

CWP No. 25873 of 2014 (O/M)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 25873 of 2014 (O/M)

Date of decision : 27.10.2016

Amarjit Singh

..... Petitioner (s)

Versus

State of Punjab and others

..... Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Prateek Pandit, Advocate, for the petitioner.

Mr. P.S. Ghuman, Additional A.G. Punjab.

Mr. Rajeev Malhotra, Advocate, for respondents No. 2 to 6.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH, J.

The petitioner has moved this Court under Articles 226 and 227 of the Constitution of India, seeking writ in the nature of certiorari for quashing the order dated 28.10.2011 (Annexure-P-6), whereby the service period of the petitioner from 1.6.2005 to 18.1.2011 has been treated as without pay, but considered as duty period for other benefits (increments and pensionary benefits). The suspension period from 15.5.2002 to 30.7.2002 has been treated as leave of the kind due. The petitioner also seeks quashing of the order dated 15.6.2012 (Annexure-P-8), whereby the departmental appeal against the said order has been dismissed.

The brief facts of the case are that the petitioner was working as

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Assistant Revenue Accountant with Punjab State Power Corporation Limited. FIR No. 32 dated 15.5.2002 under Section 7 read with Section 13 (2) of the Prevention of Corruption Act, 1988, was registered against the petitioner by the Vigilance Bureau, Jalandhar. The petitioner was accordingly arrested and placed under suspension. He remained under suspension from 15.5.2002 to 30.7.2002 and thereafter reinstated in service during the pendency of the trial. The trial ultimately resulted in the conviction of the petitioner by the learned Special Judge, Kapurthala, vide judgment of conviction and order of sentence dated 22.5.2004. He was sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs. 2,000/- under Section 13 (2) of the Prevention of Corruption Act, 1988. He was also sentenced to undergo rigorous imprisonment for four years and to pay a fine of Rs. 2,000/- under Section 7 of the Prevention of Corruption Act, 1988. On account of conviction of the petitioner, his services were terminated with effect from 22.5.2004, vide order dated 31.5.2005 (Annexure-P-1). The criminal appeal (CRA-1265-SB-2004) filed by the petitioner against his conviction and sentence was dismissed by this Court on 21.2.2006. The petitioner further preferred Criminal Appeal No. 1150 of 2006 before the Hon'ble Supreme Court of India, which vide order dated 18.1.2011 (Annexure-P-2), granted benefit of doubt to him and acquitted him of the charges. Accordingly, the petitioner was reinstated in service, vide order dated 18.4.2011 (Annexure-P-3). Thereafter, the petitioner represented to the respondent authority that the period of dismissal, period of suspension and non duty period be regularized and the pay and service benefits for the abovesaid period be released to him. Vide the impugned order dated 28.10.2011 (Annexure-P-6), the period during

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which he remained dismissed from service i.e. from 1.6.2005 to 18.1.2011 has been treated as without pay, but treated as duty period for other benefits like increments and pensionary benefits. The suspension period from 15.5.2002 to 30.7.2002 has been treated as leave of the kind due and the period from 22.5.2004 to 31.5.2004 has been treated as non duty period. The departmental appeal filed by the petitioner has been dismissed.

The petitioner claims that the period, during which he remained dismissed from service and suspension period should be treated as period spent on duty. Accordingly, he should be given all the pay and service benefits alongwith pensionary benefits.

In the reply, the respondents have taken the stand that during the period he remained under dismissal, he did not perform any service with the board/corporation. Therefore, it cannot be treated as duty period. However, it has been treated as duty period for the purpose of increments and pensionary benefits. The suspension period has already been treated as leave of the kind due as during this period, the petitioner had remained in judicial custody. The further period during which he remained in jail from 22.5.2004 to 31.5.2005, on account of dismissal of his appeal, has been treated as non duty period. The period from 19.1.2011 to 19.4.2011 has been treated as duty period. It was further pleaded that the petitioner was not fully exonerated. The reliance has been placed upon Regulation 7.3 of the Main Service Regulation, 1972, Volume-1, Part-1 and it was stated that the petitioner is not entitled to full pay and allowances as he was not fully exonerated and his acquittal is merely on account of benefit of doubt. The reliance has been placed on the case laws, which need not to be reproduced here.

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I have heard the learned counsels for the parties and have also carefully gone through the file.

The factual position is not disputed. In the petition, the petitioner is seeking only benefit of two periods i.e. during the period he remained dismissed from service i.e. from 1.6.2005 to 18.1.2011 and the period during which he remained under suspension from 15.5.2002 to 30.7.2002.

I am of the view that from 15.5.2002 to 30.7.2002, the petitioner on account of his arrest by the police remained in police custody and then in judicial custody. By any stretch of imagination, the said period cannot be treated as duty period. Thus, it was rightly treated as leave of the kind due.

Now, the main dispute is regarding the period from 1.6.2005 to 18.1.2011, during which the petitioner remained dismissed from service and did not perform his duties. This is the period when he was convicted and sentenced by the trial Court, was sent to jail and ultimately, he was acquitted by the Hon'ble Supreme Court of India, vide order dated 18.1.2011, passed in Criminal Appeal No. 1150 of 2006.

