

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

**CWP-15779-2015 (O&M)
Date of Decision: 22.12.2017**

Randhir Singh

--Petitioner

Versus

State of Punjab & others

--Respondents

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

Present:- Mr. Prateek Pandit, Advocate for the petitioner.

Mr. TPS Chawla, DAG, Punjab.

TEJINDER SINGH DHINDSA, J. (ORAL).

Petitioner has retired from the post of Assistant Sub Inspector, Punjab Police. While serving as a Head Constable, a private complaint under Sections 307/452 IPC was filed against the petitioner and co-accused, namely, Sukhdev Singh. In the trial that ensued petitioner was convicted for offence under Sections 307/452 IPC vide judgment dated 17.07.1998 rendered by the learned Additional Sessions Judge, Kapurthala and was sentenced RI for a period of 8 years and to pay a fine of Rs.2000/-. In default of payment of fine, to further undergo RI for a period of 6 months. Based upon conviction, petitioner was dismissed from service vide order dated 07.11.1998 (Annexure P-1) passed by Senior Superintendent of Police, Kapurthala. Petitioner challenged the judgment of conviction by filing an appeal before this Court i.e. CRA-S-566-SB-1998. Appeal was accepted by this Court vide judgment dated 10.08.2011 (Annexure P-2) and conviction

of the petitioner was set aside. Petitioner submitted representation to Senior Superintendent of Police, Kapurthala seeking reinstatement in service w.e.f. 17.07.1998 with all consequential benefits including seniority, promotion, arrears of salary etc. Petitioner vide order dated 21.04.2012 (Annexure P-4) was reinstated back in service.

Challenge in the instant petition is to the order dated 21.04.2012 (Annexure P-4) to the extent whereby petitioner has been denied 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 only 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 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. The complaint under Sections 307/452 IPC was filed against the petitioner and co-accused, Sukhdev Singh by one Bikkar Singh who alleged that the petitioner and his co-accused attempted to

commit armed robbery at his house on the intervening night of 23/24-09.1992 and in doing so, inflicted gun shot injury on his daughter Inderjit Kaur.

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 named in a private complaint and against the backdrop of the accusations noticed hereinabove, was arrested and was accordingly placed under suspension. His conviction for charges under Sections 307/452 IPC were duly recorded by the trial Court vide judgment of conviction dated 17.07.1998. The respondent/ authorities were thus obligated to dismiss the petitioner against the judgment of conviction. Having earned acquittal in the light of judgment dated 10.08.2011 passed by this Court, petitioner has been reinstated on 21.04.2012. 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.

A similar question came to be examined by the Hon'ble

Supreme Court in **State Bank of India & another Vs. Mohammed Abdul Rahim**, 2013 (4) SCT 133.

The respondent/writ petitioner therein while working as Assistant (Accounts) under State Bank of India was convicted for offence under Section 498-A IPC and Section 4 of the Dowry Prohibition Act. Upon conviction, he was discharged from service. Appeal preferred against the judgment of conviction was accepted and accordingly, an order of reinstatement in service was passed. Back wages for the period that the employee had remained out of service were denied. While examining the issue relating to entitlement to back wages the Apex Court held as follows:

*“The issue relating to entitlement to back wages, however, stands on a somewhat different footing. While in **Ranchhodji Chaturji Thakore (supra)**, **Jaipal Singh (supra)** and **Baldev Singh (supra)**, the basis of refusal of back wages by this Court would appear to be the inability of the employer to avail of the service of the employee due to his incarceration in jail, in **Banshi Dhar (supra)**, the refusal of back wages by this Court was in a situation largely similar to the case before us, namely, where the employee was all along on bail and was thus available for work. In **Banshi Dhar (supra)**, this Court answered the question against the employee by holding that grant of back wages is not automatic and such an entitlement has to be judged in the context of the totality of the facts of a give case. It is on such consideration that back wages was declined. In the present case, it will not even be necessary for the Court to perform the said exercise and delve into the surrounding facts and circumstances for the purpose of adjudication of the entitlement of the respondent to back wages in view of the provisions of Section 10(1)(b)(i) of the Act. The said provisions impose a clear bar on a banking company from*

employing or continuing to employ a person who has been convicted by a criminal court of an offence involving 'moral turpitude'. No discussion as to the meaning of the expression 'moral turpitude' is necessary having regard to the nature of the offences alleged against the respondent, namely, under Section 498A of the India Penal Code and Section 4 of the Dowry Prohibition Act, 1961. No doubt, the respondent was not in custody during the period for which he has been denied back wages in as much as the sentence imposed on him was suspended during the pendency of the appeal. But what cannot be lost sight of is that the conviction of the respondent continued to remain on record until it was reversed by the appellate court on 22.02.2002. During the aforesaid period there was, therefore, a prohibition in law on the appellant-bank from employing him. If the respondent could not have remained employed with the appellant-bank during the said period on account of the provisions of the Act, it is difficult to visualise as to how he would be entitled to payment of salary during that period. His subsequent acquittal though obliterates his conviction, does not operate to retrospectively wipe out the legal consequences of the conviction under the Act. The entitlement of the respondent to back wages has to be judged on the aforesaid basis. His reinstatement, undoubtedly, became due following his acquittal and the same have been granted by the appellant bank.

The respondent was acquitted on 22.02.2002; the demand for reinstatement was made by him on 22.04.2002 and he was reinstated in service by the appellant bank on 07.11.2002. On the view that we have taken, at the highest, what can be said in favour of the respondent is that he is entitled to wages from the date he had lodged the demand for the same following his acquittal, namely, from 22.04.2002, until the date of his reinstatement, if the same has not already been granted by the appellant bank.”

A Coordinate Bench of this Court in **CWP No.26122 of 2013** titled as **Balbir Singh Vs. State of Haryana & others** also declined back wages 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 **State Bank of India's case (supra)**, the limited relief admissible to the petitioner is as regards entitlement of payment of salary for the period 10.08.2011 to 21.04.2012 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 order dated 21.04.2012

(Annexure P-4) is modified to the extent as noticed hereinabove.

Consequently, the petitioner be released his salary for the period 10.08.2011 to 21.04.2012 within a period of three months from the date of receipt of a certified copy of this order.

Petition is disposed of in the aforesaid terms.

22.12.2017

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

Whether speaking/reasoned : Yes

Whether reportable : Yes