

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

CWP No. 8599 of 2015 (O&M)
Date of decision: March 3, 2017

Harbhajan Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Vishal Deep Goyal, Advocate,
for the petitioner.

Mr. Pankaj Mulwani, DAG, Punjab.

JAISHREE THAKUR, J.

1. The petitioner joined services at Government Senior Secondary School, Udhawal, Jalandhar, and was placed under suspension on account of FIR No. 136 under Sections 302, 376, 109/34 IPC registered at Police Station Phillaur, Jalandhar. He was arrested on 7.7.2006 and on this account was placed under suspension, vide order dated 11.7.2016. The petitioner was convicted by the Sessions Judge, Jalandhar, which became the basis of his services being terminated by order dated 28.11.2008. Against the judgment of conviction, the petitioner filed an appeal before this Court vide Criminal Appeal-D-56-DB of 2009 and was finally acquitted of the charges levelled against him, vide judgment dated 27.5.2013. On acquittal, the petitioner was allowed to rejoin service. However, no order was passed on the salary/allowances payable to the petitioner during the period he was under suspension and out of service. The petitioner represented to the

Department concerned and vide impugned letter dated 5.3.2015, the District Education Officer, Jalandhar, rejected the claim of the petitioner for considering the suspension period as period spent on duty and also declined to make any payment for the period, the petitioner remained under dismissal by treating it as non duty period. Aggrieved the instant writ petition has been filed.

2. Learned counsel appearing on behalf of the petitioner contends that the petitioner would be entitled to the benefit of full pay and allowances for the period he had been placed under suspension as also for the period of dismissal. He would further submit that the petitioner had been implicated in a false case and it was on account of his arrest and conviction that he had been suspended from service and subsequently dismissed. It is also contended that once order of conviction has been set aside and the petitioner reinstated, he would be entitled to full pay and allowances, as per Rules 7.3 and 7.5 of the Punjab Civil Services Rules, Volume I. Learned counsel for the petitioner relies on the judgment rendered in **Hukam Singh V. The State of Haryana and another 2001 (1) RSJ 201** to contend that the Division Bench of this Court has held that when a person is acquitted of the criminal charge, he would be entitled to full salary and allowances between the period of suspension, dismissal and reinstatement as well as on a judgment rendered in **Narinder Kumar Versus Dakshin Haryana Bijli Vitran Nigam Ltd. and others 2016 (3) SCT 738 (P and H)**, to contend that once the petitioner has been exonerated, he would be entitled to all the benefits under Rule 7.3 of the Punjab Civil Services Rules.

3. Per contra, learned counsel appearing for the respondents—

State submits that the petitioner had been reinstated upon his order of conviction being set aside but he would not be entitled to any payment on account of the fact that no services were rendered by him during the period he remained under dismissal from service. The principle of 'no work no pay' would be applicable in the instant case. It is also argued that it was on account of a private complaint that had been filed against the petitioner that process of criminal law had been set in motion and not on account of any fault on the part of the respondents or action initiated by the respondent department itself.

4. I have heard learned counsel for the parties and with their assistance have gone through the pleadings of the parties.

5. The sole question that arise for determination is, whether the petitioner, who had been dismissed from service based solely upon conviction, would be entitled to claim the benefit of pay and allowances for the period he remained under dismissal upon reinstatement?

6. In order to appreciate the contentions raised by the learned counsel for the parties, it would be appropriate to re-produce Rules 7.3 and 7.5 of the Punjab Civil Services Rules Volume I, Part I Chapter VII, which reads as under:-

“7.3(1) When a Government employee, who has been dismissed, removed or compulsorily retired or suspended, is reinstated or would have been reinstated but for his retirement on superannuation 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, occasioned by suspension and/or dismissal, removal or

compulsory retirement ending with his reinstatement on 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) Where the authority mentioned in sub rule (1) is of opinion that the Government employee has been fully exonerated or, in 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, has he not been dismissed, removed, compulsorily retired or suspended, as the case may be.

(3) In other cases, the Govt. 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 further 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 case falling under sub-rule (2), the period of absence from duty shall not 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:

Provided that if the Government employee so desires, such authority may direct that the period of absence from duty shall be converted into leave of any kind due and admissible to the Government employee.

7.5. An employee of Government against whom proceedings

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 proceedings taken against him were for his arrest for debt), of it being proved that the officer's liability arose from circumstances beyond his control or the detention being held by the competent authority to be unjustified."

A bare perusal of Rule 7.3 of the the Punjab Civil Services Rules shows that it specifically provides that in the event of a government employee, who had been dismissed, removed or compulsorily retired or suspended and has been reinstated upon exoneration, shall be paid full pay and allowances to which he would have been entitled to, had he not been dismissed, removed or compulsorily retired or suspended. Sub Rule (3) of Rule 7.3 further provides for treating the entire period of suspension preceding dismissal, removal or compulsory retirement as a period spent on duty for all purpose in case covered under sub rule (2).

Rule 7.5 specifically provides that in the event of a government employee being 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.

