

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.3216 of 2016

Date of Decision: 17.02.2016

Anup Singh @ Anoop Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. K.B.S. Mann, Advocate,
for the petitioner.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

1. The petitioner had served the Police Department as Constable and then Head Constable for 14 years when he faced a criminal trial in FIR No.87 dated June 16, 1994 registered at Police Station Sadar Muktsar under section 7 read with section 13 (2) of the Prevention of Corruption Act, 1988. He was convicted and sentenced to undergo imprisonment for one year by the Special Judge, Faridkot vide judgment passed in May 1999. Due to conviction in the criminal case the petitioner was dismissed from service on June 07, 1999. His appeal against conviction was accepted by this Court vide judgment and order dated July 16, 2010. On being declared innocent to the crime the petitioner moved a representation to the DIG Ferozepur Range, Ferozepur bringing to his notice that he had been acquitted of the charges levelled against him and he may be reinstated to service with consequential benefits. The matter was referred by the Senior Superintendent of Police, Faridkot in September 2011 to the

Director General of Police. The State Government asked for advice of the Advocate General, Punjab who forwarded recommendation that State should not file an appeal against the order of acquittal. Government decided to drop the filing of appeal vide decision dated February 22, 2012. The request of the petitioner led to passing of a detailed order dated August 23, 2012 recorded by the Senior Superintendent of Police, Faridkot being the disciplinary authority narrating the history of the case following the acquittal, recommending that the departmental inquiry pending against the petitioner should be consigned to the office record. The petitioner was reinstated to service on March 19, 2013 after approval from the Director General of Police, Punjab.

2. The SSP in his order dated August 23, 2012 held that the period of suspension from July 02, 1994 to July 11, 1996 would be included in qualifying service and the petitioner will be entitled to claim his due salary and allowances for the suspension period. The relief was not given to the petitioner in writing which led him to approach this Court in CWP No.2020 of 2013 claiming salary for the period of suspension. The writ petition was disposed of on January 31, 2013 with a direction to the Deputy Inspector General of Police, Ferozepur Range, Ferozepur to consider and decide the representation dated January 01, 2011 within a period of six weeks from receipt of the order. The decision taken would be conveyed to the petitioner forthwith.

3. These court directions have culminated in the impugned order dated March 19, 2013. The order reveals that the petitioner was suspended pending criminal trial by invoking rule 16.2 (2) of the Punjab Police Rules,

1934 (“PPR”). The petitioner has been held not entitled to benefit for the period of suspension by a single line order without assigning reason. It is this order which has been impugned in this petition as being cryptic, non-speaking and arbitrary inasmuch as no reason has been assigned for depriving the petitioner of salary for the period of suspension. Rule 16.2 (2) of the PPR deals with situation wherein an enrolled police officer convicted and sentenced to imprisonment on a criminal charge and mandates that he shall be dismissed that the rule leaves no discretion in the competent authority. The first proviso deals with exceptional cases involving manifestly extenuating circumstances for reasons to be recorded and with the prior approval of the next higher authority impose any punishment other than that of dismissal. The second proviso to rule 16.2 (2) deals with a situation where a conviction of a police officer is set aside in appeal or revision, then the officer empowered to appoint him shall review his case keeping in view the instructions issued by the Government in this behalf. The first proviso has no application in this case since common ground is that the petitioner has been reinstated following acquittal and the issue presently to be decided is confined to right to salary for the period of suspension.

4. In order to determine the issue the judgment of acquittal would be relevant in understanding the criminal case which was registered against the petitioner. It is clear from record that the Police Department did not initiate criminal action under the Prevention of Corruption Act against the petitioner. The criminal case was based on a private complaint of one Bachittar Singh but got his statement recorded before the DSP (HQ),

Muktsar to the effect that he is a Senior Vice President of Block Congress of Bhagsar. One Babu Ram resident of village Bhagsar indulges in sale of opium, poppy husk and intoxicant pills. Babu Ram inflicted injuries on his person and got himself medically examined that the injuries were caused by Bachittar Singh. This was a false report made against Bachittar Singh. This is how he met the petitioner who was then posted as Head Constable in the Police Station. He was told that Babu Ram had lodge a complaint against him for causing injuries and a case would be registered. The petitioner raised a demand of Rs.1500/- in order to help the complainant. The amount was paid. The petitioner promised Bachittar Singh that he would get him discharge in the case. This is how Bachittar Singh met DSP Jarnail Singh on June 16, 1994 who recorded his statement Ex.PA on the basis of which the case was registered and the trial commenced. The petitioner was arrested on June 17, 1994. The money was recovered on a disclosure statement on interrogation. The case was registered under section 323/324 of the Indian Penal Code on the complaint lodged by Babu Ram for causing injuries on his person. The petitioner was ultimately acquitted of the charge. The Court found material contradictions and improvements in the statement of Bachittar Singh and a son Sukhmander Singh. The statement of Sukhmander Singh and ASI Kashmir Singh were held to be in the nature of partisan witnesses. This would not be a case of trap. The Court held that the ingredients of demand and acceptance of bribe money was not present.

5. In a case where a trial takes place against a Police Officer on a complaint by a private person the State Government cannot be taken as an initiator of the criminal action. No fault can be found in the Police

Department in suspending the petitioner following police and judicial remand. If this is so then the petitioner by his own involvement in the commission of an offence even though ultimately the conviction was set aside, disabled himself from performing duty for which today he ask for salary for the suspension period.

6. Suspension from service on July 02, 1994 was a result of registration of FIR under the Prevention of Corruption Act. It continued till July 11, 1996 when the trial was in progress. The issue of back salary for the period of suspension depends on who the initiator of the cause of action is if Government initiated action which led to the criminal trial and the prosecution failed to establish guilt or in a case of conviction and sentence when the conviction is set aside by the Superior Court then Government must pay arrears of back salary as it was the one who launched the criminal proceedings suspended its employee which kept him away from performing duty. But if it is the other way round and an action is brought on a private complaint then Government cannot be blamed for putting Police Officer under suspension on a criminal charge founded on the Prevention of Corruption Act. The position has been explained by the Supreme Court in **Ranchhodji Chaturji Thakore v. Superintendent Engineer, Gujarat Electricity Board**, (1996) 11 SCC 603; **Union of India & others v. Jaipal Singh**, (2004) 1 SCC 121; **Baldev Singh v. Union of India & others**, (2005) 8 SCC 747 and **Banshi Dhar v. State of Rajasthan**, (2007) 1 SCC 324.

7. In **State Bank of India & another v. Mohammed Abdul Rahim**, (2013) 11 SCC 67 the Supreme Court dealt in a bank employees'

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 employer was held not to be responsible for payment of back wages. There is a clear demarcation between two sets of cases one initiated by the employer the other initiated by a private person against a Government servant.

8. In the present case, the Police Department was not responsible for setting the criminal law into motion. It is another matter that the incident happened in the case of a Police Officer with the Police Department being the Investigator of crime and the State being placed in the position of a prosecutor by virtue of a private complaint. If the suspension was ordered on the strength of rule where person faced trial on a charge of corruption the charge was not connected with performance of duty, it is beyond it.

9. Therefore, I see no reason to interfere with the impugned order even though it is cryptic and non-speaking but they work no injustice or prejudice and would rather uphold it in view of the clarity in law declared on the subject and demarcations drawn by the Supreme Court when rights mature and when not. The petitioner has no fundamental right to arrears of back salary for the period of suspension even if the period is to be treated as qualifying service for pension and other purposes etc.

10. Finding no merit in the petition, I would dismiss it.

(RAJIV NARAIN RAINA)
JUDGE

17.02.2016
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