

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CIVIL WRIT PETITION NO.1377 OF 2015

DATE OF DECISION: JULY 27, 2016

Narender Kumar son of Shri Jagdish ChandPetitioner

Versus

Dakshin Haryana Bijli Vitran Nigam Ltd.and others
.....Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.RK Malik, Senior Advocate with
Mr.Ramandeep Singh, Advocate for the petitioner.

Mr.PS Longia, Advocate for respondents No.1 to 3.

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TEJINDER SINGH DHINDSA, J.

The petitioner, who was serving on the post of Upper Division Clerk with the respondent-Dakshin Haryana Bijli Vitran Nigam Limited, was placed under suspension vide order dated 2.9.2002, but with effect from 28.8.2002 on account of involvement in a criminal case under the Prevention of Corruption Act, 1988 (for short 'the Act'). Departmental proceedings were also initiated in terms of issuing a charge sheet dated 9.12.2002 on the specific article of charge that the petitioner was caught red-handed and arrested by police authorities on 28.8.2002 while accepting illegal gratification of ₹1,500/- from a consumer, namely, Shri Dharambir. He was re-instated on 16.1.2003

pending the outcome of the departmental proceedings as also criminal prosecution. Petitioner was convicted under Section 7 read with Section 13(i)(d) of the Act vide judgment dated 10.11.2004 passed by the Special Judge, Faridabad and sentenced to undergo rigorous imprisonment for three years and to pay a fine of ₹3,000/-. Based upon such conviction, petitioner was dismissed from service vide order dated 25.5.2005.

2. An appeal filed by the petitioner against the judgment of conviction was allowed by this Court in the light of judgment dated 17.7.2013 at Annexure P2 in Criminal Appeal No.2284-SB of 2004. In pursuance of the judgment of acquittal dated 17.7.2013, respondent-Nigam issued orders date 17.1.2014 re-instating the petitioner back in service subject to outcome of the departmental proceedings. On 14.5.2014, vide Annexure P6, even the charge sheet dated 9.12.2002 served upon the petitioner was dropped.

3. Respondent-Nigam thereafter issued order dated 28.5.2014, Annexure P5, in terms of which the period of suspension i.e. 28.2.2002 to 16.1.2003 and the period of dismissal from service i.e. 25.5.2005 to 27.1.2014 was regularized and treated as duty period, but pay and allowances for such period were denied. The petitioner have represented and staked a claim for pay and allowances for the period of suspension as also the period spent out of service on account of dismissal, the same has been rejected vide order dated 8.1.2015, Annexure P11, re-iterating the decision contained in the earlier order dated 28.5.2014, Annexure P5.

4. Challenge in the instant writ petition is to the orders

dated 28.5.2014, Annexure P5, and dated 8.1.2015, Annexure P11, confined to the extent that the petitioner has been denied the benefit of pay and allowances for the period that he had been placed under suspension as also for the period of dismissal.

5. Learned Senior counsel appearing for the petitioner would submit that the petitioner was implicated in a false case and it was on account of his conviction that he had been dismissed from service. It is contended that the order of conviction having been set aside by this Court and the petitioner having been re-instated, there would be no justifiable basis to deny to him the full pay and allowances for the entire period i.e. period of suspension as also the dismissal period. As per learned counsel, such claim stands further fortified as the respondent-Nigam itself has taken a decision to even drop the departmental proceedings. Towards raising the claim for grant of complete arrears of salary for the period in question, reliance has been placed upon Rule 7.3 and 7.5 of the Punjab Civil Service Rules, Volume I as applicable to the State of Haryana.

6. Per contra, learned counsel appearing for the respondent-Nigam would contend that the petitioner had been re-instated upon his order of conviction being set aside, but the Nigam cannot be saddled for the backwages in relation to the period when he was under suspension as also out of service having been dismissed. The principle of 'no work no pay' has been invoked. It has been argued that the petitioner was absent from office work on account of his own involvement in a misconduct and the Nigam is, in no way, responsible for keeping him

away from duty. Learned counsel submits that acquittal would not automatically entitle the petitioner to get salary for the period in question. In support of his submissions, learned counsel appearing for the Nigam has placed reliance upon the following judgments:

1. *Union India and others v. Jaipal Singh, 2004(1) SCT 108;*
2. *Banshi Dhar v. State of Rajasthan and another, 2006(4) SCT 780;* and
3. *Surinder Kumar Bansal v. State of Punjab, 2006(1) RCR (Criminal) 743.*

7. Learned counsel for the parties have been heard at length and pleadings on record have been perused.

8. Factum of the petitioner having been dismissed from service based solely upon conviction, departmental proceedings initiated in the light of charge sheet dated 9.12.2002 having been dropped and the petitioner having been re-instated in service upon order of conviction having been set aside, is not in dispute.

9. The question that arises for consideration is as to whether the petitioner could be denied his full pay and allowances for the suspension period as also the period he remained out of service on account of an order of dismissal?

