SCC 385 holding that acquittal does not automatically give a right to be reinstated into the service. In the same strain are the judgments in Ajit Kumar Nag v. Indian Oil Corporation Ltd., (2005) 7 SCC 764 and T.N.C.S. Corpn. Ltd., v. K.Meerabai, (2006) 2 SCC 255 and back wages would accordingly depend to be examined on a case to case basis.

33. In this case Phul Wati had set the criminal law into motion against her husband under Section 498-A etc. and the charge was not brought home. It was she who deprived her husband of his salary by injuring herself, wittingly or unwittingly and alive to the consequences as she was married to a government servant. She has to pay the price of her actions by reconciling to them and cannot be easily allowed to take advantage of her own actions at the cost of the State by an action brought after the death of her husband. No one can be permitted to take advantage of

his own wrong. The Court can be of no help to the petitioner either in law or in equity for it is oft said that equity begets equity. Neither can equity or law coexist to mean the same thing for the same objective when law rejects.

34. I am neither persuaded by law nor by sympathy and compassion or any of the arguments raised by the learned senior counsel of her behalf to at the Bar even to try and mould the relief of claimed past benefits of Late Satbir Singh to bring them to the petitioner's basket.

35. For the foregoing reasons, I find no merit or substance in this petition either and would dismiss it.

36. As a result, both the petitions are dismissed without any order as to costs.

(RAJIV NARAIN RAINA)
JUDGE

17.08.2016
manju

Whether speaking/reasoned Yes

Whether reportable Yes