

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

CWP No. 6687 of 2016

Date of decision : 14.11.2018

Vinod Kumar

...Petitioner

versus

State of Haryana and ors.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. NPS Kohli, Advocate
for the petitioner.

Ms. Nidhi Garg, AAG, Haryana

RITU BAHRI, J.

In the present civil writ petition, the petitioner is seeking setting aside of order dated 17.09.2015 (Annexure P-2) passed by respondent No. 2 whereby petitioner has been held not entitled for any salary, allowances or arrears during the period of his suspension/dismissal.

Petitioner was working as UDC in the office of SDO Electricity Board, Ambala City and on 15.06.2001, F.I.R No. 19 dated 15.06.2001 under Section 7/13 of Prevention of Corruption Act and Section 120-B IPC was lodged at Police Station S.V.B Ambala. Subsequently, petitioner was suspended on 18.06.2001, vide office order No. 233. The petitioner was then convicted, vide order dated 13.09.2006. However, during the period of suspension i.e from 2001 to 2008, the petitioner was given subsistence allowance. On 23.01.2008, the petitioner was dismissed from service. The petitioner superannuated on 31.05.2008 after attaining the age of 58 years.

The petitioner was subsequently acquitted of the charges framed against him by this Court, vide judgment dated 05.11.2014 (Annexure P-1). The petitioner made representations dated 19.11.2014 and 10.06.2015 but no action has been taken. Finally, respondent No. 2 vide order dated 17.09.2015 rejected the claim of the petitioner (Annexure P-2).

On notice, a written statement has been filed on behalf of respondent No. 2 and reference has been made to judgments of Hon'ble the Supreme Court and this Court (Annexure R-2/1 to R-2/3) wherein it has been held that the petitioners have no right to claim full salary for the period he did no work, as they had disabled themselves from rendering the service on account of conviction and incarceration in jail. The petitioner has received the full pensionary benefits for the period w.e.f 01.06.2008 to 30.06.2016. The petitioner has been paid Rs.4,42,188/- i.e leave encashment and gratuity/DCRG, as per Annexure R-2/4.

Learned counsel for the petitioner while referring to judgment of acquittal wherein the petitioner and his co-accused were acquitted and it has been held that the main kingpin behind entire occurrence i.e JL Sharma, JE who was the officer incharge and authorized for reconnection of the electricity connection of the complainant has neither been arrested nor charge sheeted for want of sanction, by the prosecution. It has come in evidence that P.W.11 DSP Ramphal Singh-Investigating Officer that after asking Hoshiar Singh to accept money from the complainant, he by handing over slip to the police, ran away from the office.

Learned counsel submits that the petitioner has neither been named by the Investigating Officer nor by the shadow witness and no role qua demand and acceptance of the alleged bribe money from the

complainant has been attributed to him by them. Further he was not competent to order reconnection of the electricity connection of the complainant.

Heard learned counsel for the parties.

Reference at this stage can be made to ***CWP No. 5139-2014 titled as Mahesh Kumar Gupta vs. UHBVNL, decided on 21.05.2015*** wherein in similar circumstances, this Court partly allowed the writ petition filed by the petitioner and the petitioner was held entitled for all the benefits for the period from the date of dismissal to the date of superannuation till the date of acquittal. In this judgment, it has been held that if an employee gets involved in criminal case because of his own fault and not because of the fault of his employer, an employee is not entitled to full salary for the period he did not work. The operative part of the judgment reads as under:-

“As per provisions of Rule 7.5, in case of acquittal from criminal charge, or if it is proved that the liability of officer arose from circumstances beyond his control or his detention being held by the competent authority to be unjustified, a specific provision has been made under the rules.

*In the present case, the petitioner was acquitted by giving benefit of doubt. Although, there is no difference between the “acquitted honourably” and “acquitted by giving benefit of doubt” but in service law, the meaning is different. The difference between the acquittal on merits and acquittal by giving benefit of doubt has been interpreted in different manner. The difference has been explained recently in judgment of Hon'ble the Apex Court in **New Delhi vs. Mehar Singh, 2013(4) SCT 311.***

Further Hon'ble the Apex Court has held that an acquittal is an "honourable" acquittal in every sense and purpose. The accused should not be deprived from being appointed to the post, in the public employment by declaring him as unsuitable to the post even though he was honourably acquitted in criminal case registered against him.

In the present case, the petitioner was suspended and dismissed from service because of his conviction in the criminal case. Thereafter, he was acquitted by the Appellate Court. The stand of the petitioner is that his juniors have been promoted and he is entitled not only for promotion but also for other consequential benefits. The intervening period has been treated as duty period for the purpose of pensionary benefits with 50% allowances but he has not been granted full salary for that period. The claim has been rejected only on the ground that the petitioner did not work during that period and as such, he is not entitled for full salary as the respondent-employer was not at fault.

*In case of criminal nature, which leads to Police remand and judicial custody; facing trial and conviction in a criminal offence would be in deprivation of employer's rights of availing the services of such person not by their own actions but by an act of the employee. In such circumstances, the theory of fault becomes relevant as the employer has nothing to do if the accused-employee is convicted or acquitted and he cannot be blamed for that. The State exchequer cannot lightly be burdened for acts which do not originate from the employer as it has no rule or control. The employer/State Government is left with no option but only to wait and watch for the outcome of the criminal trial. This view has been observed by this Court in the case of **B albir Singh' s case (supra)**.*

*Even in Division Bench judgment of this Court in **Mahabir Singh vs. State of Haryana and others**, 2011(2) SLR 638, it has been held as under: -*

“6. A perusal of the aforesaid Rule shows that if a Government employee has been arrested on a criminal charge then he is deemed to be under suspension for the period during which he is detained in custody or is undergoing imprisonment. In such a situation, he is not allowed to draw any pay and allowance other than subsistence allowance that may be granted in accordance with the provision of Rule 7.2 of the Rules for such period until the final termination of the criminal proceedings initiated against him or until he is released from the detention followed by reinstatement. The rule further provides that adjustment of his allowances for the period of suspension in the aforesaid eventuality has to be made according to the circumstances of each case. According to the illustration of the rule the full amount of pay and allowances could be given only if the Officer is completely acquitted of blame or if it is proved that the officer's liability arose from circumstances beyond his control or the detention was found to be unjustified by the competent authority.” (emphasis applied)

*A reference has also been made to the judgment of Hon'ble the Supreme Court in **Ranchhodji Chaturji Thakore's case (supra)**, where the Court had proceeded to observe that the question of back wages could be considered where an employee was prevented unlawfully from discharging his duties and for this, his conduct becomes relevant and as such, the conduct has to be seen with regard to his involvement in the crime which ultimately, led to his acquittal. The Court while observing liability of the State dealing with a case where the order of conviction had already been passed for an offence on the basis of which, the employee was kept out of service. The Government cannot be fastened with liability for an act and conduct of an employee, which cannot directly be attributable to the Government.*

In the present case, the petitioner was involved in the criminal case because of his own fault and not because of the fault of

his employer as an FIR was registered against him under Prevention of Corruption Act. He was convicted by the trial Court and was subsequently, acquitted by the Appellate Court.

The procedure in criminal case is totally different from the departmental proceedings and the accused in criminal case can be acquitted on technical ground as it is for the prosecution to prove the charge against the accused beyond the reasonable doubt whereas in the departmental proceedings, the procedure is totally different. Had the petitioner been involved in the case at the instance of his employer or respondent-department, it could have safely been stated that the employer was at fault but the employee was not at fault in any manner. In the present case, the petitioner remained out of service during pendency of the criminal proceedings for which, the employer cannot be held liable and as such, the petitioner has no right to claim full salary for the period he did not work.”

The above said judgment is directly applicable to the facts of the present case, as in the present case as well, the complainant Ram Kumar gave a complaint and stated that he contacted the present petitioner and JL Sharma, JE who demanded a sum of Rs.1500/- as bribe for restoration of the electricity supply of which Rs.1000/- was for JE and Rs.500/- was for him. Thus, the complaint was by a private person and the employer has no role to play in lodging of F.I.R.

Further Hon'ble the Supreme Court of India in cases of ***Union of India and others vs. Jaipal Singh, 2004 (1) SCT 108 and Ranchhodji Chaturji Thakore vs. The Supdt. Engineer, Gujarat Electricity Board, 1997 (1) SCT 824*** wherein it has been held that if an employee convicted for an offence committed by him in his private life, he is not entitled for

back wages even though he has been acquitted. An employee is only entitled to reinstatement as the employer cannot be blamed and made liable for the personal conduct of the employee.

Thus, in the present case, the petitioner had involved himself in a crime, though he was acquitted later, he had disabled himself from rendering the service on account of conviction and incarceration in jail. 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. The employer cannot be made liable to pay for the period for which they could not avail the services of the petitioner.

Applying the ratio of law laid down in the above mentioned judgments, the present writ petition is dismissed,

14.11.2018

G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No