

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

Date of decision: 04.03.2016

CWP No.26185 of 2014

Ramesh Kumar

...Petitioner

Vs.

Punjab School Education Board

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Ms. Ekta Thakur, Advocate, for the petitioner.

Ms. Nidhi, Advocate, for

Mr. S.S.Behl, Advocate, for the respondent.

1. To be referred to the Reporters or not? **Yes.**

2. Whether the judgment should be reported in the Digest? **Yes.**

RAJIV NARAIN RAINA, J. (ORAL)

1. The petitioner was a Sweeper working in the Punjab School Education Board (for short 'the Board'). FIR No.181 dated 20th May, 2001 was registered in Police Station Sector 11, Chandigarh, against him and other co-accused inter alia under Section 302 IPC. He was taken into police custody and judicial custody and faced criminal trial. The Board suspended him from service on account of registration of FIR and arrest. As per rules of the Board, the petitioner was entitled to subsistence allowance. His application was allowed on 9th December, 2002 and he remained on subsistence allowance till his conviction. He was convicted by the court of the learned Additional Sessions Judge, Chandigarh vide judgment of conviction dated 14th July, 2006 and sentenced to life imprisonment and to pay a fine of Rs.2000/- vide order of sentence dated 15th July, 2006. The subsistence allowance was stopped on 5th

April, 2007 on learning of his conviction and sentence. In view of the pending criminal proceedings, the Board dismissed the petitioner from service on 6th September, 2007.

2. The petitioner appealed against his conviction to this Court in CRA No.533-DB of 2006. His appeal was accepted on 14th November, 2013. He was acquitted of the charges framed against him. The order has attained finality. Armed with his acquittal, the petitioner approached the Board for reinstatement and consequential benefits. His requests and representations found no response from the Board, which ultimately led him to prefer this writ petition claiming reinstatement, back-wages and arrears of difference between pay and subsistence allowance for the period it was disbursed. The dismissal was conviction based and quite obviously not on the conduct which led to the conviction. Apparently so, since he had not committed any misconduct in the Board nor could the charge of murder ever constitute foundation of a departmental proceeding for misconduct. The reason became non-existent, when he was acquitted by this Court and found innocent of the charge of murder etc. When the solitary operating reason for dismissal ceases to exist, in a case of present kind, reinstatement should follow as a natural consequence as the sub-stratum of the penalty order stands obliterated. There may be cases where the right to reinstatement would not automatically follow such as when the criminal court acquits by giving the benefit of doubt and precedents on the point need not be discussed here since the acquittal was on failure of the prosecution to bring home the charge and was in every respect an honourable one.

3. However, reinstatement would not give an automatic right to back-wages since the Board was not at fault in dismissing the petitioner on the basis of conviction recorded by a criminal court. For the future it depended on

the final outcome of the appeal. The Board had no occasion to initiate departmental proceedings against the petitioner since the criminal charge had nothing to do with the employment. The rules of the Board provided for such action. If the petitioner embroiled himself in trouble which had nothing to do with Board as it was at fault, then the Board is not liable to pay salary for work not performed or earned. There is ample authority on the proposition of law in judicial precedents including the decisions of the Supreme Court in Ranchhodji Chaturji Thakore vs. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar (Gujarat), (1996) 11 SCC 603; Union of India vs. Jaipal Singh, (2004) 1 SCC 121; Banshi Dhar vs. State of Rajasthan, (2007) 1 SCC 324 and SBI vs. Mohd Abdul Rahim, (2013) 11 SCC 67.

4. The Board is also well within its rights to suspend its employee arrested on a criminal charge, as he would be deemed to be under suspension on account of disabling himself from perform his duties for which he is paid salary due to lawful custody. In the present case, subsistence allowance was paid from the date of suspension till the date of conviction and therefore no arrears of difference between pay and subsistence allowance accrue in his favour. However, the petitioner would have a right to reinstatement with effect from the date of acquittal irrespective of the date of reinstatement which may be in the future so long as a demand for reinstatement is made proximate to acquittal. This is because an employer is under no legal compulsion to invite the petitioner to accept reinstatement. It is request based exercise of discretion in employer.

5. The petitioner would also not be entitled to annual increments falling in the way [except notionally to continue seniority and bring pay at par with junior] from the date of arrest/suspension till conviction as the right is based on work performed on an annual basis. However, he would be entitled to

retain his original seniority from the date of joining since that has nothing to do with the episode which kept him out of service facing trial.

6. For the foregoing reasons, this writ petition is allowed. A writ of mandamus is issued to the Board to consider reinstating the petitioner in service keeping in view the observations made above. On reinstatement, the petitioner would be entitled to full salary and allowances from the date of acquittal in the criminal appeal or from the date the acquittal order was served on the Board by the petitioner and demand made as they were not expected to keep track of the trial. The right to reinstatement does not carry with it, by necessary implication, a right to back wages. In this way, the petitioner is held disentitled to back-wages from the date of suspension till the date of conviction or knowledge of the order of acquittal in the Board. He would also not have the right to carry home the difference between subsistence allowance paid and full salary which may have been payable for the relevant period till dismissal on principles of no-work-no-pay which is for the reason that back wages are being denied for the loss which may be caused to the Board and still further in view of the law down in Baldev Singh v. Union of India, (2005) 8 SCC 747 that the principle applies to such cases. However, the amounts which stand paid to him by way of subsistence allowance are declared non-recoverable. Parties are left to bear their own costs.

[RAJIV NARAIN RAINA]
JUDGE

04.03.2016
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