

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

CWP No. 10487 of 2014

Date of decision : 14.01.2016

Satish Kumar Goel

...Petitioner

versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Raman B. Garg, Advocate
for the petitioner.

Mr. Parvinder Singh Chauhan, Addl.A.G. Haryana

Mr. Udey Veer Singh, Advocate for
Mr. Pratap Singh, Advocate
for respondent No. 2

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RITU BAHRI , J.

The petitioner is seeking issuance of writ in the nature of mandamus directing the respondents to revoke order dated 22.04.2008 (P-2) which was passed on the ground of conviction, which was set aside by this Court vide judgment dated 17.12.2012 (P-3) with all consequential benefits.

Brief facts of the case are that the petitioner was appointed in the Haryana State Agricultural Marketing Board as Sub Divisional

Officer on 01.04.1975 and thereafter was promoted to the post of Executive Officer by respondent No 2 and further promoted to the post of Supdt. Engineer, vide endroement dated 16.11.2006 w.e.f 17.09.1999. Thereafter, F.I.R No. 120 dated 24.04.2001 was registered against the petitioner under Sections 7/13/49/88 of the Prevention of Corruption Act and he was placed under suspension vide order dated 25.04.2001 and was also issued charge sheet under Rule 7 of HCS (P&A) Rules, 1987 vide memo dated 08.01.2002. The petitioner submitted his reply to the charge sheet on 16.04.2002. He was reinstated subject to final decision of criminal proceedings as well as without prejudice to the pending departmental enquiry vide order dated 26.04.2002. The petitioner was thereafter convicted vide order dated 17.09.2002 and he filed appeal against order dated 17.09.2002 and his sentence was suspended on 08.10.2002, during the pendency of the appeal. Thereafter, the suspension orders of the petitioner were revoked on 28.04.2002 by the respondent-Board. The petitioner continued in service till 22.04.2008 and the petitioner was to retire on 30.04.2009 on attaining the age of supperuation but the petitioner was dismissed from service on 22.04.2008 on the ground of his conviction despite the fact that he was acquitted of the charges framed against him. The petitioner submitted his representation dated 22.08.2013 (P-4) to the respondent to revoke his dismissal order on the ground of

setting aside of judgment of conviction by this Court vide judgment dated 17.12.2012 with further request to grant him salary of the suspension period from 24.04.2001 to 28.04.2002 by regularizing the said period as duty period, grant annual increments and the salary from 22.04.2008 to 30.04.2009 and all other retiral benefits. Thereafter, the petitioner sent reminder dated 29.03.2014 (P-5) and legal notice dated 01.04.2014 (P-6), but no decision has been taken thereon till date.

On notice, a written statement has filed on behalf of respondent No. 2 admitting the date of appointment of the petitioner and the date of termination of his services. It has further been stated that the petitioner is not entitled for the pension and other benefits only on the ground of acquittal in a criminal case as it is settled principal that departmental proceedings can go on even after acquittal in criminal proceedings. However, it has been stated that the petitioner never sent any representation dated 22.08.2013 (P-4) and reminder.

Learned counsel for the petitioner contends that it is a settled principle of law that an employee dismissed from service due to conviction, is liable to be reinstated in the service with all consequential benefits including salary on his acquittal by the Higher Courts.

On the other hand, learned counsel for respondent No. 2 stated that the principle of no work no pay would apply and the petitioner is not entitled for the pension and other benefits only on

the ground of acquittal in a criminal case.

Heard learned counsel for the parties.

The point for consideration before this Court that whether an employee after acquittal in appeal in a criminal case would become entitled to grant of all benefits.

