

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

**CWP No.7406 of 2014 (O&M)
Date of decision: 09.02.2016**

Sahib Singh

.....Petitioner

Versus

Uttar Haryana Bijli Vitran Nigam and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

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

Present: Mr. G.K. Chawla, Advocate,
for the petitioner.

Mr. Pardeep Singh Poonia, Advocate,
for the respondents.

Ritu Bahri, J.

The petitioner is seeking to quash the order dated 15.05.2003 (Annexure P-1) terminating his services consequent upon his conviction under Section 7 of the Prevention of Corruption Act by the Special Judge, Jhajjar.

The petitioner, who was working as Assistant Foreman under Operation Division, Uttar Haryana Bijli Vitran Nigam (UHBVN), Jhajjar, was involved in a criminal case under Section 7 of the Prevention of Corruption Act and an FIR was registered against him on 10.03.2006. After conclusion of trial, the Special Judge, Jhajjar, vide judgment dated

sentenced him to undergo rigorous imprisonment for two years and to pay a fine of Rs.2000/-. Thereafter, the respondent-Nigam terminated the services of the petitioner vide order dated 15.05.2003 (Annexure P-1) on the ground of moral turpitude. However, appeal against the said judgment was allowed by this Court vide judgment dated 03.10.2013 (Annexure P-2) and the petitioner was acquitted of the charges framed against him by giving him the benefit of doubt. The petitioner is seeking reinstatement as per Rule 7.5 of the Punjab Civil Services Rules, Vol. I, Part I, which are applicable to Haryana Government/Nigam employees.

Upon notice, reply on behalf of the respondents has been filed, wherein it has been stated that after his acquittal, the petitioner had been reinstated notionally and retired from the office of respondent-Nigam vide order dated 24.09.2014 (Annexure R-2). He was placed under suspension w.e.f. 11.03.1996 to 15.05.2003 and during this period, he was granted subsistence allowances as per rules and regulations of the Nigam. The petitioner has not been held entitled to salary and allowances from the period of termination till his superannuation i.e. from 15.05.2003 to 31.05.2004 on the basis of principle of 'no work no pay'.

Learned counsel for the petitioner has argued that after acquittal of the petitioner in criminal proceedings, as per Rule 7.5 of the Rules, he is entitled to be reinstate with full back wages.

A Division Bench of this Court in **Shashi Kumar Vs. Uttri Haryana Bijli Vitran Nigam and another**, 2005 (1) SCT 576 was considering a case of an employee, who was removed from service only on the basis of conviction. After his acquittal, he was held entitled to reinstatement with all consequential benefits under Rule 7.5 of Punjab Civil Services

benefit of full back wages and allowances for the period during which he remained under suspension. It has been further observed as under:-

8. The aforesaid judgment of the Madras High Court was considered and followed by this Court in the case of *Jagmohan Lal v. State of Punjab through Secy. to Punjab Govt. Irrigation and others, AIR 1967 (54) Punjab and Haryana 422 (Punjab)*. In that case, on acquittal, the petitioner was reinstated in service, but his period of suspension was not treated as the period spent on duty. He had, therefore, filed writ petition under Articles 226/227 of the Constitution of India claiming that he was entitled to full pay and allowances for the period of his suspension. Considering the impact of Rules 7.3, 7.5 and 7.6 of the Punjab Civil Services Rules Vol. I, Part-I, it was observed as follows:-

(2) xxx xxx xx

The interoperation which has been put by the Government on the rule is incorrect. The blame which attached to the petitioner was that there was a criminal charge against him under which he was standing his trial. The moment he is acquitted of the charge, he is acquitted of the blame. In criminal law, the Courts are called upon to decide whether the prosecution has succeeded in bringing home the guilt to the accused. The moment the Court is not satisfied regarding the guilt of the accused, he is acquitted. Whether a person is acquitted after being *given a benefit* of doubt or for that reasons, the result is that his guilt is not proved. The Code of Criminal Procedure does not contemplate honourable acquittal. The only words known to the Code are 'discharged' or 'acquitted'. The effect of a person being discharged or acquitted is the same in the eyes of law. Since, according to the accepted notions of imparting criminal justice, the Court has to be satisfied regarding the guilt of the accused beyond a reasonable doubt, it is generally held that there being a doubt in the mind of the court, the accused is acquitted.

