

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

CWP No.13222 of 2015

Date of Decision:16.02.2017

Ravi Parkash

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. N.C. Kinra, Advocate for the petitioner.

Mr. Harish Rathee, Sr. D.A.G. Haryana.

P.B. BAJANTHRI J. (Oral)

In the instant writ petition, the petitioner has questioned the validity of the order dated 24.4.2014 by which the intervening period from the date of suspension till reinstatement has been treated as '*dies non*' for all intents and purposes.

The petitioner while working in the District Court at Bahadurgarh was entrusted payment of electricity charges towards the bill raised by the Electricity Board to the extent of Rs.12025/-. On the allegation that the petitioner had misappropriated the said amount, he was subjected to criminal proceedings for the offences under Section 409 IPC. An FIR No.415 of 2008 was registered at Police Station City Bahadurgarh. Arising out of the above facts and circumstances, the petitioner was placed under suspension on 10.11.2008. In the criminal proceedings, the petitioner was convicted on 18.9.2009. Based on the order of conviction, petitioner was

dismissed from service on 22.9.2009 under Article 311(2) of the Constitution of India vide Annexure P-1. Against order of conviction, petitioner preferred an appeal before the Appellate Court. Appellate Court was pleased to set aside the order of conviction on 31.10.2013. Thus, the petitioner approached the Competent Authority for his reinstatement. The Competent Authority had shown intention to file criminal appeal or revision against the acquittal. In this regard, there was protracted correspondence between the Deputy Commissioner of the concerned District due to timely action was not taken in preferring an appeal or criminal revision. The petitioner approached the appointing authority for reinstatement and had also given an undertaking that he will not claim any back-wages and other benefits in relation to out of service period. Based on the petitioners' application, the appointing authority reinstated the petitioner on 24.1.2014. Thereafter the intervening period from the date of suspension till reinstatement has been regulated by passing an order as '*dies non*' vide order dated 24.4.2014 which is under challenge in the present petition.

Learned counsel for the petitioner vehemently contended that once the petitioner is acquitted from service, he is entitled for regulating his intervening period as duty period in view of Rule 7.5 of Punjab Civil Services Rules. The respondents have not taken note of the aforesaid statutory provision. That apart petitioner has not been heard before passing the order dated 24.4.2014 vide Annexure P-12. Hence, impugned action is liable to be set aside.

On the other hand, learned counsel for the respondents vehemently contended that the petitioner has already given undertaking dated 19.3.2014 vide Annexure P-10 to the extent that the petitioner would

not claim salary for the intervening period i.e. remaining out of service from 2008 to 2014. Therefore, he cannot go back with the undertaking. It was further submitted that the petitioner's services is dismissed under Article 311 (2) of the Constitution pursuant to the order of conviction dated 18.9.2009. Till date the petitioner has not questioned the validity of dismissal order. Therefore, there is no infirmity in the impugned order dated 24.4.2014.

Heard learned counsel for the parties.

Short question for consideration in the present petition is whether the petitioner is entitled for regulating the out of service period for extending all service benefits or not?

Undisputedly, the petitioner was involved in a criminal case for which he was placed under suspension. He was convicted and dismissed from service. Thereafter he was acquitted in the criminal case. The petitioner has not questioned the validity of the dismissal order dated 22.9.2009 even to this day. As long as order of dismissal which has been passed under the quasi judicial proceedings is not set aside, the period from 22.9.2009 to 24.1.2014, cannot be regulated as duty under Rule 7.5. of the Punjab Civil Services Rules. At the best the petitioner is entitled for regulating the intervening period from 10.11.2008 to 22.9.2009 i.e. suspension period. Therefore, the respondents are directed to re-examine the claim of the petitioner only to the extent of regulating the suspension period i.e. from 10.11.2008 to 22.9.2009 having regard to the fact that the petitioner has been acquitted in the criminal proceedings read with Rule 7.5. of the Punjab Civil Services Rules. The respondents are directed to pass a speaking order to the above extent within a period of three months from

today.

Petition stands disposed of.

16.02.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No