

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No.2353 of 2017(O&M) in
CWP No.167 of 2014
Date of Decision:3.4.2018

Smt. Satinder Kapoor

..... Appellant

versus

The State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Jagdish Manchanda, Advocate, for the appellant.

B.S.WALIA, J.

1. Intra-court appeal has been filed against order dated 26.4.2017 dismissing CWP No.167 of 2014 wherein prayer was for quashing of order dated 20.9.2013 (Annexure P13) passed by respondent no.2 which was communicated to the appellant-petitioner on 30.9.2013.

2. Brief facts of the case leading to the filing of the Intra-court appeal are that the appellant while working as Science teacher in the Government Senior Secondary School was involved in a Criminal case pursuant to registration of FIR No.181 dated 22.6.2000 for the offences under Sections 148, 149, 427, 428, 395, 506 and 120-B and 412 IPC read with Sections 27, 54, 56 of the Arms Act at Police Station Model Town, Panipat.

3. The appellant was convicted and sentenced by learned Additional Sessions Judge, Panipat vide order dated 24.2.2003 under Sections 120-B and 412 IPC to rigorous imprisonment for 3 years along with fine of ₹500/-. The appellant

filed a criminal appeal in which she was acquitted on 13.5.2011.

4. Claim before the Writ Court was for grant of service benefits including monetary benefits during the period intervening the date of arrest till acquittal. The Writ Court dismissed the writ petition by taking into account that the appellant was involved in a criminal case in her individual capacity and the same had not been initiated by the department. Therefore, for misdeeds committed by the appellant in her individual capacity, she was not entitled for any monetary benefits in the light of decision of this Court dated 28.11.2013 in CWP No.26122 of 2013 in case titled as “**Balbir Singh versus State of Haryana and others** as upheld by the Division Bench in LPA No.514 of 2014 decided on 13.8.2014.

5. Learned counsel for the appellant contended that dismissal of the writ petition is legally unsustainable as the appellant had been falsely implicated in a criminal case which was evident from acquittal recorded in her favour by the learned Appellate Court by reversing the judgment of conviction recorded by the learned Additional Sessions Judge, Panipat. Learned counsel further contended that in the circumstances, the appellant having been unnecessarily dragged into criminal litigation for no fault of her, was entitled to be granted all monetary benefits for the intervening period i.e. from the date of arrest till the date of acquittal.

6. We have considered the submissions of learned counsel for the appellant but for the reasons recorded hereunder, are unable to agree with the same.

7. In **Union of India v. Jaipal Singh, AIR 2004 SC 1005**, Hon'ble the Supreme Court dealt with the point in issue in a case arising from the conviction of an employee under Section 302 IPC by the trial Court and who was acquitted by the High Court in appeal as also its effect on backwages on reinstatement for the period the employee remained out of service due to involvement in the

criminal case. Relevant extract of the same is reproduced as under:

"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 backwages 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 laible 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.”

8. The alleged offence was committed by the appellant not during the course of her employment but at a private place when she was not on duty. Thus, nothing can be attributed to the employer for having implicated the appellant in criminal litigation. It was on account of the wrongful conduct of the appellant herself which resulted in her being dragged into criminal litigation. Division Bench of this Court in LPA No.514 of 2014 titled as **Balbir Singh versus State of Haryana and others**, decided on 13.8.2014, held as under:

“The learned Single Judge has also dealt with the plea raised by the appellant with regard to applicability of Rule 7.5 of the C.S.R. and rejected the same, while observing as under :

“The structure of the rule is built around acquittal from blame on a criminal charge or if it is proved that the official's liability arose from circumstances beyond his control or the detention being held by the competent authority to be unjustified. It would be well to remember that the petitioner was acquitted of murder and other serious charges by giving him the benefit of doubt. In criminal law such an acquittal even though based on

benefit of doubt is taken as proof of innocence and there may be no great difference between honorable acquittal and acquittal by giving the benefit of doubt. However, in service law the meaning can be different, with different hues and diverse fallouts on the relief sought from the administrator and then from the Court. This vital difference has been explained recently in the context of false declarations made to procure appointment to public service in the police department and fitness for appointment or retention in service on discovery of false declarations in attestation forms by the Supreme Court in relation to service law in **Commissioner of Police, New Delhi v. Mehar Singh; (2013) 7 SCC 685**. There is therefore no automatic right to back wages and other financial benefits on reinstatement for the period spent out of service on dismissal on conviction and much would depend on the facts of each case.”

Before us, learned counsel for the appellant has again raised both the aforesaid contentions and we are of the opinion that in the present case, the appellant has rightly been denied the salary for the period during which he remained out of service due to his dismissal. The alleged offence was committed by the appellant not during the course of his employment, but it was committed in the village, when he was not on duty. There was no fault of the employer. It was the wrong of the appellant himself, which dragged him in the criminal litigation. If in that criminal case, for want of evidence, the appellant has been given benefit of doubt, the employer, with whom the appellant had not worked during the period of his dismissal from service, cannot be compelled to pay salary for the said period. The principle of “No

work no pay”, in our opinion, is applicable in the present case and for that period, the appellant is not entitled for the salary. Thus, the learned Single Judge has rightly come to the conclusion that the case of the appellant is not covered by the provision of Rule 7.5 of the C.S.R. The judgment of this Court in **Shashi Kumar vs. Uttri Haryana Bijli Vitran Nigam and another**, 2005 (1) RSJ 718, relied upon by learned counsel for the appellant before the learned Single Judge, has been held to be not applicable, because that case was under the Prevention of Corruption Act, 1988. In the present case, as already mentioned, the appellant was not involved in a case relating to his work and functions during the course of his employment. He had committed serious offence of murder of murder, which had nothing to do with the discharge of his official duty.

In view of the above, we do not find any merit in the instant appeal.”

9. The Writ Court in the instant case relied upon the decision of the Single Bench in CWP No.26122 of 2013 decided on 28.11.2013 in case titled as **Balbir Singh versus State of Haryana and others** which in turn was upheld by a Division Bench of this Court in LPA No.514 of 2014 in case titled as **Balbir Singh versus State of Haryana and others**, decided on 13.08.2014. The appellant committed an offence in her private capacity and not when she was on duty. She was convicted by the Additional Sessions Judge, Panipat under Sections 120-B and 412 IPC and sentenced to undergo rigorous imprisonment for three years along with a fine of ₹500/-. Subsequently, she was acquitted by the High Court on 13.5.2011 by giving her benefit of doubt. It is clear that the decision of Hon’ble the Supreme Court in **Jaipal Singh's** case (supra) as relied upon by the Division Bench of this Court in CWP No.514 of 2014 in case titled as **Balbir Singh versus State of Haryana and others** would apply to the matter in issue in the instant

case.

10. Resultantly, finding no merit in the appeal, the same is dismissed in limine. Consequently, the application seeking condonation of delay in refiling the appeal is also dismissed.

(RAJESH BINDAL)
JUDGE

(B.S.WALIA)
JUDGE

April 03, 2018

ps

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No