

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

**CWP No.15241 of 2015
Date of decision: 21.12.2016**

Darshan Singh

..Petitioner

Versus

**The Punjab State Warehousing Corporation
and another**

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Ms. Jagdeep Bains, Advocate
for the petitioner.

Mr. Balwinder Singh, Advocate
for the respondents.

Daya Chaudhary, J.

The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of order dated 30.06.2015 (Annexure P-9) passed by respondent No.2 whereby, order dated 16.09.2014 passed by respondent No.1 has been upheld reinstating the petitioner in service from the date of his acquittal vide judgment dated 04.04.2014 passed by this Court in Criminal Appeal No.226-SB of 2007 and by applying the principle of “no work no pay”, the consequential benefits have been denied w.e.f.02.05.2008 upto 04.04.2014 and salary upto 01.10.2014 has not been released.

Briefly, the facts of the case as made out in the present writ petition are that the petitioner was appointed in the respondent-Corporation on 15.09.1983 and was promoted as Warehouse Manager. While serving, FIR No.32 dated 19.05.1997 was registered under Sections 13(1)(c) of the Prevention of Corruption Act, 1988 and Sections 407, 408, 409, 467, 468, 471 and 477-A of Indian Penal Code at Police Station Vigilance Bureau,

Patiala against the petitioner and four others on the basis of complaint made by some persons, resultant whereupon, the promotion of the petitioner from the post of Warehouse Manager to A.D.M. was withheld by the Managing Director of the Corporation. The allegations against the petitioner and other employees were that some bags of wheat were found to be less, consequently, the petitioner and other accused were convicted and sentenced vide judgment dated 20.01.2007 passed by the Special Judge, Fatehgarh Sahib. Thereafter, the petitioner was dismissed from service vide order dated 02.05.2008 on account of his conviction in the criminal proceedings, however, no departmental proceedings relating to said allegations were initiated.

Against said judgment of conviction and sentence dated 20.01.2007, the petitioner and other accused filed Criminal Appeal No.226-SB of 2007 before this Court and during pendency of the appeal, co-convict employee, namely, Ramesh Kumar died and other co-convict, namely, Nanak Chand Rana, was discharged by this Court vide order dated 09.02.2006 and the sentence of the present petitioner was suspended by this Court. Thereafter, the petitioner was also acquitted by this Court vide judgment dated 04.04.2014 (Annexure P-2), however, because of initiation of criminal proceedings against the petitioner, an adverse entry was made in his annual confidential report dated 28.05.1998. A representation was also made by the petitioner against the same entry but it was rejected by the Managing Director vide order dated 08.10.1998. The promotion of the petitioner from the post of Warehouse Manager to the post of District Manager, which was due in the year 2007, was also withheld because of

adverse entry in the annual confidential report. On acquittal by this Court, the petitioner made a representation on 09.04.2014 for reinstatement into service and he was reinstated in service without granting the benefit of the period from 02.05.2008 upto 04.04.2014 by adopting the principle of “no work no pay”.

The grievance of the petitioner is that no departmental inquiry was initiated and he was not even reinstated from the date of his acquittal.

Learned counsel for the petitioner submits that the petitioner was entitled for reinstatement into service from the date of his acquittal but in spite of making of representation, the same was not considered. Even the adverse remarks, which were made in the ACR because of initiation of criminal proceedings, were not expunged. Learned counsel further submits that on acquittal, the petitioner is entitled not only for reinstatement but also for full backwages and other consequential benefits including promotion. Learned counsel also submits that the petitioner was acquitted honourably in absence of any evidence against him and the backwages cannot be denied as it was a false case. Learned counsel also submits that the action of the respondents is violative of Rule 7.3 of the Punjab Civil Services Rules Volume I Part I. Learned counsel for the petitioner has also relied upon judgment rendered by Hon'ble the Supreme Court in ***Union of India and ors. vs. Jaipal Singh, 2004(1) SCT 108*** as well as judgments rendered by this Court in ***Smt. Poonam Rani vs. Uttar Haryana Bijli Vitran Nigam Ltd., 2008(1) SCT 819, CWP No.13367 of 2012*** titled as ***Pawan Kumar vs. District & Sessions Judge, Hisar and others***, decided on ***16.02.2015*** and ***CWP No.1326 of 2013*** titled as ***Surjit Singh vs. State of Haryana and***

another, decided on **30.04.2015** in support of her contentions.

In response to notice of motion, reply has been filed by the respondents, which is on record.

Learned counsel for the respondents submits that the period of dismissal from 02.05.2008 upto 04.04.2014 was rightly treated as non-duty period in view of various judgments passed by this Court as well as Hon'ble the Apex Court. The petitioner was reinstated into service vide order dated 16.09.2014 after acquittal by this Court vide judgment dated 04.04.2014 and the period of dismissal from 02.05.2008 till the date of acquittal i.e., 04.04.2014 was treated as non-duty period and the period from the date of acquittal till the date of joining was treated as leave of kind due. Learned counsel for the respondents has relied upon judgments rendered by Hon'ble the Supreme Court in ***State of U.P. & ors. vs. Mahindra Nath Tiwari, 2010 (2) SCC 252, Corp. Mithilesh Kumar @ Mithilesh Singh vs. Union of India & ors., 2010 (13) Scale 98, Banshi dhar vs. State of Rajasthan and Anr., 2006(4) SCT 780*** as well as judgment rendered by this Court in ***Balbir Singh vs. State of Haryana and others, 2014(3) SCT 451*** in support of his contentions.

Heard arguments of learned counsel for the petitioner as well as learned counsel for the respondents and have also perused the impugned order of termination; order of reinstatement; judgment of acquittal and other documents available on the file.

