

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-15927-2013
Date of decision: 11.01.2019

Sukhwinder Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. G.P. Vashisht, Advocate for the petitioner.

Mr. Vikas Mohan Gupta, Addl.A.G., Punjab.

JITENDRA CHAUHAN, J. (ORAL)

By filing the instant petition, the petitioner, *inter alia*, seeks quashing the part of order dated 04.01.2013 (Annexure P-6), passed by respondent No.2, whereby the claim of the petitioner was partly accepted, whereby, even though, the petitioner had been held entitled to all the benefits for the period i.e. date of dismissal till the date of reinstatement, but was denied the arrears of salary for the suspension period i.e. 15.05.1998 to 17.10.2002 as also salary for the dismissal period i.e. 18.10.2002 to 25.02.2009.

It is the case of the petitioner that he was selected as a regular Hindi Master vide order dated 11.12.1996 and joined his services as such on 08.01.1997 at Government Middle School, Bhoot (S.B.S. Nagar). Vide

order dated 07.12.1998, he was placed under suspension w.e.f. 15.05.1998 on account of registration of an FIR No.42 dated 09.04.1998, under Sections 302, 364 and 201 of the Indian Penal Code, at P.S. Haryana, District Hoshiarpur. The petitioner was convicted by the trial Court under Sections 302 and 201 IPC and sentenced to imprisonment for life and on the basis thereof, vide order dated 17.10.2002 (Annexure P-1), the petitioner was dismissed from service. However, the appeal preferred by the petitioner against the judgment of conviction and order of sentence was accepted by this Court vide judgment dated 25.02.2019 (Annexure P-2) and he was acquitted of the charges framed. Upon acquittal, the petitioner moved a representation dated 28.03.2009 to respondent No.3 seeking reinstatement. Vide order dated 16.04.2010 (Annexure P-3), passed by respondent No.2, the prayer of the petitioner was accepted and he was reinstated in service w.e.f. 20.05.2010. Thereafter, the petitioner further moved a representation dated 09.06.2010 to respondent No.3 and also served a legal-cum-demand notice dated 10.12.2011 for release of consequential benefits, but to no avail. Ultimately, the petitioner moved CWP-889-2012 before this court, which was disposed of vide judgment dated 16.01.2012 (Annexure P-4) (modified/clarified vide order dated 24.02.2012-Annexure P-5). In compliance of judgment/orders dated 16.01.2012 and 24.02.2012, respondent No.2, passed order dated 04.01.2013 (Annexure P-6), whereby, the claim of the petitioner was partly accepted, except the following benefits:-

- a. He shall not be entitled to any pay and allowances except whatever he had already been paid in the form of subsistence allowance for the suspension period.

b. The suspension period of the petitioner shall be treated as qualifying service for the purpose of computing pensionary benefits.

Hence the instant petition.

It is contended that the petitioner was dismissed from service solely on the basis of his conviction. After having been acquitted of the charges framed against him by this Court, he was reinstated. Vide impugned order (Annexure P-6), the petitioner has been held entitled to all the benefits for the period i.e. date of dismissal till the date of reinstatement but he has been denied the arrears of salary for the suspension period i.e. from 15.05.1998 to 17.10.2002, as also the salary for the period of dismissal w.e.f. 18.10.2002 to 25.02.2009. It is averred that the action of the respondents in denying the salary for the period in question is against the provision of Rule 7.3 of the Punjab Civil Services Rules, Volume-1 as also against the dictum of law laid down by Hon'ble the Supreme Court in ***Jaipur Vidyut Vitran Nigam Ltd. Vs. Nathu Ram, 2010 (1) S.C.T. 227*** as also a Division Bench judgment of this Court rendered in ***General Manager Operation Circle, Dakshin Haryana Bijli Vitran Nigam, Narnaul and others Vs. Mathura Dass Gupta, 2012 (4) S.C.T. 7.***

On the other hand, learned State counsel submits that the petitioner had been involved in the criminal case in his personal capacity and respondent-Department had no role to play therein. The petitioner has been granted all the benefits which had accrued to him consequent upon his acquittal, however, following the principle of 'no work, no pay', he has not been paid the arrears of salary for the period in question. Cites ***State Bank***

of India Vs. Mohammed Abdul Rahim (SC), 2013(4) S.C.T. 133.

Heard.

Sub Rules (1) and (2) of Rule 7.3 ((ibid) read thus:-

“7.3. (1) When a Government employee, who has been dismissed, removed or compulsorily retired, is reinstated as a result of appeal, revision or review, or would have been so reinstated but for his retirement on superannuation while under suspension or not, the authority competent to order re-instatement shall consider and make a specific order—

(a) regarding the pay and allowances to be paid to the Government employee for the period of his absence from duty including the period of suspension, preceding his dismissal, removal or compulsory retirement, as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Where the authority competent to order re-instatement is of opinion that the Government employee, who had been dismissed, removed or compulsorily retired, has been fully exonerated, the Government employee shall, subject to the provisions of sub-rule (6), be paid his full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended, prior to such dismissal, removal or compulsory retirement, as the case may be:

Provided that where such authority is of opinion that the termination of the proceedings instituted against the Government employee had been delayed due to reasons directly attributable to the Government employee it may, after giving him an opportunity to make

representation and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government employee shall, subject to the provisions of sub-rule (7), be paid for the period of such delay only such amount (not being the whole) of pay and allowances, as it may determine.”

It is to be noticed that the petitioner remained out of service on account of registration of a criminal case against him under Section 302 IPC. He was ultimately acquitted of all the charges. From the perusal of provisions Rule 7.3 (ibid), it is apparent that a government employee who stood dismissed, removed, compulsorily retired or suspended, is reinstated upon being fully exonerated, shall be entitled to grant of full pay and allowances to which he would have been otherwise entitled to. However, in the instant case, the suspension and subsequent dismissal of the petitioner from service is not on account of initiation of criminal proceedings at the behest of the employer and there was no role of the respondent-Department in the said criminal proceedings. The controversy in hand has been dealt with by Hon'ble the Supreme Court in Mohammed Abdul Rahim's case (supra), by holding thus:-

“9. In the present case, the respondent was acquitted by the appellate court. There can be no manner of doubt that the said acquittal would relate back and the initial order of conviction would stand obliterated. On that basis, there can be no manner of doubt that the substratum of the cause that had led to the respondent's dismissal/discharge in the present case had ceased to exist. The same would entitle him to be reinstated in

service, an act that has been duly performed by the appellant-bank.

10. The issue relating to entitlement to back wages, however, stands on a somewhat different footing. While in Ranchhodji Chaturji Thakore (supra), Jaipal Singh (supra) and Baldev Singh (supra), the basis of refusal of back wages by this Court would appear to be the inability of the employer to avail of the service of the employee due to his incarceration in jail, in Banshi Dhar (supra), the refusal of back wages by this Court was in a situation largely similar to the case before us, namely, where the employee was all along on bail and was thus available for work. In Banshi Dhar (supra), this Court answered the question against the employee by holding that grant of back wages is not automatic and such an entitlement has to be judged in the context of the totality of the facts of a given case. It is on such consideration that back wages was declined. In the present case, it will not even be necessary for the Court to perform the said exercise and delve into the surrounding facts and circumstances for the purpose of adjudication of the entitlement of the respondent to back wages in view of the provisions of Section 10(1)(b)(i) of the Act. The said provisions impose a clear bar on a banking company from employing or continuing to employ a person who has been convicted by a criminal court of an offence involving moral turpitude. No discussion as to the meaning of the expression 'moral turpitude' is necessary having regard to the nature of the offences alleged against the respondent, namely, under Section [498A](#) of the Indian Penal Code and Section [4](#) of the Dowry Prohibition Act, 1961. No doubt, the respondent was not in custody during the period for which he has been denied back

wages in as much as the sentence imposed on him was suspended during the pendency of the appeal. But what cannot be lost sight of is that the conviction of the respondent continued to remain on record until it was reversed by the appellate court on 22.02.2002. During the aforesaid period there was, therefore, a prohibition in law on the appellant-bank from employing him. If the respondent could not have remained employed with the appellant-bank during the said period on account of the provisions of the Act, it is difficult to visualise as to how he would be entitled to payment of salary during that period. His subsequent acquittal though obliterates his conviction, does not operate to retrospectively wipe out the legal consequences of the conviction under the Act. The entitlement of the respondent to back wages has to be judged on the aforesaid basis. His reinstatement, undoubtedly, became due following his acquittal and the same have been granted by the appellant bank.

11. The respondent was acquitted on 22.02.2002; the demand for reinstatement was made by him on 22.04.2002 and he was reinstated in service by the appellant bank on 07.11.2002. On the view that we have taken, at the highest, what can be said in favour of the respondent is that he is entitled to wages from the date he had lodged the demand for the same following his acquittal, namely, from 22.04.2002, until the date of his reinstatement, if the same has not already been granted by the appellant bank.”

From the perusal of the above, it is crystal clear that the petitioner

is entitled to wages from the date he had lodged the demand for the same

following his acquittal, which has already been granted to him. The case law in *Mathura Dass Gupta (supra)* is distinguishable on facts as in the cited case, the petitioner had been involved in a case under Section 7 of the Prevention of Corruption Act. In the case in hand, the petitioner was convicted for an offence not connected with his office and had got involved in something with which the department had no concern or responsibility.

In view of the above, finding no merit in the instant petition, the same is hereby dismissed.

11.01.2019

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(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether reportable: *Yes/No*