

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

CWP No.16615 of 2014.

Date of Decision: 15.05.2019

Harbans Kaur and others

.....Petitioners

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present:- Mr. Ashok Bhardwaj, Advocate,
for the petitioner.

Ms. Gunkirat Kaur, AAG Punjab.

JITENDRA CHAUHAN J.

By way of present civil writ petition, original petitioner, namely, Ex. Constable Jagtar Singh had sought quashing of order dated 16.02.2011 (Annexure P-2) and reply dated 13.06.2014 (Annexure P-5) vide which consequential benefits and arrears of pay were declined to him.

Petitioner, Jagtar Singh had joined the police department as Constable on regular basis on 18.11.1989. After departmental inquiry regarding absence, he was dismissed from service vide order dated 17.09.1994 passed by the SSP, Faridkot. The departmental appeal filed by the petitioner was rejected by DIG, Ferozepur vide order dated 17.04.1996. The revision petition filed by the petitioner met with the same fate vide order dated 03.07.1999. Thereafter, the petitioner filed a civil suit before Civil Court, Sangrur challenging the orders dated 17.09.1994, 17.04.1996 and 03.07.1999. The said civil suit was

dismissed vide judgment and decree dated 20.03.2007. However, the appeal filed by the petitioner was accepted by Additional District Judge, Sangrur, vide judgment and decree dated 08.09.2008 (Annexure P-1) holding that the petitioner was dismissed from service without holding any regular inquiry. However, a liberty was granted to the department to conduct a *de-novo* inquiry. The judgment dated 08.09.2008 (Annexure P-1) had finality upto Hon'ble the Supreme Court. Thereafter, vide order dated 16.02.2011 (Annexure P-2) the petitioner was reinstated in service with effect from 17.09.1994. However, the arrears of pay were withheld on the ground that the petitioner had not performed duty during the said period. A *de-novo* inquiry was conducted. Vide order dated 18.12.2011 (Annexure P-3) one annual increment without commutative effect was stopped. The petitioner had represented to the department a number of times but his claim was declined vide reply dated 13.06.2014 (Annexure P-5) by invoking the principle of “No Work No Pay”.

It is contended that the petitioner was kept out of job for no fault on his part. Once the dismissal of the petitioner had been set aside and he was awarded punishment of stoppage of one increment for absenting himself from duty, the petitioner on his reinstatement deserves to be given all the consequential benefits i.e. increment, seniority and promotion.

Learned counsel relies upon Union of India Vs. K.V.

Jankiraman 1991(4) SCC 109; Sudershan Kumar vs. State of

Haryana 1997(2) SCT 278 and; Bhagat Singh Vs. State of Punjab.
and another CWP No. 1045 of 1993 decided on 28.11.2013 to

contend that the petitioner is entitled to back wages.

On the other hand, on behalf of the respondents, it is contended that the petitioner is not entitled to any consequential benefits as the same was not granted by the Court of Additional District Judge, Sangrur and the matter has attained finality upto Hon'ble the Supreme Court.

Heard.

It is pertinent to mention here that during the pendency of the present petition, the petitioner expired and his legal representatives were brought on record vide order dated 29.08.2017.

It is to be noticed that the petitioner was dismissed from service on account of his absence from duty for 155 days from 02.11.1993 to 06.11.1994. No doubt, he had been reinstated in service but the respondent-department cannot be made liable to pay salary and allowance to the petitioner for the period, he remained out of job on the ground that the dismissal order had 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 had ordered setting aside the dismissal. Thereafter, a *de novo* departmental inquiry was conducted and punishment of stoppage of one increment was awarded. The petitioner was not 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.”

The respondent-department has not deemed it appropriate to award back wages to the petitioner. No fault can be found in the impugned order. Thus, no case for interference in the matter is made out.

Dismissed.

15.05.2019.

SN

(JITENDRA CHAUHAN)
JUDGE

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