

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

**CWP No.9848 of 2013
Decided on : 06.05.2016**

Baljit Singh

... Petitioner

Versus

Director General of Police, Punjab and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. Gurinder Singh Lalli, Advocate
for the petitioner.

Mr. Avinit Avasthi, AAG, Punjab.

G.S. Sandhawal, J.

The petitioner challenges the order dated 05.04.2013 (Annexure P-2) passed by respondent No.3, whereby his request for re-enlistment as an SPO was filed, in view of the instructions dated 19.01.1998 on the ground that once discharged, he could not be reinstated. The discharge of the petitioner was initially made vide order dated 07.01.2003 (Annexure P-7) on account of the FIR dated 30.08.2001 bearing No.265 under Sections 457 and 380 IPC.

Perusal of the paper-book would go on to show that the petitioner was appointed as Special Police Officer (SPO) under Section 17 of the Police Act, 1861 on 08.10.1991 (Annexure P-3). During the period of his service, the abovesaid FIR was lodged on 30.08.2001. In the meantime, he had qualified for the requirements for being approved for absorption as constable in

accordance with the seniority on the basis of date of enlistment as SPO and was allotted the Indian Reserve Battalion. He was directed to report for Basic Recruits Training Course vide order dated 02.05.2002 (Annexure P-10) by the Inspector General of Police, PAP, Jalandhar Cantt. However, on verification of character by the respondents, it transpired that the FIR had been lodged, due to which show cause notice dated 02.12.2002 (Annexure P-4) was issued to him as to why he should not be discharged from the post of SPO.

The petitioner had submitted his reply (Annexure P-5) by taking the plea that he was on bail and the case was pending in the Court. He had been appointed as constable through selection, but due to the registration of the case, he had been left out. Whatever decision the Court would take, the same would be acceptable to him. On account of the reply filed by the petitioner, respondent No.3 vide order dated 07.01.2003 (Annexure P-7) discharged him from the post of SPO on the ground that he was a daily-wager and that he had been appointed on the basis of antecedents.

The petitioner, thereafter, filed an appeal which was dismissed as not maintainable vide order dated 17.02.2003 (Annexure P-8) by the Deputy Inspector General of Police. Eventually, the petitioner was acquitted on 04.10.2011 by the

Judicial Magistrate 1st Class, Batala on the ground that the prosecution has not been able to prove its case against him and other co-accused beyond the shadow of any substantial or fair doubt arising from the evidence available or lack of it. The petitioner, thereafter, served a legal notice upon the respondents on 27.09.2012 and thereafter approached this Court by filing CWP No.24183 of 2012, which was disposed of vide order dated 06.12.2012 (Annexure P-1) with direction to consider the case of the petitioner in view of the legal notice served within a specified time period. Resultantly, the impugned order has been passed.

The reasons given in the impugned order dated 05.04.2013 (Annexure P-2) have already been noticed.

Counsel for the petitioner has argued that once the petitioner had been enlisted as an constable, then the order of discharge as SPO was not sustainable and even otherwise on merits, he has been acquitted. Therefore, the base of discharge itself does not exist. Only on account of the lodging of the FIR, he cannot be kept out of his job, therefore, he is entitled for being put back in service.

State on the other hand in its defence has taken the plea that the speaking order was justified, as the petitioner was not a permanent employee, as such due to the lodging of the FIR, he was discharged. The acquittal was on the basis of benefit of

doubt, therefore, the petitioner was not entitled for reinstatement.

Perusal of the show cause notice on the basis of which, the petitioner was discharged, would go on to show that it was primarily on the basis of the lodging of the FIR. The petitioner's defence was that he will abide by the decision of the Court. At that point of time apart from the FIR being lodged and the case pending in the Court, nothing as such adverse was against the petitioner though the case was being tried by the JMIC. The finding now which has been recorded on acquittal is that the State has failed to prove its case and the benefit has been given. The relevant portion reads as under:-

“Viewed in the context of factual position in the present case, being guided by statutory provisions, legal propositions, law laid down by Hon'ble courts at all the levels, as a sequel to aforesaid discussion, and necessary corollary to finding on points for determination (Supra), it is crystal clear that the prosecution has not been able to prove its case against the accused beyond the shadow of any substantial or fair doubt arising from the evidence available or lack of it. Consequently, the above named accused stands acquitted of the offences punishable under Sections 380 & 457 IPC and they be set at liberty forthwith. Personal bonds of the accused and surety bonds of their sureties stand discharged. File be consigned to the Record Room after due compliance and same be revived as and when co-accused Baldev Singh appears, apprehends or surrenders in future as separate P.O. proceedings against him were initiated.”

