

C.W.P No. 23737 of 2014

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P No. 23737 of 2014

DATE OF DECISION:14.12.2016

Jaswinder Singh

.....Petitioner

Versus

Punjab State Power Corpn. Ltd. & Ors.

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Sandeep Wadhawan, Advocate
for the petitioner.

Mr. Y.P. Khullar, Advocate
for respondents No.1 to 4.

DAYA CHAUDHARY, J.

The prayer in the present petition is for issuance of a writ in the nature of certiorari for quashing of order dated 29.11.2013, vide which, the suspension period of the petitioner from 19.11.2007 to 12.12.2007 and 13.12.2007 to 9.1.2008 has been treated as 'no work no pay' period by treating the same as no duty period. A further prayer has also been made for issuing directions to respondents No.1 to 3 to regularize the service period of the petitioner w.e.f. 19.11.2007 by treating the aforesaid period as on duty period and to grant all consequential benefits including increments, promotions and other service benefits in view of acquittal of the petitioner in criminal case by the trial Court vide its judgment dated 25.8.2011.

Briefly the facts of the case as made out in the present petition

are that the petitioner was appointed as Lineman in the Electricity Board at Kapurthala. Thereafter, he was promoted as Assistant Junior Engineer and was also given the charge of Junior Engineer and remained posted at different places. During his service, he conducted inspection of village Rahal Chahal and during the course of inspection, he caught about 140 persons of the village red handed, who were involved in theft of electricity. Out of 140 persons, one person, namely, Dhyan Singh who was having grudge in his mind got the petitioner implicated by the Vigilance in case bearing FIR No. 37 dated 19.11.2007 under Section 7 and 13 (2) of the Prevention of Corruption Act at Police Station Vigilance Bureau, Amritsar, on the basis of statement made by one Gurmail Singh son of Dhyan Singh. Ultimately, the petitioner was placed under suspension during the pendency of criminal case and all service benefits of the petitioners like increment and promotion were withheld. Even the juniors to the petitioners were also promoted during that period. Subsequently, the petitioner was acquitted of the charge by the trial Court vide its judgment dated 25.8.2011 and no appeal against the judgment of acquittal was filed by the State of Punjab. The petitioner on acquittal made representation to the respondent-Department and requested to grant all benefits by treating period of suspension as duty period but no action was taken thereupon. The petitioner by way of filing the present petition has challenged order dated 29.11.2013, vide which, period of suspension from 19.11.2007 to 12.12.2007 and 13.12.2007 to 9.1.2008 has been treated as 'no work no pay' period by considering it as no duty period.

Learned counsel for the petitioner contends that the petitioner was falsely implicated in the case and ultimately was acquitted of the

charges by the trial Court and no appeal against acquittal was filed. The petitioner was neither granted any increment nor any other benefit like promotion during that period, whereas, juniors to him were promoted. Learned counsel further contends that the petitioner was implicated in the case at the instance of one Dhyan Singh, who was caught red handed but as he was acquitted by the trial Court, therefore, he is entitled for all the benefits. At the end, learned counsel for the petitioner submits that acquittal is for all intents and purposes as the trial Court has given a specific finding that the case was registered against the petitioner out of grudge on account of taking action against those persons who were involved in theft of electricity. Even the recovery of tainted notes was not proved from the petitioner. Learned counsel for the petitioner has also relied upon the Division Bench judgment of this Court in **Bhag Singh Vs. Punjab and Sind Bank** (P&H) (DB) 2006 (1) SCT 175 and also in case of **Smt. Poonam Rani Vs. Uttar Haryana Bijli Vitran Nigam Ltd.**, (P&H) 2008 (1) SCT 819. It is also the submission of learned counsel for the petitioner that the controversy in hand is squarely covered by the decision of this Court rendered in **Balkar Singh Vs. State of Punjab and others** C.W.P. No. 21586 of 2015 decided on 3.5.2016.

Learned counsel for respondents No.1 to 4 has opposed the submissions made by learned counsel for the petitioner but has not disputed the ratio of judgment of **Balkar Singh's case (supra)**.

Heard the arguments advanced by learned counsel for the parties and have also gone through the documents available on record.

The facts relating to lodging of FIR, facing of trial and ultimately being acquitted by the trial Court are not disputed. The issue is

as to whether the petitioner is entitled for grant of benefit of period of suspension by treating the same as duty period or not. The controversy in the present case is squarely covered by the judgment of **Balkar Singh's case (supra)** as in that case also, FIR was registered against the petitioner under Sections 7 and 13 (2) of the Prevention of Corruption Act, 1988 (for short 'the Act'). The petitioner in that case was convicted by the trial Court and against the said judgment of conviction, the petitioner preferred an appeal before this Court. During the pendency of appeal, the sentence of the petitioner was suspended and ultimately the appeal was allowed by this Court vide judgment dated 26.11.2013 and the judgment of trial Court was set aside. The petitioner in that case was taken back in service. Thereafter he filed the writ petition with regard to the dispute for treating period during which he remained out of service as on duty period. The writ petition was allowed and impugned order was quashed so also all adverse action giving rise to the cause of action. The respondents were directed to pass a fresh order in accordance with law in the light of judgment by treating the disputed periods as periods deemed to be spent on duty for all intents and purposes including right to consideration for promotion from the date his juniors were promoted to the higher ranks while the petitioner was facing trial. The relevant portion is reproduced as under:-

“Viewed in the aforesaid perspective the service rules of PSPCL in play deserve to be appreciated and I find from the pleaded argument of Mr. Hooda articulately reasoned in the petition to be the correct position in law when he asserts in paras.23 to 25: “23. That from above it is quite axiomatic that 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). A bare reading of the provision as contained in Rule 7.3 would make it clear that a Government employee who has been dismissed, removed, compulsorily retired or suspended, is reinstated upon having been fully exonerated, then he shall be given full pay and allowances to which he would have been entitled to had he not been dismissed, removed, compulsorily retired or suspended as the case may be. In other words, the above quoted rule clearly specifies that a dismissed employee when reinstated upon exoneration is entitled to be granted full pay and allowances to which he would have been otherwise entitled to had he not

been dismissed from service. Whereas, 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... "That now, it becomes 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 specific Rule will always take 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. In other words, 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... "That in other words, 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) or 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 purpose.”

13. To further his case towards relief claimed Mr. Hooda relies on *Brahma Chandra Gupta v. Union of India*; 1984 (2) SCC 433 which can usefully be referred to in its paragraph relevant to the present context, to quote:

“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 fully 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. We accordingly allow this appeal, set aside the judgment of first appellate Court as well of the High Court and restore the one of trial Court with this modification that the amount decreed shall be paid with 9% interest p.a. from the date of suit till realisation with costs throughout.”

In view of the facts as discussed above and the reasons mentioned in **Balkar Singh's case (supra)**, the present petition is allowed and impugned order dated 29.11.2013 is hereby quashed. The respondents are directed to pass a fresh order in accordance with law in the light of judgment of **Balkar Singh's (supra)** by treating the disputed periods as periods deemed to be spent on duty for all intents and purposes including

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right to consideration for promotion from the date his juniors have been promoted. The necessary exercise be done within a period of two months from the date of receipt of copy of the order.

December 14, 2016
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No