

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

CWP No. 724 of 2013

Date of decision : 01.04.2016

Jai Bhagwan

...Petitioner

versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ram Niwas Sharma, Advocate
for the petitioner.

Mr. Rajesh Gaur, Addl.A.G Haryana

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

RITU BAHRI , J.

Petitioner has filed the present petition seeking quashing of impugned orders dated 03.11.2009 (P-4) and 20.10.2011 (P-8) to the extent of denial of pay and allowances for the period w.e.f 23.04.2008 to 11.11.2009, as the petitioner was retired compulsorily on the basis of adverse remarks in the ACR for the period 17.06.2007 to 31.03.2008 and pendency of F.I.R No. 29 dated 04.08.2009 under Section 7/13 of Prevention of Corruption Act.

It is not disputed that the petitioner was appointed as

Constable on 23.04.1973 and was promoted from time to time. However, F.I.R No. 29 dated 04.06.2007 was registered against him under Section 7/13 of the Prevention of Corruption Act (for short 'the Act'). However, petitioner was acquitted in the criminal case by learned Special Judge vide judgment dated 13.01.2009 (P-1) wherein it was held that the prosecution has failed to prove its case beyond reasonable shadow of doubts. It was further held complainant and his family members remained involved in number of criminal cases in past and as such, the complaint was made with ulterior motive.

However before that, petitioner was prematurely retired from the services on 23.04.2008, as he was not granted extension to retain in service beyond the age of 55 years due to pendency of the above said case. A departmental regular enquiry was conducted against the petitioner and vide order dated 30.10.2008, S.S.P Karnal ordered to withhold the pension of the petitioner for three years (P-2).

Petitioner preferred an appeal against the above said order and Inspector General of Police, Rohtak Range vide order dated 20.03.2009 set aside the punishment order dated 30.10.2008 and petitioner was exonerated from the charges levelled against him, as the petitioner was also acquitted in criminal case.

Thereafter, petitioner made representation before the respondents to allow him extension period beyond the age of 55 years and Inspector General of Police, Rohtak Range allowed the petitioner extension vide order dated 03.11.2009 (P-3) and petitioner again joined his services on 12.11.2009. But due to pendency of the above said case against the petitioner, adverse remarks were made in the ACR for the period i.e 17.06.2007 to 31.03.2008. Petitioner made representation against adverse remarks, which were expunged vide office memo dated 13.08.2009 (P-4).

Thereafter, petitioner requested to give him salary for the period he remained out of job i.e 23.04.2008 to 11.11.2009 which was denied on the ground that I.G. Rohtak vide letter dated 03.11.2009 has denied the pay for the period petitioner remained out of service whereas IGP, Rohtak Range vide order dated 15.02.2011 approved the promotion of the petitioner to the rank of Offg. Sub Inspector (P-6).

However, on retirement petitioner has neither been allowed increment for the period 23.04.2008 to 28.02.2011 except on i.e July, 2010 whereas petitioner is entitled for annual increments for the period July, 2008, 2009 and 2010 and also salary for the period 23.04.2008 to 11.11.2009.

Learned counsel for the petitioner contends that once the petitioner has been acquitted of the charges framed against him, as per Rules 7.2, 7.3 and 7.5 of C.S.R Vol I Part I and the principle laid down by this Court as well as Hon'ble the Supreme Court in various judgments, the petitioner is entitled to salary and allowances with all consequential benefits like salary, promotion and ACP scale for the period he remained under suspension as well as for the period of dismissal.

In the written statement filed by the respondents, it has been admitted that the petitioner was compulsory retired from the service before attaining the age of superannuation, as F.I.R was registered against him and thereafter, on his acquittal, on the application given by the petitioner, he was reinstated but was not given increments w.e.f July, 2008, 2009 and 2010 and also salary for the period 23.04.2008 to 11.11.2009.

Heard learned counsel for the parties.

The point for consideration before this Court that whether the department can reject the claim of the petitioner on the ground of 'No Work No Pay'

Reference at this stage can be made to a judgment passed by this Court in a case of ***Shashi Kumar v. Uttar Haryana Bijli Vitran***

Nigam Ltd. and others, 2005 (1) S.C.T 576 who was dismissed from service on the basis of conviction. This Court held that if the removal from service was only on the basis of conviction without considering any other material or circumstances, the employee will be entitled to be reinstated with all consequential benefits and full back wages on acquittal by the appellate Court whether honourably or giving benefits of doubt the charge being not proved beyond reasonable doubt. Once the charge is not proved, the acquittal is always honourable for all purposes. This Court allowed the writ petition by relying upon a division bench judgment of this Court in a case of ***Hukam Singh, Lecturer in Hindu Government Sr. Sec. School Indri v. State of Haryana and anr, 2001(2) SCT 696 (P&H)*** whereby Rule 7.3 and 7.5 of Punjab Civil Service Rules were considered in detail. In para 7 of the judgment, it has been observed as under:-

“7.3 (1) When a Government employee, who has been dismissed, removed, compulsorily retired or suspended, is reinstated, or would have been reinstated but for his retirement on superannuation the authority competent to order the 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,

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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 be treated as a period spent on duty.

