

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

**CWP No. 26740 of 2014
Date of Decision:- 30.11.2016**

Raj Kumar

....Petitioner

vs.

State of Punjab and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. S.S. Swaich, Advocate,
for the petitioner.

Mr. Avinit Avasthi, AAG, Punjab.

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 29.02.2012 (Annexure P-7) whereby claim of the petitioner for treating the period from the date of his dismissal from service to the date of reinstatement in service as duty period and to grant arrears of pay and other consequential benefits has been rejected. Thereafter, the appeal filed by the petitioner has also been rejected on the ground of delay. A further prayer has also been made for issuance of a writ in the nature of Mandamus directing respondents to release the arrears of pay and other consequential benefits for the period from 6.1.2000 to 16.10.2009 including increments, seniority, continuity in service along with interest.

Briefly, the facts of the case as made out in the present petition, are that the petitioner joined as Constable in Punjab Armed Police, 13th Battalion on 10.5.1993. FIR No. 154 dated 11.7.1998 was registered under Sections 302, 323, 148, 149 and 120-B IPC at Police Station Sadar Hoshiarpur. Petitioner was placed under suspension vide order dated 16.9.1998 and was reinstated on 30.11.1998. Thereafter, he was convicted by the trial Court vide its judgment dated 30.8.1999 and on account of conviction, the petitioner was dismissed from service vide order dated 6.1.2000. Aggrieved by the judgment of conviction passed by the trial Court, the petitioner filed an appeal which was allowed and he was acquitted of the charge, whereas, the appeal of his co-accused was dismissed. On acquittal by the appellate Court, the petitioner was reinstated in service vide order dated 16.10.2009 whereas his claim for grant of arrears of pay/full back wages/increments/continuity in service/seniority and other allowances during the period he remained dismissed from service w.e.f. 6.1.2000 to 16.10.2009 was rejected vide order dated 29.2.2012. The appeal filed against the aforesaid order dated 29.2.2012 before Inspector General of Police, PAP, Jalandhar Cantt was also dismissed on 20.4.2012 being time barred. Thereafter, the petitioner filed revision petition before Additional Director General of Police, PAP, Jalandhar Cantt which was also dismissed on 9.5.2014 and it was communicated to him vide letter dated 20/22.5.2014. The petitioner has challenged the impugned order dated 29.2.2012 (Annexure P-7) whereby his claim for treating the aforesaid period i.e. 6.1.2000 to 16.10.2009 as duty period along with all consequential benefits was rejected. He has also challenged the orders

passed by the Appellate Authority as well as the Revisional Authority by raising various arguments.

Learned counsel for the petitioner submits that the petitioner was falsely implicated in the case due to party faction in the village and subsequently he was acquitted by the appellate Court. A specific finding has also been recorded in the judgment by the Appellate Court that the petitioner was falsely implicated in the case. Hence, the petitioner is entitled for all benefits from the date of dismissal from service till the date of reinstatement. Learned counsel also submits that petitioner cannot be blamed as he was falsely been implicated in the case and is entitled to full back wages and other consequential benefits for the entire period from 6.1.2000 to 16.10.2009. He further submits that the impugned order has been passed in violation of provisions of Rule 7.3 of the Punjab Civil Service Rules Vol. I Part I Chapter VII (hereinafter referred to as 'the Service Rules'). In support of his contentions, learned counsel has also relied upon judgments rendered in cases **Jaipur Vidyut Vitran Nigam Ltd. & ors. vs. Nathu Ram**, 2010 (1) SCC 428, **Ishwar Singh vs. State of Haryana and others**, 2012(2) SCT 209, **Sucha Singh vs. State of Punjab and others**, 2014(2) RSJ 370 and **Dhani Ram vs. U.H.B.V.N. and another**, 2015 (2) RSJ 488.