In order to appreciate the contention of the learned counsel for respondents No. 2 to 6, the order passed by the Apex Court dated 18.1.2011 is reproduced as under :-

“ This appeal has been filed against the impugned judgment and order dated 21.2.2006 in RLA No. 1265 of 2004 of the High Court of Punjab and Haryana at Chandigarh.

The facts of the case have been set out in the judgment of the High Court and hence we are not repeating the same here.

On the facts of the case, we are of the opinion that the appellant is entitled to benefit of doubt. Hence, we allow the

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appeal and acquit the appellant set aside the judgment of the High Court and trial Court.”

Now, the undisputed facts are that the petitioner was convicted and sentenced by the trial Court and ultimately acquitted by the Apex Court, by giving him benefit of doubt. During this period, the petitioner remained dismissed for service and did not perform any duties. The judgment of the lower Court placed on file shows that the petitioner was caught red handed for allegedly accepting the bribe. The learned counsel for respondents No. 2 to 6 has argued that the petitioner himself was involved in the crime by demanding the bribe and he was arrested by the police red handed. Though, ultimately he was given benefit of doubt by the Apex Court, but the department is not at fault, nor the department is responsible for his arrest. He was found guilty by the learned Special Judge, Kapurthala, as well as by this Court. Since the petitioner did not perform his duties and his acquittal was not honorable, therefore, the petitioner is not entitled to the wages and consequential benefits during the period he remained dismissed from service.

On the other hand, the learned counsel for the petitioner has argued that it was not fault of the petitioner. The department granted sanction for his prosecution. Once, the petitioner is found to be not guilty, he is entitled to full wages and consequential benefits.

The learned counsels for both the parties have relied upon various authorities of the Apex Court to support their contentions.

The learned counsel for the petitioner has relied upon the Division Bench judgment of this Court in Shashi Kumar Versus Uttri Haryana Bijli Vitran Nigam and another, 2005 (1) SCT 576, involving the same institution, wherein it was held that where the removal from service

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was only on the basis of conviction without considering any other material or circumstances and the employee is acquitted whether honorably or giving benefit of doubt, he is entitled to full back wages on acquittal. The same views were reiterated by another Division Bench of this Court in Harpal Singh Versus Haryana Vidyut Prasaran Nigam Limited through its Managing Director, Panchkula and another, 2008 (1) SCT 733. Subsequently, a Single Bench of this Court in Jaswinder Kaur Versus Punjab State Power Corporation Limited and others, 2016 (2) SCT 218 also taken the view that in such circumstances, the petitioner is entitled to full salary and allowances for the time being he remained out of service. The matter was also considered recently by this Court in Vinod Kumar Versus State of Punjab and others, (CWP No. 7674-2014, decided on 5.8.2016), where in a similar case of arrest and conviction under the Prevention of Corruption Act and subsequent acquittal, this Court took the view that the employee is entitled to full salary and other consequential benefits.

On the other hand, the learned counsel for respondents No. 2 to 6 has relied upon the judgment of the Hon'ble Supreme Court of India in Mehar Singh Versus Commissioner of Police, New Delhi and another, (2013) 7 Supreme Court Cases 685. The said case was regarding appointment where a person was disqualified on account of a criminal case. This is not so in the present case. Here, the employee was working and was dismissed from service on account of conviction in a criminal case. The learned counsel for respondents No. 2 to 6 has also relied upon the judgment of the Supreme Court of India in State of Assam and another Versus Raghava Rajgopalachari, 1972 SLR 915, wherein the Apex Court

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took the view that where a Government servant has not been fully exonerated, it is for the Government to decide about the proportion of pay and allowances to be paid. The respondents have also relied upon the judgment of the Apex Court in Deputy Inspector General of Police and another Versus S. Samuthiram, (2013) 1 Supreme Court Cases 598. The said case is on different footing. In the said case, the effect of acquittal in the criminal case on a departmental inquiry was considered and it was held that there are different standards of proofs applicable in criminal proceedings and departmental proceedings.

The abovenoted discussion makes it clear that if an employee is dismissed from service only on account of his conviction in a criminal case and the said conviction is set aside, may be by granting him the benefit of doubt, the employee is entitled to be reinstated in service with full back wages. Consequently, in the present case, the period from 1.6.2005 to 18.1.2011, during which the petitioner remained dismissed from service, is to be treated as duty period and the petitioner is entitled to full back wages for the said period alongwith consequential benefits. The suspension period has already been treated as leave of the kind due and there is no ground to interfere with the same.

As a result of the foregoing discussion, the present writ petition is partly allowed. The impugned order dated 28.10.2011 (Annexure-P-6), vide which the service period of the petitioner from 1.6.2005 to 18.1.2011, during which the petitioner remained dismissed from service on account of conviction in a criminal case, was treated as without pay, but considered as duty period for other benefits (increments and pensionary benefits), is hereby quashed and it is held that the petitioner is entitled to full back

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wages for the said period. The remaining part, whereby the suspension period from 15.5.2002 to 30.7.2002, was treated as leave of the kind due, is maintained. In these circumstances, no interest on arrears is to be paid.

The present writ petition is allowed to the abovenoted extent.

(KULDIP SINGH)
JUDGE

27.10.2016
sjks

Whether speaking / reasoned : Yes

Whether Reportable : Yes