

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

CWP No.9808 of 2003 (O&M)

Date of Decision: 13.08.2019

Sukhjit Singh and others

... Petitioners

Versus

State of Punjab and another

... Respondents

CWP No.2280 of 2014 (O&M)

Raman Kumar

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- None.

ARUN MONGA, J.

This order of mine shall dispose of two writ petitions bearing CWP No.9808 of 2003 and CWP No. 2280 of 2014.

2. In the first writ petition impugned, *inter alia*, are order/letters dated 24.08.2001 and 18.09.2001 Annexures P-16 and P-14, respectively vide which it has been clarified that Instructions dated 23.01.2001, issued by respondent No.1-State, it shall not be applicable to the employees engaged on contract basis in Local Bodies (Municipal Council, respondent No.2 herein). Consequently, issuance of a writ in the nature of mandamus has also been sought directing the respondents to regularize the

services of the petitioners in service who were initially engaged on contract basis in the Municipal Council and had rendered uninterrupted service of more than 3-8 years at the time of filing of the writ petition in the year, 2003.

3. The petition was initially filed by 7 petitioners who were all employed on contract basis but in the light of applicable policy of the State Government, the services of six of them were regularized during pendency of the petition and resultantly, the writ petition was withdrawn qua them. Presently, the writ petition survives only qua petitioner No.2 i.e. Raman Sharma, who has not been accorded the benefit of regularization as in the case of other 6 petitioners.

4. In the separate returns filed by respondents No.1 and 2 respectively, the claim of the petitioners has been resisted on the ground that reliance placed by them on the Instructions dated 23.01.2001 is misplaced as the said Instructions are not applicable to those employees who are appointed on contract basis as is the case of the petitioners having since been appointed on contract. Therefore, once the petitioners had accepted the terms and conditions of the contract and on being granted salary, in accordance thereof, they cannot claim regular pay scale after being granted regularization.

5. On a conjoint perusal of pleadings, the factual background that emerges is that petitioners No.1 to 5 were appointed as Clerks in Municipal Council, Majitha by way of inviting applications through Employment Exchange pursuant to

an advertisement issued by Director, Local Bodies, Government of Punjab on 24.10.2000. The relevant parts of the appointment letters of the petitioners No.1 to 5 are contained at Annexures P-4 to P-8 and are in verbatim worded as below:-

“Nagar Council Majitha vide its resolution No.38 dated 04.12.2000 has appointed you on contract basis as Clerks cum contract base typist in the salary fixed for contract base clerk per month. You may kindly submit your attendance report to this office.”

6. Ever since the appointment, petitioners have been performing the duties of Class-III posts i.e. Octroi Clerks/ Office Clerks without any interruption which reflects that the job requirement is perennial and the need of the respondent No.2 is regular as well as the posts are regular even though the same were advertised on contract basis. The request of the petitioners to regularize their service and consequently to grant them salary at the minimum scale of what is being given to employees appointed on regular basis on the principles of “equal pay for equal work” were not accepted and the various representations submitted by the petitioners were also of no avail. Hence the writ petition.

7. Having carefully gone through the pleadings filed by the parties herein, I am of the view that as far as the prayer qua issuance of a writ in the nature of certiorari to quash the impugned letters dated 18.09.2001 and 24.08.2001 (Annexures P-14 and P-16), the same need not be gone into at this stage as the respondents have regularized the services of six of the petitioners who had been employed on contract basis thus waiving their

reliance on letters Annexures P-14 and P-16.

8. In the second writ petition i.e. CWP No.2280 of 2014 has been filed by petitioner No.2 in CWP No.9808 of 2003 whose services were not regularized as FIR under Prevention of Corruption Act was registered against him on 22.10.2009 and pursuant thereto his services were terminated vide Resolution dated 30.11.2009, passed by Municipal Council. The termination order was later modified and the petitioner was placed under suspension vide Resolution No.10/2010 communicated vide letter dated 15.04.2010 (Annexure P-6) impugned in this petition.

9. Owing to the pendency of the criminal proceedings and suspension of the petitioner No.2, he was not accorded the benefit of regularization while other petitioners in CWP No.9808 of 2003 were regularized.

10. Grievance of petitioner in CWP No.2280 of 2014, thus is that despite his acquittal vide order/judgment dated 12.12.2012 (Annexure P-7), neither suspension from service has been removed nor has he been regularized.

11. Once it is established that the petitioner was acquitted by a competent court of criminal jurisdiction, there is no plausible reason available with the respondents but not given the benefit of the said acquittal to the petitioner by revoking his suspension.

12. Every acquittal is honourable acquittal. There is nothing in the Criminal Procedure Code nor is there any rule of criminal jurisprudence for treating the effects and consequences of an honourable acquittal from an acquittal on failure of the

prosecution to prove the case beyond reasonable doubt.

13. A Division Bench of this Court in a case titled as ***Shashi Kumar Vs. Uttar Haryana Bijli Vitran Nigam and another, 2005 (1) SCT 576*** relying in turn on another Division Bench of Madras High Court has held that the terms honourable acquittal or fully exonerated unknown in the Criminal Jurisprudence. His Lordship S.S.Nijjar, J. (as he then was of this Court) speaking for the Division Bench observed as below:-

7. In any event, the terms “honourable acquittal” or “fully exonerated” are unknown in the Code of Criminal Procedure or in Criminal Jurisprudence. These terms came up for consideration before a Division Bench of the Madras High Court in the case of Union of India Vs. Jayaram, AIR 1960 Madras 325. Rajammannar, C.J. Delivering the judgment of the Division Bench observed as under:-

There is no conception like “honourable acquittal” in Criminal Procedure Code The onus of establishing the guilt of accused is on the prosecution, and if it fails to establish the guilt beyond reasonable doubt, the accused is entitled to be acquitted.

Clause (b) of Article 193 of the Civil Service Regulations which says that when a Government servant who was under suspension is honourably acquitted, he may be given the full salary to which he would have been entitled if he had not been suspended applies only to the case of departmental Inquiry.

Where the servant was

suspended because there was a criminal prosecution against him, and he was acquitted therein, and reinstated he is entitled under the general law, to the full pay during the period of his suspension. To such a case Article 193(b) does not apply.”

8. *The aforesaid judgment of the Madras High Court was considered and followed by this Court in the case of Jagmohan Lal Vs. State of Punjab through Secy. to Punjab Govt. Irrigation and others, AIR 1967 (54) Punjab and Haryana 422 (punjab). In that case, on acquittal, the petitioner was reinstated in service, but this period of suspension was not treated as the period spent on duty. He had, therefore, filed writ petition under Articles 226/227 of the Constitution of India claiming that he was entitled to full pay and allowances for the period of his suspension. Considering the impact of Rules 7.3, 7.5 and 7.6 of the Punjab Civil Services Rules Vol.I Part-I, it was observed as follows:-*

(2) XXX XXX XXX

The interpretation which has been put by the Government on the rule is incorrect. The blame which attached to the petitioner was that there was a criminal charge against him under which he was standing his trial. The moment he is acquitted of the charge, he is acquitted of the blame. In criminal law, the Courts are called upon to decide whether the prosecution has succeeded in bringing home the guilt to the accused. The moment the Court is not satisfied regarding the guilt of the accused, he is acquitted. Whether a person is acquitted after being given a benefit of doubt or for that reasons, the result is that his guilt is not proved. The Code of Criminal Procedure

does not contemplate honourable acquittal. The only words known to the Code are 'discharged' or 'acquitted'. The effect of a person being discharged or acquitted is the same in the eyes of law. Since, according to the accepted notions of imparting criminal justice, the Court has to be satisfied regarding the guilt of the accused beyond a reasonable doubt, it is generally held that there being a doubt in the mind of the court, the accused is acquitted.

I am, therefore, quite clear in my mind that the intention underlying Rule 7.5 can be no other except this” the moment the criminal charge on account of which an officer was suspended fails in a court of law, he should be deemed to be acquitted of the blame. Any other interpretation would defeat the very purpose of the rule. It is futile to expect a finding of either honourable acquittal or complete innocence in a judgment of acquittal. The reason is obvious; the criminal courts are not concerned to find the innocence of the accused. They are only concerned to find whether the prosecution has succeeded in proving beyond a reasonable doubt the guilt of the accused.”

14. Another redeeming feature in favour of the petitioner (CWP No.2280 of 2014) is that though departmental inquiry was instituted against him before passing the impugned resolution of suspension, the department simply relied on prosecution in the criminal case and suspended him. As a natural consequence, therefore, the petitioner has to be taken back in service once he was acquitted in the criminal proceedings.

15. As a corollary, he is also entitled to be granted the same benefit as granted to his co-petitioners in CWP No.9808 of 2003.

16. In the premise, writ petition No.2280 of 2014 is allowed with a direction to the respondents to reinstate the petitioner in service and to treat the suspension period as service with full back-wages and all other consequential benefits.

17. In CWP No.9808 of 2003, the respondents are directed to give to petitioner No.2 (Raman Kumar) the benefit of regularization of service, with all consequential benefits as given by the respondents to the other petitioners.

18. No order as to costs.

19. Disposed of in the aforesaid terms.

13.08.2019
vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No