Learned State counsel has opposed the submissions made by learned counsel for the petitioner. He submits that respondent-Department has no concern with the registration of case and on account of his conviction, the petitioner was dismissed from service in view of provisions of Rule 16.2(2) of Punjab Police Rules. Learned counsel further submits

that the petitioner is not entitled for any benefit for the aforesaid period in view of principle of 'no work no pay'. Learned State counsel also submits that case of the petitioner is not covered by the provisions of Rule 7.3 of the Service Rules, as this Rule is applicable to the cases where a government employee is dismissed as a result of departmental proceedings and reinstated as a result of appeal/revision or review as per Rules 16.28, 16.30 and 16.32 of the Punjab Police Rules. The petitioner was dismissed from service on 6.1.2000 and subsequently he was reinstated on 16.10.2009. The past conduct of the petitioner is also not good as he willfully remained absent from duty from 7.9.1994 to 9.9.1994 and from 6.11.1994 to 8.11.1994 which was treated as non-duty period. Learned State counsel has also relied upon the judgments of Hon'ble the Apex Court rendered in **State Bank of India and another vs. Mohammed Abdul Rahim**, 2013 (11) SCC 67, **Banshi Dhar vs. State of Rajasthan and another**, 2006 (4) SCT 780, **Baldev Singh vs. Union of India and others**, 2006(1) SCT 375, **Union of India and others vs. Jaipal Singh**, 2004(1) SCT 108, **Ranchhodji Chaturji Thakore vs. The Superintendent Engineer, Gujarat Electricity Board**, 1997(1) SCT 824 and a judgment of this Court rendered in CWP No. 3216 of 2016 titled as **Anup Singh @ Anoop Singh vs. State of Punjab and others**, decided on 17.02.2016 in support of his contentions.

Heard arguments of learned counsel for the petitioner as well as learned State counsel. I have also perused the impugned orders as well as other documents available on the file.

The facts relating to appointment as Constable, lodging of FIR,

suspension and dismissal from service and thereafter reinstatement are not disputed. The petitioner is claiming benefits for the period from the date of dismissal to the date of reinstatement i.e. from 6.1.2000 to 16.10.2009 by treating said period as duty period and continuity in service. As per case of the petitioner, he is entitled for consideration of the aforesaid period as duty period in view of provisions of Rule 7.3 of the Service Rules, whereas, the stand of respondent-State is that this provision is applicable to a government employee where he is dismissed from service as a result of departmental proceedings whereas provisions of Rule 16.28, 16.30 and 16.32 of Punjab Police Rules are applicable. Rule 7.3 of the Service Rules, Vol. I, Part I, Chapter VII is reproduced as under:-

7.3. (1) When a Government employee, who has been dismissed, removed or compulsorily retired, is reinstated as a result of appeal, revision or review, or would have been so reinstated but for his retirement on superannuation while under suspension or not, the authority competent to order re-instatement 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 including the period of suspension, preceding his dismissal, removal or compulsory retirement, as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Where the authority competent to order reinstatement is of opinion that the Government employee, who had been dismissed, removed or compulsorily retired, has been fully exonerated, the Government employee shall, subject to the provisions of sub-rule (6), be paid his full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended, prior to such dismissal, removal or compulsory retirement, as the case may be:

Provided that where such authority is of opinion that the termination of the proceedings instituted against the Government employee had been delayed due to reasons directly attributable to the Government employee it may, after giving him an opportunity to make representation and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government employee shall, subject to the provisions of sub-rule (7), be paid for the period of such delay only such amount (not being the whole) of pay and allowances, as it may determine.

(3) In a case falling under sub-rule (2), the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, shall be treated as a period spent on

duty for all purposes.

(4) In cases other than those covered by sub-rule (2) including cases where the order of dismissal, removal or compulsory retirement from service is set aside by the authority exercising powers of appeal, revision or review solely on the ground of noncompliance with the requirements of clause (2) of article 311 of the Constitution and no further inquiry is proposed to be held, the Government employee shall, subject to the provisions of sub-rules (6) and (7), be paid such amount (not being the whole) of pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the Government employee of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period as may be specified in the notice:

Provided that any payment under this sub-rule to a Government employee other than a Government employee who is governed by the provisions of the payment of Wages Act, 1936 (Act 4 of 1936) shall be restricted to a period of three years immediately

preceding the date on which order for re-instatement of such Government employee are passed by the authority exercising the powers of appeal, revision or review, or immediately preceding the date of retirement on superannuation of such Government employee, as the case may be.

(5) In a case falling under sub-rule (4), the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specified purpose:

Provided that if the Government employee so desires such authority may direct that the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall be converted into leave of any kind due and admissible to the Government employee.

Note.—The order of the competent authority under the preceding proviso shall be absolute and no sanction of the higher authority shall be necessary for the grant of—

(a) extraordinary leave in excess of three months

in the case of a temporary Government employee; and

(b) leave of any kind due in excess of five years in the case of a permanent and quasi-permanent Government employee.

