

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

**CWP No. 22376 of 2015
DECIDED ON: MARCH 14, 2018**

SUJINDER SINGH

.....PETITIONER

VERSUS

PUNJAB STATE POWER CORPORATION LTD. & OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. A.S. Walia, Advocate
 for the petitioner.

 Mr. Rajiv Dhawan, Advocate
 for the respondents.

JASPAL SINGH, J (ORAL)

By virtue of instant petition preferred under Articles 226/227 of the Constitution of India, petitioner has sought a writ in the nature of certiorari to quash the order dated 01.08.2012 (P-3) to the extent of regularization of the period of suspension as leave of kind due as well as order dated 16.05.2013 (P-8) whereby, a statutory appeal preferred by the petitioner against the order dated 01.08.2012 has been dismissed with further direction for issuance of writ in the nature of mandamus directing the respondents to treat the period of his

suspension from 11.11.1994 to 11.06.1995 as “spent on duty”, and to regularise the same accordingly and to release the amount of leave encashment against the available due earned leave.

2. Assailing the impugned orders, it has been argued with vehemence by learned counsel for the petitioner that petitioner was placed under suspension vide office order 912, dated 11.11.1994 (P-1) on account of registration of FIR No.88, dated 06.11.1995, under Sections 420, 466, 467, 468, 471, 477-A and 120-B IPC, at Police Station Goindwal Sahib, District Tarn Taran. However, after facing prolonged trial for more than 10 years, petitioner was acquitted of the charges by learned Judicial Magistrate Ist Class, Tarn Taran vide judgment dated 21.09.2010 (P-5). Even, an appeal preferred by the respondents against order of acquittal dated 21.09.2010 (P-5) was also dismissed by learned Additional Sessions Judge, Tarn Taran vide judgment dated 24.10.2011 (P-6). Subsequent thereto, petitioner approached the respondents/punishing authority to drop the proceedings on the basis of charge sheet dated 17.01.1995 and to regularize the period of his suspension from 11.11.1994 to 11.06.1995 and grant him the leave encashment. However, even though the proceedings were dropped but the period of suspension was treated as 'leave of kind due' instead of duty vide impugned order dated 01.08.2012 (P-3). Aggrieved, against the impugned order dated 01.08.2012 (P-3), petitioner preferred a statutory appeal which was also dismissed vide order dated 16.05.2013 (P-8).

3. Learned counsel for the petitioner further contended that while passing the afore-said impugned orders by the concerned authorities it weighed in their mind that the petitioner has been acquitted of the charges by giving

“benefit of doubt”, as the prosecution has not produced the relevant register in the Court. But while referring rule 7.3 of the Punjab State Electricity Board Main Service Regulations, 1975 Volume-I (for short 'Service Regulations'), learned counsel for the petitioner has submitted that it provides as to how the allowances on reinstatement of a suspended employee are to be regulated and as per rule 7.3 (2) of the *ibid* Service Regulations where the petitioner has been fully exonerated he is entitled to the full pay and allowances to which he would have been entitled, had he not been dismissed, removed, compulsory retired or suspended, as the case may be. In fact the authorities while passing the impugned orders have not taken into consideration the afore-said rules as well as principles governing the regularization of suspension period.

4. He further contended that once an employee is acquitted of the charges either for want of evidence or on technical ground after having been given benefit of doubt, he is entitled to be treated on duty and he is entitled to all the benefits on his retirement. In this context, learned counsel for the petitioner has placed reliance upon the judgments rendered by Hon'ble Division Bench of this Court in **Bhag Singh vs. Punjab and Sindh Bank; 2006 (1) SCT 175; Joginder Singh vs. Union Territory of Chandigarh; 2015 (1) SCT 87 and Shashi Kumar vs. Uttar Haryana Bijli Vitran Nigam Ltd; 2005 (1) SCT 576,** which are subsequent relied upon by this Court in **Lakshmi Narain vs. State of Haryana and another; 2017 (1) SCT 756.**

5. Per contra, learned counsel for the respondents has controverted the various submissions made by learned counsel for the petitioner, contending that the facts narrated by learned counsel for the petitioner referred to above are to

some extend correct but alleged that the mere fact that charge sheet was dropped and the petitioner is acquitted in a criminal case does not *ipso facto* mean that the period of suspension is supposed to be regularized by treating the concerned official on duty.

6. Undoubtedly, charge sheet was dropped and vide impugned order dated 01.08.2012 (P-3) competent authority considered the case of the petitioner in the light of provisions contained in rule 7.3 of the Service Regulations and has made a specific order. The petitioner cannot claim as a matter of right that period of his suspension to be treated as period “spent on duty”, simply on the ground that charge sheet has been dropped or he has been acquitted of the charges in a criminal case. From the judgment of acquittal, it cannot be construed that the petitioner was fully exonerated or the allegations were found to be fully unjustified. The case of the petitioner was considered and it was only thereafter, impugned orders (P-3 and P-8) were passed. Moreover, an appeal preferred by the petitioner against the order dated 01.08.2012 (P-3) was also dismissed, finding no infirmity or illegality in the impugned order (P-3). Accordingly, he prays for the dismissal of instant petition.

