

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

RSA-902-2012

Date of decision: February 04, 2016

RATTI RAM AND ANOTHER

.....Appellants

Versus

HARYANA STATE AND ANOTHER

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Naveen Daryal, Advocate
for the appellants

SABINA, J

Appellants had filed suit for declaration challenging punishment orders dated 27.9.1999, 9.3.2000 and 13.3.2002.

Case of the appellants, in brief, was that the FIR No.262 dated 4.7.1994 was registered against them under Section 223/182 of the Indian Penal Code, 1860 on the allegation that Gulab Singh, accused had escaped from their custody. On the same allegation, departmental proceedings were initiated against the appellants. Charge-sheet dated 15.8.1994 was served on the appellants without considering the fact that the appellants had been acquitted in the criminal case by the trial Court vide judgment dated 28.11.1997. Department again started the departmental inquiry against the appellants on the same charge. Inquiry Officer was appointed, who vide his report dated 20.9.1994 submitted that the

charge levelled against the appellants stood proved. Show cause notice was served on the appellants qua proposed punishment of dismissal from service. Appellants submitted their reply to the said show cause notice. Punishing Authority vide order dated 27.9.1999 dismissed the appellants from service. Appellants preferred appeal against the said order. Appellate Authority modified the punishment of dismissal from service to that of stoppage of three future annual increments with permanent effect and it was further ordered that for the suspension period, appellants would be paid subsistence allowance already drawn by them. Revision petition filed by the appellants was dismissed vide order dated 13.3.2000. Hence, the suit was filed by the appellants.

Defendants, in their written statement, averred that the departmental proceedings had been initiated against the appellants as per rules. During inquiry proceedings, charge levelled against the appellants was duly proved. Impugned order had been passed in accordance with law.

On the pleadings of the parties, following issues were framed by the trial Court:-

- “1. Whether the plaintiffs are entitled to the declaration sought? OPP
2. Whether the plaintiff's suit is not maintainable? OPD
3. Relief.”

Parties led evidence in support of their respective pleas.

Trial Court vide judgment and decree dated 27.9.2010 dismissed the suit of the plaintiff. The said judgment and decree

were upheld in appeal filed by the appellant by the First Appellate Court vide judgment and decree dated 9.8.2011. Hence, the present appeal by the appellants-plaintiffs.

Learned counsel for the appellants has submitted that the impugned orders were liable to be set aside. The suit filed by the appellants was within the period of limitation. Learned counsel for the appellants has submitted that the period of limitation was liable to be counted from the day when the writ petition filed by the appellants, had been withdrawn i.e. on 27.7.2004. In support of his argument, learned counsel has placed reliance on **Shambu Ram vs. Uttar Haryana Bijli Vitran Nigam and another** 2015(4)SCT 315 wherein it was held as under:-

The contention of the learned counsel for the petitioner is that notwithstanding the fact that the trial Court had used the phrase, 'benefit of doubt' while acquitting the petitioner yet, it was a case where there was no evidence since recovery was not proved and even the complainant had exculpated the petitioner. As per him this would amount to full exoneration under Rule 7.3 of the Punjab Civil Services Rules as applicable to the State of Haryana. In this connection he has relied upon a decision of this Court in Shiv Kumar Goel Vs. State of Haryana and another, 2007 (1) PLR 190 wherein a Division Bench held as follows :-

“7. When the facts of the present case are examined in the light of the principle laid down in the aforementioned Rule it transpires that the petitioner was

subjected to a criminal trial by registration of FIR No.242 dated 12.7.1996 under the provisions of Prevention of Corruption Act, 1988 registered at P.S. Gohana. He was acquitted on merit for lack of evidence as substantive attributes of Section 7 of the Prevention of Corruption Act, 1988, remain unsatisfied and no evidence connecting the petitioner to the crime could be produced by the prosecution. Accordingly, a judgment of acquittal was recorded in his favour by learned Special Judge on 24.1.2002 (Annexure P3). In the meanwhile after the judgment of acquittal the services of the petitioner were retrenched on 30.6.2002. Despite the issuance of charge sheet dated 24.10.2002 (Annexure P7) and the reply of the petitioner dated 28.10.2002 (Annexure P8), the Managing Director of the Corporation has passed an order against the petitioner by treating the period of suspension as a non duty period without giving him any benefit except the payment of subsistence allowance. The petitioner has also been given warning. According to the principle laid down in Rule 2.2 of Ibid rules, the disciplinary authority could not have initiated disciplinary proceedings against the petitioner. In any case, attempt made by the punishing authority to proceed against the petitioner by issuing him charge sheet was virtually abandoned yet order of punishment dated 20.11.2002 was passed. It is well settled that once the departmental

proceedings for imposition of major penalty had been initiated against a delinquent employee then even for imposing a minor penalty like warning etc. regular departmental proceedings are required to be initiated. In that regard, reliance may be placed on a Full Bench judgment of this Court in the case of “K.G.Tiwari v. State of Haryana & Others” 2002(2) SCT 915 : 2002(4) SLR 329.