I am, therefore, quite clearly in my mind that the intention underlying Rule 7.5 can be no other except this: the moment the criminal charge on account of which an officer was suspended fails in a court of law, he should be deemed to be acquitted of the blame. Any other interoperation would defeat the very purpose of the rule. It is futile to expect a finding of either honourable acquittal or complete innocence in a judgment of acquittal. The reason is obvious; the criminal courts are not concerned to find the innocence of the accused. They are only concerned to find whether the prosecution has succeeded in proving beyond a reasonable doubt the

guilt of the accused.”

10. Furthermore, a Division Bench of this Court, after examining the relevant rules in the cases of Hukam Singh (supra) has held as under:-

“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 take 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.

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, 1994 (1) SCT 154 (P&H): 1993 (8) Services Law Reporter 188**. Same view was expressed by this Court in the case of **Lehna Singh v. The State of Haryana and others, 1994 (1) SCT 173 (P&H): 1993 (3) Recent Services Judgments 119**. 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.....”

Further, reference can be made to the judgment passed by the Division Bench of this Court in **General Manager Operation Circle, Dakshin Haryana bijli Vitran Nigam, Narnaul and others Vs. Mathura Dass Gupta**, 2012 (4) SCT 7. The petitioner, in that case, had been convicted under Section 7 of the Prevention of Corruption Act, 1988. After his acquittal vide judgment dated 09.11.2005, he sought reinstatement along with consequential benefits. The competent authority withdrew the termination order, but it was held that the petitioner was not entitled to claim arrears of salary on the principle of 'no work no pay'. The writ petition was allowed by the learned Single Judge, which was affirmed by the LPA Bench by referring to the judgment of the Hon'ble Supreme Court in **Union of India Vs. K.V. Jankiraman etc.**, 1991 (3) SCT 317 wherein it was held that

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.

Further, reference can be made to another judgment passed by a Division Bench of this Court in **Chander Singh Dalal Vs. Haryana Dairy Development Co-operative Federation Limited, Chandigarh through its Managing Director and others**, 2008 (3) SCT 33. In that case, the petitioner, after facing trial under Section 408 IPC, had been acquitted as embezzlement could not be proved against him. He has removed from service because of criminal prosecution. Petition filed by him was allowed by giving direction to the respondents to reinstate him in service with all consequential benefits by referring to the judgments passed by this Court in **Shashi Kumar Vs. Uttri Haryana Bijli Vitran Nigam and another**, 2005 (1) SCT 577 and **Shiv Kumar Goel Vs. State of Haryana and another**, 2007 (1) SCT 739, wherein it has been consistently held 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. The benefit of pay and allowances over and above subsistence allowance cannot be forfeited still observing him guilty of the same charges.

In the facts of the present case, the petitioner has been reinstated in service vide order dated 24.09.2014, however, period of his suspension i.e. 11.03.1996 to 15.05.2003 has been restricted only to subsistence

allowance and he has not been held entitled for salary or allowance for the

period of termination till his superannuation i.e. 15.05.2003 on the basis of 'no work no pay'.

In view of Rule 7.5, Volume I, Part I of Punjab Civil Services rules and the law laid down in the aforesaid authorities, this Court is of the view that once, the petitioner had been acquitted in criminal proceedings, then he should have been reinstated in service with all consequential benefits. Principle of 'no work no pay' cannot be made applicable in the case of the petitioner.

Resultantly, this petition is allowed and the respondents are directed to release arrears of full pay and allowances to the petitioner for the period he remained out of service and for the duration of his suspension period as well, within a period of three months from the date of receipt of certified copy of this judgment.

09.02.2016
ajp

(RITU BAHRI)
JUDGE