The facts relating to appointment of petitioner, his promotion and lodging of FIR under various sections are not disputed. It is also not disputed that the petitioner was convicted and sentenced by the trial Court

vide judgment dated 20.01.2007 and he was dismissed from service on 02.05.2008. It is also not disputed that against the said judgment of conviction, appeal was filed before this Court and the petitioner was acquitted of the charges by this Court vide judgment dated 04.04.2014. Due to initiation of criminal proceedings, an adverse entry was made in the annual confidential report dated 28.05.1998. A representation was also made by the petitioner against adverse entry but the same was rejected. Even the promotion of the petitioner was withheld due to pendency of criminal proceedings and adverse entry made in the ACR. When the petitioner was acquitted by this Court, he was reinstated in service but without granting the benefit of the period from 02.05.2008 upto 04.04.2014 by adopting the principle of “no work no pay”. It is also not disputed that no departmental proceedings were initiated and only on the basis of conviction by the trial Court, he was dismissed from service. The petitioner filed appeal before the appellate authority seeking modification of order dated 16.09.2014 but the same was not decided. The petitioner filed CWP No.26898 of 2014 before this Court, which was disposed of vide order dated 24.12.2014 with a direction to the appellate authority to hear and decide the appeal of the petitioner within a period of four months. Thereafter, the appellate authority rejected the appeal of the petitioner by applying principle of “no work no pay”.

Now the question for consideration before this Court is as to whether the petitioner is entitled to be reinstated into service along with consequential benefits and backwages as per provisions of Rule 7.3 of the Punjab Civil Services Rules Volume I Part I read with instructions dated

23.12.1976. It is also to be determined as to whether the principle of “no work no pay” is to be applied for grant of pay w.e.f.02.05.2008 upto 04.04.2014 and from the date of acquittal till the date of actual reinstatement as the said period has been considered as leave of kind due. Consequential benefits include expunge of adverse remarks in the ACR and grant of promotion, which was withheld.

The Rules governing the issue in the present case are necessary to be considered. Relevant extract of Rules 7.1 to 7.5 of the Punjab Civil Service Rules, Volume I, as applicable to the State of Haryana are reproduced 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."

Under Rule 7.1, a Government employee is not entitled 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 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 case, a Government employee is acquitted of the charge 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.

In the present case, the petitioner was involved in a criminal case and was convicted by the trial Court but acquitted by the first Appellate Court (this Court). On acquittal, the petitioner was reinstated into service but without salary for the period he remained out of service. The action of the competent authority to deprive the petitioner of the wages would be seen as an inherent contradiction.

In **Jaipal Singh's case (supra)**, Hon'ble the Apex Court had dealt with the issue in a case arisen from conviction of an employee under Section 302 IPC by the trial Court, but acquitted by this High Court in appeal and its effect on backwages upon reinstatement for the period the concerned employee remained 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."

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 with 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. It was precisely such distinction that had weighed with the Coordinate Bench in **Balbair Singh's case (supra)** while denying backwages to the employee concerned who while working as a Conductor with the

Haryana Roadways 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.”

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.

In the present case, the respondent-department was not instrumental in initiating the criminal proceedings as FIR was registered at

the instance of private persons. The State is the investigator of crime and not the party. The order of suspension was passed and thereafter the petitioner was placed under suspension on conviction and subsequently, dismissed from service. On acquittal from appellate Court (this Court), he was reinstated in service. However, the charge was not connected with performance of duty. The same issue was dealt with by this Court in ***CWP No. 3216 of 2016*** titled as ***Anup Singh @Anoop Singh vs. State of Punjab and others***, decided on ***17.02.2016*** wherein the petitioner was a Constable and was placed under suspension due to lodging of FIR under Section 7 read with Section 13(2) of the Prevention of Corruption Act, 1988 which resulted into conviction. It was held in that case that the employer was not responsible for the conviction and as such he was not held responsible for payment of backwages. It was held that petitioner in that case has no fundamental right to claim the arrears for the period, he remained out of service even in case the period is treated as qualifying service for pension and other purposes. Said petition was dismissed by this Court on 17.2.2016.

In ***State Bank of India and another vs. Mohammed Abdul Rahim, 2013 (11) SCC 67***, the respondent-Department reinstated the employee without backwages. It was held that since provisions of Banking Regulation Act, 1949 impose a clear bar on a banking company from employing or continuing to employ a person who has been convicted by a criminal Court of an offence of moral turpitude, he would not be entitled for payment of salary during that period. His subsequent acquittal does not operate to retrospectively wipe out the legal consequences of the conviction under the Act. He was held entitled for wages demanded by him till date of

reinstatement.

In the present case, the petitioner was acquitted of the charge by this Court vide judgment dated 04.04.2014. Thereafter, he made representation on 09.04.2014 for reinstatement along with all consequential benefits and he was reinstated in service after a period of more than 5 months vide order dated 16.09.2014 but without granting benefits of the period from 02.05.2008 upto 04.04.2014 by adopting the principle of “no work no pay”. The petitioner also filed an appeal before the appellate authority for modification of order dated 16.09.2014, which was dismissed and he was allowed to join the duty on 01.10.2014. The respondent-department was not at fault as the complaint was not made at the instance of the department. Hence, the petitioner is entitled for the benefits from the date of making representation with the respondent-department. However, the petitioner is not entitled for backwages during the period he was placed under suspension or was dismissed from service.

Accordingly, the present writ petition is partly allowed and the petitioner is held entitled to the salary for the period from the date of making representation with the respondent-Corporation till he was allowed to join duty on reinstatement along with all consequential benefits.

21.12.2016
neetu

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

√
Yes/No

Whether Reportable

√
Yes/No