Similar issue came up for consideration before a Division Bench of this Court in a case of ***Chander Singh Dalal vs. Hry. Diary Development Co-op Fed. Ltd, Chandigarh through its MD and others, 2008(3) S.C.T 33*** whereby a criminal case was registered against an employee and three others and in departmental inquiry he was found guilty by the Inquiry Officer and thus, he was removed from service. He filed an appeal against this order and he was taken back in service by reducing the punishment of removal from service to stoppage of three annual increments with cumulative effect vide order dated 12.10.1998. On judicial side, he was convicted along with his co-accused to undergo rigorous imprisonment for 03 years and the petitioner was removed from service, vide order dated 30.05.2003 and he filed an appeal against this order on the ground that his sentence had been suspended, vide order dated 19.04.2003. His appeal was dismissed being time barred. A writ was filed against the order of suspension, which was allowed on 17.05.2005 and direction was issued to the Appellate Authority to pass an order on the merits of

controversy. The appellate Authority dismissed the appeal on 06.12.2005 and the order was conveyed to the petitioner. Thereafter, this Court in para 9 of the judgment, has observed as under:-

*“Similar view was taken by a Division Bench of this Court in the case reported as **Shashi Kumar vs. Uttri Haryana Bijli Vitran Nigam and another, 2005 (1) Service Cases Today 577**. The argument of the learned counsel for the respondents that the acquittal of the petitioner is not honourable one because it has been recorded by the Additional Sessions Judge, Jhajjar, on account of certain technical flaws like non-mentioning of the articles in the Stock Register, entrustment of articles to the petitioner having not been proved etc., does not legally hold the field. In the case of **Shiv Kumar Goel v. State of Haryana and another, 2007 (1) Service Cases Today 739**, a Division Bench of this Court observed that if the Criminal Court recorded finding that there was no evidence to prove the charge of corruption against the employee, notwithstanding observations as to acquittal by benefit of doubt, it will be considered honourable acquittal. It has further been observed that his benefits of pay and allowances over and above subsistence allowance cannot be forfeited still observing him guilty of the same charges.”*

In the present case as well, the petitioner has been acquitted since main witnesses in this case have not supported the prosecution case and prosecution had failed to build the edifice of evidence and resultantly failed to prove the guilt of the appellant beyond reasonable shadow of doubt. Recovery of the alleged tainted notes has been effected from the drawer of the table and not from the person of the appellant. The recovery further became doubtful. The office of the appellant was open to everyone specially staff, so in connivance with staff such tainted money can be placed in the drawer of the table too. Further, the complainant and the shadow witness have turned hostile with regard to alleged demand, recovery and acceptance and thus, the benefit of doubt was given to the accused-appellant.

Further this Court was considering a case of ***Shashi Kumar v. Uttar Haryana Bijli Vitran Nigam Ltd. and others*** who was dismissed from service on the basis of conviction. This Court held that if the removal from service was only on the basis of conviction without considering any other material or circumstances, the employee will be entitled to be reinstated with all consequential benefits and full back wages on acquittal by the appellate Court whether honourably or giving benefits of doubt the charge being not proved beyond reasonable doubt. Once the charge is not proved, the acquittal is always honourable for all purposes. This Court allowed the writ petition by relying upon a division bench judgment of this Court in a case of ***Hukam Singh, Lecturer in Hindu Government Sr.***

Sec. School Indri v. State of Haryana and anr, 2001(2) SCT 696 (P&H) whereby Rule 7.3 and 7.5 of Punjab Civil Service Rules were considered in detail. In para 7 of the judgment, it has been observed as under:-

7.3 (1) When a Government employee, who has been dismissed, removed, compulsorily retired or suspended, is reinstated, or would have been reinstated but for his retirement on superannuation the authority competent to order the 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 be treated as a period spent on duty.

(2) Whether 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."

Rule 7.5 of the Rules also assumes importance. In this connection, reference can well be made to Rule 7.5 of the Rules which deals with suspension during pendency of criminal proceedings and effect thereafter. It reads as under :-

"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 period 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 principle laid down in rule 7.2) for such period 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 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 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."

It is abundantly clear that Rule 7.3 of the Rules is the general rule, while in case a person is acquitted, it is specific Rule 7.5 of the Rules that would be attracted. The law is well settled that special Rule will always taken precedence over the general rule and consequently it must follow that under Rule 7.5 of the Rules, referred to above, the petitioner was entitled to the full back wages because, as mentioned above, the earlier decisions referred to above have little application in the present case."

