

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

CWP No. 23909 of 2016

Date of Decision:-23.04.2018

Satyapal @ Satpal

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present:- Mr. B.K. Bagri, Advocate
for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

RAJIV NARAIN RAINA J.(Oral)

Prayer in this petition filed under Articles 226/227 of the Constitution of India is for issuance of a writ in the nature of certiorari for quashing the order dated 24.6.2016 (Annexure P-5) passed by the Inspector General of Police, Railways & Commando, Haryana, Panchkula.

This Court vide order dated 02.12.2015 passed in Criminal Revision No.849 of 2009 has acquitted the petitioner of the charges under Sections 221 and 120-B IPC in FIR No.391 dated 16.9.1998, registered under Sections 221, 222, 120-B, 506, 34 IPC at Police Station Model Town, Panipat. As a result of acquittal, the petitioner has been reinstated to

service vide order dated 24.6.2016. Since the trial Court had convicted the petitioner, he had to spend time in jail till he was released on bail. While awarding reinstatement, the respondents denied payment of arrears of salary to the petitioner for the period of absence till reinstatement due to criminal charges.

Without holding a departmental proceedings, the petitioner has been punished by an order of reversion from the post of EASI to Head Constable vide order dated 15.5.2009 (Annex P-1) due to pendency of the criminal case. The petitioner has approached this Court by way of this petition for grant of backwages from 28.5.2009 to 30.6.2016 in view of his acquittal of the criminal charges.

This Court in criminal revision doubted the prosecution story that the accused went to the residence of the complainant and threatened him on 15.9.1998 while in custody of the petitioner. This Court reasoned that in other words before the petitioner was giving the custody of accused Jasbir Singh, how could he accompany him to the house of the complainant on 15.9.1998, and this crucial question has remained unanswered in the prosecution evidence. It was for the reason that if the intention of the accused i.e. Mohar Singh, Surat Singh and Jasbir Singh, accused of murdering the father of complainant Dalbir Singh, was to threaten the complainant and stop him for deposing against them, the task could very well have been accomplished by the co-accused Pargat Singh and Gurmukh Singh, who were already on bail and that is how order dated 02.12.2016 came in the criminal revision and the accused acquitted of the charges

framed against them. If the Police Department initiates criminal action against the members of its own force and fail to secure conviction on a criminal charge, then the prosecution Department is responsible for the the agony of trial and judicial custody and the period spent during the trial. The innocence of the petitioner is declared by virtue of the order of High Court from the date of registration of FIR. If that is so, and the charge/s employment related, then the petitioner cannot be made to suffer non-payment of the arrears of salary on the principle of 'No Work No Pay'. In such a case, this principle will not apply.

Learned counsel for the petitioner cites a large number of judgments on the point including a Division Bench of this Court in **General Manager Operation Circle, Dakshin Haryana Bijli Vitran Nigam, Narnaul and others vs. Mathura Dass Gupta**, 2012(4) S.C.T. 7 of which I was a member. Learned counsel in addition relies on **Jaswinder Kaur vs. Punjab State Power Corporation Limited and others**, 2016(2) S.C.T. 218 and a judgment of the Supreme Court in **Jaipur Vidyut Vitran Nigam Ltd. and others vs. Nathu Ram**, 2010(1) SCC 428 and the well settled law in **Union of India vs. K.V. Jankiraman**, AIR 1991 SC 2010 to strike on the point of applicability of principle of 'No Work No Pay' in cases where an employee is willing to work but is kept away from performing duties by authorities for no fault of his. Learned counsel for the petitioner also cites orders passed by this Court in CWP No.3344 of 2012 decided on 03.8.2012, CWP No.13988 of 2015 decided on 24.1.2017 and CWP No.20097 of 2015 decided on 15.2.2017 on the same subject matter.

In view of the settled law, the petition against impugned order re-instating the petitioner but denying arrears of salary and demoting the petitioner to Head Constable without holding disciplinary proceedings has to be allowed. The reversion order passed on the conviction of the petitioner by the trial Court is set aside in view of the acquittal of petitioner by the High Court. The arrears of salary be calculated and paid to the petitioner within three months from the date of receipt of certified copy of this order.

The petition is accordingly allowed.

April 23, 2018
Vijay Asija

(**RAJIV NARAIN RAINA**)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

No