

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

CWP No. 20097 of 2015 (O&M)
Date of decision: February 15, 2017

Manjit Kumar @ Goldi

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Angel Sharma, Advocate,
the petitioner.

Mr. Rupam Aggarwal, DAG, Punjab.

JAISHREE THAKUR, J.

1. The petitioner joined the Police Department as Constable in the year 1994. He was implicated in criminal case bearing F.I.R No. 294 dated 06.11.2009 under Sections 15, 25, 27–A, 29 and 61 of the Narcotics Drugs and Psychotropic Substances Act, 1985 read with Sections 7 and 13 (2) of the Prevention of Corruption Act 1988. On the basis of the FIR, he was dismissed from service by invoking Article 311 (2) of the Constitution of India on 10.11.2009. The petitioner was acquitted in the said criminal case by Judge, Special Court Ludhiana on 01.05.2013 and was exonerated of all charges framed against him. On acquittal, the petitioner approached authorities for reinstatement in service and by order dated 14.02.2014, he was taken back but it was ordered that the period from the date of dismissal from service till date of rejoining was to be treated as ‘dice non’. Being aggrieved against the order dated 14.02.2014, the petitioner filed an appeal

which was dismissed on 9.6.2015. Against the orders dated 14.2.2014 and dated 09.06.2015, disallowing petitioner all benefits for the period he was not working, the instant writ petition has been filed.

2. Mr. Angel Sharma, learned counsel for the petitioner contends that the petitioner had been wrongly dismissed from service on account of a false case that was registered against him and eventually the Judge, Special Court has acquitted him from all charges levelled against him. It is argued that the petitioner is entitled to be reinstated with full pay, allowances and increments etc. and the order dated 14.2.2014 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 he had been kept out of service for no fault of his and, thus, should be entitled to the consequential benefits on his reinstatement.

3. Per contra, Mr. Rupam Aggarwal, learned counsel appearing on behalf of the respondents-State submits that the petitioner had been dismissed from service on account of the FIR lodged against him under the NDPS Act and the PCA 1988. 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.

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

5. 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?

6. 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...”

7. 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.

8. In the facts of the present case, once the order of conviction of

the petitioner under the provisions of the NDPS Act and Prevention of Corruption Act has been set aside and the petitioner stands completely exonerated, he would be entitled to all benefits as provided for under Rule 7.3 of the Punjab Civil Services Rules. Dismissal from service was only on account of the pendency of the criminal proceedings having been initiated. The said proceeding had been initiated at the behest of the Government itself and were not on the basis of a private complaint. This Court would have no hesitation in holding that in terms of Rule 7.3 of Punjab Civil Services, the petitioner upon being acquitted would be entitled to benefits as provided under the Rules.

9. In view of the above, the writ petition is allowed. The impugned orders are hereby set aside to the extent it denies the petitioner continuity of service, notional pay and allowances for the period he remained out of service. 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.

10. The writ petition allowed in the aforesaid terms.

February 15, 2017
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No