7. In order to appreciate the complaint that had been filed, it is relevant to look at the sections under which the petitioner had been booked. FIR that was registered under Sections 302, 376, 109/34 IPC. He was convicted under Section 376 but eventually acquitted under that Section by giving him the benefit of doubt.

8. In the matter of **Reserve Bank of India V. Bhopal Singh 1994 (1) SCT 505**, the Supreme Court held that in case an employee is absent for reasons of his own involvement and does not discharge duties, the bank cannot be saddled with the liability to pay his salary and allowances for that period. Further, in **Ranchhodji Chaturji Thakore v. The Superintendent Engineer, Gujarat Electricity Board, 1997 (1) SLR 14**, the Supreme Court held as under:-

“It was his conduct of involving himself in the crime that was taken into account for his not being in service of the respondent. Consequent upon his acquittal, he is entitled to reinstatement for the reason that his service was terminated on the basis of the conviction by operation of proviso to the statutory rules applicable to the situation. The question of back wages would be considered only if the respondents have taken action by way of disciplinary proceedings and the action was found to be unsustainable in law and he was unlawfully prevented from discharging the duties. In that context, his conduct becomes relevant. Each case requires to be considered in his own backdrops. In this case, since the petitioner had involved himself in a crime, though he was later acquitted, he

had disabled himself from rendering the service on account of conviction and incarceration in jail. Under these circumstances, the petitioner is not entitled to payment of back wages. The learned single Judge and the Division Bench have not committed any error of law warranting interference.”

9. Even in **Union of India and others v. Jaipal Singh 2004 (1) SCT 108**, the Hon'ble Supreme Court had dealt with the issue in a case arising from conviction of an employee under Section 302 of the Indian Penal Code by the trial Court, but acquitted by the High Court in appeal and its effect on back wages upon reinstatement for the period the employee was out of service due to involvement in a criminal case and had observed as under:

“.....If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest or by department itself, perhaps different considerations may arise. On the other hand, if a citizen the employee or a public servant got involved in a criminal case and if after initial conviction by the trial Court, he gets acquittal on appeal subsequently, the department cannot in any manner be found fault with for having kept him out of service, since the law obliges, a person convicted of an offence to be so kept out and not to be retained in service. Consequently, the reasons given in the decision relied upon, for the appellants are not only convincing but are in consonance with reasonableness as well. Though exception taken to that part of the order directing reinstatement cannot be sustained and the respondent has to be reinstated, in service, for the reason that the earlier discharge was on account of those criminal proceedings and conviction only, the appellants are well within their rights to deny backwages to the respondent for the period he was not in service. The appellants cannot be made liable to pay for the period for which they could not avail of the services of the respondent. The High

Court, in our view, committed a grave error, in allowing backwages also, without adverting to all such relevant aspects and considerations. Consequently, the order of the High Court insofar as it directed payment of backwages are liable to be and is hereby set aside."

10. A similar matter came up for hearing in **CWP No. 26122 of 2013 titled Balbir Singh Versus State of Haryana and others decided on 28.11.2013**, wherein this Court came to hold that if an employee faces trial and is convicted of criminal offence, though eventually acquitted, would not be entitled to pay and allowances for the period he remained under suspension and subsequently reinstated, if he had been implicated in a criminal complaint instituted at the behest of a private person. In the instant case, the petitioner was implicated in FIR No. 136 on the basis of an act having no direct nexus with the work and function in the course of his employment. It was purely on account of allegations mentioned in a private complaint. Rule 7.3 (b) of the Punjab Civil Services, Volume I, Part-I, mentions that if the authorities comes to an opinion that the suspension or removal etc. was wholly unjustified, the government employee shall be given full pay and allowances. In case, the petitioner had been suspended, dismissed from service on account of any complaint of criminal proceedings initiated arising out of his work and such action resulted in his dismissal and subsequent reinstatement, the suspension, dismissal could have been held to have been wholly unjustified, but when a person is facing criminal charge arising out of a complaint of private nature, it is not on account of any action taken by the Government, suspension could be justified and, therefore, in case no work is put in during that period, the principle of 'no work no pay'

would apply. The State should not be burdened for the act which does not originate from the employer.

11. The judgment as relied upon by the learned counsel for the petitioner in **Hukam Singh's case (supra)** would not be applicable in the instant case, since it was not a case where the petitioner was dismissed from service on the basis of a private complaint and the judgment in **Narinder Kumar's case (supra)** arose out of the proceedings initiated under the Prevention of Corruption Act, 1988. Moreover, even in **Narinder Kumar's case (supra)** the learned Single Judge noted that the criminal trial faced by the petitioner, which finally culminated in his acquittal, was in relation to the allegations directly related to the act done during the course of his employment.

12. Therefore, while placing reliance on the judgments in **Ranchhodji Chaturji Thakore, Jaipal Singh and Balbir Singh (supra)**, this Court is of the opinion that the petitioner would not be entitled to pay and allowances as claimed by him.

13. The writ petition stands dismissed accordingly.

March 3, 2017
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No