

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

CWP No.10571 of 2016.

Date of Decision: 08.05.2019

ASI Gurwinder Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present:- Mr. G.B.S. Gill, Advocate for
Mr. Jaswinder Singh, Advocate,
for the petitioner.

Ms. Maloo Chahal, DAG Punjab.

JITENDRA CHAUHAN J.

The petitioner has laid challenge to the order dated 27.04.2013 (Annexure P-1) vide which the petitioner has been declined the pay and allowances during the period he remained out of job.

The petitioner is an Assistant Sub Inspector in Police department. While he was posted in CIA Staff Amritsar, a complaint was moved by one Prabhjot Singh against the petitioner and others which resulted in registration of FIR No.44 dated 27.04.2013 registered under Sections 7 and 13 of the Prevention of Corruption Act, 1988. Thereafter, the petitioner was dismissed from service vide order dated 27.04.2013 (Annexure P-1). However, the appeal filed by the petitioner was allowed and the petitioner was ordered to be

reinstated in service vide order dated 16.12.2013 (Annexure P-2). However, it was held by the appellate authority that the petitioner shall not be entitled to any pay and allowances for the period from 27.04.2013 to 19.12.2013.

It is contended that no inquiry was held before passing the order of dismissal. The petitioner was placed in column No.2 in the report filed under Section 173 Cr.P.C. Once the dismissal order has been found to be wrong by the appellate authority, the natural consequential order of release of salary and allowance ought to have been passed by the appellate authority

On the other hand, it is contended that the petitioner was involved in taking illegal gratification from some people. On the statement of one Prabhjot Singh, FIR No. 44 dated 27.04.2013 was registered in Police Station C Division, Amritsar against the petitioner under Sections 7 and 13 of the Prevention of Corruption Act, 1988. The petitioner had committed heinous crime. Thus, a strict departmental action was recommended against the petitioner and he was dismissed from service.

Heard.

It is to be noticed that the petitioner was dismissed from service due to his act and conduct. No doubt, he has been reinstated in service by the appellate Authority but the respondent-department cannot be made liable to pay salary and allowance to the petitioner for the period, he remained out of job because the dismissal order has been

set aside only on the ground that department inquiry in the matter was desirable and that only after the departmental inquiry, the next step could have been taken, therefore, the appellate authority has ordered setting aside the dismissal order with no back wages and a direction was issued that departmental inquiry be conducted against the petitioner. The petitioner has not been exonerated from the charges.

Hon'ble the Supreme Court in **Gr. Hyderabad Mun.Corp. vs. M. Prabhakar Rao 2011 AIR (SC) 3173** has held as under:-

11. Yet, the Tribunal has found fault with the order dated 17.11.2008 of the competent authority and has held that the suspension of the respondent was unjustified. The reasons given by the Tribunal in its order are that the prosecution has failed to prove the case beyond reasonable doubt about the demand and acceptance of the bribe and the criminal court has acquitted the respondent and it was open for the authorities to proceed against the respondent departmentally, but no such departmental proceedings were initiated to prove the misconduct of the respondent. The approach of the Tribunal, in our considered opinion, was not correct. Sub-rule (3) of F.R. 54-B does not state that in case of acquittal in a criminal proceedings the employee is entitled to his salary and allowances for the period of suspension. Sub-rule (3) of F.R. 54-B also does not state that in such case of acquittal the employee would be entitled to his salary and allowances for the period of suspension unless the charge of misconduct against him is proved in the disciplinary proceedings. Sub-rule (3) of F.R. 54-B vests power in the competent authority to order that the employee will be

paid the full pay and allowances for the period of suspension if he is of the opinion that the suspension of the employee was wholly unjustified. Hence, even where the employee is acquitted of the charges in the criminal trial for lack of evidence or otherwise, it is for the competent authority to form its opinion whether the suspension of the employee was wholly unjustified and so long as such opinion of the competent authority was a possible view in the facts and circumstances of the case and on the materials before him, such opinion of the competent authority would not be interfered by the Tribunal or the Court.”

In view of above, no interference in the matter is required.

Dismissed.

08.05.2019.
SN

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No