

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

* * * * *

CWP No. 2918 of 2014 (O&M)

Date of decision : January 18, 2016

* * * * *

Ram Anjore

.....Petitioner

Versus

Uttari Haryana Bijli Vitran Nigam Limited
through its Managing Director, Panchkula
and others

.....Respondents

* * * * *

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

* * * * *

Present: Mr. Shrey Goel, Advocate for the petitioner.

Mr. Pardeep Singh Poonia, Advocate for the respondents.

* * * * *

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

RITU BAHRI, J

C.M No. 10561 of 2015

Prayer made in the application for fixing of the case for some actual date for final hearing is accepted.

Writ petition is taken up for final disposal today itself.

CWP No. 2918 of 2014

The petitioner has filed the present writ petition for issuance of a writ in the nature of certiorari for quashing of impugned order dated 19.9.2012 (Annexure P-3) and further issue a writ in the nature of mandamus directing the respondent authorities to treat the

suspension/dismissal period from 20.05.2002 to 28.10.2010 as duty period for all intents and purposes.

The petitioner was working as ALM with the respondent-authorities. An FIR No.14 dated 20.5.2002 was lodged against the petitioner, Ram Anjur and one Ramesh Kumar Gulati under Sections 7/13 of Prevention of Corruption Act at Police Station, Vigilance Bureau, Ambala on a complaint made by one Dalip Singh. The State Vigilance Bureau filed a challan before the competent Court of Law at Ambala and thereafter the trial was conducted against the petitioner and Ramesh Kumar Gulati. Court of Special Judge, Ambala vide its judgment dated 21.8.2007/order of sentence dated 22.8.2007 found the petitioner and Ramesh Kumar Gulati guilty of offence under Section 7/13 of Prevention of Corruption Act, 1988 and convicted and sentenced the accused to undergo rigorous imprisonment for one year and to pay a fine of Rs.200/- each. The petitioner filed Criminal Appeal No. 1851-SB of 2007. Appeal was allowed vide order of this Court dated 14.5.2010 (Annexure P-1) and the petitioner was acquitted of the charges framed against him.

After lodging of the FIR, respondent-authorities suspended the petitioner on 20.5.2002. The services of the petitioner were terminated on 7.9.2007 after the petitioner was convicted by the Special Court, Ambala. The petitioner was reinstated on 28.10.2010 in view of the judgment of this Court dated 14.5.2010 (Annexure P-1).

The petitioner thereafter submitted a representation in

the month of November 2010 and stated that his suspension/termination period from 20.5.2002 to 28.10.2010 be regularized and the same be treated as duty period and consequentially all benefits be released. It was further submitted in the representation that the respondent-authorities have already treated the suspension period as duty period in the case of Ramesh Kumar Gulati. The petitioner submitted another representation dated 20.3.2012 (Annexure P-2). Vide order dated 19.9.2012 (Annexure P-3) the suspension /dismissal period w.e.f 20.5.2005 to 28.10.2010 was treated as leave of kind due. The petitioner has referred to the order dated 13.3.2012 (Annexure P-4) passed by the authorities in the case of Ramesh Kumar Gulati, Junior Engineer who was facing a trial in the above stated FIR along with the petitioner. Ramesh Kumar Gulati had also been acquitted of the charges framed against him by this Court by giving him a benefit of doubt. His suspension period dated 20.5.2002 to 30.5.2005 was regularized as leave of the kind due and further on a review appeal, he was held entitled for full pay and allowances for suspension period and the suspension period from 20.5.2002 to 30.5.2005 was considered as duty period.

On notice, a written statement was filed by the respondents. The prayer of the petitioner for treating the suspension period as duty period has been denied on the ground that during this period he did not work. However, with regard to the order passed in favour of Ramesh Kumar Gulati (Annexure P-4), it has been stated that that order was passed in a different set of facts.

The case of the petitioner is not different from the case of Ramesh Kumar Gulati. He was facing criminal trial in the same FIR as the petitioner. It would be appropriate to examine in the first instance the scheme of Rules governing the issue in question. Relevant extract of Rules 7.2 to 7.5 of the Punjab Civil Service Rules, Volume I as applicable to the State of Haryana reads as under:

***ALLOWANCES DURING PERIOD OF
SUSPENSION***

7.2 (1) A Government employee under suspension shall be entitled to the following payments, namely:

(i) xx xxx xxx

(ii) In the case of any other Govt. employee-

(iii) A subsistence allowance at an amount equal to the leave salary which the Government employee would have drawn if he had been on leave on half-pay, and in addition dearness allowance, if admissible, on the basis of such leave salary:

Provided that where the period of suspension exceeds six months, the authority which made or is deemed to have made the order of suspension shall be competent to vary the amount of subsistence allowance for any

period subsequent to the period of the first six months as follows:-

(i) the amount of subsistence allowance may be increased by a suitable amount not exceeding 50 per cent of the subsistence allowance admissible during the period of the first six months, if in the opinion of the said authority, the period of suspension has been prolonged for reasons to be recorded in writing, not directly attributable to the Government employee.

(ii) the amount of subsistence allowance may be reduced by a suitable amount, not exceeding 50 per cent of the subsistence allowance admissible during the period of the first six months, if in the opinion of the said authority, the period of suspension has been prolonged due to reasons to be recorded in writing, directly attributable to the Government employee.

(iii) The rate of dearness allowance will be based on the increased, or as the case may be, the decreased amount of subsistence allowance admissible under clauses (i) and (ii) above.

(b) Any other compensatory allowance admissible from time to time on the basis of pay of which the Government employee was in receipt on the date of suspension subject to the fulfillment of other conditions laid down for the drawl of such allowances.

(2) No payment under sub-rule (1) shall be made unless the Government employee furnishes a certificate, and the authority which made or is deemed to have made the order of suspension is satisfied that he is not engaged in any other employment, business, profession or vocation:

Provided that in the case of Government employee dismissed, removed or compulsorily retired from service, who suspension from the date of such dismissal or removal or compulsory retirement and who fails to produce such a certificate for any period or periods during which he is deemed to be placed or to continue to be under suspension, he shall be entitled to the subsistence allowance and other allowances equal to the amount by which his earnings during such period or periods as the case may be fall short

of the amount of subsistence allowance and other allowances that would otherwise be admissible to him are equal to or less than the amount earned by him nothing in this proviso shall apply to him.

ALLOWANCES ON REINSTATEMENT

7.3(1) When a Government employee, who has been dismissed, removed or compulsory retired or suspended, is reinstated or would have been reinstated but for his retirement on superannuation while under suspension the authority competent to order reinstatement 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, occasioned by suspension and/or dismissal, removal or compulsory retirement ending with his reinstatement on or the date of his retirement on superannuation 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 mentioned in sub rule (1) is of the opinion that the Government

employee has been fully exonerated or, in case of suspension, that it was wholly unjustified, the Government employee shall be given the full pay and allowances to which he would have been entitled, has he not been dismissed, removed or compulsorily retired or suspended as the case may be :

(3) In other cases, the Govt. employee shall be given such proportion of such pay and allowances as such competent authority may prescribe: Provided that the payment of allowances under sub-rule (2) or sub-rule (3) shall be subject to all other conditions under which such allowances are admissible.

Provided further that such proportion of such pay and allowances shall not be less than the subsistence and other allowances admissible under rule 7.2.

(4) In case falling under sub-rule (2), the period of absence from duty shall not be treated as a period spent on duty for all purposes.

(5) In a case falling under sub-rule (3) the period of absence from duty shall not be

treated as a period spent on duty unless such 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 shall be converted into leave of any kind due and admissible to the Government employee.

***SUSPENSION DURING PENDENCY OF
CRIMINAL PROCEEDINGS, OR
PROCEEDINGS FOR ARREST FOR DEBT,
OR DURING DETENTION UNDER A LAW
PROVIDING FOR PREVENTIVE
DETENTION***

7.5. An employee of Government against whom proceeding have been taken either for his arrest or debt or on a criminal charge or who is detained under any law providing for preventive detention should be considered as under suspension for any periods during which he is detained in custody or is undergoing imprisonment, and not allowed to draw any pay and allowances (other than any

subsistence allowance that may be granted in accordance with the principles laid down in Rule 7.2) for such periods until the final termination of the proceedings taken against him or until he is released from detention and allowed to rejoin duty, as the case may be. An adjustment of his allowances for such periods should thereafter be made according to the circumstances of the case, the full amount being given only in the event of the officer being acquitted of blame or (if the proceedings taken against him were for his arrest for debt), of it being proved that the officer's liability arose from circumstances beyond his control or the detention being held by the competent authority to be unjustified."

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). 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.

In **Brahma Chandra Gupta v. Union of India, 1984 AIR (SC) 380** the Hon'ble Supreme Court while examining a similar issue had observed as under:

“6.....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 full 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, were 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 this as the correct approach.....”

Even a Division Bench of this Court in the case of **Hukam Singh v. State of Haryana and another, 2001(2) SCT 696**, while considering the scope of Rule 7.5 of the Punjab Civil Service Rules had held as under:-

*“8. In our this view, we are supported by the judgment of this Court in the case of **Maha Singh v. State of Haryana and another, 1993 (8) Service Law Reporter 188: 1994 (1) SCT 154 (P&H)**. Same view was expressed by this Court in the case of **Lehna Singh v. The State of Haryana and others, 1993 (3) Recent Services Judgments 119: 1994(1) SCT 173 (P&H)**. Keeping in view the aforesaid, we have no hesitation in holding that the impugned order cannot be sustained. 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. The impugned order Annexure P-7 is accordingly quashed. The petitioner can thereafter be considered for any further promotion that may be due in accordance with the rules. No order as to costs.”

Such view has thereafter been noticed and followed by the Division Bench of this Court in **LPA No. 1660 of 2011** titled as '**Ishwar Singh vs. State of Haryana and others**' decided on 17.11.2011.

In the case of “**Surjit Singh vs. State of Haryana and another**” titled '**CWP No. 1326 of 2013**' wherein the petitioner who was serving on the post of Patwari under the Revenue Department, State of Haryana was placed under suspension on account of involvement in a criminal case under the Prevention of Corruption Act. He was reinstated back in service in consequence of the judgment of acquittal in the criminal case. The petitioner, however was held not entitled to the salary for the period he remained out of service. A Division Bench of this Court allowed the writ petition by observing that having been absolved of such allegations and charges, he would be vested with the right to full pay and salary for the period he remained out of service in the light of relevant statutory provisions i.e Rules 7.3 and 7.5 of the Punjab Civil Service Rules, Volume I as applicable to the State of Haryana. Hence the petitioner

was held entitled to full pay and allowances for the period that he had remained out of service on account of his conviction.

In the facts of the present case, the petitioner was involved in a criminal case, but this Court while examining the appeal preferred by the petitioner against an order of conviction, found that the charge against him was unjustified and accordingly acquitted him. The petitioner having been absolved of such allegations and charges he would be vested with the right to full pay and salary for the period he remained out of service by applying the ratio of aforenoticed judgments and in the light of the relevant statutory provisions i.e Rules 7.3 and 7.5 of the Punjab Civil Service Rules, Volume I as applicable to the State of Haryana.

Having regard to the aforesaid, I am of the considered view that the petition deserves to succeed. Consequently, the impugned order dated 19.9.2012 (Annexure P-3) is set aside and writ petition is allowed. The petitioner is held entitled to the full pay and allowances during the period he remained under suspension.

Ordered accordingly.

January 18, 2016
ritu

(**RITU BAHRI**)
JUDGE