The said issue was also considered by a Division

Bench of this Court in **Shashi Kumar vs. UHBVN and another,**

2005 (1) SCT 576 wherein, the issue of full back wages on account of acquittal and resultant reinstatement was in question under Rules 7.3 and 7.5 of the Punjab Civil Service Rules. Reference was made to the earlier Division Bench judgments in **Hukam Singh vs. State of Haryana, 2001 (2) SCT 696** to hold that “honourable acquittal” or “fully exonerated” were unknown in the Code of Criminal Procedure or in criminal jurisprudence. The relevant portion reads as under:-

*“7. In any event, the terms "honourable acquittal" or "fully exonerated" are unknown in the Code of Criminal Procedure or in Criminal Jurisprudence. These terms came up for consideration before a Division Bench of the Madras High Court in the case of **Union of India v. Jayaram, AIR 1960 Madras 325**. Rajammannar, C.J. delivering the judgment of the Division Bench observed as under :-*

"There is no conception like "honourable acquittal" in Criminal Procedure Code The onus of establishing the guilt of 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 pay during the period of his suspension. To such a case Article 193(b) does not apply."

*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 xxx

The interpretation 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 interpretation 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."

9. The judgment rendered in the case of **Union of India v.**

Jayaram (supra) has also been followed by a Division Bench of the Gujarat High Court in the case of **Ramsinhji Viraji Rathod, Parmanand Society v. The State of Gujarat and another, 1971 SLR 743**. In the aforesaid case, it has been observed as follows :-

7Clause (b) of Article 193 of the Civil Service Regulations, which was under consideration before the Madras High Court was substantially similar to our Rule 152, with this difference, that instead of the words "fully exonerated" the words were "honourably acquitted". With respect we are in agreement with the reasoning of Rajamannar, C.J. and in our opinion, it is not open to the authorities concerned to bring in the concept of honourable acquittal or full exoneration so far as the judgment of the Criminal court is concerned. In a criminal trial the accused is only called upon to meet the charge levelled against him and he may meet the charge - (a) by showing that the prosecution case against him is not true; or (b) that it is not proved beyond reasonable doubt; or (c) by establishing positively that his defence version is the correct version and the prosecution version is not correct. In any one of these three cases, if the Court comes to the conclusion that the prosecution has failed to establish its case beyond reasonable doubt or that the prosecution case is not true or that the defence version is correct and is to be preferred as against the prosecution version, the Criminal Court is bound to acquit the accused. The accused is not called upon in every case to establish his complete innocence and it is sufficient for the purposes of criminal trial that he satisfies the Court that the prosecution has not established its case beyond reasonable doubt. Since he is not called upon to prove a positive case, the concept of honourable acquittal or full exoneration can have no place in a criminal trial and it is because of this reasoning that we agree with the observations of **Rajamannar, C.J. in Jayaram's case, AIR 1960 Madras 325.**"

10. Furthermore a Division Bench of this Court, after examining the relevant rules in the case 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....."*

11. We are of the considered opinion that in view of the settled law the petitioner is clearly entitled to be reinstated in service with all consequential benefits. We quash the impugned order dated 27.8.2003 (Annexure P-4). We direct the respondents to reinstate the petitioner into service with full back-wages. Mr. Agnihotri has argued that the respondents be given opportunity to now conduct a departmental enquiry. We are of the considered opinion that in view of the categoric findings recorded by the High Court, there would be hardly any justification in permitting further departmental action. We, therefore, decline the request made by the counsel for the respondents."

A similar view was also taken in **Bhag Singh vs. Punjab and Sind Bank and others, 2005 (6) SLR 464** and **Shiv Kumar Goel vs. State of Haryana and another, 2007 (1) SCT 739**.