(6) The payment of allowances under sub-rule (2) or sub-rule (4) shall be subject to all other conditions under which such allowances are admissible.

(7) The amount determined under the proviso to sub-rule (2), or under sub-rule (4) shall not be less than the subsistence allowance and other allowances admissible under rule 7.2.

(8) Any payment made under this rule to a Government employee on his reinstatement, shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of removal, dismissal or compulsory retirement, as the case may be, and the date of reinstatement. Where the emoluments admissible under this rule are equal to or less than the amounts earned during the employment elsewhere nothing shall be paid to the Government employee.

Note 1.—This rule is absolute and unconditional and so the question of lien does not arise in the case of a Government employee who is dismissed from service and is reinstated on appeal, revision or review when the

period of unemployment between the date of dismissal and reinstatement is declared by the authority exercising the powers of appeal, revision or review as the period spent on duty.

Note 2.—Clause (b) of sub-rule (1) of this rule does not forbid the period spent under suspension being treated as leave, and it is open to the authority exercising the powers of appeal, revision or review to specify the proportion of pay and allowances to be paid as the leave salary which would be permissible, if the Government employee were on leave.

Administrative Instruction.—A permanent post vacated by the reason of dismissal, removal or compulsory retirement of a Government employee should not be filled substantively until the expiry of a period of one year from the date of such dismissal, removal or compulsory retirement. Where, on the expiry of the period of one year, the permanent post is filled and the original incumbent of the post is reinstated thereafter, he should be accommodated against any post which may be substantively vacant in the grade to which his previous substantive post belonged. If there is no such vacant post, he should be accommodated against a supernumerary post which should be created in that grade with proper sanction and with the stipulation that it would terminate

on the occurrence of the first substantive vacancy in that grade.

Note 3.—If no order is passed under sub-rule (5), directing that the period of absence be treated as duty for any specified purpose, the period of absence should be treated as 'non-duty'. In such event, the past service (i.e. service rendered before dismissal, removal, compulsory retirement) will not be forfeited.

Note 4.—There is no bar to the conversion of any portion of a period of suspension into extraordinary leave. In the case of persons who are not fully exonerated, the conversion of the period of suspension into leave with or without allowances has the effect of removing the stigma of suspension and all the adverse consequences flowing therefrom. The moment the period of suspension is converted into leave, it has the effect of vacating the order of suspension, and it will be deemed not to have been passed at all. Therefore, if it is found that the total amount of subsistence and compensatory allowances that an officer received during the period of suspension exceeds the amount of leave salary and allowances, the excess will have to be refunded and there is no escape from this conclusion.”

A perusal of aforesaid Rule would show that in case a

government employee who has been dismissed, removed or compulsorily retired, is reinstated as a result of appeal, revision or review, the competent Authority is to pass order of reinstatement by considering that period as duty period. Accordingly, the case of the petitioner is not covered under provisions of Rule 7.3 of the Service Rules as this Rule is applicable to the cases where a government employee is dismissed as a result of departmental proceedings and reinstated as a result of appeal, revision or review.

Rules 16.28, 16.30 and 16.32 of the Punjab Police Rules, 1934 are applicable as he was placed under suspension and thereafter was dismissed from service because of his conviction by the trial Court. Thereafter, he was reinstated in service by the same authority on his acquittal by the appellate Court vide order dated 16.10.2009 and not by the appellate or reviewing authority.

Rules 16.28, 16.30 and 16.32 of the Punjab Police Rules are reproduced as under:-

“16.28. Powers to review proceedings

(1) The Inspector-General, a Deputy Inspector-General, and a Superintendent of Police may call for the records of awards made by their subordinates and confirm, enhance, modify or annul the same, or make further investigation or direct such to be made before passing orders.

(2) If an award of dismissal is annulled, the officer annulling it shall state whether it is to be regarded as suspension followed by reinstatement, or not.

The order should also state whether service previous to dismissal should count for pension or not.

(3) In all cases in which officers propose to enhance an award they shall, before passing final orders, give the defaulter concerned an opportunity of showing cause, either personally or in writing, why his punishment should not be enhanced.

16.29 XXXX XXXX XXXX

16.30. Rules regarding appeals

(1) Every appeal to the Deputy Inspector-General or Inspector-General shall be in English. It shall set forth the grounds of appeal, and shall be accompanied by a copy of the order made in the case.

