

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

CWP No.11867 of 2016 (O&M)

Reserved on:11.07.2017

Date of decision: 11 .08.2017

Harbhajan Singh

... Petitioner

Vs.

Chief Secretary, Punjab Govt. & others

... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. Ashwani Bhardwaj, Advocate and
Mr. Aditya Sanghi, Advocate for the petitioner.

Mr. Sukhbir Singh, AAG, Punjab.

...

TEJINDER SINGH DHINDSA, J.

The petitioner, who was serving on the post of Social Studies Master under the Punjab State Education Department was placed under suspension on 22.06.2006 (Annexure P-1) on account of involvement in FIR No.139 dated 25.08.2004, registered at Police Station Ghall Khurd (Ferozepur), under Sections 363/376 and 120-B of the Indian Penal Code. In the trial that has ensued, petitioner was convicted for offences punishable under Sections 366 and 376 (G) IPC and sentenced to undergo RI for a period of 10 years and to pay a fine of Rs.10,000/- under Section 376 (G) IPC and was awarded RI for a period of 5 years and to pay a fine of Rs.5000/- under Section 366 IPC. Based upon such conviction, petitioner was dismissed from service on 22.07.2009 (Annexure P-3).

An appeal filed by the petitioner against the judgment of

conviction was allowed by this Court in the light of judgment dated 17.11.2011 at Annexure P-4 in CRA-1950-SB-2008. In consequence of the judgment of acquittal dated 17.11.2011 passed by this Court, petitioner was reinstated back in service on 12.11.2012.

Challenge in the instant petition is to the orders dated 04.12.2015 (Annexure P-6) and 13.05.2016 (Annexure P-7) which have the effect of denying to the petitioner the salary for the period that he remained under suspension as also out of service.

Learned counsel appearing for the petitioner would submit that the petitioner was implicated in a false case and it was on account of his conviction that he had been dismissed from service. It is contended that the order of conviction having been set aside by this Court and the petitioner having been reinstated, there would be no justifiable basis to deny to him the full pay and allowances for the period in question. Reliance has been placed upon Rules 7.3 and 7.5 of the Punjab Civil Services Rules, Volume I Part I.

Per contra, learned State counsel would contend that the petitioner had been reinstated upon his order of conviction being set aside but the department cannot be saddled for backwages in relation to a period when the petitioner was under suspension or was out of service by virtue of the dismissal order. It is submitted that the principle of '**no work no pay**' has been rightly invoked.

Counsel for the parties have been heard at length.

The factum of the petitioner having been dismissed from service based solely upon conviction stands admitted.

The question that arises for consideration is as to whether the

petitioner could be denied his full pay and allowances for the period he remained under suspension as also out of service on account of dismissal?

It would appropriate to examine in the first instance the scheme of rules governing the issue in question. The relevant extract of Rules 7.3 and 7.5 of the Punjab Civil Services Rules, Volume I Part I reads as under:

“7.3 (1) When a Government employee, who has been dismissed, removed, compulsorily retired or suspended is reinstated, or would have been re-instated but for his retirement on superannuation the authority competent to order reinstatement shall consider and make a specific order—

(a) regarding the pay and allowance to be paid to the Government employee for the period of suspension ending with reinstatement or the date of his retirement on superannuation, as the case may be; and

(b) whether or not the said period shall 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.

3) In other words, the Government employee shall be given such proportion of such pay and allowances as such competent authority may prescribe:

Provided that the payment of allowances under sub rule (2) or sub rule (3) shall be subject to all other conditions under which such allowances are admissible.

Provided that such proportion of such pay and allowances shall not be less than the subsistence and other allowances admissible under Rule 7.2.

4) In a case falling under sub-rule (3) the period of absence from duty shall be treated as a period spent on duty for all purposes.

5) In a case falling under sub-rule (3) the period of absence from duty shall not be treated as a period spent on duty unless such competent authority specifically directs that it shall be so treated for any specified purpose.

Authority may direct that the period of absence from duty shall be converted into leave of any kind due and admissible to the Government employees”

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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 periods 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 principles laid down in rule 7.2) for such periods 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 allowances 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 proceeding taken against him were for his arrest for debt), of its being proved that the officer's liability arose from circumstances beyond his control over the detention being held by the competent authority to be unjustified.”

Rule 7.3 (i) empowers the competent authority to decide in respect to the period of a government employee, who remained dismissed or

removed or compulsorily retired or under suspension. Sub Rule (ii) of Rule 7.3, however, specifically prescribes that in the event of a government employee, who had been dismissed, removed or compulsorily retired and has been fully exonerated upon reinstatement, he shall be paid full pay and allowances of which he would have been entitled to, had he not been dismissed, removed compulsorily retired or suspended. Sub Rule (iii) of Rule 7.3 provides for treating the entire period of suspension preceding dismissal, removal or compulsorily retirement as a period spent on duty for all purposes in a case covered Sub Rule (ii). Rule 7.5 specifically prescribes that in the event of a government employee acquitted of the blame and it is proved that the official's liability arose from circumstances beyond control or the detention being held by the competent authority to be unjustified, he would be entitled to full salary.

The scheme of the rules reproduced herein above do not vest an absolute right upon the delinquent employee to get full pay and allowances for the period that he has remained under suspension as also dismissal. Such entitlement would arise only upon the competent authority recording a finding as regards the detention of the employee to be unjustified or the official's liability having arisen from circumstances beyond control.

