

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

(1) CWP No. 8647 of 2015 (O&M)
Date of decision: 17.4.2017

Harchand Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

(2) CWP No. 8495 of 2015 (O&M)

Gurinder Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Saurabh Arora, Advocate,
for the petitioners.

Mr. Amit Chaudhary, Additional Advocate General, Punjab.

JAISHREE THAKUR, J.

1. By this common order, this court propose to dispose of the above titled two writ petitions as they arise out of the similar set of facts and involving similar question of law. However, for the sake of brevity, the facts are being culled out from CWP No. 8647 of 2015.

2. The petitioner herein joined the Punjab Police as Constable on 24.3.1987 and thereafter he was promoted as Head Constable on 30.5.2001.

He, along with Gurinder Singh (petitioner in CWP No. 8495 of 2015) was

implicated in a criminal case bearing No. 295 dated 28.10.2009 under Sections 225-A, 343 and 384 IPC, Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and Sections 7 and 13 (2) of the Prevention of Corruption Act, 1988. On account of the registration of the FIR, both the petitioners were dismissed from service by order dated 23.11.2009. Against the order of the dismissal, the petitioners appealed and the same was kept pending to await the outcome of the proceedings under the FIR registered against the petitioners. Both the petitioners were acquitted of all the charges levelled against them, vide judgment dated 26.4.2012 passed by the Special Court, Shaheed Bhagat Singh Nagar. The Appellate Authority thereafter allowed the appeals, set aside the orders of dismissal dated 23.11.2009 with a direction to reinstate the petitioners on duty with immediate effect and to treat the period of dismissal from job as non-duty period without pay. Against the order of treating the dismissal period as non-duty period without pay, the petitioners preferred revisions, but the same were dismissed affirming the order of the Appellate Authority, leading to the filing of the instant writ petitions.

3. Learned counsel appearing on behalf of the petitioners contends that by virtue of Rules 7.3 and 7.5 of the Punjab Civil Services Rules, Volume I, Part I, the petitioners herein would be entitled to the benefits of full pay and allowances for the period they had been dismissed. It is further contended that the petitioners had been falsely implicated and it was on account of their conviction that they had been suspended from service and subsequently dismissed. Reliance has been placed on a 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&H)** to contend that once the petitioner had been exonerated, he would be entitled to all the benefits under Rule 7.3 of the Punjab Civil Services Rules.

4. Per contra, learned counsel appearing on behalf of the respondent—State submits that the petitioners had been dismissed from service on account of their involvement in the FIR and, therefore, by applying the principle of 'No work No Pay' the petitioners have been rightly denied the pay and allowances for the period they remained out of service.

5. The short question that arises for consideration is, as to whether the petitioners could be denied his full pay and allowances for the period in question i.e. from the date of suspension till the date of their 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

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) 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 petitioners under the provisions of the NDPS Act and Prevention of Corruption Act has been set aside and the petitioners stand completely exonerated, they 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 petitioners upon being acquitted would be entitled to benefits as provided under the Rules.

9. Moreover, on the question of equity as well, it is to be noted that one Sohan Singh, Head Constable was also dismissed from service on 23.11.2009 on account of his alleged involvement in criminal activities along with the petitioners. A special investigation team was constituted and after holding inquiry a report was submitted that Head Constable Sohan Singh was not at fault. The matter was thereafter examined and he was reinstated from the date of dismissal with all the monetary benefits for the period during which he remained out of service by order dated 28.10.2010.

10. For the afore-stated reasons and keeping in view the equity, the writ petitions are allowed. The impugned orders are hereby set aside to the extent the petitioners have not been granted the benefits of service including full pay and allowances for the entire period during which they remained out of service till their reinstatement. Let such benefit be calculated and released to the petitioners within a period of two months from the date of receipt of a certified copy of this order.

11. The writ petitions are allowed on the aforesaid terms.

17.4.2017
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No