

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 4010 of 2017 (O&M)

Date of decision : 17.10.2018

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Dharambir

.....Petitioner

Versus

State of Haryana and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Ms. Monika Arora, Advocate
for the petitioner.

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

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RITU BAHRI, J.

The petitioner is seeking quashing of the order dated 24.8.2016 (Annexure P-5), passed by respondent no.2, whereby the petitioner has been denied back wages. The petitioner has further sought a direction to the respondents to release all the wages for the period from 15.6.2012 till 18.4.2015 along with interest @ 12% per annum to the petitioner.

Briefly stated, the facts of the case are that the petitioner was appointed and joined on the post of Driver with respondent no.2 on 26.12.1989. On 14.2.2012, petitioner applied for voluntary retirement under Voluntary Retirement Scheme on account of certain domestic problems.

This application of the petitioner was rejected by respondent no.2 on 1.3.2012. Immediately thereafter on 17.5.2012, the petitioner withdrew the aforesaid application for VRS and the application seeking withdrawal of the same was duly received by the office of respondent no.2. Without considering this respondent no.2 passed the order dated 15.6.2012 by accepting the application of the petitioner of VRS while retiring him voluntarily from the services vide order dated 15.6.2012. In this backdrop, petitioner approached this Court by way of filing CWP No. 17063 of 2012 and the said writ petition was allowed by this Court vide order dated 27.4.2015 (Annexure P-1) while holding that since the respondents-authorities vide order dated 01.3.2012 (Annexure P-3) had rejected the request of the petitioner seeking voluntary retirement from Government service, there was no occasion for the authorities to accept his application vide impugned order 15.6.2012. There is no dispute with regard to the settled proposition of law that a person is entitled to withdraw his application seeking voluntarily retirement before acceptance, therefore, the impugned order has been passed ignoring the letter dated 01.3.2012 (Annexure P-3), therefore, the order dated 15.6.2012 is vitiated in law and the same is hereby quashed. In compliance with the order dated 27.4.2015 (Annexure P-1), the petitioner was taken back in service w.e.f 18.5.2015 with all consequential benefits prior to joining vide order dated 03.07.2015 (Annexure P-2). The petitioner was directed to report for his duty to the Deputy Inspector, Haryana Raodways, Panipat immediately. The petitioner was allowed to join the service, however the consequential benefits during

which the petitioner was out of service were not released to him. Aggrieved on account of this, the petitioner served a legal notice dated 23.12.2015 (Annexure P-3) upon the respondents and when no decision was taken by the respondents even after that, then the petitioner filed CWP No. 7148 of 2016. This writ petition was disposed of by this Court vide order dated 21.4.2016 (Annexure P-4) by directing the respondents to decide legal notice served by the petitioner within a period of three months. Thereafter the impugned order dated 24.8.2016 (Annexure P-5) has been passed denying benefit of salary on the principle of “no work no pay”. Hence the present petition.

Counsel for the petitioner referred to a judgment of Hon'ble the Supreme Court in case titled “Union of India vs. K.V Jankiraman” 1991 AIR (SC) 2010, wherein it was observed that the Rule of “no work no pay” is not applicable to cases where employee is willing to work but is kept away by authorities for no fault of employee and the principle of “no work no pay” will apply only on to those cases where employee remains away from work for his own reasons although the work is offered to him.

Counsel for the State has argued that the impugned order dated 24.8.2016 (Annexure P-5) is not liable to be quashed as for the above said three years, it is not expected that the petitioner has not worked elsewhere. Learned State counsel referred to a judgment of this Court in the case of State of Haryana vs. Bikar Singh, 2002(2) SLR 341. In this case, the respondent, who was working as a Conductor had been terminated on the allegations that he charged the fare from the passengers but did not issue the

tickets for the same. It was observed by this Court that the best evidence which can prove the charge against the respondent was the statements of the passengers who according to the case of the department actually paid the fare to the respondent. In the absence of the statements of the passengers either before the domestic Tribunal or before the checking staff, the respondent cannot be held responsible for the alleged embezzlement. Thus, the order of termination passed by the General Manager and confirmed by the Appellate Authority was held to be not sustainable. However, it was held that as the respondent did not work in the department after passing the order of termination, therefore, he is not entitled to back wages. Reference was made to another judgment in the case of **Dr. Lovkesh Kumar and others vs. State of Punjab and another, 2011(2) SLR 308.** In this case, in the case of recruitment of medical officers, appointment of the petitioners was made on the ground of directions of the Court. Petitioners claimed pay and monetary benefits from back date. Claim was denied on the ground that they have not served respondents during said period. No pleading was taken by the petitioner that they were not employed during that period. It was held that in the absence of any specific pleading, presumption can be drawn that petitioners were gainfully employed. “No work no pay” principle was held to be applicable in this case.

Heard counsel for the parties. At the outset, judgments referred to by the State will not be applicable to the facts of the present case. In ***Bikar Singh's case (supra)***, the respondent was facing a domestic enquiry. However, in the present case, the petitioner was not facing any departmental

or domestic enquiry and ***Dr. Lovkesh Kumar's case (supra)*** was a case of fresh appointment. The present case is not the case of fresh appointment. The petitioner joined on the post of Driver with Department on 26.12.1989 and his work and conduct was very good and peaceful. The 2nd ACP of the petitioner became due on December 2009. Due to some personal circumstances, the petitioner applied for voluntary retirement under VRS on 14.2.2012. By this time, he had rendered about 24 years of regular service. Immediately thereafter on 17.5.2012, the petitioner withdrew the aforesaid application for VRS. Without considering this respondent no.2 passed the order dated 15.6.2012 by accepting the application of the petitioner of VRS while retiring him voluntarily from the services vide order dated 15.6.2012. Later on he was taken back in service. However he was denied backwages for the period from 15.6.2012 till 18.4.2015. He could not be denied the back wages for the above said period and this aspect has been considered in ***Union of India vs. KV Jankiraman, 1991(3) SCT 317***, wherein Hon'ble Supreme Court was considering a case in which during departmental proceedings, the employee had not been promoted. Later on, he was completely exonerated of the charge. It was held that the employee be given salary of higher post and other benefits from the date from which he would have normally be promoted but for disciplinary/criminal proceedings. An exception was, however, carved out by Hon'ble the Supreme Court in a case where the disciplinary proceedings/criminal proceedings had been delayed at the insistence of the employee himself. In paragraph 25 of this judgment, it was observed as under:

“We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of “no work no pay” is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that FR 17 (1) will also be inapplicable to such cases.”

Thereafter, in the case of **Krishan Kumar vs. Haryana State Fed. of Consumers' Coop Wholesale Stores Ltd., 1997 (1) SCT 686**, it was held that the doctrine of 'no work no pay' is attracted only where the employee does not attend to his work at his own and not in the cases where termination of workman was set aside being illegal. Once the termination of an employee is found to be illegal, he is entitled to be reinstated and promotion if his juniors were promoted. He will be entitled to arrears of salary of promoted post from the date he is found entitled to be promoted. He cannot be denied the benefit of salary of promoted post only because he did not work on promoted post during the period of termination because he was not allowed the work and status of promoted post per force the illegal order of his termination. Doctrine of 'no work no pay' cannot be applied in that case. In paragraph 5 of this judgment, it was observed as under:

“In K.V. Jankiraman's case (supra) it was observed by the Apex Court that when an employee is completely exonerated in criminal/disciplinary proceedings and is not visited with the penalty even of censure indicating thereby that he was not blame-worthy in the least, he should not be deprived of any benefits including the salary of the promotional post. The normal rule of "no work no pay" is not applicable to such cases where the employee, although he is willing to work, is kept away from work by the authorities for no fault of his. If the employee remains away from the work for his own reasons, although the work is offered to him, then he may not be entitled to the salary.”

In **Vidya Parkash Harnal vs. State of Haryana, 1995 (3) SCT 785**, it was observed that once a civil servant is found entitled to promotion with retrospective effect, he cannot be deprived of the benefits of arrears of salary accruing on account of such promotion from the date assigned for his promotion. Principle of “No work no pay” not attracted in such cases where the employee is not offered the work to which he was entitled to. In paragraph 5 , it was observed as under:

5. *The gram in the nature of pension, increments and salary were once considered to be in the discretion of the Government who had the exclusive power to pass appropriate orders with respect to the grant or refusal regarding such claims. Salary of a civil servant cannot be termed to be a measure of grant or a bounty being in the discretion of the Government. The salary is paid for the services rendered to which a civil servant is entitled as a matter of right under the service rules or the service contract. The salary being a consideration of the services rendered is, in fact, a property which a civil servant cannot be deprived of without having recourse to the provisions of Constitution and the Service Rules applicable. The mere fact that an employee serves the State in the discretion of the executive, cannot be made a basis for depriving him of the usufruct of the services and the labour rendered. A civil servant cannot be forced to serve the executive ex-gratia and it cannot be held that his salary is in the nature of a bounty. In State of Bihar vs. Abdul Majid, AIR 1954 Supreme Court 245, it was held:-*

