

**270 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 17580 of 2015.

Date of Decision: 25.03.2019.

Gagandeep Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. Manpreet Singh Dua, Advocate,
for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

Mr. Anupam Singla, Advocate,
for respondent No.2.

JITENDRA CHAUHAN.J.

The petitioner seeks quashing of the suspension order dated 27.12.2011 (Annexure P-4), order dated 25.09.2013 (Annexure P-11) vide which the back wages were declined to the petitioner and order dated 01.07.2015 (Annexure P-14) passed by respondent No.2 vide which on re-consideration of the matter, the claim for back wages was declined.

The petitioner was appointed as Computer Faculty Teacher under Information and Communication Technology Education Society at GSSS Kundal District Ferozepur on contract basis. The services of the petitioner were regularised on 29.06.2011 and the petitioner was permitted to join his regular service on 31.08.2011 at GSSS Kundal,

District Ferozepur. Subsequently, an FIR No.16 dated 17.06.2011 was registered against the petitioner by his wife under Sections 406 and 498-A IPC. Due to registration of the FIR, the petitioner remained in police custody from 14.12.2011 to 19.12.2011 and as such, he was suspended under Rule 4(2)(a) of the Punjab Civil Services (Punishment and Appeal) Rules, 1970. After release on bail, the petitioner went to join his duties on 20.12.2011 but he was not permitted to do so. The petitioner moved an application dated 17.01.2012 in this regard. However, the petitioner was reinstated in service after a span of 8 months. The petitioner was acquitted of the charges in the criminal case vide judgment dated 17.04.2013 (Annexure P-9) passed by Judicial Magistrate First Class, Bathinda. The petitioner claimed his full salary, allowance and the benefits of suspension period but the same were declined. The petitioner filed CWP No.5442 of 2015 which was disposed of vide judgment dated 24.03.2015 (Annexure P-13) with a direction to respondent No.2 to consider the representation of the petitioner within three months. Thereafter, vide impugned order dated 01.07.2015 (Annexure P-14), the claim of the petitioner has been declined.

On behalf of the respondents, it is contended that the petitioner was involved in an FIR No.16 dated 17.06.2011 registered under Sections 406 and 498-A IPC by his wife. The respondents cannot be blamed and made liable for the personal conduct of the petitioner. However, the matter would have been different if the FIR

had been got registered by the employer. The respondents were well within their right to deny back wages to the petitioner for the period for which his services could not be availed.

Heard.

In **Union of India and others vs. Jaipal Singh 2004(1)**.

SCT (SC) 108, it was held as under:-

“xx If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest or by department itself, perhaps different considerations may arise. On the other hand, if as a citizen the employee or a public servant got involved in a criminal case and if after initial conviction by the trial court, he gets acquittal on appeal subsequently, the department cannot in any manner be found fault with for having kept him out of service, since the law obliges, a person convicted of an offence to be so kept out and not to be retained in service.”

Further in **Raj Kumar vs. State of Punjab and others**.

2017(1) SCT 479 it was held by this Court as under:-

“In the present case, the respondents-police department was not instrument for initiating criminal proceedings as FIR was registered at the instance of private person. The State is the investigator of crime and not the party. The order of suspension was passed and thereafter the petitioner was dismissed on conviction and thereafter on acquittal from appellate Court he was reinstated in service. The charge was not connected with

performance of duty. The same issue was dealt with in judgment of Anoop Singh's case (supra) as the petitioner was Constable and was placed under suspension due to lodging of FIR under Section 7 read with Section 13(2) of the Prevention of Corruption Act, 1988 which resulted into conviction. It was held in that case that the employer was not responsible for the conviction and as such he was not held responsible for payment of back wages. It was also held that petitioner in that case has no fundamental right to claim the arrears for the period, he remained out of service even in case the period is treated as qualifying service for pension and other purposes. Said petition was dismissed by this Court on 17.2.2016.”

In the present case, the FIR was got registered by the wife of the petitioner. The employer has nothing to do with the registration of criminal case, therefore, the employer cannot be held responsible for payment of back wages.

Dismissed.

25.03.2019.
SN

(JITENDRA CHAUHAN)
JUDGE

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