

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

CWP No. 8512 of 2015

Date of decision : 19.02.2016

Balwan Singh

...Petitioner

versus

D.H.B.V.N and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Balraj Singh, Advocate
for the petitioner.

Mr. R.D. Bawa, Advocate
for the respondents

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

RITU BAHRI , J.

The present petition is for issuance of writ in the nature of certiorari quashing order dated 13.03.2015 (P-5) passed by respondent No. 4 to to extent to commence the departmental disciplinary proceedings vide which action under Regulation 7 of HSEB (P&A) Rules 1990 has been taken against the petitioner on absolutely identical and same charge against the petitioner has faced the criminal proceedings and has been acquitted by this Court vide order dated 22.05.2014.

GAURAV ARORA
2016.03.03 15:11
I attest to the accuracy and
integrity of this document

Petitioner was appointed as T. Mate on 03.03.1979 and on 07.10.1985 was promoted as ALM. One F.I.R No. 179 dated 03.09.1998 was lodged against him under Section 7(13) of the Prevention of Corruption Act, 1988 for demanding and accepting the illegal gratification and vide judgment dated 08.05.2003/09.05.2003, petitioner was found guilty of an offence punishable under Section 7 (13) of the Prevention of Corruption Act, 1988 and was sentenced to undergo rigorous imprisonment for a period of 02 years.

Petitioner was then placed under suspension vide order dated 15.09.1998 w.e.f 03.09.1998 to 29.03.2001 and during this period, he was paid substance allowance at rate of 50% of salary and on 30.03.2001, petitioner resumed duty and remain on duty till 10.02.2004. Respondent No. 4 terminated the services of the petitioner, vide order dated 11.02.2004.

Petitioner then approached this Court against the judgment of conviction and order of sentence and this Court admitted the appeal and suspended the sentence of the petitioner and vide judgment dated 22.05.2014 passed in CrI.A. No 1042-SB of 2003, the appeal of the petitioner was allowed and he was acquitted of the charges framed against him (P-2) on the ground that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt

and the shadow witness has not supported the prosecution version and turned hostile.

After acquittal the petitioner made a representation dated 25.06.2014 and requested the respondents to reinstate the services of the petitioner with all consequential benefits. Petitioner again made representation dated 02.09.2014 and finally when no action was taken, he filed CWP No. 978 of 2015 before this Court and this Court vide order dated 21.01.2015 (P-4) directed respondent No. 2 to consider and decide the representation, at an early date by passing an appropriate order thereon, strictly in accordance with law but in any case, within a period of two months.

On 13.03.2015, respondent No. 4 has withdrawn the termination order dated 11.02.2004 but did not release the consequential benefits till today and commence the departmental discipline proceedings, vide order dated 13.03.2015 (P-5).

Learned counsel for the petitioner contends that once the petitioner has been acquitted of the charges framed against him, the department should have released the consequential benefits to the petitioner and further the department after acquittal of the petitioner, cannot commence the department disciplinary proceedings on absolutely identical and same charge against the petitioner has faced

the criminal proceedings.

Learned counsel for the petitioner submits that the respondent-Nigam adopts instructions issued by State Government from time to time and service of the employees are governed by the Punjab Civil Services Rules applicable to Haryana. But respondent did not apply the provisions available under Rule 7.3 and 7.5 of C.S. Vol I Part I under Rule 7.3 of CSR Vol I Part I whereby if an employee is fully exonerated then employee shall be given the full pay and allowances to which he would have been entitled, had he not been dismissed, removed.

On the other hand, learned counsel for the respondents while referring to the written statement stated that since petitioner has been acquitted by giving benefit of doubt, therefore, vide order dated 13.03.2015 (P-5) respondent No. 4 has decided to commence the departmental disciplinary proceedings against the petitioner.

Reference has been made to a judgment of Hon'ble the Supreme Court in **Gr. Hyderabad Municipal Corporation vs. M. Prabhakar Rao 2011 (4) SCT 46** where an employee is exonerated/acquitted in disciplinary/criminal proceedings by giving him a benefit of doubt, in that case, the suspension of an employee was not wholly unjustified and thereafter, the employer can decline the

payment of remaining salary for the period of suspension.

Moreover, in the disciplinary proceedings initiated against the petitioner as mentioned above, a punishment of stoppage of two annual increments with cumulative effect has been imposed upon the petitioner, vide order dated 09.10.2015 (R-1)

Heard learned counsel for the parties.

The point for consideration before this Court that whether an employee after acquittal in appeal in a criminal case would become entitled to grant of all benefits.

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.”

Further this Court was considering 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 benefit 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, 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.”

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.

In the present case as well, the petitioner has been acquitted since main witnesses in this case have not supported the prosecution case and prosecution had failed to build the edifice of evidence and resultantly failed to prove the guilt of the appellant beyond reasonable shadow of doubt. Further, the shadow witness has turned hostile with regard to alleged demand, recovery and acceptance and thus, the benefit of doubt was given to the accused-

appellant.

The above mentioned judgments are directly applicable to the facts of the present case where the petitioner was initially convicted but later on was acquitted by this Court and hence he is entitled to all the consequential benefits and no departmental inquiry can be initiated against him on absolutely identical and same charges, as the petitioner has faced the criminal proceedings and has been acquitted by this Court vide order dated 22.05.2014.

In view of the settled law and in terms of Rule 7.5 of Punjab Civil Service Rules, order dated 13.03.2015 (P-5) passed by respondent No. 4 is hereby quashed and the petitioner is entitled to all consequential benefits. The respondent-department is directed to release all the consequential benefits i.e promotion, regularisation of the period in which he remained out of service and release the salary and all the retiral benefits from the date of superannuation etc.

The petition stands allowed.

(RITU BAHRI)
JUDGE

19.02.2016

G Arora