

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

CWP No. 13199 of 2014

Date of Decision:-18.07.2018

Constable Shamsher Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present:- Mr. Aminder Singh, Advocate
for the petitioner.

Ms. Harsimrat Rai, DAG Punjab.

JITENDRA CHAUHAN J.(Oral)

Prayer in this petition filed under Article 226 of the Constitution of India is for issuance of direction in the nature of writ of certiorari for setting aside the order dated 24.12.2013 (Annexure P-8) passed in the departmental appeal, whereby, the petitioner was denied service benefits after treating the period of dismissal as non-duty period and further prayer for issuing writ of mandamus directing the respondents to grant full service benefits (pay and allowances, seniority/promotion etc.) for the period 28.1.2008 to 12.3.2013 alongwith interest @ 12% per annum in view of reinstatement on acquittal from the criminal charges.

The petitioner, a Constable, was involved in a criminal case

bearing FIR No.51 dated 25.04.1996, registered under Sections 392 and 419 read with Section 34 of the Indian Penal Code (for short, 'the IPC'), at P.S. GRP Ludhiana, *inter alia*, on the allegations that on 20.03.1996, while on official duty in Howrah Mail (3006 Down), had snatched 35 Pound sterling, 2 US Dollars and Rupees 3,200/- from a passenger, namely, Ravinder Singh, the complainant. Upon registration of the FIR, he was placed under suspension and was subsequently reinstated on 28.10.1996. The trial ended in the conviction of the petitioner under Section 392 IPC vide judgment dated 11.08.20015 and was sentenced to undergo rigorous imprisonment for two years and fine of Rupees five thousand. Aggrieved against the judgment of conviction and order of sentence, the petitioner preferred appeal before learned District and Sessions Judge, Ludhiana and during the pendency of the appeal, the sentence of the petitioner was suspended.

The competent authority, vide order dated 23.11.2005 (Annexure P-1), terminated the services of the petitioner. In the departmental appeal preferred by the petitioner, the Director General of Police, Railways, Punjab, partly accepted the appeal vide order dated 06.01.2006 (Annexure P-2) to the extent that order dated 23.11.2005 (Annexure P-1) passed by the punishing authority shall remain in abeyance till the final outcome of the appeal preferred before the Appellate Court. Thereafter, a show cause notice dated 28.1.2008 issued by S.P.-cum-A.I.G., GRP Punjab, Patiala was served upon the petitioner whereby it was proposed to dismiss him from service in view of letter dated 5.8.1998 issued

by the Department of Personnel and Admn. Reforms (PP-II BR.), wherein, instructions were issued to the effect that dismissal from service cannot be stopped on the ground that the higher Court has suspended his sentence. Reply submitted by the petitioner to this show cause notice was not accepted by the Department by relying upon the letter/instructions dated 09.1.2008 and 26.11.2007 dealing with letter dated 5.8.1998. Consequently, the petitioner was dismissed from service vide order dated 23.4.2008 (Annexure P-3). Vide judgment dated 25.2.2011 (Annexure P-4) passed by the appellate Court, criminal appeal preferred by the petitioner against his conviction was allowed in and he was acquitted of the charges framed against him by noticing that there was no evidence on record to show that the petitioner had checked the bag of the complainant; took out any currency therefrom; or ever threatened the complainant of dire consequences if he did not hand over the said bag to him. The only allegation against him was that he was accompanying co-accused HC Gurcharan Singh being on official duty to escort Howrah Mail train. Therefore, the petitioner moved an application dated 1.6.2011 (Annexure P-5) to Additional Director General of Police, GRP, Punjab, Chandigarh with a request to reinstate him into service on the ground of acquittal. Receiving no response, the petitioner sent a reminder dated 23.4.2012 (Annexure P-6) to this effect. Thereafter, the petitioner was reinstated into service by Assistant Inspector General, GRP, Punjab, vide order dated 12.3.2013, however, the period of dismissal from 28.1.2008 to 12.3.2013 was ordered to be treated as non-duty period on the principle of 'No Work No Pay'.

Learned counsel for the petitioner contends that the petitioner is entitled to release of the service benefits for the period from 28.1.2008 to 08.3.2013, as the principle of 'No Work No Pay' will not be applicable to the case of the petitioner as he was always willing to work. On the contrary, the respondent Department wrongly and arbitrarily dismissed the petitioner from service. He further contends that as per instructions dated 05.8.1998, it is clearly provided that if a Government servant is acquitted in appeal or other proceedings, he/she shall be entitled to all service benefits to which he would have been otherwise entitled to. Learned counsel further contends that even no departmental inquiry was initiated against the petitioner and he was dismissed from service only on the ground of conviction by the lower Court. Learned counsel further refers to Rule 16.3 Vol.2 of the Punjab Police Rules, 1934, which provides that of a police officer has been tried and acquitted by a criminal Court, he shall not be punished departmentally. Cites **M.P. Jindal vs. State Bank of Patiala and others 2013(2) SLR 251**, **Ram Singh vs. State of Punjab and others 2016(4) SCT 426** and a Division Bench judgment of this Court in passed on 10.2.2012 in **LPA No.1580 of 2011 (O & M)**, titled as '**General Manager Operation Circle vs. Mathura Dass Gupta**'.

On the other hand, learned State counsel contends that upon registration of FIR, the petitioner was convicted and sentenced by the trial Court. The punishing Authority, in view of instructions dated 05.8.1998 to the effect that in corruption and criminal cases, dismissal from service cannot be prevented merely on the basis of suspension of sentence by the

Appellate Court. Consequent to his acquittal, the petitioner was reinstated in service vide order dated 12.3.2013 (Annexure R-4) but the service benefits during the period he remained out of service i.e. from 28.1.2008 to 08.3.2013, were rightly denied on the principle of "No Work No Pay" because it was observed by the competent authority that it was the conduct of the petitioner involving himself in the crime that was taken into account for his not being in service of the respondents.

Heard learned counsel for the parties and perused the record.

In the instant case, the petitioner though was initially suspended, however, during trial, he was reinstated but was dismissed from service upon conviction by the trial Court. After his acquittal by the first Appellate Court, the petitioner represented for his reinstatement in service. Thereafter, the petitioner claimed that the service benefits for the period he remained under suspension and/or dismissal be paid to him as he was not at fault and he was always ready and willing to work, therefore, principle of 'No Work No Pay' is not applicable as it could be applied in a case where though work is offered but he did not perform the same or denied to do so willingly. The petitioner is the victim of the circumstances in the course of his employment and he cannot be said to be at fault, therefore, in view of law laid down in M.P. Jindal's case, Ram Singh's case and General Manager Operation Circle's case (supra), the writ petition is allowed and the impugned order passed by respondent No.2 declining pay and allowances to the petitioner for the period i.e. 28.1.2008 to 08.3.2013 he remained under suspension, is partly set aside and the petitioner is granted service benefits

from the date of filing his representation (Annexure P-5) i.e. from 01.6.2011 to 08.3.2013.

Allowed in the terms indicated above.

July 18, 2018
Vijay Asija/atulsethi

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No