

Sr.No.214

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

LPA-2170-2016(O&M)

Date of Decision: 22.11.2017

State of Haryana through the Secy. to Govt. of Haryana Deptt. Of Home
Hry. Civil Sectt. Chandigarh and others

....Appellants

VS.

Suresh Chand

....Respondent

**CORAM HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI**

Present:- Mr.Samrath Sagar, Addl. A. G. Haryana.
Mr. Lekh Raj Sharma, Advocate for respondent.

-.-

MAHESH GROVER, J (ORAL)

The only question that arises for our consideration in present appeal is that if an employee involved in a criminal case not initiated by the department but by private individual results in acquittal then does it obligate the State to condone the period of suspension result in monetary consequence for the period the employee has been kept away from the employment.

The question has been answered suitably by the Hon'ble Supreme Court in UNION OF INDIA AND ORS. V. JAIPAL SINGH 2004(1) SCT 108, wherein it was observed as under:-

“ On a careful consideration of the matter and the materials on record, including the judgment and orders brought to our notice, we are of the view that it is well accepted that an order rejecting a special leave petition at the threshold without detailed reasons therefor does

LPA-2170-2016(O&M) -2-

not constitute any declaration of law by this Court or constitute a binding precedent. Per contra, the decision relied upon for the appellant is one on merits and for reasons specifically recorded therefor and operates as a binding precedent as well. On going through the same, we are in respectful agreement with the view taken in 1996(11) SCC 603 (supra). 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 re-instatement cannot be sustained and the respondent has to be re-instated, 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 back wages 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 back wages also, without advertng to all such relevant aspects and considerations. Consequently, the order of the High Court in so far as it directed payment of back wages are liable to be and is hereby set aside.”

Likewise, the Division Bench of this Court has observed in **LPA No.514 of 2014 Balbir Singh v. State of Haryana and others, decided on 13.08.2014**

as under:-

*“ Before us, learned counsel for the appellant has again raised both the aforesaid contentions and we are of the opinion that in the present case, the appellant has rightly been denied the salary for the period during which he remained out of service due to his dismissal. The alleged offence was committed by the appellant not during the course of his employment, but it was committed in the village, when he was not on duty. There was no fault of the employer. It was the wrong of the appellant himself, which dragged him in the criminal litigation. If in that criminal case, for want of evidence, the appellant has been given benefit of doubt, the employer, with whom the appellant had not worked during the period of his dismissal from service, cannot be compelled to pay salary for the said period. The principle of “No work no pay”, in our opinion, is applicable in the present case and for that period, the appellant is not entitled for the salary. Thus, the learned Single Judge has rightly come to the conclusion that the case of the appellant is not covered by the provision of Rule 7.5 of the C.S.R. The judgment of this Court in **Shashi Kumar vs. Uttri Haryana Bijli Vitran Nigam and another, 2005 (1) RSJ 718**, relied upon by learned counsel for the appellant before the learned Single Judge, has been held to be not applicable, because that case was under the Prevention of Corruption Act, 1988. In the present case, as already mentioned, the appellant was not involved in a case relating to his work and functions during the course of his employment. He had committed serious offence of murder, which had nothing to do with the discharge of his*

LPA-2170-2016(O&M)

-4-

official duty.

*In view of the above, we do not find any merit in
the instant appeal.*

Dismissed.

We will, thus, set aside the impugned judgment insofar as to
condone the period of suspension to award monetary consequences to the
appellant in view of the above settled principle of law. However, keeping in
view the reasons stated in the application, delay of 301 days in filing the
appeal is condoned.

Disposed of.

(MAHESH GROVER)
JUDGE

(RAJ SHEKHAR ATTRI)
JUDGE

22.11.2017
mamta

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No