(2) Whether the authority mentioned in sub-rule (1) is of opinion that the Government employee has been fully exonerated or, in the 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, had he not been dismissed, removed, compulsorily retired or suspended, as the case may be."

Rule 7.5 of the Rules also assumes importance. In this connection, reference can well be made to Rule 7.5 of the Rules which deals with suspension during pendency of criminal proceedings and effect thereafter. It reads as under :-

"7.5 An employee of Government against whom proceeding have been taken either for his arrest for 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 period 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 principle laid down in rule 7.2) for such period 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 allowance 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 its 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."

It is abundantly clear that Rule 7.3 of the Rules is the general rule, while in case a person is acquitted, it is specific Rule 7.5 of the Rules that would be attracted. The law is well settled that special Rule will always taken precedence over the general rule and consequently it must follow that under Rule 7.5 of the Rules, referred to above, the petitioner was entitled to the full back wages because, as mentioned above, the earlier decisions referred to above have little application in the present case."

The terms honourable acquittal or fully exonerated came up for consideration before a Division Bench of Madras High Court in a case of ***Union of India vs. Jayaram, AIR 1960 Mad 325*** wherein it has been observed as under:-

"There is no conception like "honourable acquittal" in Criminal C.P. The onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is entitled to be acquitted.

Clause (b) of Article 193 of the Civil Service Regulations which says that when a Government servant who was under suspension is honourably acquitted, he may be given the full salary to which he would have been entitled if he had not been

suspended applies only to the case of departmental inquiry.

Where the servant was suspended because there was a criminal prosecution against him and he was acquitted therein, and reinstated he is entitled under the general law, to the full day during the period of his suspension. To such a case Article 193 (b) does not apply.”

The above said judgment of Madras High Court was considered and followed by this Court in cases of ***Jagmohan Lal vs. State of Punjab through Secy to Punjab government Irrigation and others, AIR 1967 (54) Punjab and Haryana 422 (Punjab) and Ramsinhji viraji Rathod, Parmanand Society v. State of Gujarat and anr, 1971 SLR 743***

The judgment of ***Shashi Kumar*** was challenged before the Supreme Court which was dismissed on 26.09.2013. However, with regard to the backwages, it has been observed that High Court was not justified in directing payment of full salary and allowances because the respondents had not been fully exonerated. Each one of them was given the benefit of doubt by the High Court or the trial Court. Thereafter, the High Court should have directed the competent authority to pass appropriate order in terms of Rules reproduced above. We may have adopted that course and directed the concerned authority to pass necessary order within a specified time frame, but

keeping in view the long lapse of time, we do not consider it proper to exercise the power of this court under Article 136 of the Constitution of India and interfere with order for payment of full backwages.

Reference at this stage can now be made to judgment of Hon'ble the Supreme Court in a case of ***Union of India v. K.V. Kankiraman AIR 1991 SC 2010*** wherein it has been held that normal rule of "No Work No Pay" is not applicable to cases where the employee is willing to work but kept away from work by authorities for no fault of his.

Similar view has been expressed by Hon'ble the Supreme Court in a case of ***Punjab National Bank vs. Virender Kumar Goel and others, RSJ 2004 (1) 701*** whereby Hon'ble the Apex Court rejected the plea of the Bank-management applying the principle of No Work No Pay and held that the applicants were out of their job for no fault of theirs.

This Court in ***Hukam Singh's case (supra)*** was dealing with a case where petitioner was convicted for the offences punishable under Sections 302/307/324/34 IPC. Subsequently, he was acquitted and was reinstated in service but intervening period was not treated as on duty and back wages were denied. This Court allowed the writ petition

in terms of Rule 7.5 and held the petitioner entitled to full salary and allowances for the period of suspension and dismissal.

Recently, this Court in a case of ***Gen Manager Operation Circle, DHBVNL, Narnaul and others vs. Mathura Dass Gupta, 2012 (4) S.C.T 7*** was considering a case of an employee who was acquitted of charges levelled against him by Appellate Court but he was denied salary and allowances on the ground of No Work No Pay. This Court held that it is not fair and the rule of No Work No Pay is not applicable to cases where employee although willing to work is kept away from work by the authorities for no fault of his. The relevant para reads as under:-

“3. The representation of the writ petitioner-respondent was decided by the competent authority vide order dated 7.7.2008 (P-5). The principle of ‘no work no pay’ was applied to deny him the back wages. The competent authority after due consideration of the pros and cons of the case has decided to withdraw the termination order dated 20.12.1996 subject to the condition that the writ petitioner-respondent would not be entitled to claim arrears of salary and allowances of the suspension as well as termination period except the subsistence

allowance already paid to him. The aforesaid order became subject matter of challenge before the learned Single Judge and the same has been set aside by holding as under:-

*“The petitioner was available for work but was denied the same. The termination was on the basis which is now not found justified and proper. Can principle of No Work, No Pay strictly apply in this case once the termination on the basis of his conviction, has subsequently been set aside? The petitioner cannot be made to suffer the consequences of his conviction. The principle of No Work No Pay may not appear to apply in this case. Reference in this regard can be made to observations made in the case of Union of India versus Union of India versus **K.V. Jankiraman etc., AIR 1991 Supreme Court 2010** . It is held in this case that when an employee is completely exonerated in criminal/disciplinary proceedings and is not visited with the penalty even of censure indicating thereby that he was not blameworthy in the least, he should not be deprived*

of any benefits including the salary of the promotional post. The normal rule of “no work no pay” is not applicable to such cases where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons.

