

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

Civil Writ Petition No.17883 of 2017

Date of decision: 25.08.2017

Hans Raj

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr. Ashok Bhardwaj, Advocate for the petitioner.

G.S.SANDHAWALIA, J. (Oral)

The petitioner challenges the order dated 10.6.2016 (Annexure P/6) whereby on account of his acquittal by the Apex Court vide order dated 19.11.2015 (Annexure P/1), he has been reinstated to the post of PGT English and given posting order.

Counsel for the petitioner has referred to Rule 7.3 of the Punjab Civil Services Rules Vol. I Part I as applicable to the State of Haryana to point out that impugned order is not liable to be sustained in view of the fact that the competent authority ought to make a specific order regarding the pay and allowances for the relevant period of absence from duty which is occasioned by dismissal or suspension. In the present case the absence on account of dismissal is from 21.4.2002 to 19.11.2015 and similarly it is submitted that petitioner has also remained under suspension from 3.8.1998 to 21.4.2002. Therefore, for both the periods, there is no reference in the impugned order and neither the provisions have been referred to in the impugned order and thus the same is not sustainable.

Notice of motion.

Ms. Shruti Jain Goyal, Assistant Advocate General, Haryana

accepts notice on behalf of the respondents.

As noticed above, the order is very cryptic and without taking account that how the period of 17 years i.e. 3.8.1998 to 19.11.2015 have to be treated in spite of the fact that Statutory Rules provide that there has to be made specific order regarding the pay and allowances to be paid to the Government employee for the period of his absence from duty occasioned by suspension and/or dismissal, removal or compulsory retirement ending with his reinstatement.

Counsel for the State on the other hand submits that since the facts are not clear on account of the fact that there is no reply at this stage and separate order might have been passed as such by the competent authority.

Counsel for the petitioner submits that if that be the case the competent authority can clarify in its subsequent orders the said fact.

Counsel for the petitioner has also relied upon the judgment in **Civil Writ Petition No.22633 of 2012-Balbir Kumar Vs. State of Punjab and another** wherein in similar circumstances, this Court has held as under:-

“The matter is no longer *res integra*. The issue has been decided by this Court in CWP No.5228 of 2011 titled *Const. Sukhchain Singh Vs. The State of Punjab & others*, decided on 25.03.2013 and CWP No.22023 of 2012 titled *Sucha Singh Vs. State of Punjab & others*, decided on 11.09.2013. In the later case also, no separate departmental proceedings had been initiated and the question was whether the petitioner could be denied the full pay and allowances from the date of dismissal till the date of reinstatement. Reference was made to Rule 7.3 of the Punjab Civil Services Rules, Vol.I, Part I, Chapter VII, to hold that a Government employee is to be given full pay and allowances upon his

reinstatement, having been fully exonerated. Rule 7.3(1) 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 the reinstatement 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) Whether the authority competent to order reinstatement 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.”

Counsel for the State has relied upon the judgment of the Apex Court in *Union of India & others Vs. Jaipal Singh 2004(1) SCC 121* to submit that the person who had been convicted and on his own account, had been kept out of job, backwages could not be granted.

A perusal of the said judgment would go on to show that the attention of the Apex Court was not drawn to Rule 7.3 and the requirement of the respondents to pass the appropriate orders and take a decision for the period the petitioner remained out of job and the wording of the said section.

Resultantly, the present writ petition is allowed. The petitioner would be entitled for his pensionary benefits for the period pertaining to 04.11.1996 to 05.07.2011. The said amount be disbursed to him within a period of 3 months from the date of receipt of a certified copy of this order.”

Keeping in view of the above, this Court is of the opinion that since legal notice dated 17.10.2016 (Annexure P/7) has already been served upon the respondents for the release of salary and granting of other service benefits which is still pending consideration. Accordingly, the present writ petition is disposed of with a direction to respondent no.1 to take into account the said legal notice dated 17.10.2016 (Annexure P/7) and pass an appropriate order in consonance with the relevant Statutory Rules within a period of two months from the date of receipt of certified copy of this order without being bound down by the earlier order.

August 25, 2017
Pka

(G.S.SANDHAWALIA)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No