Recently, this Court in a case of **Gen Manager Operation Circle, DHBVNL, Narnaul and others vs. Mathura Dass Gupta, 2012**

(4) S.C.T 7 was considering a case of an employee who was acquitted

of charges levelled against him by Appellate Court but he was denied salary and allowances on the ground of No Work No Pay. This Court held that it is not fair and the rule of No Work No Pay is not applicable to cases where employee although willing to work is kept away from work by the authorities for no fault of his. The relevant para reads as under:-

“3. The representation of the writ petitioner-respondent was decided by the competent authority vide order dated 7.7.2008 (P-5). The principle of ‘no work no pay’ was applied to deny him the back wages. The competent authority after due consideration of the pros and cons of the case has decided to withdraw the termination order dated 20.12.1996 subject to the condition that the writ petitioner-respondent would not be entitled to claim arrears of salary and allowances of the suspension as well as termination period except the subsistence allowance already paid to him. The aforesaid order became subject matter of challenge before the learned Single Judge and the same has been set aside by holding as under:-

“The petitioner was available for work but was denied the same. The termination was on the basis which is now not found justified and proper. Can principle of No Work, No Pay strictly apply in this case once the termination on the basis of his conviction,

*has subsequently been set aside? The petitioner cannot be made to suffer the consequences of his conviction. The principle of No Work No Pay may not appear to apply in this case. Reference in this regard can be made to observations made in the case of Union of India versus Union of India versus **K.V. Jankiraman etc., AIR 1991 Supreme Court 2010** .*

It is held in this case that when an employee is completely exonerated in criminal/disciplinary proceedings and is not visited with the penalty even of censure indicating thereby that he was not blameworthy in the least, he should not be deprived of any benefits including the salary of the promotional post. The normal rule of “no work no pay” is not applicable to such cases where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons.

It may have been a different matter, had the petitioner been convicted for an offence not connected with his office and he had got himself

involved in something with which the department had no concern or responsibility. As observed in K.V. Jankiraman's K.V. Jankiraman case (supra), there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on accounts of non-availability of evidence due to the acts attributable to the employee etc. in such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such LPA No. 1580 of 2011 (O&M) 6 circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated in disciplinary/criminal proceedings he should be entitled to all salary for the intervening period is to

undermine discipline in the administration and jeopardize public interests. Therefore to deny the salary to an employee would not in all circumstances be illegal.

This is not a case where the salary is denied due to any of consideration as noticed by the Hon'ble Supreme Court. It is a case where the petitioner has been accused of offence which has a connection with the service. Once the petitioner is acquitted of offence under the Prevention of Corruption Act, denying him salary, and allowances on the ground of No Work No Pay may not be fair. Even in terms of rule position, the denial of pay and allowances for the period under suspension could be ordered only after following the procedure prescribed under the rules, which apparently has not been done.

The writ petition is, accordingly, allowed. The petitioner is held entitled to pay and allowances for the period he has remained out of service and for the duration of his suspension period as well. The petitioner is also held entitled to costs, which are assessed as `10,000/-."

The LPA filed by the department was dismissed by upholding the above said opinion of Single Bench.

The above mentioned judgments are directly applicable to the facts of the present case where the petitioner was initially convicted but later on was acquitted by this Court and hence he is entitled to all the consequential benefits.

In view of the settled law and in terms of Rule 7.5 of Punjab Civil Service Rules, order dated 22.04.2008 (P-2) is hereby quashed and the petitioner is entitled to pay and allowances for the period he has remained out of service and for the duration of his suspension period as well. The respondent-department is directed to pay the petitioner arrears of salary from 17.09.1999 to 16.11.2006 and further grant the petitioner pension and all other pensionary benefits w.e.f 01.05.2009 forthwith along with interest @ 9% per annum on account of his promotion vide order dated 16.11.2006.

The petition stands allowed.

(RITU BAHRI)
JUDGE

14.01.2016

G Arora