“The rule that a civil servant holds office at the pleasure of the Crown has its origin in the Latin phrase “durante bene placito” (during pleasure) meaning that

the tenure of office of a civil servant, except where it is otherwise provided by statute, can be terminated at any time without cause assigned. The true scope and effect of this expression is that even if a special contract has been made with the civil servant the Crown is not bound thereby

In a judgment of a Division Bench of this Court in the case of **General Manager Operation Circle, Dakshin Haryana Bijli Vitran Nigam, Narnaul and others vs. Mathura Dass Gupta 2012 (4) SCT 7**, an employee was acquitted of the charges levelled against him in a criminal trial. He was reinstated with all consequential benefits. The competent authority denied him the back wages on the principle of 'no work no pay'. Denial of salary and allowances on ground of 'No Work no Pay' was held to be not fair by the Single Bench. It was observed that normal rule of 'No work no pay' was not applicable to cases where employee although willing to work is kept away from work by authorities for no fault of his. Feeling aggrieved, the appellant-Nigam filed the Instant appeal before a Division Bench of this Court. Appeal was dismissed and it was held that the opinion of Single Judge does not suffer from any infirmity. In paragraph 6, it was observed as under:

6. It is in the background of the

aforesaid arguments that the issue raised has to be decided. It is true that in the case of Jaipal Singh (supra), Hon'ble the Supreme Court has taken the view that if the Electricity Board did not initiate prosecution and it was at the instance of the State Government then they would not be burdened with the liability of paying back wages as the employee did not work during the period of trial and conviction etc. However, the judgment would not apply to the facts of the present case because the Division Bench of this Court has already taken the view in its order dated 8.4.2008 that on acquittal the writ petitioner- respondent would be entitled to re-instatement in service with all consequential benefits as are admissible to him (P-4). Therefore, the judgment of Hon'ble the Supreme Court in Jaipal Singh's case (supra) would not apply. Moreover, the judgment in Jaipal Singh's case (supra) has been distinguished by their Lordships' in the case [Jaipur Vidyut Vitran Nigam Limited v. Nathu Ram, of Jaipur Ram](#), (2010) 1 SCC428.

In **Haryana State Agricultural Marketing Board vs. Ram Kumar Naidu, 2013 (3) SCT 298**, the administration had denied promotion to an employee and he was given promotion with retrospective effect w.e.f

1.4.1982 vide order dated 18.1.2007 taking into consideration the date from

which his junior was promoted but had restricted the arrears for the financial benefits to just 38 months. The Civil suit was decreed by the Trial Court as well as the appellate Court while holding that the plaintiff was entitled to full arrears of pay from the date he was given retrospective promotion. The Regular Second Appeal filed by the Board was dismissed and it was held that where administration has wrongly denied petitioner's due, he should be given full benefits. Principle of 'no work no pay' cannot be accepted as a rule of thumb. In paragraph 8 of this judgment, it was held as under

8. Counsel for the appellant has contended that the plaintiff was not entitled to the arrears on the principle of "no work no pay" and have basically relied upon the same submissions made before the Courts below. Reliance has also been placed on Regular Second Appeal No.2077 of 2009 Haryana State Agricultural Marketing Board, Panchkula and another Vs. Maha Singh decided on 10.5.2010 to contend that the principle laid down in Telecommunication Engineering Services Association Vs. Union of India 1994(3) S.C.T. 804 should be followed. The said submission is not acceptable because in RSA No.2077 of 2009, the issue pertained to passing of type test of the employee and whether he was

liable for arrears on account of promotion as no rule was prescribed for passing of type test. Similarly in the case of Telecommunication Engineering Services Association's case (supra), the Hon'ble Supreme Court was dealing with 6000 persons, who were involved and it was in such circumstances it was held that the principle of 'no work no pay' should be applicable due to huge financial implication involved. In the present case, both the Courts below have specifically noticed that similarly situated employees have been given the benefit and payments have been made regarding the arrears with effect from 1.4.1982. The plaintiff was vigilant enough to produce on record all the said evidence showing the payments made to Balbir Singh Dahiya, Rajinder Sharma and Ramesh Kumar. Once other similarly situated have been given the benefit then keeping in view the provisions of [Article 14](#) of the Constitution of India, the Courts below were justified to grant the benefit to the plaintiff also. The submission of the counsel of the appellant is without any basis as in the present case there is no allegation that the punishment had been imposed upon the plaintiff or

that he had been suspended due to any criminal activity and reinstated thereafter and due to fault on his part he was denied the promotion and was given promotion subsequently on exoneration. The Board on its own motion gave him retrospective promotion with effect from 1.4.1982 as Arrival Recorder vide order dated 18.1.2007, taking into consideration the date from which his junior was promoted but had restricted the arrears for the financial benefits to just 38 months preceding from the date of his representation. The Hon'ble Supreme Court in State of Kerala and others Vs. E.K.Bhaskaran Pillai (2007) 6 Supreme Court Cases 524 has held that principle of 'no work no pay' cannot be accepted as a rule of thumb and where Administration has wrongly denied his due, he should be given full benefits. The Hon'ble Supreme Court in E.K.Bhaskaran Pillai's case (supra) has been laid down as under:-

"So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered. Sometimes in a case of departmental enquiry or in

*criminal case it depends on the authorities to grant full back wages or 50 per cent of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the matter when the person is superseded and he has challenged the same before court or tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, in that case the court may grant sometimes full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors. However, it is very difficult to set down any hard-and-fast rule. The principle "no work no pay" cannot be accepted as a rule of thumb. There are exceptions where **** courts have granted monetary benefits also."*

In **Suraj Mal vs. State of Haryana and others 2014 (2) SCT**

2 years as per Instructions of the Department. Petitioner retired from service without referring his case to PGIMS. Order of retirement was set aside. Petitioner was held entitled to salary and all other benefits for the period during which he was not allowed to work with 8% interest.

In *Varinder Kumar Bhardwaj and another vs. State of Haryana and others 2016 (2) SCT 41*, petitioners were seeking benefit of notional promotion from the date their juniors had been promoted to the post of Music Teachers. Petitioners were given seniority and notional promotion from the date their juniors were promoted but denied arrears of pay of promotion post. It was held that once it is acknowledged that the petitioners were entitled to be promoted from the date their juniors were promoted, there is no reason to deny them arrears of pay on that account when they were always willing to work on the promotion post but were kept away from the same for no fault on their part. Respondents directed to pay arrears of pay to the petitioners from the date of their notional promotion. In paragraph 5, it was observed as under:

5. It is unfortunate that differently-abled persons like the petitioners, who, as noticed above, are 100% blind, had to approach this Court three times for getting what was due to them. What necessitated them to approach this Court was a highly discriminatory and arbitrary action on the part of the respondents. Persons who were junior to the petitioners by 21 years and 07 years respectively, had been promoted in preference to the petitioners. Once through the order dated

23.11.2011, it was acknowledged by the respondents themselves that the petitioners were entitled to be promoted with effect from the date their juniors had been promoted against vacant posts, there is no reason in law or in fact to deny arrears to them. The petitioners were always willing to work on the promoted posts, but were kept away by the respondents for no fault on their part. In this regard, the following observations by the Apex Court in **Union of India vs. K. V.Jankiraman** reported as **AIR 1991 SC 2010** may usefully be referred to :-

“25. We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases.”

The ratio of these judgments are directly applicable to the facts of the present case. In this case, after making application for voluntary retirement from service, the petitioner had made an application to withdraw the same. Instead of accepting the same, respondent-Department retired him voluntarily from the services vide order dated 15.6.2012. The petitioner was always willing to work with the respondent-Department on the post, where he had served for almost 24 years. Thus the petitioner cannot be denied backwages for the period he remained out of service i.e w.e.f 5.6.2012 till 18.4.2015. The writ petition is being allowed and the impugned order dated 24.8.2016 (Annexure P-5), passed by respondent no.2 is hereby quashed. A direction is being given to the respondents to pay arrears of salary w.e.f 15.6.2012 till 18.4.2015 along with interest @ 6% interest to the petitioner within a period of 4 months of the receipt of a certified copy of this order.

17.10.2018

*ritu***(RITU BAHRI)
JUDGE**

Whether speaking/reasoned

Yes

Whether reportable

Yes