10. It would be appropriate to examine in the first instance the scheme of Rules governing the issue in question. Relevant extract of Rules 7.1 to 7.5 of the Punjab Civil Service Rules, Volume I, as applicable to the State of Haryana reads 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 fulfilment 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 a Government employee dismissed, removed or compulsorily retired from service, whose 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 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 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 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, 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 proceedings 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."

11. 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.

12. In the facts of the present case, the petitioner was involved in a criminal case, but this Court while examining the appeal preferred by the petitioner against the order of conviction,

found that the charge against him was unjustified and, accordingly, acquitted him. It would be relevant to take notice that criminal prosecution had been launched against the petitioner on an allegation made by the complainant that he had approached the official of the Electricity Department on 13.8.2002 for getting a meter connection and the official had kept the file with him and the complainant having again approached the official on 23.8.2002, the demand of illegal gratification of ₹2,000/- had been raised and of which ₹500/- were given to the official on the said date and the remaining amount of ₹1,500/- was settled to be paid subsequently. Even the departmental proceedings initiated by the respondent-Nigam against the petitioner in the light of the charge sheet dated 9.12.2002 carried the following specific articles of charge:

- "i) Shri Narender Kumar, U.D.C. was caught red handed and arrested by Police Authorities on 28.8.02 while accepting illegal gratification of ₹1500/- from the consumer Shri Dharambir of Mohalla Kumaharwara, Ballabgarh, as detailed in the statement of allegations.*
- ii) That he is guilty of grave misconduct."*

13. This Court while accepting the appeal preferred by the petitioner against the judgment of conviction in its order dated 17.7.2013 at Annexure P2, has clearly observed that the prosecution had failed to establish the factum of demand and acceptance of bribe by the appellant (petitioner herein) from the complainant. Furthermore, the testimony of DW1 Lekh Ram, Upper Division Clerk had been noticed wherein such witness had

deposed that on 23.8.2002 i.e. the crucial date of alleged demand and part payment of bribe money, the appellant (present petitioner) was on leave.

14. Insofar as the departmental proceedings initiated on the same very charge vide charge sheet dated 9.12.2002, the respondent-Nigam issued office orders dated 14.5.2014 at Annexure P6 whereby the charge sheet, itself, has been dropped. Perusal of such order at Annexure P6 would reveal that the decision to drop the departmental proceedings has been taken not only on account of acquittal of the petitioner by this Court, but also having considered the reply furnished by the delinquent to the charge sheet as also comments sought from the field office. The order of dated 28.5.2014 at Annexure P5 reveals that the petitioner has been held entitled to all benefits pertaining to the suspension period as also the dismissal period except pay and allowances. The decision of the competent authority to deprive the petitioner of the wages for the period in question would be seen as an inherent contradiction. On the one hand, the petitioner in the criminal proceedings has earned acquittal and the respondent-Nigam, itself, has dropped the departmental proceedings reflecting the same to be unjustified and, on the other hand, he has been deprived of the pay and allowances even though treating the entire period towards continuity in service.

15. In **Brahma Chandra Gupta v. Union of India, 1984 AIR (SC) 380**, the Hon'ble Supreme Court while examining a similar issue had 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.....”

16. Even a Division Bench of this Court in the case of **Hukam Singh v. State of Haryana and another**, 2001(2) SCT 696, while considering the scope of Rule 7.5 of the Punjab Civil Service Rules had held as under:-

*“8. In our this view, we are supported by the judgment of this Court in the case of **Maha Singh v. State of Haryana and another**, 1993 (8) Service Law Reporter 188: 1994 (1) SCT 154 (P&H). Same view was expressed by this Court in the case of **Lehna Singh v. The State of Haryana and others**, 1993 (3) Recent Services Judgments 119: 1994(1) SCT 173 (P&H). Keeping in view the aforesaid, we have no hesitation in holding that the impugned order cannot be sustained.*

In terms of Rule 7.5 of the Rules, on petitioner's being acquitted, he would be entitled to full salary and allowances for the period of suspension and dismissal. The impugned order Annexure P-7 is accordingly quashed. The petitioner can thereafter be considered for any further promotion that may be due in accordance with the rules. No order as to costs."

17. Such view has thereafter been noticed and followed by the Division Bench of this Court in **LPA No.1660 of 2011** titled as **Ishwar Singh v. State of Haryana and others**, decided on 17.11.2011.

18. In the case of **Union of India and others v. Jaipal Singh** (supra), the Hon'ble Supreme Court had dealt with the issue in a case arising from conviction of an employee under Section 302 of the Indian Penal Code by the trial Court, but acquitted by the High Court in appeal and its effect on backwages upon reinstatement for the period the employee was out of service due to involvement in a criminal case and had observed as under:

".....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 adverting 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."

19. The principle of 'no work no pay' was applied in the case of **Jaipal Singh** (supra) in a situation where the employee faces trial on allegations which had nothing to do in the course of his employment. Under such circumstances, the State Exchequer was held not to be burdened for acts on the part of the employee and over which the employer did not have any control. Precisely, such distinction had also weighed with the Co-ordinate Bench in

judgment dated 28.11.2013 rendered in Civil Writ Petition No.26122 of 2013 titled as “**Balbir Singh v. State of Haryana and another**” while denying backwages to the employee concerned who was serving as a Conductor with the Haryana Roadways and was convicted in a criminal case for offences punishable under Sections 148, 149, 307 and 302 of the Indian Penal Code and was subsequently acquitted. The judgment in **Balbir Singh's** case (supra) having come up for scrutiny in an intra court appeal, the view was affirmed by the Division Bench by observing thus:

“The alleged offence was committed by the appellant not during the course of his employment, but it was committed in the village, when he was not on duty. There was no fault of the employer. It was the wrong of the appellant himself, which dragged him in the criminal litigation. If in that criminal case, for want of evidence, the appellant has been given benefit of doubt, the employer, with whom the appellant had not worked during the period of his dismissal from service, cannot be compelled to pay salary for the said period. The principle of 'no work no pay', in our opinion, is applicable in the present case and for that period, the appellant is not entitled for the salary.”

20. In the considered view of this Court, the distinction drawn by the Hon'ble Supreme Court in **Jaipal Singh's** case (supra) and thereafter noticed and followed in the case of **Balbir Singh** (supra), would rather support the claim put forth by the present petitioner. The normal rule of 'no work no pay' would not be

applicable to cases where the employee although is willing to work, yet is kept away from work by the authorities for no fault of his. This is the inference that has to be drawn in favour of the petitioner as the respondent-Nigam, itself, has chosen to even drop the departmental proceedings initiated against the delinquent.

21. It would also be relevant to take notice that the judgment in **Jaipal Singh's** case (supra) has thereafter been considered and distinguished by the Hon'ble Supreme Court in **Jaipur Vidyut Vitran Nigam Ltd. & Ors. v. Nathu Ram, 2010(1) SCC 428**. Nathu Ram had been regularized on the post of Helper, Grade-II. He was allegedly caught accepting bribe by the Anti Corruption Bureau. Trial Court having convicted him for offence under the Prevention of Anti Corruption Act, 1947, an appeal was preferred and the High Court of Rajasthan acquitted Nathu Ram. The question of backwages relating to the dismissal period had come up for consideration and Nathu Ram was held entitled to the same in the light of a circular dated 3.9.1975 issued by the erstwhile Rajasthan State Electricity Board that governed the issue as regards grant of backwages. Likewise, even in the present case, the claim of the petitioner is found admissible under Rules 7.1 to 7.5 of the Punjab Civil Services Rules as applicable to the State of Haryana.

22. In the case of **Banshi Dhar** (supra) relied upon by learned counsel for the respondent-Nigam, it had been clearly held by the Apex Court that the judgment of acquittal itself would not exonerate a delinquent of the charges levelled against him

and it was always open for the employer to have proceeded further in the matter in a departmental proceeding. While upholding the decision of the authorities concerned in denying to Banshi Dhar, the benefit of backwages, it had been noticed that departmental proceedings against him could not be held as on the date of passing of judgment of acquittal in his favour, he had already attained the age of superannuation. The facts of the case in hand, however, are clearly distinguishable. The respondent-Nigam herein has taken a conscious decision to drop the departmental proceedings during the course of employment of the petitioner and in the light of his acquittal as also the reply furnished by him. Respondent-Nigam having chosen to do so, the action of denial of pay and allowances for the period in question cannot sustain.

23. The issue arising for consideration in **Surinder Kumar Bansal** (supra) was entirely different and related to the grant of sanction for prosecution under Section 197 of the Code of Criminal Procedure, and it was held that against the charge of bribe and forgery by a public servant, such sanction is not required as it is not a part of his duty to commit any forgery or to take bribe.

24. The criminal trial that the petitioner has faced and which finally culminated in his acquittal was in relation to allegations having direct nexus with the work and functions in the course of his employment. Even departmental proceedings initiated on the same very allegations have since been dropped by the respondent-Nigam. The petitioner having been absolved

of the allegations and respondent-Nigam having taken a conscious decision to even drop the charge sheet issued against the petitioner, he would be vested with the right to pay full pay and salary for the period of suspension as also the period he remained out of service on account of order of dismissal by applying the ratio of afore-noticed judgments and in the light of the relevant statutory provisions i.e. Rules 7.3 and 7.5 of the Punjab Civil Service Rules, Vol.I, as applicable to the State of Haryana.

25. For the reasons recorded above, writ petition is allowed. Impugned orders dated 28.5.2014, Annexure P5, and dated 8.1.2015, Annexure P11, are modified to the extent that the petitioner is held entitled to full pay and allowances for the period that he had remained under suspension as also for the period he remained out of service on account of dismissal. Let such benefit be calculated and released to the petitioner within a period of three months from the date of receipt of a certified copy of this order.

26. Petition is allowed in the aforesaid terms.

JULY 27, 2016
SRM

(TEJINDER SINGH DHINDSA)
JUDGE

Note:	<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
	<i>Whether Reportable:</i>	<i>Yes/No</i>