

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP No. 3345 of 2014 (O&M)

Date of Decision: 08.08.2016.

Sultan Singh

--Petitioner

Versus

State of Haryana and others

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. S.K. Verma, Advocate for the petitioner.

Mr. Ravi Pratap Singh, A.A.G., Haryana.

TEJINDER SINGH DHINDSA.J

Petitioner, who was serving as Patwari in the office of District Town Planner, Jind was placed under suspension w.e.f. 8.8.2002 on account of involvement in a criminal case under the provisions of Prevention of Corruption Act, 1988. Allegations that had been leveled by the complainant Bansi Lal were that he contacted the petitioner for obtaining N.O.C regarding sale of his agricultural land measuring 5 kanals 13 marlas and for which a demand of illegal gratification of Rs.1,000/- had been raised. On the same very allegation departmental proceedings were also initiated against the petitioner vide charge sheet dated 26.8.2003 issued under Rule 7 of the Haryana Civil Service (Punishment & Appeal) Rules, 1987. The then District Town Planner, Kaithal was appointed as the Inquiry Officer on 2.9.2004. The departmental proceedings culminated in the furnishing of an inquiry report dated 20.5.2005 (Annexure P-1), wherein findings were returned that there was no evidence to prove the demand and acceptance of any amount by way of bribe and as such the petitioner was exonerated.

However, in the criminal prosecution petitioner was convicted vide

judgement dated 10.2.2005 passed by the Special Judge, Jind and sentenced to undergo R.I of 2 years and to pay a fine of Rs.5,000/-. Based on the judgement of conviction petitioner was dismissed from service vide order dated 29.8.2005.

The appeal preferred by the petitioner against the judgement of conviction was accepted by this Court vide judgement dated 17.8.2010 (Annexure P-2) and he was acquitted of the charges. As a consequence of the acquittal, an order dated 13.2.2011 (Annexure P-3) was passed by the Director General, Town & Country Planning, Haryana reinstating the petitioner in service but with immediate effect i.e. w.e.f. 13.2.2011 itself. A representation filed by the petitioner seeking all consequential benefits pertaining to the suspension period as also the period he remained out of service stands rejected vide memo dated 22.9.2011 (Annexure P-6).

It is against such brief factual backdrop that the instant petition was instituted in the year 2014 seeking the issuance of a Writ of Mandamus for directing the respondent authorities to release to the petitioner all the consequential benefits including arrears of salary for the period that he remained under suspension as also for the period of dismissal and up till his date of reinstatement.

Upon notice of motion having been issued a joint written statement on behalf of respondents no.1 to 3 has been filed and placed on record. The prayer of the petitioner has been opposed by taking a stand that the petitioner had remained out of service due to his involvement in a criminal case and for such conduct of the petitioner the department is not responsible and as such, he is not entitled to any benefit pertaining to the suspension period as also the period he remained out of service. Learned

State counsel in support of such stand has placed reliance upon the decisions of the Hon'ble Supreme Court in ***Union of India and others Vs. Jai Pal Singh, 2004 (1) S.C.T, 108*** and ***Ranchhodji Chaturji Thakore Vs. The Superintending Engineer, Gujrat Electricity Board, 1997 (1) S.C.T, 824.***

Learned counsel for the parties have been heard at length.

Factum of the petitioner having been dismissed from service based solely upon conviction, petitioner having been exonerated in the departmental proceedings initiated against him and he having been reinstated in service upon order of conviction having been set aside is not in dispute.

In the cases of ***Union of India and others Vs. Jai Pal Singh*** and ***Ranchhodji Chaturji Thakore Vs. The Superintending Engineer, Gujrat Electricity Board*** the Hon'ble Supreme Court had dealt with the issue of an employee earlier convicted but subsequently acquitted by the High Court in appeal and the effect of acquittal on back wages upon reinstatement in relation to the period the employee was out of service due to involvement in a criminal case. In the case of ***Union of India and others Vs. Jai Pal Singh (supra)*** it had been observed as under:-

“.....If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest or by department itself, perhaps different considerations may arise. On the other hand, if a citizen the employee or a public servant got involved in a criminal case and if after initial conviction by the trial Court, he gets acquittal on appeal subsequently, the department cannot in any manner be found fault with for having kept him out of service, since the law obliges, a person convicted of an offence to be so kept out and not to be retained in service. Consequently, the reasons given in the decision

relied upon, for the appellants are not only convincing but are in consonance with reasonableness as well. Though exception taken to that part of the order directing reinstatement cannot be sustained and the respondent has to be reinstated, in service, for the reason that the earlier discharge was on account of those criminal proceedings and conviction only, the appellants are well within their rights to deny back wages to the respondent for the period he was not in service. The appellants cannot be made liable to pay for the period for which they could not avail of the services of the respondent. The High Court, in our view, committed a grave error, in allowing back wages also, without advertent to all such relevant aspects and considerations. Consequently, the order of the High Court insofar as it directed payment of back wages are liable to be and is hereby set aside."

In the present case, however, during the course of arguments counsel has made a categorical submission at the bar that he would not be pressing the instant petition qua arrears of salary for the suspension period and the dismissal period. Counsel submits that during the pendency of the petition, the petitioner has retired upon attaining the age of superannuation. He confines the scope of the present petition only with regard to counting the suspension period as also the period from the date of dismissal till reinstatement to be treated as duty period for purposes of reckoning pensionary benefits.

In the considered view of this Court the petitioner is entitled to such limited relief.

Petitioner was placed under suspension w.e.f. 8.8.2002 and subsequently dismissed from service on 29.8.2005 only on account of his involvement in a criminal case and conviction by the Trial Court. It is by now well settled that an employee, who is dismissed from service solely

based on conviction, is entitled to be reinstated upon earning the acquittal in appeal. Reference in this regard may be made to two Division Bench judgements of this Court in *Shiv Kumar Goel Vs. State of Haryana, 2007 (1) S.C.T, 739* and *Chander Singh Dalal Vs. Haryana Dairy Development Cooperative Federation Limited, 2008 (3) R.S.J., 268*.

In the facts of the present case the appeal filed by the petitioner against the judgement of conviction having been accepted by this Court, he has been reinstated in service vide order dated 13.2.2011 but with immediate effect. His claim for treating the suspension and dismissal period as duty period has been declined vide impugned memo dated 22.9.2011 (Annexure P-6) on the following reasoning:-

“It is informed while attracting your attention towards order no.9,DP-2011/1301 dated 14.2.2011, passed by the Director General, Town and Country Planning Department that in the aforesaid orders it was cleared while reinstating you with immediate effect that you were initially found guilty. So, service benefit of that cannot be given to you and it is denied.”

The basis of denying to the petitioner the consequential benefits upon reinstatement and for the period of dismissal is reflected in the impugned order itself that the petitioner had **initially been found guilty**.

Such reasoning is on the face of it misconceived.

Undoubtedly, the petitioner had been convicted by the Trial Court vide judgement dated 10.2.2005. Appeal preferred by the petitioner has been accepted by this Court and a judgement of acquittal dated 17.8.2010 has been passed in his favour at Annexure P-2. The judgement of conviction has been set aside. In other words the taint of conviction has been wiped out by a judicial verdict. The petitioner having been reinstated

back in service, service benefits for the period in question cannot be denied by referring to a judgement of conviction that does not even exist. In any case the petitioner is not even claiming benefit of arrears of salary for the period that he did not work.

Under such circumstances, the order of reinstatement dated 13.2.2011 (Annexure P-3) has to necessarily relate back to the date of passing of the order of dismissal. It is directed that such period shall be counted as duty period.

Likewise, the petitioner had been placed under suspension w.e.f. 8.8.2002. At that point of time F.I.R had been registered against him and even charge sheet for imposition of major penalty had been served. In the departmental proceedings the petitioner has been fully exonerated vide inquiry report dated 20.5.2005 (Annexure P-1). Even in the criminal prosecution the petitioner has finally earned acquittal at the hands of this Court. There would be no justifiable basis for the department not to treat the period of suspension as duty period.

For the reasons recorded above, impugned order dated 22.9.2011 (Annexure P-6) is set aside. The order of reinstatement dated 13.2.2011 (Annexure P-3) is modified to the extent that reinstatement of the petitioner in service would relate back to the date of passing of the order of dismissal. The petitioner, however, would not be granted any arrears of salary for the period that he remained under suspension as also out of service on account of order of dismissal.

The revised pensionary benefits in pursuance to treating the suspension period and dismissal period as on duty be calculated and released to the petitioner within a period of three months from the date of receipt of a certified copy of this order.

Petition is allowed in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

08.08.2016

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Whether speaking/reasoned: Yes

Whether Reportable: Yes