8. Another reason which persuaded us to take the view that no enquiry could be held after the acquittal of the petitioner on merit by the criminal Court is that the charge sheet dated 24.10.2002 (Annexure P7) issued to the petitioner is based on the same facts and allegations which were the basis of criminal charge. Even the evidence which was likely to be produced in the departmental proceedings was similar. It was in these circumstances that the Supreme Court in the case of “G.M.Tank v. State of Gujarat” 2006 (3) RCR (Cr.) 251: 2006(3) SCT 252 (SC) : (2006)5 SCC 446 has held that no enquiry after the acquittal of the petitioner in criminal trial would be permissible. Therefore, the order dated 20.11.2002 (Annexure P1) passed by the Managing Director cannot be sustained in the eyes of law.

9. There is another aspect of the matter. In the Punjab Civil Services Rules Volume-I (as applicable to Haryana) Chapter VII has been incorporated which deals with amongst other things the subject of suspension. Rule 7.3

lays down a comprehensive procedure for coming to a conclusion as to how the period of suspension is to be treated. The aforementioned Rule was subject matter of consideration by Hon'ble the Supreme Court in the case of "B.D.Gupta v. State of Haryana" (1973)3 SCC 149. It was held that if an order adversely affects financially then even minor penalty has to be passed after objective assessment of all relevant facts and circumstances. The aggrieved employee is required to be granted a full opportunity of hearing by issuing show cause notice. In the present case, there is no show cause notice issued to the petitioner on the subject of treatment of his period of suspension. Even on that account, the order dated 20.11.2002 (Annexure P1) is liable to be set-aside."

4.Learned counsel for the petitioner has also relied upon Dr.M.L.Kamra & others Vs. State of Haryana & others, 2009(6) SLR 577, wherein a Division Bench of this Court has held as follows :-

"5. The combined reading of these provisions would show that the justification for payment of pay and allowances would primarily depend upon the outcome of the inquiry which is held, for which the government employee is placed under suspension. If the consequential effect of the rule is seen operating harshly than the punishment awarded, then the same can certainly be termed unfair and unjust. In this

background, a view is possible that it would not be fair, just and equitable to forfeit the pay and allowances of person, who was left with the award of warning only. The reason disclosed in the order to justify denial of full pay and allowances is that the petitioners were awarded warning. This reason alone to justify denial of full pay and allowances may indicate non application of mind. Rule 7.3 of Rules referred to above shows that the competent authority while passing the order was to see if the suspension was wholly unjustified. If the case is considered fit enough to be disposed of by award of warning then it can be said that there was hardly any requirement to place the petitioners under suspension. It is thus possible to say that the suspension was unjustified. As per the rule, competent authority is called upon to conclude that the suspension of the said servant was not wholly unjustified. The impugned order does not give any indication if this aspect of the rule was taken into consideration. This aspect of consideration is wholly absent. This order, even otherwise, would be much more damaging than the order of punishment. The impugned order thus cannot be sustained. The same is set aside. The petitioners would be entitled to full pay and allowances for the period they had remained under suspension.”

5. In the circumstances petition is allowed. The

chargesheet Annexure P-1 is quashed and impugned orders Annexures P-5 and P-6 are set aside. Consequently it is directed that the suspension of the petitioner be treated as period on duty. The petitioner is entitled to full pay and allowances for the said period. The same be worked out and released to the petitioner within a period of three months from the date of receipt of a certified copy of this order. It is made clear that if any due benefit is not granted to the petitioner, he would be entitled to claim the same with interest at the rate of 8% p.a. from the date/s the amount/s fell due till the date of payment."

In the present case, order of punishment was passed by the Punishing Authority on 27.9.1999 whereby appellants were ordered to be dismissed from service. Thereafter, the said order was modified by the appellate authority and vide order dated 9.3.2000 and it was ordered that three future annual increments be stopped with permanent effect and it was ordered that during the suspension period, appellants would be entitled to subsistence allowance already drawn by them. Revision petition filed by the appellants was dismissed vide order dated 13.3.2002. Thereafter, appellants filed the suit on 5.9.2007. Thus, the suit filed by the appellants was barred by limitation as the same had been filed after three years of the passing of the order dated 13.3.2002.

Appellants had filed CWP No. 755 of 2004 in this Court challenging the impugned orders and the same was got dismissed as

withdrawn on 27.7.2004 with liberty to agitate the same by filing the civil suit. The fact that the writ petition was got dismissed as withdrawn on 27.7.2004 would not extend the period of limitation. Merely because appellants had got the writ petition dismissed as withdrawn with liberty to file the civil suit would not lead to the inference that the limitation for filing the suit stood extended and was to be calculated from the day the writ petition had been withdrawn. At the most the period of about 6/7 months (the period for which the writ remained pending in this Court) could be excluded while calculating the period of limitation. Even then the suit filed by the appellants did not come within the period of limitation. The appellants were liable to pass the litmus test qua limitation. Since, the suit filed by the appellants was barred by limitation, the relief sought by them was liable to be declined being time barred. The judgment relied upon by the learned counsel for the appellants fails to advance the case of the appellants as the claim of the appellants is not being considered on merits being time barred.

No substantial question of law arises in this case warranting interference by this Court.

Dismissed.

**(Sabina)
Judge**

February 04,2016

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