

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 22018 of 2014

Date of Decision: May 15, 2018

Bal Mukand

.....Petitioner

versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE SUDHIR MITTAL

Present:- Mr. Madan Pal, Advocate
for the petitioner

Mr. Gaurav Jindal, Addl. A.G. Haryana

Sudhir Mittal, J. (Oral)

The petitioner was appointed as Agriculture Development Officer on adhoc basis on 13.08.1979. Vide order dated 02.12.1985, his services were terminated as a criminal case had been registered against him. Finally, the petitioner was acquitted vide judgment dated 01.12.1995. He was reinstated vide order dated 29.10.1997. The period of absence from duty was treated as extra ordinary leave. This order was challenged by the petitioner by way of CWP No. 83 of 2001, which was ultimately disposed of vide order dated 12.02.2014, giving the petitioner liberty to make a detailed representation regarding his claim with a direction to the respondents to decide his claim within a time bound manner. Consequently, the petitioner submitted a detailed representation dated 19.02.2014. Two fold claims were made; (a) grant of regularization of service as per policy dated 01.04.1985; and (b) payment of remuneration for the period between date of termination and date of reinstatement.

2. Vide order dated 29.04.2014, the claim for regularization was granted but the petitioner was denied remuneration for the period that he did not work.

Thus, the present writ petition has been filed.

3. Learned counsel for the petitioner submits that the impugned order gives two reasons for rejection of the claim of the petitioner and neither of them is sustainable in law. The first reason given that the other employees who were co-accused in the criminal case had challenged their order of termination by filing writ petition and the High Court had passed an order of status quo in their favour and, thus, they were entitled to full emoluments on reinstatement, is fallacious, for the reason that the petitioner had also challenged his order of termination by way of appeal and the record shows that the appellate order was never conveyed to the petitioner. Apart from that, merely because the petitioner did not file a writ petition challenging the order of termination, he can not be denied the same treatment as has been given to the similarly situated employees, who were co-accused with him. The second ground that as per policy of the Government, the petitioner is not entitled to pay for the period he has not worked on the principle of 'No work no pay' is also unsustainable in view of Rule 7.3(2) of the Punjab Civil Services Rules, Volume I Part I, as applicable to the State of Haryana. According to him, as per the said Rule, if a Government employee has been fully exonerated he is entitled for full pay and allowances for the period he has not worked. Reliance has also been placed upon judgment of Division Bench of this Court in ***Shashi Kumar vs. Uttar Haryana Bijli Vitran Nigam and another, 2005(1) SCT 576*** as well as single Bench judgment of this Court in ***Vinod Kumar vs. State of Punjab, 2016(4) SCT 553***.

4. Learned State counsel supports the reasoning adopted in the impugned order. He states that since the petitioner never challenged his order of termination, he can be dealt with differently. Moreover, FIR was registered against the petitioner on the basis of complaint made by the general public and not by any Government official or department. In such a situation, the principle of 'No work no pay' will apply and the petitioner is, thus, not entitled to be paid for the period he

remained out of service. Reliance has been placed upon judgment of the Supreme Court in *Ashok Sharma vs. Ram Adhar Sharma, 2009(2) SCT 165* and single Bench judgment of the Patna High Court in *Uma Kant Prasad vs. State of Bihar and others, 2011(11) SCT 446*.

5. Sub rule (2) of Rule 7.3 is reproduced herein below for ready reference:-

“(2) Where the authority competent to order reinstatement 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 compulsorily retirement, as the case may be.”

6. A perusal of the above Rule leaves no doubt that if the Government is of the opinion that an employee has been fully exonerated he must be given the full pay and allowances for the period he remained out of service. The Rules does not permit any distinction between an employee who challenged his order of termination and another who does not do so. A perusal of the judgment of the trial Court dated 01.12.1995 shows that the petitioner and his co-accused were honorably acquitted as the prosecution failed to prove charges against them. The prosecution witnesses turned hostile during the trial and ultimately the case became a case of no evidence. The co-accused of the petitioner have been granted full benefits for the period they remained out of service and, thus, there is no reason to discriminate against the petitioner. The Government can not change its opinion in the case of the petitioner even though he is identically placed as the co-accused. Thus, in my view the case of the petitioner is fully covered by Rule 7.3(2) (supra).

7. The judgment of a Division Bench of this Court in *Shashi Kumar*

once an employee is acquitted by the criminal Court, it amounts to full exoneration and such an employee would be entitled to reinstatement alongwith all benefits including salary for the period he remained out of service. This is also the ratio of ***Vinod Kumar (supra)***, in which case Rule 7.3(2) (*supra*) has been specifically interpreted. The judgment of the Supreme Court in ***Ashok Kumar (Supra)*** is not attracted to the facts of this case as no service rules have been referred to in the said judgment. Moreover, the plaintiff-appellant in the said case was seeking higher pay scale of the post of Executive Officer-cum-Secretary but that is not the situation in this case.

8. The judgment of ***Uma Kant Prasad (supra)*** only holds that an employee is not automatically entitled to full wages for the period he remained in judicial custody on being acquitted. No service rule has been discussed therein while reaching a conclusion. Thus, the said judgment is also not attracted to the facts of this case.

9. For the reasons mentioned hereinabove, the writ petition is allowed and the impugned order dated 29.04.2014 (Annexure P-14) qua the refusal of salary for the period during which the petitioner remained out of service, is quashed. The respondents are directed to pay the salary due to the petitioner for the period he remained out of service on account of the termination of his services and all consequential benefits to which he is entitled to on account of regularization, within a period of two months from the date of receipt of certified copy of this order. In case the payment is not released within the said period, it shall carry interest @ 8% p.a. on the dues.

May 15, 2018

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[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No