The benefit, as such, that would flow on the strength of Rules 7.3 and 7.5 would depend on the facts and circumstances of each case.

It would be relevant to go into the backdrop leading to criminal prosecution of the petitioner. FIR in question had been lodged on the statement of complainant Balbir Singh. Complainant had stated that his youngest daughter (prosecutrix) was aged about 17 years and near to his

house was the house of Gurmit Singh (main accused) and on the intervening night of 22/23.08.2004, the prosecutrix had been enticed away by Gurmit Singh. The present petitioner was alleged to be part of the conspiracy along with other co-accused and as such, in connivance with each other, kidnapped the prosecutrix by means of criminal intimidation and induced her with an intent that she may be compelled into illicit intercourse and thereby committed an offence punishable under Section 366 IPC. Second charge was that all the accused for the period 23.08.2004 to 08.09.2004 committed gang rape with the prosecutrix at different places and thereby committed an offence punishable under Section 376(G) IPC.

Clearly, the present case brings forth a situation where the employee faced trial on allegations which had nothing to do with the course of his employment.

Under such circumstances, the State Exchequer cannot be burdened for acts on the part of the employee and over which the employer did not have any control. The petitioner having been implicated in the FIR in question and against the backdrop of the allegations noticed herein above, was arrested and was accordingly placed under suspension. His conviction for charges under Sections 366 and 376 (G) IPC were duly recorded by the trial Court vide judgment of conviction dated 24.09.2008. The respondent/authorities were thus obligated to dismiss the petitioner against the judgment of conviction. Having earned acquittal, vide judgment dated 17.11.2011 passed by this Court, petitioner has been reinstated on 12.11.2012. It is not the case, where the petitioner has been suspended or dismissed from service on account of any complaint or criminal proceedings

initiated in relation to his scope of work, job and responsibilities. The petitioner faced criminal prosecution arising out of a complaint of a private nature leading to his suspension and dismissal on account of conviction and such action could not have been held to be wholly unjustified so as to bring the claim of the petitioner for full salary and allowances for the period in question within the scope of Rules 7.3 and 7.5 of the Punjab Civil Services Rules, Volume I, Part I.

In the considered view of this Court, the principle of '**No work no pay**' has been rightfully invoked.

In the case of **Union of India & others Vs. Jaipal Singh, 2004(1) SCT 108**, the Hon'ble Supreme Court had dealt with the issue in a case arising from conviction of an employee under Section 302 IPC by the trial Court, but acquitted by the High Court in an appeal and its effect on backwages upon reinstatement for the period the employee was out of service due to involvement in a criminal case and had observed as under:

“...If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest or by department itself, perhaps different considerations may arise. On the other hand, if a citizen the employee or a public servant got involved in a criminal case and if after initial conviction by the trial Court, he gets acquittal on appeal subsequently, the department cannot in any manner be found fault with for having kept him out of service, since the law obliges, a person convicted of an offence to be so kept out and not to be retained in service. Consequently, the reasons given in the decision relied upon, for the appellants are not only convincing but are in consonance with reasonableness as well. Though exception taken to that part of the order directing reinstatement cannot be sustained and the respondent has to be reinstated, in service,

for the reason that the earlier discharge was on account of those criminal proceedings and conviction only, the appellants are well within their rights to deny backwages to the respondent for the period he was not in service. The appellants cannot be made liable to pay for the period for which they could not avail of the services of the respondent. The High Court, in our view, committed a grave error, in allowing backwages also, without advertting to all such relevant aspects and considerations. Consequently, the order of the High Court insofar as it directed payment of backwages are liable to be and is hereby set aside."

A Coordinate Bench of this Court in **CWP No.26122 of 2013** titled as **Balbir Singh Vs. State of Haryana & others** also declined backwages to the employee concerned, who while working as a Conductor with the Haryana Roadways was convicted in a criminal case for offences punishable under Sections 148/149/307/302 IPC and who was subsequently acquitted. The judgment in **Balbir Singh's case (supra)** having come up for scrutiny in an Intra Court Appeal, the view was affirmed by the Division Bench in LPA No.514 of 2014 decided on 13.08.2014 and by observing thus:

"The alleged offence was committed by the appellant not during the course of his employment but it was committed in the village, when he was not on duty. There was no fault of the employer. It was the wrong of the appellant himself which dragged him in the criminal litigation. If in that criminal case, for want of evidence, the appellant has been given benefit of doubt, the employer with whom the appellant had not worked during the period of his dismissal from service, cannot be compelled to pay salary for the said period. The principle of 'No work no pay', in our opinion is applicable in the present case and for that period the appellant is not entitled for the

salary.”

Following the dictum of the Hon'ble Supreme Court in the **Jaipal's case (supra)**, the limited relief admissible to the petitioner is as regards entitlement of payment of salary for the period 17.11.2011 to 12.11.2012 i.e. the period from the date of acquittal till the date he was allowed to rejoin in service.

Accordingly, for the reasons recorded above, the present writ petition is partly allowed and the impugned orders dated 04.12.2015 (Annexure P-6) and 13.05.2016 (Annexure P-7) are modified to the extent as noticed herein above. Consequently, the petitioner be released his salary for the period 17.11.2011 to 12.11.2012 within a period of three months from the date of receipt of a certified copy of this order.

Petition disposed of.

11.08.2017

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |