

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

**CWP No. 18862 of 2013**

**Date of decision : 23.02.2016**

**Buddhi Singh**

**...Petitioner**

**versus**

**State of Haryana and another**

**...Respondents**

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI**

Present: Mr. Virender Kumar, Advocate  
for the petitioner.

Mr. Ravi Pratap Singh, A.A.G. Haryana

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

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**RITU BAHRI , J.**

Petitioner has filed the present petition seeking quashing of impugned order dated 10.05.2012 (P-2) passed by respondent No. 2 to the extent of treating the suspension period of the petitioner as leave of kind due and further quashing the impugned order dated 11.11.2012 (P-4) vide which the appeal filed by the petitioner, has been dismissed.

Brief facts of the case are that the petitioner was posted as Gram Sachiv in the office of BDPO, Sohna and on 21.04.2005, F.I.R No.

13 under Sections 7/13/49/88 of the Prevention of Corruption Act was registered against him. Subsequently, he was placed under suspension during the period 21.04.2005 to 06.05.2005, which was conveyed to him vide endst dated 26.05.2005 and after release from the custody, he was again placed under suspension from the service w.e.f 28.07.2005 to 17.04.2008.

However, petitioner was acquitted by the Court of learned Special Judge, Gurgaon vide impugned judgment dated 05.03.2008 and subsequently, petitioner was reinstated in service vide order dated 12.04.2008, which was conveyed to him vide Endst dated 17.04.2008. However, petitioner was served a charge sheet on 10.05.2012 under Rule 7 of Haryana Civil Service (Punishment and Appeal) Rules, 1987 (for short 'Rules 1987') for the aforesaid offences again, after the retirement of the petitioner on attaining the age of superannuation on 13.01.2012. The charge sheet was subsequently dropped on 12.05.2012 but the suspension period of the petitioner i.e 21.04.2005 to 06.05.2005 and 28.07.2005 to 17.04.2008, was ordered to be treated as leave of kind due, without giving any notice or opportunity of hearing to the petitioner. Petitioner preferred an appeal against this order, which was also dismissed on 11.11.2012 (P-4)

On notice, a written statement has filed on behalf of

respondent No. 1 and 2 taking a stand that the impugned orders have rightly been passed, as per provisions contained in Rule 7.3 of Rules 1987.

Learned counsel for the petitioner contends that once the petitioner has been acquitted of the charges framed against him, the department should have released the consequential benefits to the petitioner and further the department after acquittal of the petitioner, cannot commence the department disciplinary proceedings on absolutely identical and same charge for which the petitioner has already faced the criminal trial and has been acquitted.

Learned counsel has further submitted that the petitioner is covered by Rule 7.3 and 7.5 of C.S. Vol I Part I, as under Rule 7.3 of CSR Vol I Part I if an employee is fully exonerated then employee shall be given the full pay and allowances to which he would have been entitled, had he not been dismissed, removed.

On the other hand, learned counsel for the respondents has referred to LPA No. 514 of 2014 titled as **Balbir Singh vs State of Haryana and others**, decided on 13.08.2014 whereby petitioner filed appeal against an order dated 28.11.2013 passed by learned Single Judge whereby the writ petition challenging the order dated 06.04.2011 rejecting the representation of the appellant for payment of full salary

for the period from 25.10.2000 to 22.07.2009 has been dismissed. The LPA Bench also upheld the order passed by learned Single Judge by observing as under:-

*“Before us, learned counsel for the appellant has again raised both the aforesaid contentions and we are of the opinion that in the present case, the appellant has rightly been denied the salary for the period during which he remained out of service due to his dismissal. 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. Thus, the learned Single Judge has rightly come to the conclusion that the case of the appellant is not covered by the provision of Rule 7.5 of the C.S.R. The judgment of this Court in **Shashi***

***Kumar vs. Uttri Haryana Bijli Vitran Nigam and another, 2005 (1) RSJ 718***, relied upon by learned counsel for the appellant before the learned Single Judge, has been held to be not applicable, because that case was under the Prevention of Corruption Act, 1988. In the present case, as already mentioned, the appellant was not involved in a case relating to his work and functions during the course of his employment. He had committed serious offence of murder, which had nothing to do with the discharge of his official duty. “

Learned counsel for the petitioner has referred to CWP No 1847 of 2009 titled as ***Ram Kumar v. State of Haryana and others, decided on 08.01.2014*** wherein petitioner was denied the benefit of full pay and allowances for the intervening period between suspension and acquittal i.e 12.05.2003 to 19.11.2015. This Court allowed the writ petition and petitioner was held entitled to full pay and allowances for the intervening period between suspension and acquittal i.e 12.05.2003 to 19.11.2015.

