

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 01.05.2018****CWP No.4512 of 2018**

Rakesh Kumar

...Petitioners

Vs.

Haryana Vidyut Prasaran Nigam Limited & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Rajender Singh Malik, Advocate, for the petitioner.

RAJIV NARAIN RAINA, J. (ORAL)

The petitioner was appointed as Peon in the Haryana Vidyut Prasaran Nigam Limited (for short 'the Nigam') in April, 2002. A criminal case bearing FIR No.281 dated 03.12.2005 under Sections 302, 147, 148, 149, 324, 323 IPC was registered against the petitioner and others at Police Station Sarkaghat, Himachal Pradesh in which the petitioner was arrested. Sessions trial No.18 of 2006 was instituted on 03.07.2006. The learned Sessions Judge, Mandi held that there was unsatisfactory evidence regarding the identity of the accused as the assailants and the guilt against the accused could be said to have been proved. The petitioner and the others were acquitted vide judgment of acquittal dated 12.07.2010. During trial, the petitioner was admitted to regular bail by the concerned Court and the petitioner reported for duty on 28.03.2006.

Upon acquittal, the petitioner approached the Nigam to allow him to join his duties. The petitioner was reinstated to service vide office

order dated 08.11.2010 and his suspension period was treated as extraordinary leave. He claims salary for the period. The other grievance is that because of the trial, the petitioner was ignored for promotion from Class IV to Class III service. Non-redressing of his grievance brought the petitioner to file CWP No.20355 of 2012 before this Court with the prayer that the suspension period of about 5 years i.e. from 03.12.2005 to 08.11.2010 be treated as duty period with all consequential benefits, and, consequently the order dated 03.11.2011 reinstating the petitioner etc. be quashed to the extent it denied benefits falling in the wake of the trial and judicial custody. Since the petitioner had already submitted a representation against the order and such representation was pending, this Court disposed of the writ petition with a direction to respondent No.1 to decide the same in accordance with law within a period of three months from the date of receipt of a certified copy of the order.

As a result of the directions issued, the Nigam considered the case of the petitioner and passed the order which is impugned. The facts coming from the order dated 17.07.2013 reveal that the petitioner proceeded on earned leave on 21.11.2005, sanctioned previously on 24.10.2005. He had to resume duty on 19.12.2005, but on 03.12.2005 the criminal case was registered and the petitioner arrested and sent to police and judicial remand. On 20.12.2005, he requested for extension of leave as his mother was ill. He did not disclose the existence of the criminal case till the Department received a letter dated 24.01.2006 from one Shri Dharam Pal Sharma, Advocate, Sarkaghat District Mandi intimating the department that the petitioner was involved in an offence of murder and was arrested by the police. On receiving this information, the services of the petitioner were

placed under suspension vide order dated 07.03.2006 with retrospective effect i.e. from the date of lodging of FIR. During suspension of service, he was paid subsistence allowance in terms of Rule 7.1 of the Civil Service Rules. On acquittal, he was reinstated on 08.11.2010. Thereupon, the petitioner requested for regularization of his suspension period from 19.11.2005 to 08.11.2010, as leave of kind due and the same was sanctioned vide order dated 03.01.2011 treating the period from 21.11.2005 to 30.01.2006 (71 days) under Rule 8.113 CSR Vol. I Part-I as earned leave; while the period 31.01.2006 to 08.11.2010 (1743 days) under Rule 8.137 CSR Vol.I Part-I as extra ordinary leave. The rule prescribes that for extra ordinary leave, no pay is admissible. The matter was considered by the Nigam, as above, and the competent authority allowed subsistence allowance for the period of suspension under Rule 7.1 CSR and held that the same cannot be recovered from the pay of petitioner. However, subsistence allowance w.e.f. 01.09.2008 to 07.11.2010 had not been paid to the petitioner, but he was entitled for subsistence allowance for the aforesaid period since it was not paid by inadvertence. Accordingly, the petitioner was found entitled to an amount of Rs.41,178/- and to Rs.1,99,341/- on account of subsistence allowance for the period w.e.f. 01.09.2008 to 07.11.2010, which had not been paid.

Against the decision, the petitioner has approached this Court by way of this petition seeking directions to pay him his past dues. At no point of time, was the petitioner dismissed from service. It is argued on behalf of the petitioner that on acquittal he has a right to all service benefits arising from the period of registration of FIR and till the conclusion of the trial on 08.11.2010. The petitioner relies on a Division Bench judgment of

this Court rendered in case Hukam Singh Vs. State of Haryana & another, 2001 (2) SCT 696 and a Single Bench judgment in Maha Singh Vs. State of Haryana, 1994 (1) SCT 154.

Hukam Singh's case facts were that he was working as a Lecturer in Hindi in the Haryana Education Department. He too was tried on the charge of murder and was convicted by the trial Court in the year 1986 for the offences punishable under Sections 302, 307 and 324 read with Section 34 IPC. Consequent thereto, his services were terminated due to his conviction in a criminal case. The conviction of the petitioner was upheld by this Court, but in appeal before the Supreme Court, he was acquitted of the charges. After acquittal, Hukam Singh was reinstated in 1998. He represented for regularization of period of suspension from 01.02.1986 to 01.05.1986 and for grant of salary of the period 02.05.1986 to 18.02.1998, the date when he was acquitted by the Supreme Court. The petitioner's claim was declined. He claimed back wages from 01.02.1986 to 31.07.1998 and asked that the intervening period should be treated as period spent on duty. The question arose, whether the petitioner after acquittal is entitled to entire back wages or not. The Bench distinguished the judgments of the Supreme Court in Smt. K. Ponnammamma Vs. State of Kerala & others, AIR 1997 SC 3660 and Hukmi Chand Vs. Jhabua Cooperative Central Bank Ltd. Jhabua (MP) & another, 1998 (3) RSJ 306. Rule 7.3 of the Punjab Civil Services Rules, as applicable to Haryana, was noticed, which deals with situation when a Government employee has been dismissed, removed, compulsorily retired or suspended, is reinstated, then the issue regarding pay and allowances to be paid to the Government employee for the period of his absence from duty, occasioned by suspension and/or dismissal, removal or

compulsory retirement ending with his reinstatement and whether or not the claimed period be treated as a period spent on duty, then if the authority mentioned in sub-rule (1) is of the opinion that the Government employee has been fully exonerated or, in the case of suspension, that it was wholly unjustified, the Government employee shall be given full pay and allowances to which he would have been entitled, had he not been dismissed, removed, compulsorily retired or suspended, as the case may be.

The Court also noticed Rule 7.5 of the Rules, which prescribes as follows:

“7.5 An employee of Government against whom proceeding have been taken either for his arrest for debt or on a criminal charge or who is detained under any law providing for preventive detention should be considered as under suspension for any period during which he is detained in custody or is undergoing imprisonment, and not allowed to draw any pay and allowance (other than any subsistence allowance that may be granted in accordance with the principle laid down in rule 7.2) for such period until the final termination of the proceedings taken against him or until he is released from detention and allowed to rejoin duty, as the case may be. An adjustment of his allowance for such periods should thereafter be made according to the circumstances of the case, the full amount being given only in the event of the officer being acquitted of blame or (if the proceedings taken against him were for his arrest for debt), of its being proved that the officer's liability arose from circumstances beyond his control or the detention being held by the competent authority to be unjustified.”

The Bench held that Rule 7.5 was a general rule, while in case a person is acquitted it is specific Rule 7.5 that would be attracted. The Bench held that the law is well settled that special Rule will always take precedence

over the general rule and consequently it must follow that under Rule 7.5 of the Rules, the petitioner was entitled to the full back wages. The Division Bench drew support from the judgments of this Court in Maha Singh's case (supra) and Lehna Singh Vs. The State of Haryana & others, 1993 (3) RSJ 119. On these premises, Hukam Singh was found entitled to full salary and allowances for the period of suspension and dismissal.

However, while paying due respect to the judgment of the Division Bench in *Hukam Singh's* case, I am unable to make it a rule of the court in this case for the reason it was not argued before the Bench that Hukam Singh was not involved in an employment related issue which the department prosecuted into a trial and was unsuccessful. The registration of the FIR in had nothing to do with the Nigam.

I had the occasion to examine similar issue in CWP No.26122 of 2013 titled 'Balbir Singh Vs. State of Haryana & others' decided on 28.11.2013. While considering import of Rule 7.5 as well as the various judgments, I took the following view:

“In cases involving criminal acts leading to police remand and judicial custody and thereafter accused faces trial and is convicted of criminal offences would be in deprivation of employer's rights of availing the services of such person not by there own actions but by an act of the employee for which it pays salary for work done out of public funds and thus cannot be compelled to pay for no fault of it. Therefore, fault theory becomes relevant. Who was at fault? If the Government initiates action and fails it must pay. If the employee gets into trouble, suffers jail and faces trial which has nothing to do with the employer, is convicted or acquitted he has only himself to blame. The State exchequer cannot be lightly burdened for acts which do not originate in the employer nor over which it has any control. The

employer/State Government in this case can only watch and wait for the end of the criminal trial held.

In *Union of India v. Jaipal Singh*, AIR 2004 SC 1005 the Supreme Court dealt with the issue at hand in a case arising from conviction of an employee under Section 302 IPC by the trial Court but acquitted by the High Court in appeal and its effect on backwages upon reinstatement for the period he was out of service due to involvement in a criminal case observed thus:

"If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest or by department itself, perhaps different considerations may arise. On the other hand, if as a citizen the employee or a public servant got involved in a criminal case and if after initial conviction by the trial Court, he gets acquittal on appeal subsequently, 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. Consequently, the reasons given in the decision relied upon [ins. Ranchhodji Chaturji Thakore v. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar & Anr., AIR 1997 SC 1802], for the appellants are not only convincing but are in consonance with reasonableness as well. Though exception taken to that part of the order directing reinstatement cannot be sustained and the respondent has to be reinstated, in service, for the reasons that the earlier discharge was on account of those criminal proceedings and conviction only, the appellants are well within their rights to deny back wages to the respondent for the period he was not in service. The appellants cannot be made liable to pay for the period for which they could not avail of the services of the respondent. The High Court, in our view, committed a grave error, in allowing backwages also, without adverting to all such

relevant aspects and considerations. Consequently, the order of the High Court insofar as it directed payment of backwages are liable to be and is hereby set aside."

For the aforestated reasons, this Court finds no legal infirmity or lack of application of mind or misapplication of rule in rejecting the request of the petitioner for full salary for the period prior to acquittal by this Court in the criminal trial. The validity of the impugned order dated 6th April, 2011 (P-7) is thus upheld.

The writ petition fails and is dismissed in limine."

Aggrieved against that order, the petitioner preferred LPA No.514 of 2014, which was dismissed on 13.08.2014. The law in *Jaipal Singh's* case was not available when the Division Bench decided *Hukam Singh's* case and is, therefore, treated to be decision on its own facts but not the governing rule on the moot issues.

For these reasons, I do not find any merit in the instant petition and would dismiss the same.

01.05.2018
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes
No