The Apex Court in ***Joginder Singh Vs. Union Territory of Chandigarh and others 2015 (2) SCC 377*** has also held that on account of an acquittal, the employee cannot be deprived from being appointed to the post by declaring him non-suitable, on the ground that it was not an honourable acquittal. It has been held that the police authorities cannot be allowed to sit in judgment over the finding recorded by the Court and denying appointment would be like a vicarious punishment.

This Court had directed the respondents to have a fresh look on the issue regarding the claim put forward by the petitioner for re-enlistment, on account of the fact of the acquittal, which had been recorded. The impugned order does not show any such application of mind on that account, but only refers to instructions dated 19.01.1998 (Annexure R-III) that once the SPOs have been discharged, they cannot be re-enlisted. The instructions also go on to show that the strength of S.P.O. have to be decreased and does not lay down that a S.P.O. once discharged could not be reinstated, therefore, the same would not be applicable. The discharge was on the basis of the mere lodging of the FIR and not on any conviction, which would save the petitioner.

Even otherwise under Rule 16.2 (2) of the Punjab Police Rules, 1934 where an enrolled police officer who has been

convicted and has been dismissed is liable to have his order of dismissal reviewed. It is not the case of the respondents that in any manner he had concealed lodging of the FIR, due to which an adverse inference was drawn up against him that he had supplied false information. It was only at the time of his verification, when he was to be enlisted as a constable the fact had surfaced. The factum of the FIR having been lodged against him led to his discharge order.

In similar circumstances, a Division Bench of this Court in ***CWP No.3196 of 1997 Raman Kumar Vs. State of Punjab and others decided on 09.09.1998*** has also set aside the order of discharge on the ground that once the sole reason for discharge was lodging of the FIR, then on account of acquittal the S.P.O. was liable to be taken back in service. The relevant part of the judgment reads as under:-

“The solitary ground on which the petitioner was discharged from service vide dated 29.1.1996 (Annexure P-1) is that he was involved in a case under the Prevention of Corruption Act. The petitioner was acquitted by the Special Judge, Patiala, vide judgment dated 7.9.1996 Annexure P-2 by observing that there was not even an iota of evidence against him to connect him with the crime and that the prosecution had failed to prove its case against him. As such, he was acquitted honourably. Infact, the order Annexure P-1 is bad in law inasmuch as it indicted the petitioner before he could be tried by a court of competent jurisdiction. After his acquittal in the case, the petitioner cannot be denied reinstatement in service. In other words, the State is bound to take him back in service. The stand of the State that the petitioner was appointed on daily wages

when he was discharged from service, is not supported by any document on the record. Moreover, the services off the petitioner were not dispensed with as no longer required, as is usually done in the cases of ad hoc/daily wage basis appointments. In this case, it may be stated, at the pain of repetition, that the only ground on which the petitioner was discharged from service was registration of a case against him under the Prevention of Corruption Act, in which he stands acquitted.

For the afore-mentioned reasons, this petition deserves to be allowed. Accordingly, the same is allowed and the order Annexure P-1 whereby the petitioner was discharged from service is hereby quashed with a direction to the respondents to reinstate him as S.P.O. on the same terms and conditions on which he was serving from service. However, the petitioner shall not get back wages between the date of his discharge from service i.e. 24.1.1996 and the date of this order.”

In such circumstances, this Court is of the opinion that the impugned order cannot be justified. Resultantly, the order dated 05.04.2013 (Annexure P-2) alongwith order dated 07.01.2003 (Annexure P-7) stand quashed, whereby the petitioner was discharged from the service. The respondent shall take back the petitioner and enlist him as constable, subject to the verification of his character. However, it is made clear that the petitioner will not be entitled for any financial benefit for the period he remained out of service on the principle of no work, no pay and is only entitled for the notional benefits. Reference can be made to the judgment of the Apex Court in ***Union of India and others Vs. Jaipal Singh 2004 (1) SCC 121***, wherein it has been held that backwages can be denied where the employee has been kept out

from service on account of his own conduct, since the services could not be availed of.

Accordingly, the present writ petition is allowed.

MAY 06, 2016
Naveen

(G.S. SANDHAWALIA)
JUDGE