

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

CWP No.13344 of 2014 (O&M)

Date of decision: 22.02.2018

Manohar Lal

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. R.K. Arora, Advocate for the petitioner(s).

Ms. Sudeepti Sharma, Addl. A.G., Punjab.

Jitendra Chauhan, J. (Oral)

By way of the present petition, the petitioner(s) seek(s) issuance of a writ in the nature of certiorari for quashing the part of the impugned order dated 02.01.2014 (Annexure P-9) to the extent whereby the petitioner has been denied arrears of salary for the period from the date of his dismissal to the date of his reinstatement.

Learned counsel for the petitioner has raised a limited prayer that after the release on probation by this Court in CRA-S-415-SB-2001, he was reinstated by the respondents with all consequential benefits except his period from the date of his dismissal to the date of his reinstatement, vide order dated 14.01.2013 (Annexure P-4). Aggrieved thereby, the petitioner filed CWP-14973-2013 which was disposed of on 16.07.2013 with directions to respondent No.2 to consider the claim of the petitioner and to take final decision on the representation. Pursuant

thereto, respondent No.2 had passed the order dated 02.01.2014, whereby the petitioner has been allowed benefit of notional pay fixation, annual increments for the period, the petitioner remained out of job on account of his dismissal and the benefit of seniority with all consequential benefits of promotion from the date his juniors were granted promotion, however, the benefit of arrears of salary from 07.09.2006, the date of dismissal to the date of reinstatement i.e. 20.01.2013 was not granted. Learned counsel contends that since the petitioner had been granted all the benefits when he remained out of job, he cannot be deprived of the benefit of arrears of salary from 07.09.2006 to 20.01.2013.

On the other hand, learned State counsel submits that the petitioner had been granted the benefit of probation and has not been acquitted, therefore, the punishment of probation has not been wiped out the effect of his conviction

Heard.

In **Union of India and others** Vs. **Jaipal Singh**, 2004(1)

SCT 108, Hon'ble the Supreme Court has held 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 therefore does 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 therefore 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 as a citizen the employee or a public servant got involved in a criminal case and it 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 adverting 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."

The petitioner joined the respondents' department as Multipurpose Health Worker on 18.03.1982. He was regularized w.e.f. 01.04.1985. An FIR No.181 dated 26.11.1998, under Section 188, 332 and 333 read with Section 34 of IPC was registered against the petitioner at Police Station Sultanpur Lodhi, District Kapurthala, wherein he was sentenced to three years and fine of Rs.2000/- and was subsequently, dismissed from service, vide order dated 07.09.2006. Aggrieved thereby, the petitioner filed an appeal whereby he was released on probation. After

release on probation, the petitioner has been allowed all the benefits except the arrears of salary for the period from 07.09.2006 to 20.01.2013. After considering the submission raised on behalf of the petitioner, this Court feels that the competent authority has already taken a lenient view in favour of the petitioner whereby he has been granted the all other benefits. It is to be noticed that the petitioner was allowed parole and it was not a honourable acquittal. The status of the petitioner remains to be that of a convict. The petitioner was out of service under a order passed by the competent Court and has not worked, therefore, he is not entitled to any salary for the period from 07.09.2006 to 20.01.2013. Accordingly, no case for quashing the part of the impugned order dated 02.01.2014 (Annexure P-9) is made out.

Dismissed.

22.02.2018

sumit.k

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No