(2) An appeal which is not filed within a month of the date of the original order, exclusive of the time taken to obtain a copy of the order or record, shall be barred by limitation. The appellate authority may, however accept an appeal filed out of time, if he sees fit to do so.

16.31 XXXX XXXX XXXX

16.32. Revision.

An officer whose appeal has been rejected is prohibited from applying for a fresh scrutiny of the

evidence. Such officer may, however, apply, within a month of the date of dispatch of appellate orders to him, to the authority next above the prescribed appellate authority for revision on grounds of material irregularity in the proceedings or on production of fresh evidence, and may submit to the same authority a plea for mercy: provided that no application for the revision of an order by the Inspector-General will be entertained. An officer whose appeal has been heard by the Inspector General may however, submit to the Inspector-General a plea mercy or may apply to the Inspector-General for a review of his appellate order only on the ground that fresh evidence has become available since the appellate order has been pronounced. This rule does not affect the provisions of rule 16.28. Such application or plea must be in English.”

In the present case, the petitioner was placed under suspension and thereafter dismissed from service only because of lodging of FIR. He was convicted by the trial Court but he was acquitted of the charge by the appellate Court. In a case, where the trial takes place against a police official on a complaint made by a private person, the State government cannot be taken as an initiator of the criminal action. No fault can be found with the police department in suspending the petitioner following police as

well as judicial remand. It is because of the involvement of the petitioner in commission of an offence. It is also not disputed that no departmental proceedings were initiated and only because of lodging of criminal case and conviction by trial Court, he was suspended and ultimately he was dismissed. On acquittal by the appellate Court, he was reinstated by the respondent-Department. The issue is for payment of salary for the period of suspension depends on the fact as to who was the initiator of the cause of action. In the present case, FIR was lodged at the instance of complainant. The respondent-department cannot be blamed for putting the police official under suspension on a criminal charge. The same issue was there before Hon'ble the Apex Court in judgments rendered in **Ranchhodji Chaturji Thakore's case**, **Jaipal Singh's case**, **Baldev Singh's case**, and **Banshi Dhar's case** (supra).

In **Mohammed Abdul Rahim's case (supra)**, Hon'ble the Apex Court dealt with a bank employee's case who faced criminal proceedings initiated for an offence under Section 498-A IPC read with Section 4 of the Dowry Prohibition Act, 1961 which resulted in conviction. The employer was not responsible for the conviction and, therefore, the employee was held not to be entitled for payment of back-wages. There is a clear cut demarcation between two sets of cases i.e. one initiated by the employer and the other initiated by a private person against the government employee.

In the present case, the respondents-police department was not instrument for initiating criminal proceedings as FIR was registered at the instance of private person. The State is the investigator of crime and not

the party. The order of suspension was passed and thereafter the petitioner was dismissed on conviction and thereafter on acquittal from appellate Court he was reinstated in service. The charge was not connected with performance of duty. The same issue was dealt with in judgment of **Anoop Singh's case** (supra) as the petitioner was Constable and was placed under suspension due to lodging of FIR under Section 7 read with Section 13(2) of the Prevention of Corruption Act, 1988 which resulted into conviction. It was held in that case that the employer was not responsible for the conviction and as such he was not held responsible for payment of back-wages. It was also held that petitioner in that case has no fundamental right to claim the arrears for the period, he remained out of service even in case the period is treated as qualifying service for pension and other purposes. Said petition was dismissed by this Court on 17.2.2016.

In **Mohd. Abdul Rahim's case** (supra), the respondent-Department reinstated the employee without back wages. It was held that since provisions of Banking Regulation Act, 1949 impose a clear bar on a banking company from employing or continuing to employ a person who has been convicted by a criminal Court of an offence of moral turpitude, he would not be entitled for payment of salary during that period. His subsequent acquittal does not operate to retrospectively wipe out the legal consequences of the conviction under the Act. He was held entitled for wages demanded by him till date of reinstatement.

In the present case also, the petitioner is not entitled for wages during the period he was placed under suspension or he was dismissed from service. He is held entitled for wages from the date of submission of

application after acquittal by the Appellate Court till he was reinstated.

Accordingly, the present petition is partly allowed and the petitioner is held entitled to the salary for the period he made request to respondent-Department till he was allowed to join duty on reinstatement in case the same has not been paid.

November 30, 2016
poonam

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes