

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGRH

Letters Patent Appeal No.826 of 2019 (O&M)

Date of Decision: 03.05.2019

Karan Singh

..Appellant

Versus

Haryana Power Generation Corporation Ltd. and others

..Respondents

**CORAM: HON'BLE MR. JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE.**

Present : Mr. JK Goel, Advocate, for the appellant.

KRISHNA MURARI C.J. (oral)

This intra-court appeal under Clause X of the Letters Patent is directed against the judgment and order dated 23.01.2019 passed by the learned Single Judge dismissing the writ petition filed by the appellant-petitioner.

2. Challenge in the petition was made to an order dated 25.08.2015 including minor punishment of warning and the order dated 16.08.2017 dismissing the appeal. A further writ of mandamus was also claimed to command the Respondents Authorities to covert the period of absence from 21.02.2014 to 01.12.2014 as the leave of kind due for all intents and purposes and release the arrears of salary and other benefits for the said period. The aforesaid relief was claimed in the background of the following facts:-

Appellant was working on the post of work Mistri in the respondent-Haryana Power Generation Corporation. An FIR No. 147 dated

21.02.2016 was lodged against him under section 304 read with Section 34 of the Indian Penal Code by one Ram Chander alleging that his daughter was married to the son of the appellant who later on died. The apprehension expressed in the FIR was that the accused have murdered her and hanged her with the fan. The appellant alongwith his son was arrested by the police and a challan was filed before the Court of law. However, on the trial being held, the appellant as well as his son both were exonerated of the charges. On account of being in police custody the appellant could not report on duty from 21.02.2014 to 26.11.2014. Subsequently, a charge sheet under section 7 of the Haryana State Electricity Board (Punishment and Appeal) Rules, 1990 was issued charging the appellant on the ground that he was willfully absent from duty from 21.02.2014 to 26.11.2014 without any intimation. In the disciplinary proceedings a minor punishment of warning with a copy to be placed in the personal file was issued. Further, the respondents authorities treated the period of absence w.e.f. 21.02.2014 to 26.11.2014 as an extraordinary leave and the period from 27.11.2014 to 01.12.2014 as leave of kind due and denied the payment of any salary for the said period on the principle of 'no work no pay'. An appeal was filed against the said order which was dismissed by the competent authority vide order dated 25.08.2015.

3. The issue arising for consideration in this appeal is whether the appellant would be entitled for payment of salary for the period of absence. Learned Single Judge dismissed the writ petition holding that since the respondents' authorities were not in any way responsible from preventing the appellant unlawfully from discharging his duties, they were under no obligation to make the payment of arrears for the period of absence.

4. The issue is no longer res-integra and stands settled by catena of decisions rendered by the Hon'ble Apex Court. Reference be made to a judgment in the case of ***Ranchhodji Chaturji Thakore v. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar (Gujarat) AIR 1997 SC 1802***. In the said case, the appellant before the Apex Court was charged for the offence under section 302 read with section 34 of the Indian penal Code for his involvement. He was convicted by the Sessions Judge under section 302 read with Section 34 of the Indian Penal Code but was subsequently acquitted of the offence in an appeal by the High Court. The High Court directed reinstatement of his services. However, back wages were denied to him. On a Special Leave Petition filed before the Apex Court, it was held that question of back wages was liable to be considered only if the respondents have taken action in disciplinary proceedings and the action was found to be unsustainable in law and he was unlawfully prevented from discharging his duties.

5. Reference may also be made to another decision of the Hon'ble Apex Court in the case of ***Union of India and others v. Jai Pal Singh JT 2003(10) SC 103***, wherein the services of the appellant were terminated on the ground of his conviction by the trial Court in a case under section 302 of the Indian Penal Code. However, he was acquitted by the High Court in an appeal. Since the employer failed to reinstate him back, the High Court passed an order directing reinstatement with full back wages and consequential benefits. In an appeal filed by the employer, the Hon'ble Supreme Court held that the High Court was not justified in directing payment of full back wages because the Employer was not at all fault for having kept the employee out of service and accordingly part of the order

directing payment of back wages was set aside. Same view was expressed by a Division Bench of this Court in the case of ***Satpal Dhawan v. State Bank of Patiala and others (LPA No. 9380 of 2012)*** decided on 01.04.2013, wherein the employee was held not entitled for payment of back wages for the period he remained under suspension as he was involved in a case of corruption and the employer was not responsible for keeping him away from his normal duties.

6. The facts of the case are more or less identical to the law referred in three cases above. In the case in hand the appellant remained under incarceration on account of criminal proceedings against him though subsequently he was acquitted from the charges. However, since the respondent-employer had no role in keeping him out of service, they cannot be liable to make the payment of arrears of salary for the period of absence.

7. In view of the facts of the case and the settled position of law, we see no infirmity in the view taken by the learned Single Judge while dismissing the writ petition and the impugned order does not call for any interference. The appeal is devoid of merits and accordingly stands dismissed.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

03.05.2019
ravinder

Whether speaking/non-speaking: Speaking
Whether reportable : Yes/No.