

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No. 18418 of 2016
Date of Decision: 06.02.2017

Randhir Singh ...Petitioner

Versus

State of Punjab & others ...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Daldeep Singh, Advocate for the petitioner.

Mr. T. N. Sarup, Additional Advocate General, Punjab.

JAISHREE THAKUR, J.

The petitioner herein is seeking the benefit of pay and allowances etc. from the date of his dismissal to the date of his reinstatement and further treating the said period as on duty i.e. from 26.12.2007 to 04.12.2014.

In brief, the facts are that the petitioner herein was appointed as Constable in Punjab Police in District Patiala and was eventually promoted to the rank of Assistant Sub Inspector. On 18.09.1999, a criminal case under FIR No. 54 was registered under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988 in which he was convicted by order dated 08.04.2003, passed by the Spacial Judge at Fatehgarh Sahib, as under:

Under Section 7 of the PC Act	To undergo rigorous imprisonment for six months with a fine of Rs. 1000/-, in default of the payment of fine, to further undergo rigorous imprisonment for 15 days.
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Under Section 13 (2) of the PC Act	To undergo rigorous imprisonment for one year with a fine of Rs. 4,000/-, in default of the payment of fine, to further undergo rigorous imprisonment for one month.
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Against the above mentioned order of conviction, the petitioner preferred a criminal appeal bearing CRA No. S-797 of 2003 which was admitted on 28.04.2003 and the sentence of the petitioner was suspended till the final decision of the appeal.

On 26.12.2007, in view of the judgment of conviction, the petitioner was dismissed from service by the Senior Superintendent of Police, Patiala. Against the said dismissal, the petitioner preferred an appeal which appeal came to be dismissed. On 26.03.2014, the criminal appeal filed by the petitioner against the order of conviction was allowed and the impugned order was set aside acquitting the petitioner of all charges levelled against him. After the appeal was decided, the petitioner approached the DIG, Patiala Range for being reinstated w.e.f. 26.12.2007 with all consequential benefits. The said appeal was forwarded to the SSP, Patiala being the competent authority to take appropriate action and decision on the case. An opinion of the Legal District Attorney was sought who gave his opinion that there was no impediment in reinstating the petitioner granting him benefits due to him in terms of pay and allowances. By an order dated 04.12.2014, the petitioner was ordered to be reinstated but the period, from the date of his dismissal i.e. 26.12.2007 till 04.12.2014, the date he was ordered to be reinstated, was treated as 'no work period' by adopting the principles of 'No Work No Pay'. A departmental inquiry too

was initiated against the petitioner in which the petitioner was found to be innocent and the departmental inquiry was consigned to the record. Against the order dated 11.12.2014 wherein the period of the dismissal from service till reinstatement has been treated as period of 'no duty', the petitioner preferred an appeal. However, the said appeal was dismissed as well as the revision thereafter. Aggrieved, the instant writ petition has been filed.

Counsel for the petitioner contended that the petitioner had been wrongly dismissed from service on account of a false case that was registered against him and eventually the High Court has acquitted him from all charges levelled against him. It is also argued that a departmental inquiry that was initiated has also found him to be innocent and the inquiry has been consigned. It is argued that the petitioner is entitled to be reinstated with full pay, allowances and increments etc. and the order dated 11.12.2014 treating the period of dismissal from service till the period of reinstatement as 'no work period' is wholly unsustainable. In this regard, counsel for the petitioner placed reliance upon a judgment rendered in ***Commissioner, Karnataka Housing Board vs. C. Muddaiah, (2007) 7 SCC 689*** to contend that the petitioner had been kept out of service for no fault of his and thus should be entitled to the consequential benefits on his reinstatement.

Per contra, learned counsel appearing on behalf of the respondents-State submits that the petitioner had been dismissed from service on account of his conviction and in the appeal he was not acquitted honourably but by giving him the benefit of doubt. Applying the principle of 'No Work No Pay', petitioner has been rightly denied the benefit of pay

and allowances for the period he had remained out of service.

I have heard learned counsel for the parties and perused the record of the case.

The short question that arises for consideration is as to whether the petitioner could be denied his full pay and allowances for the period in question i.e. from the date of dismissal till the date of his re-instatement in service?

In this regard, it would be necessary to advert to Rule 7.3 of the Punjab Civil Services Rules, Vol. I, Part I, Chapter VII, which reads as under:

“7.3. (1) When a Government employee, who has been dismissed, removed or compulsorily retired, is reinstated as a result of appeal, revision or review, or would have been so reinstated but for his retirement on superannuation while under suspension or not, the authority competent to order re-instatement 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 including the period of suspension, preceding his dismissal, removal or compulsory retirement, as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Where the authority competent to order re-instatement is of opinion that the Government employee, who had been dismissed, removed or compulsorily retired, has been fully exonerated, the Government employee shall, subject to the provisions of sub-rule (6), be paid his full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended, prior to such dismissal, removal or compulsory retirement, as the case may be:

Provided that where such authority is of opinion that the termination of the proceedings instituted against the Government employee had been delayed due to reasons directly attributable to the Government employee it may, after giving him an opportunity to make representation

and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government employee shall, subject to the provisions of sub-rule (7), be paid for the period of such delay only such amount (not being the whole) of pay and allowances, as it may determine.

(3) In a case falling under sub-rule (2), the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, shall be treated as a period spent on duty for all purposes.

(4) In cases other than those covered by sub-rule (2) including cases where the order of dismissal, removal or compulsory retirement from service is set aside by the authority exercising powers of appeal, revision or review solely on the ground of noncompliance with the requirements of clause (2) of article 311 of the Constitution and no further inquiry is proposed to be held, the Government employee shall, subject to the provisions of sub-rules (6) and (7), be paid such amount (not being the whole) of pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the Government employee of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period as may be specified in the notice:

Provided that any payment under this sub-rule to a Government employee other than a Government employee who is governed by the provisions of the payment of Wages Act, 1936 (Act 4 of 1936) shall be restricted to a period of three years immediately preceding the date on which order for re-instatement of such Government employee are passed by the authority exercising the powers of appeal, revision or review, or immediately preceding the date of retirement on superannuation of such Government employee, as the case may be.

xxxx xxxx xxxx..."

A bare reading of the provision would make it clear that a Government employee who has been dismissed, removed, compulsorily retired or suspended, is re-instated upon having been fully exonerated, then he shall be given full pay and allowances to which he would have been

entitled to had he not been dismissed, removed, compulsorily retired or suspended as the case may be.

In the facts of the present case, the order of conviction of the petitioner under the provisions of the Prevention of Corruption Act has been set aside and the petitioner stands completely exonerated. Even the departmental inquiry stands shelved. This Court would have no hesitation in holding that in terms of Rule 7.3, the petitioner upon being acquitted would be entitled to the full salary and allowances for the period i.e. the date of dismissal till date of re-instatement.

In view of the above, the writ petition is allowed. The impugned order dated 11.4.2014 to the extent it denies the petitioner continuity of service, notional pay and allowances for the period he remained out of service i.e from 26.12.2007 to 04.12.2014 is set aside. Let such benefit be calculated and released to the petitioner within a period of two months from the date of receipt of a certified copy of this order.

Petition stands allowed in the aforesaid terms.

February 06, 2017

Ansari

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No