

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

**CWP-28419-2013 (O&M)
Date of decision : 23.04.2018**

Nirmal Singh

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Sunny Singla, Advocate for the petitioner.

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

JITENDRA CHAUHAN, J.

The question that arises for determination of this Court in the instant writ petition is whether the petitioner is entitled for grant of full pay, allowance, increments and other benefits which may have accrued to him during the period he remained under suspension from service on account of registration of a FIR against him, which ultimately stood quashed by this Court.

The wife of the petitioner lodged FIR No.10 dated 22.04.2010, registered under Sections 406 and 498-A of the Indian Penal Code at Police Station Mataur, District SAS Nagar, Mohali. The petitioner remained in custody from 27.04.2010 to 29.04.2010. Vide office letter dated 08.07.2010, the petitioner was suspended w.e.f. 27.04.2010. During the course of trial, the parties compromised the matter and on the basis thereof, the FIR in question was quashed by this Court vide order dated 27.10.2010

(Annexure P-1), passed in CRM-M-27891-2010. Thereafter, vide order dated 21.04.2011 (Annexure P-2), the petitioner was reinstated conditionally, and ultimately, vide order dated 22.03.2012, the conditional order of reinstatement was made absolute.

Thereafter, the petitioner approached the authorities with a request to pay the arrears of pay etc. for the period of suspension, which was declined vide impugned order dated 18.07.2013 (Annexure P-4).

It is contended that the allegations contained in the FIR did not relate to any misconduct in relation to the service tenure of the petitioner. The dispute was of matrimonial nature between the petitioner-husband and his wife, which stood amicably compromised. Therefore, the period of suspension could not be treated as non-duty period. In support of his contentions, learned counsel has prayed reliance on a Division Bench judgment of this Court rendered in ***Shiv Kumar Goel Vs. State of Haryana, 2007(1) SCT 739***, by following the law laid down by Hon'ble the Supreme Court in ***B.D. Gupta v. State of Haryana, (1973)3 SCC 149***.

On the other hand, learned State counsel has vehemently argued that the petitioner is not entitled to the relief claimed inasmuch as the petitioner was placed under suspension on account of registration of criminal case against him by his wife and the department has nothing to do with the said proceedings. The department has already taken a lenient view in the matter by not treating the period of suspension as non-duty period and the same has been considered as duty period for the purposes of seniority and pension. The case of the petitioner is barred by the principle

of 'No work, no pay'.

Heard.

Rule 7.3 B(3) of the Punjab Civil Services Rules, read as under:-

“(3) Where the authority competent to order re-instatement is of the opinion that the suspension was wholly unjustified, the Government employee shall, subject to the provisions of sub-rule (8), be paid the full pay and allowances to which he would have been entitled, had he not been suspended:

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government employee, had been delayed due to reasons directly attributable to the Government employee, it may, after giving him an opportunity to make his representation and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing that the Government employee shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.”

In **Shiv Kumar's** case (supra), it was held as under:-

“9. There is another aspect of the matter.

*In the Punjab Civil Services Rules Volume-I (as applicable to Haryana) Chapter VII has been incorporated which deals with amongst other things the subject of suspension. Rule 7.3 lays down a comprehensive procedure for coming to a conclusion as to how the period of suspension is to be treated. The aforementioned Rule was subject matter of consideration by Hon'ble the Supreme Court in the case of “**B.D. Gupta v. State of Haryana**” (1973)3 SCC 149. It was held that if any order adversely affects financially then even minor penalty has to be passed after objective assessment of all relevant facts and circumstances. The aggrieved employee is required to be granted a full opportunity of hearing by issuing show cause notice. In the present case, there is no show cause notice issued to the petitioner on the subject of treatment of his period of suspension. Even on that account, the order dated 20.11.2002 (Annexure P-1) is liable to be set-aside.*

- 1. The argument of learned counsel for the respondent based on the judgment of the Supreme Court in Krishnakant Raghunath Bibhavnekar's case (supra) has failed to impress us because there was ample scope for holding of an enquiry as the employee had neither been retired from*

service nor was retrenched. In the present case, the employer-employee relationship has come to an end on 30.06.2002 when he was retrenched from service and, therefore, the aforementioned judgment is not applicable to the facts of the present case. Accordingly, the argument is devoid of merit and the same is rejected.”

Similar view was taken by this Court in CWP-18117-2013, titled as ***Dhani Ram Vs. UHBVN and another***, decided on 02.03.2015, wherein, it was held as under:-

“In the instant case, even after acquittal of the petitioner by the criminal Court, his case was not considered. His dismissal was based on judgment of conviction, although, he was acquitted of the charge. The order of removal was passed by respondent-Department without affording any opportunity of hearing to the petitioner and as such, the petitioner cannot be made to suffer its consequences.

*Under similar circumstances, petitioner-Harpal Singh in **CWP No.10006 of 2006** was held to be entitled for benefit of intervening period i.e. between removal from service till he was taken back on duty and he was deemed to be on duty for all intents and purposes*

vide order dated 21.01.2008.

Accordingly, this petition is allowed and the impugned order dated 08.05.2008 (Annexure P-11), 11.11.2008 (Annexure P-12) and 22.12.2008 (Annexure P-13) are set aside and the petitioner is held entitled for all consequential benefits. The intervening period of dismissal and re-instatement be considered as period spent on duty.

The necessary exercise be done within a period of three months from the date of receipt of certified copy of this order.”

In the instant case, the reasons for placing the petitioner under suspension cannot be said to be relatable, in any manner, to the conduct of the petitioner which could be termed as prejudicial to either his employer or his employment. He has not been alleged to be guilty of any indiscipline or a behaviour unbecoming of an employee. He has also not been alleged of any act of commission or omission which can be said to be detrimental to the interests of his employer, in discharge of his official duties. The circumstances which led to his suspension are largely attributable to the matrimonial discord arisen between the petitioner and his wife, and thus, are personal in nature and have no relation to his official placement. Therefore, the respondent-authorities, though, rightly considered the period of suspension as period spent on duty for the purposes of pension and

seniority, but fell in error while declining him grant of full pay and allowances therefor.

In view of the above, impugned order Annexure P-4 is partially modified to the extent that benefit of Rule 7.3 B(3) *ibid* be extended to the petitioner in totality by granting him full pay and allowances for the period of suspension.

Allowed.

23.04.2018

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**(JITENDRA CHAUHAN)
JUDGE**

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No