It may have been a different matter, had the petitioner been convicted for an offence not connected with his office and he had got himself involved in something with which the department had no concern or responsibility. As observed in K.V. Jankiraman's K.V. Jankiraman case (supra), there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on accounts of non-availability of evidence due to the acts attributable to the employee etc. in such circumstances, the

concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such LPA No. 1580 of 2011 (O&M) 6 circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated in disciplinary/criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardize public interests. Therefore to deny the salary to an employee would not in all circumstances be illegal.

This is not a case where the salary is denied due to any of consideration as noticed by the Hon'ble Supreme Court. It is a case where the petitioner has been accused of offence which has a connection with

the service. Once the petitioner is acquitted of offence under the Prevention of Corruption Act, denying him salary, and allowances on the ground of No Work No Pay may not be fair. Even in terms of rule position, the denial of pay and allowances for the period under suspension could be ordered only after following the procedure prescribed under the rules, which apparently has not been done.

The writ petition is, accordingly, allowed. The petitioner is held entitled to pay and allowances for the period he has remained out of service and for the duration of his suspension period as well. The petitioner is also held entitled to costs, which are assessed as `10,000/-."

The LPA filed by the department was dismissed by upholding the above said opinion of Single Bench.

Similar issue came up for consideration before a Division Bench of this Court in a case of **Chander Singh Dalal vs. Hry. Diary Development Co-op Fed. Ltd, Chandigarh through its MD and others, 2008(3) S.C.T 33** whereby a criminal case was registered

against an employee and three others and in departmental inquiry he was found guilty by the Inquiry Officer and thus, he was removed from service. He filed an appeal against this order and he was taken back in service by reducing the punishment of removal from service to stoppage of three annual increments with cumulative effect vide order dated 12.10.1998. On judicial side, he was convicted along with his co-accused to undergo rigorous imprisonment for 03 years and the petitioner was removed from service, vide order dated 30.05.2003 and he filed an appeal against this order on the ground that his sentence had been suspended, vide order dated 19.04.2003. His appeal was dismissed being time barred. A writ was filed against the order of suspension, which was allowed on 17.05.2005 and direction was issued to the Appellate Authority to pass an order on the merits of controversy. The appellate Authority dismissed the appeal on 06.12.2005 and the order was conveyed to the petitioner. Thereafter, this Court in para 9 of the judgment, has observed as under:-

*“Similar view was taken by a Division Bench of this Court in the case reported as **Shashi Kumar vs. Uttri Haryana Bijli Vitran Nigam and another, 2005 (1) Service Cases Today 577.** The argument of the learned*

*counsel for the respondents that the acquittal of the petitioner is not honourable one because it has been recorded by the Additional Sessions Judge, Jhajjar, on account of certain technical flaws like non-mentioning of the articles in the Stock Register, entrustment of articles to the petitioner having not been proved etc., does not legally hold the field. In the case of **Shiv Kumar Goel v. State of Haryana and another, 2007 (1) Service Cases Today 739**, a Division Bench of this Court observed that if the Criminal Court recorded finding that there was no evidence to prove the charge of corruption against the employee, notwithstanding observations as to acquittal by benefit of doubt, it will be considered honourable acquittal. It has further been observed that his benefits of pay and allowances over and above subsistence allowance cannot be forfeited still observing him guilty of the same charges.”*

In the present case as well, the petitioner has been acquitted as the prosecution failed to prove beyond reasonable shadow of doubts.

In view of the settled law and in terms of Rule 7.5 of Punjab Civil Service Rules, orders dated 03.11.2009 (P-4) and 20.10.2011 (P-8)

are hereby set aside to the extent of denial of pay and allowances for the period w.e.f 23.04.2008 to 11.11.2009. Further respondents are directed to treat the period w.e.f 23.04.2008 to 11.11.2009 as duty period with all consequential benefits. The respondents are directed to calculate the amount @ 9%, in view of the judgment of Hon'ble the Supreme Court in cases of ***D.D. Tewari (D) through LRs vs. Uttar Haryana Bijli Vitran Nigam Ltd. and others, 2014 AIR (SC) 2861 and Megh Varan Sharma vs. State of U.P and others, 2015 (1) S.C.T (12).***

The petition stands allowed.

(RITU BAHRI)
JUDGE

01.04.2016

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