Reference at this stage can be made to a judgment passed by this Court in a case of ***Shashi Kumar v. Uttar Haryana Bijli Vitran Nigam Ltd. and others, 2005 (1) S.C.T 576*** 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."*

The terms honourable acquittal or fully exonerated came up for consideration before a Division Bench of Madras High Court in a case of ***Union of India vs. Jayaram, AIR 1960 Mad 325*** wherein it has been observed as under:-

*"There is no conception like "honourable acquittal" in Criminal C.P. The onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is entitled to be acquitted.*

*Clause (b) of Article 193 of the Civil Service Regulations which says that when a Government servant who was under suspension is honourably acquitted, he may be given the full salary to which he would have been entitled if he had not been suspended applies only to the case of departmental inquiry.*

*Where the servant was suspended because there was a criminal prosecution against him and he was acquitted therein, and reinstated he is entitled under the general law, to the full day during the period of his suspension. To such a case Article 193 (b)*

*does not apply.”*

The above said judgment of Madras High Court was considered and followed by this Court in cases of ***Jagmohan Lal vs. State of Punjab through Secy to Punjab government Irrigation and others, AIR 1967 (54) Punjab and Haryana 422 (Punjab) and Ramsinhji viraji Rathod, Parmanand Society v. State of Gujarat and anr, 1971 SLR 743***

The judgment of ***Shashi Kumar*** was challenged before the Supreme Court which was dismissed on 26.09.2013. However, with regard to the backwages, it has been observed that High Court was not justified in directing payment of full salary and allowances because the respondents had not been fully exonerated. Each one of them was given the benefit of doubt by the High Court or the trial Court. Thereafter, the High Court should have directed the competent authority to pass appropriate order in terms of Rules reproduced above. We may have adopted that course and directed the concerned authority to pass necessary order within a specified time frame, but keeping in view the long lapse of time, we do not consider it proper to exercise the power of this court under Article 136 of the Constitution of India and interfere with order for payment of full backwages.

Reference at this stage can now be made to judgment of

Hon'ble the Supreme Court in a case of ***Union of India v. K.V. Kankiraman AIR 1991 SC 2010*** wherein it has been held that normal rule of “No Work No Pay” is not applicable to cases where the employee is willing to work but kept away from work by authorities for no fault of his.

Similar view has been expressed by Hon'ble the Supreme Court in a case of ***Punjab National Bank vs. Virender Kumar Goel and others, RSJ 2004 (1) 701*** whereby Hon'ble the Apex Court rejected the plea of the Bank-management applying the principle of No Work No Pay and held that the applicants were out of their job for no fault of theirs.

This Court in ***Hukam Singh's case (supra)*** was dealing with a case where petitioner was convicted for the offences punishable under Sections 302/307/324/34 IPC. Subsequently, he was acquitted and was reinstated in service but intervening period was not treated as on duty and back wages were denied. This Court allowed the writ petition in terms of Rule 7.5 and held the petitioner entitled to full salary and allowances for the period of suspension and dismissal.

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.

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 as the prosecution failed to prove beyond reasonable shadow of doubts that the accused-petitioner made a demand of an amount of Rs.1500/- from the complainant.

The judgment cited by learned State counsel is not of much help, as in **Balbir Singh's case (supra)**, F.I.R has been lodged against the petitioner under Section 302 read with Section 149 IPC and the alleged offence was committed by him not during the course of his employment, but it was committed in village, when he was not on duty. This Court while dismissing his LPA has rightly held that it was the wrong of the appellant himself, which dragged him in criminal litigation.

However, in the present case, the complainant alleged that petitioner has raised a demand of Rs.1500/- from the complainant to extend the lease period and the complainant reported the matter to State Vigilance Bureau, Gurgaon, who caught the petitioner red handed by taking the currency notes amounting to Rs.1500/-. But the petitioner was acquitted of the charges framed against him, as the prosecution

failed to prove beyond reasonable shadow of doubts that the accused-petitioner made a demand of an amount of Rs.1500/- from the complainant.

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 and no departmental inquiry can be initiated against him on absolutely identical and same charges, as the petitioner has faced the criminal proceedings and has been acquitted vide judgment dated 05.03.2008.

In view of the settled law and in terms of Rule 7.5 of Punjab Civil Service Rules, order dated 10.05.2012 (P-2) passed by respondent No. 2 and order dated 11.11.2012 (P-4) are hereby quashed. The respondent-department is directed to treat the suspension period of the petitioner i.e 21.04.2005 to 06.05.2005 and 28.07.2005 to 17.04.2008 as duty period and thereafter, release the full pay and allowances for the said period.

The petition stands allowed.

**(RITU BAHRI)**  
**JUDGE**

**23.02.2016**

G Arora