

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No.20271 of 2015 (O&M)
Date of decision: 03.03.2016

Jagdish Lal

...Petitioner

versus

Uttar Haryana Bijli Vitran Nigam and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ram Niwas Sharma, Advocate,
for the petitioner.

Mr. R.S. Longia, Advocate,
for the respondents.

RITU BAHRI, J.

The petitioner is seeking quashing of the orders dated 01.06.2012 and 01.05.2015 (Annexures P-13 and P-17), vide which, he has been denied the pay and allowances for the termination period i.e. from 23.02.1995 to 17.01.2011 on the ground of no work no pay.

Jagdish Lal-petitioner joined the erstwhile HSEB on 18.11.1973 as T-mate and his services were regularized as ALM on 21.09.1980. An FIR No.27 dated 23.02.1995 under Section 7 (13) (49) (88) of Prevention of Corruption Act, 1988 was registered against him at Police Station, Kalanaur, for demanding and accepting a sum of Rs.300/- as gratification for the purpose of increasing load of electric meter KAP-185. Thereafter, the petitioner was placed under suspension vide order dated 28.02.1995. On the other hand, the Special Judge, Rohtak, vide judgment dated 02/04.12.1997 (Annexure P-1) convicted the petitioner under the

aforesaid offence and sentenced him to undergo rigorous imprisonment for

two years and to pay a fine of Rs.1000/-. After conviction, the services of the petitioner were terminated vide order dated 18.03.1998 w.e.f. 04.12.1997. Against his conviction, the petitioner filed Criminal Appeal No. 1015-SB of 1997, which was allowed by this Court vide order dated 26.07.2010 (Annexure P-3) by setting aside the order of conviction and sentence of the petitioner. Thereafter, the petitioner was reinstated in service with immediate effect vide order dated 18.01.2011. After reinstatement, a charge sheet was issued to him on 07.06.2011 on the same allegation of accepting gratification of Rs.300/- from Sh. Surat Singh, resident of Kalanaur for test report for increasing the load of electric connection KAP-185. The petitioner gave his reply dated 04.07.2011. Thereafter, an enquiry officer was appointed, who submitted enquiry report vide memo dated 19.03.2012. After due consideration of the material available on record, the charge sheet was dropped. However, intervening period from the date of arrest i.e. 23.02.1995 till reinstatement on 18.01.2011 was treated as a continuous service for the purpose of pension, but without any wages on the principle of 'no work no wages' and the reference was made to the judgment dated 29.02.2012 passed by this Court in **Bala Ram Vs. UHBVN and others,** CWP No.14645 of 2010. The said order was challenged by the petitioner by filing CWP No.16599 of 2011, which was disposed of on 04.12.2014 by giving direction to the respondents to look into the matter and pass a fresh order in accordance with law and also keeping in view the law laid down by the Division Bench of this Court in **Shashi Kumar Vs. Uttar Haryana Bijli Vitran Nigam and another,** 2005 (1) RSJ 718. Thereafter, the case of the petitioner was considered in compliance of the order dated 04.12.2014 passed by this

Court. At the time of consideration, it had been observed that against the above referred judgment in Shashi Kumar's case (supra), SLP had been filed before the Hon'ble Supreme Court, which was dismissed vide order dated 26.09.2013. While dismissing the SLP, it has been observed that the High Court was not justified in directing payment of full salary and allowances, as the respondent had not been fully exonerated. However, the Hon'ble Supreme Court restrained from interfering in the order of payment of back wages. It was further clarified that the impugned orders shall not be treated as precedent for other cases. The competent authority proceeded to examine Rule 7.3 of the Punjab Civil Services Rules (Vol 1 Part I). After examining the said rule, it was held that the official had been terminated on account of conviction and therefore, the respondent-Nigam could not be saddled to pay salary and allowances for the period he remained out of service on the principle of 'no work no pay'. The claim for payment of arrears of salary was declined and the above said period was regularized only for the purpose of continuity of service.