7. This Court has given an anxious thought to the rival submissions made by learned counsel for the parties and has scanned the document available on file meticulously and also gone through the judgments relied upon by the parties during the course of arguments.

8. Undisputably, on account of registration of a criminal case, petitioner was placed under suspension and remained as such from 11.11.1994 to 11.06.1995. Subsequently, he was acquitted in afore-said criminal case vide

judgment dated 21.09.2010 (P-5) passed by learned Judicial Magistrate Ist Class, Tarn Taran. Not only this, an appeal preferred against the afore-said judgment of acquittal (P-5) was also dismissed by learned Additional Sessions Judge, Tarn Taran vide order dated 24.10.2011 (P-6). Meaning thereby, that the judgment dated 21.09.2010 (P-5) has attained finality. Earlier, petitioner was also served with the charge sheet dated 17.01.1995 on similar allegations as levelled in the criminal case and on acquittal of the petitioner in the said criminal case, proceedings in the afore-said charge sheet were also dropped. However, vide impugned order dated 01.08.2012 (P-3) suspension period of the petitioner w.e.f. 11.11.1994 to 11.06.1995 was treated as “leave of kind” due by the competent authority considering that mere acquittal of the petitioner as well as dropping of proceedings on the ground of acquittal, suspension period cannot be treated as period “spent on duty”, by distinguishing the rule contained in 7.3(2) of Service Regulations, impugned order dated 01.08.2012 (P-3) passed. Though an appeal was also preferred against the said order but that was also dismissed vide order dated 16.05.2013 (P-8).

9. The short question which requires determination or consideration in this petition as to whether an order of suspension is automatically set aside on the reinstatement or acquittal of the concerned official and whether the management can deal with the period of suspension according to the regulations governing in the service conditions of the delinquent.

10. No doubt it is settled proposition of law that the mere acquittal of the petitioner does not debar the competent authority under the Act and Rules to consider the case of the petitioner while dealing with the matter for treating

suspension period as “leave of kind due” or “spent on duty”. To arrive at a conclusion that petitioner is not entitled to the period to be treated as “spent on duty”, concerned authorities are obliged to conduct a detailed inquiry and to conclude whether the act and conduct of the petitioner in case of registration of FIR against him has resulted into gross mis-conduct and if the concerned authorities are of that view, it is within its jurisdiction to take a view different from the one provided in rule 7.3 (2) of the Service Regulations.

11. In the case in hand, it is not a question of discussion that whether it was a Hon'ble acquittal or otherwise but one thing is evident that the word “acquittal” or “Hon'ble acquittal” or “acquittal of the blames” or “acquittal of the charges” has not been defined. Generally, once allegations against the delinquent official are not established by way of evidence by the prosecution, it is observed that the accused is acquitted of the charges by giving benefit of doubt. In this context, we can have the reference of Hon'ble Division Bench judgments of this Court rendered in the cases of *Bhag Singh (supra)*, *Joginder Singh (supra)* and *Shashi Kumar (supra)*, which have further been relied upon by this Court in the case of *Lakshmi Narain (supra)*. No findings has been recorded either by the competent authority while passing the impugned order dated 01.08.2012 (P-3) or by appellate authority to the effect that gross misconduct is established on the part of the petitioner, on account of which, suspension period to be treated as period “spent on duty”. Rather this Court is of the considered view that on acquittal of the delinquent official-petitioner whether on technical grounds or on the ground of paucity of evidence of “by giving benefit of doubt” is an Hon'ble acquittal, until or unless gross mis-

conduct is proved or established on his part. As such, he cannot be penalized in any manner either by way of treating suspension period to be leave of kind due or to be absent from duty. Since in the instant case, nothing has been recorded either by punishing authority or by appellate authority while passing the impugned orders, the declining of relief to which he is entitled as per the rules is neither legally nor factually justified. Since impugned orders (P-3 and P-8) suffer from material infirmity or illegality, the same are not sustainable in the eyes of law and are liable to be quashed/set aside.

12. For the reasons recorded above, instant petition is allowed. Impugned orders dated 01.08.2012 (P-3) and dated 16.05.2013 (P-8) are quashed/set aside. Respondent authorities are directed to treat the suspension period of the petitioner w.e.f. 11.11.1994 to 11.06.1995 as period “spent on duty”, to regularize the same and release the amount of leave encashment against the earned leave available as per Rules.

13. Needful is expected to be done within a period of three months from the date of receipt of certified copy of this order. In case of non-compliance of afore-said direction, petitioner shall be at liberty to have recourse to other remedies available under law including to approach this Court.

MARCH 14, 2018
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(JASPAL SINGH)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>