

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

CWP No.9335 of 2015

Date of Decision:27.02.2017

Palvinder Singh

... Petitioner

Vs.

Haryana Vidyut Parsaran Nigam Ltd. and others

... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. N.C. Kinra, Advocate for the petitioner.

Mr. Padamkant Dwivedi, Advocate for the respondents.

P.B. BAJANTHRI J. (Oral)

The petitioner while working as Work Munshi was involved in a criminal case for the offence under Section 414 of IPC. The respondents placed the petitioner under suspension on 20.10.2000 with reference to the fact that the petitioner was involved in a criminal case. The respondents have not undertaken review of suspension. The petitioner was acquitted in the criminal proceedings on 14.11.2011. Thereafter on 28.11.2011, he has submitted representation to reinstate him. Thus, the respondents have reinstated the petitioner on 25.1.2013. The respondents have regulated the intervening period of suspension as extra ordinary leave not to be counted towards increment and the subsistence allowance paid to the petitioner is not to be recovered.

The petitioner has questioned the portion of the order treating the intervening period from 21.10.2000 to 27.1.2013 as extra ordinary leave not to be counted towards increment and further due to acquittal in criminal proceedings, he is entitled for full pay attached to the post held by him and he has sought for treating the suspension period as duty for all purposes.

Learned counsel for the petitioner submitted that petitioner has not been paid the enhanced subsistence allowance to the extent of 75% after completion of six months period of suspension. Further it was contended that treating the intervening period of suspension as extra ordinary leave is without consent of the petitioner and contrary to Rule 7.3 of Punjab Civil Services Rules Vol.I Part-I. Since proviso to Rule 7.3 stipulates 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. In the present case, petitioner's consent was not obtained before passing the order of treating the intervening period of suspension as extra ordinary leave. It was further submitted that the petitioner is entitled for reinstatement immediately as and when he was acquitted. In this regard, he has submitted representation on 28.11.2011. However, the respondents have reinstated the petitioner on 25.01.2013. Therefore, the petitioner is entitled for salary during the intervening period from 28.11.2011 to 25.1.2013.

On the other hand, learned counsel for the respondents submitted that the petitioner is required to be make his presence on every day in view of Regulation 4-A relates to Suspension. Proviso to Rule 4-A stipulates that the suspended employee, shall be bound to mark his presence on all working days in the office where his head-quarter, during the period of his suspension; is fixed and in not doing so, would be an act of misconduct. Therefore, the petitioner is not entitled for enhanced of subsistence allowances after completion of six months of suspension period as he has not complied the provision to Rule 4-A of the Haryana State Electricity Board Employees (Punishment and Appeal) Regulation 1990 (for

short “1990 Regulation”). It is further submitted that the petitioner is not entitled for treating the suspension period as duty for the reasons that his involvement in criminal case is nothing to do with the discharge of his duties. In other words in his own capacity, he himself involved in criminal proceedings. Therefore, he is not entitled for the suspension period is required to be treated as duty for all purposes. It is further submitted that no doubt there is delay in reinstating the petitioner after his acquittal on 14.11.2011 and it is due to administrative difficulties. Therefore, there is no intention of issuing order of reinstatement belatedly.

Heard learned counsel for the parties.

Question for consideration in the present petition whether the petitioner is entitled for 75% subsistence allowance or not?; period of suspension is to be regulated as duty or not?; and whether is he entitled for salary attached to the post of Work Munshi for the period from 28.11.2011 to 25.1.2013 or not?

Admittedly the petitioner was involved in a criminal case of his own which is not in concern with the respondents. Therefore, the petitioner is not entitled for regulating the suspension period as duty for all purposes and further he is not entitled for 75% subsistence allowance as and when completion of six months of suspension period for the reasons that the petitioner failed to comply Rule 4-A Suspension of Regulation 1990 in not marking the attendance every working day as is evident from the record that he has approached the respondents only in the year 2012. Hence, the petitioner is not entitled for 75% of subsistence allowance. However, the petitioner is entitled for an opportunity as per Rule 7.3 of Punjab Civil Services Rules Vol-I Part-I before treating the suspension period as extra

ordinary leave Government employee consent is required. Therefore, to that extent impugned orders dated 18.6.2013 and 14.10.2013 are liable to be set aside. The respondents are directed to issue show cause notice before treating the suspension period as extra ordinary leave. If the petitioner gives a consent for regulating the intervening period, necessary orders shall be passed in accordance with law. In action of the respondents in not reinstating the petitioner from 28.11.2011 to 25.1.2013 is not supported by any reasons. Therefore, the respondents are directed to pay salary attached to the post of Work Munshi from 1.1.2012 to 25.1.2013 to the petitioner, if the reasonable period from the date of acquittal on 14.11.2011 read with request of the petitioner for reinstating him made on 28.11.2011 has been taken note. Hence, the respondents are directed to calculate and disburse the arrears of salary from 1.1.2012 to 25.1.2013. It is made clear that the petitioner is entitled for all service benefits during the intervening period from 28.11.2012 to 25.1.2013.

Accordingly, petition stands disposed of.

27.02.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**