

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

CWP No.4204 of 2015

Date of decision: 08.04.2016

Smt. Versa Rani

...Petitioner

versus

Haryana Power Generation Corporation Ltd. & another

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Naveen Daryal, Advocate,
for the petitioner.
Mr. Padamkant Dwivedi, Advocate, for the respondents.

RITU BAHRI, J.

Petitioner is seeking to quash the orders dated 06.08.2010 and 17.10.2013 (Annexures P-6 and P-8), whereby her suspension period from 19.07.2005 to 08.03.2007 has been treated as leave of the kind due and order dated 14.07.2014 (Annexure P-9), vide which, punishment has been reduced to stoppage of one annual increment without cumulative effect.

The petitioner was issued a charge-sheet under Punishment and Appeal Rules Regulation 7 of the HSEB Regulation, 1990 with the allegation that she had misbehaved with the Managing Director on 19.07.2005. After holding preliminary enquiry, she was dismissed from service vide order dated 20.07.2005. Thereafter, this order was set aside by a Division Bench of this Court vide order dated 03.02.2006 passed in CWP No.11621 of 2005 (Annexure P-2). The department was, however, granted liberty to proceed afresh in accordance with law. The petitioner was reinstated on 09.03.2007 (Annexure P-3). Thereafter, Shri R.C. Chugh was appointed as Enquiry officer on 27.02.2008. As per report of the Enquiry officer, charges against

the petitioner were not proved on account of inconsistency in the statements of witnesses of the department. Petitioner, thereafter, was issued a show cause notice dated 23.11.2009 (Annexure P-4), to which, she gave reply dated 09.02.2009 (Annexure P-5). Vide order dated 06.08.2010 (Annexure P-6), punishment of stoppage of one increment with cumulative effect was inflicted upon her and her ACR for the said period was downgraded.

A perusal of order (Annexure P-6) shows that the punishing authority had taken into consideration that an FIR had been got lodged against her at Police Station, Sector-6, Panchkula and the matter was sub-judice. She was a habitual absentee and had misbehaved with MD, HPGCL, Panchkula on 19.07.2005. The punishing authority did not agree with the report of the Enquiry Officer that the charge of misbehaviour was not proved. It referred to the statements made by Sh. S.K. Jolly, CE/Adm. (Retd.) and Sh.R.P. Bhatia, Senior P.S. (Retd.), whereby they had stated before the Enquiry officer that Sh. V.k. Goyal and Sh. J.C. Kinra were present in the chamber of MD, HPGCL at the time of incident. Both the officers confirmed that the petitioner had misbehaved with the then MD, HPGCL. After accepting the statements of aforesaid two witnesses, the petitioner was found guilty and punished accordingly. On appeal against the said order, punishment was reduced to stoppage of one increment without cumulative effect. While accepting appeal, it has been observed that the petitioner had tendered her apology for her omission and had requested to decide her appeal at an early date. The appeal was accepted vide order dated 14.07.2014 (Annexure P-9) and the punishment awarded to the petitioner was reduced to stoppage of one increment without cumulative effect. Apart from the above said order, another order was passed on 17.10.2013 (Annexure P-8) with

regard to suspension period from 19.07.2005 to 08.03.2007 as required under Rule 7.3 of Punjab Civil Service Rules, Vol-I, Part-I. Vide this order, she has been held entitled to draw subsistence allowance, but suspension period has been treated as 'leave of the kind due'.

Learned counsel for the petitioner has argued that after facing trial in FIR No.324 dated 19.07.2005, under Sections 332/353/186/504 IPC, she has been acquitted vide judgment dated 12.09.2013.

The petitioner was suspended on account of charge sheet served upon her under Regulation 7 of the HSEB Regulation, 1990. She was suspended on 19.07.2005 and was thereafter, reinstated on 08.03.2007. Even though, she has been acquitted in the criminal trial, but her suspension period has been treated as leave of the kind due vide order dated 17.10.2013 (Annexure P-8). A perusal of this order shows that she had not been suspended on account of registration of FIR, but she had been suspended on account of misbehaving with the Managing Director, HPGCL. Hence, acquittal in the FIR, would not give any right to the petitioner to treat this period from 19.07.2005 to 08.03.2007 as period spent on duty. The competent authority has passed the order dated 17.10.2013 (Annexure P-8) under Rule 7.3 of Punjab Civil Service Rules, Vol-I, Part-I. Relevant extract of this order is reproduced as under:-

- “1. That she will draw pay and allowances equal to the subsistence allowance as already drawn by her during her suspension for the period from 19.07.2005 to 08.03.2007.
2. That the leave of the kind due to the official shall be applicable for the suspension period from 19.07.2005 to 08.03.2007.

The petitioner had misbehaved with the M.D., HPGCL,

Panchkula on 19.07.2005 and a complaint was made by Mr. R.P. Bhatia, the

then Sr. P.S. to MD on the basis of which, FIR dated 19.07.2005 had been registered against the petitioner at Police Station, Sector-6, Panchkula. On account of registration of FIR, she has been suspended. Simultaneously, she has been issued charge sheet under Regulation 7.

The question for consideration would be, 'whether after acquittal in the criminal trial, her suspension period should be treated as 'leave of kind due' or not.

Reference can now be taken to a decision given by this Court in **Balwan Singh Vs. D.H.B.V.N. & others**, CWP No.8512 of 2015 (decided on 19.02.2016). In that case, after acquittal of the petitioner in a criminal case, the department had withdrawn his termination order, but did not release the consequential benefit. In the aforesaid judgment, by following the judgment passed by a Division Bench of this Court in **Hukam Singh, Lecturer in Hindu Government Sr. Sec. School, Indri Vs. State of Haryana and another**, 2001 (2) SCT 969 and another judgment in **General Manager, Operation Circle, DHBVNL, Narnaul and others Vs. Mathura Dass Gupta**, 2012 (4) SCT 7, the petitioner was held entitled to all the consequential benefits i.e. salary and other allowances. The employee was willing to work, but was kept away from work by the authorities for no fault of his. The employee had no reason to keep himself away for his own reasons.

The petitioner, in the present case, has been acquitted in the criminal case vide judgment dated 12.09.2013. Moreover, the Enquiry officer had exonerated the petitioner, but the punishing authority expressed its disagreement with the enquiry report. In these circumstances, after reinstatement, all the consequential benefits should have been granted to the petitioner. The aforesaid judgments are directly applicable to the facts of the

present case, where the petitioner was initially convicted, but later on, acquitted by this Court in appeal. Hence, he is entitled to all the consequential benefits and no departmental enquiry could be initiated against him on absolutely identical and same charges.

In view of the above, impugned orders dated 06.08.2010, 17.10.2013 and 14.07.2014 (Annexures P-6, P-8 & P-9) are set aside and suspension period of petitioner w.e.f. 19.07.2005 to 08.03.2007 is treated as period spent on duty. The petitioner is held entitled to salary and allowances for the said period along with all consequential benefits.

Allowed accordingly.

08.04.2016
ajp

(RITU BAHRI)
JUDGE