Learned counsel for the petitioner has argued that the respondent-Nigam adopts the instructions issued by the State Government from time to time and the order dated 01.05.2015 (Annexure P-17) has been passed by the respondents without considering the relevant provisions of Rule 7.5 of CSR, Vol. 1, Part-I. The said Rule lays down the procedure for a government employee, who has been arrested and facing a criminal charge. Even after acquittal, the departmental enquiry was initiated on the same allegations. The charges levelled against the petitioner were not proved and vide impugned order dated 01.06.2012 (Annexure P-13), the intervening period from the date of arrest till reinstatement had been treated

to be continuous service for the purpose of pension, but without any wages. He further argued that while dismissing Civil Appeal No.4114 of 2006, titled as **Uttar Haryana Bijli Vitran Nigam and another Vs. Shashi Kumar,** decided on 26.09.2013 (Annexure P-19), the Hon'ble supreme Court had merely observed that the High Court instead of directing payment of pay and allowances, should have given a direction to the department to pass appropriate orders in term of Rules 7.3 and 7.5 of CSR. In the said order, it was further observed that the respondents had been acquitted by giving the benefit of doubt and they had not been fully exonerated. However, keeping in view the long lapse of time, the Hon'ble Supreme Court did not interfere with the order for payment of full back wages.

Learned counsel for the respondents has argued that the competent authority has rightly denied the benefit of back wages to the petitioner in view of the decision given by this Court in **Bala Ram's** case (supra).

Heard, counsel for the parties.

The order dated 01.05.2015 (Annexure P-17) has been passed keeping in view the judgment passed by the Hon'ble Supreme Court in **Shashi Kumar's** case (supra) (Annexure P-19), whereby SLP filed by UHBVN had been dismissed. Shashi Kumar had been terminated on account of conviction in a trial under Section 7/13 of the Prevention of Corruption Act, 1988. However, on appeal he was acquitted of the charges by giving benefit of doubt. On acquittal, he was not reinstated and thereafter, he filed CWP No.14375 of 2003, which was allowed by this Court on 07.12.2004 (Annexure P-18) by giving direction to the respondents to reinstate him in service with full back wages. Against the

said judgment, UHBVN filed SLP before the Hon'ble Supreme Court, which was dismissed by observing that the High Court was not justified in granting payment of full salary and allowances as he had not been fully exonerated. The High Court should have directed the competent authority to pass appropriate order(s) in terms of Rule 7.5 of Punjab Civil Services Rules.

In the facts of the present case, vide impugned order dated 01.06.2012 (Annexure P-13), it was held that the charges levelled against the petitioner were not proved, therefore, the charge sheet was dropped. However, the intervening period w.e.f. 23.02.1995 to 17.01.2011 was treated as continuous service for the purpose of pension, but without any wages. It is clear from the aforesaid order that after his acquittal, the petitioner was reinstated in service on 17.01.2011 and it is, thereafter, the charge sheet was issued to him. In compliance of the order dated 04.12.2014 passed by this Court in CWP No.16599 of 2011, the impugned order dated 01.05.2015 (Annexure P-17) has been passed. However, while passing this order, the competent authority has not considered the relevant provisions of Rule 7.5 of Civil Service Rules, Vol. I, Part I. This is the specific provision, which deals with the cases of employees, who are facing criminal prosecution.

As per the observations made by the Hon'ble Supreme Court in **Shashi Kumar's** case (supra), the competent authority was to apply its mind on the relevant Rule 7.5 CSR and then pass an order on back wages after reinstating the petitioner. It was the competent authority, who could be directed to pass an appropriate order on pay and allowances after acquittal under Rules 7.3 and 7.5.

The above said Rules have been interpreted by this Court in **Ram Anjore Vs. Uttari Haryana Bijli Vitran Nigam Limited, through its Managing Director, Panchkula and others,** CWP No.2918 of 2014 (decided on 18.01.2016), whereby after acquittal in a case under Section 7/13 of Prevention of Corruption Act, 1988, the petitioner was reinstated and was held entitled for payment of pay and allowances for the period he remaine out of service as per provisions of Rules 7.3 and 7.5 of Punjab Civil Service Rules, Volume I, as applicable to the State of Haryana. The ratio of the said judgment is applicable to the facts of the present case.

In view of the above discussion, this petition is allowed; impugned orders dated 01.06.2012 and 01.05.2015 (Annexures P-13 and P-17) are set aside and the respondents are directed make payment of full salary and allowance to the petitioner during the period he remained out of service i.e. from 23.02.1995 to 17.01.2011 along with interest at the rate of 9% per annum, within a period of three months from the date of receipt of certified copy of this order.

03.03.2016
ajp

(RITU BAHRI)
JUDGE