

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-23445-2015

Date of Decision: 05.11.2019

Subash Chand

... Petitioner

vs.

Punjab State Power Corporation Limited and Ors .. Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Ashish Grover, Advocate
for the petitioner.

Ms. Promila Nain, Advocate
for the respondents.

ARUN MONGA, J.(ORAL)

Impugned herein, *inter alia*, is an order dated 31.08.2015 (Annexure P-6) with a further relief of issuance of a writ in the nature of *mandamus* commanding the respondents to regularize the break in service of the petitioner with effect from 17.05.2004 to 07.04.2014 and grant him all consequential benefits including arrears of salary and restoration of his seniority.

2. Succinctly, the facts of the case are that on 16.04.1981, petitioner joined as Sub-Station Attendant in Punjab State Electricity Board. Thereafter, on 17.05.1988, he was selected as Junior Engineer in the Electricity Board through direct recruitment.

3. On 01.09.1993, a case bearing FIR No. 69 dated 01.09.1993 was registered against the petitioner at Police Station Bhikhi, District Mansa under Section 7 read with Section 13(2) of the Prevention of

Corruption Act. On the same day, FIR No. 70 dated 01.09.1993 was also registered against the petitioner and 15 other employees of the Board. In FIR Nos. 69 and 70 dated 01.09.1993, petitioner and his other co-accused were convicted owing to which, petitioner was dismissed from service on 17.05.2004. Vide judgment dated 19.11.2013 rendered by this Court in CRA-S-2170-SB-2003 (Annexure P-1), petitioner was acquitted in case FIR No. 69 dated 01.09.1993 and reinstated in service vide order dated 03.04.2014 (Annexure P-2) and in that order, it was also held that whatever decision will come in the judgment in case FIR No. 70 dated 01.09.1993 shall be implemented.

4. By judgment dated 23.12.2014 rendered by this Court in CRA-S-2162-SB-2003 (Annexure P-3), petitioner has been acquitted in case FIR No. 70 dated 01.09.1993.

5. Thereafter, petitioner submitted a representation dated 01.01.2015 (Annexure P-4) to respondent No.3 with regard to his acquittal in case FIR No. 70 dated 01.01.1993 but no action was taken thereon. Later, petitioner filed CWP-11084-2015 which was disposed of on 28.05.2015 with a direction to respondent No.3 to take a decision on the aforesaid representation of the petitioner.

6. Petitioner further states that vide order dated 31.08.2015 (Annexure P-6), impugned herein, his representation was dismissed.

7. I have heard the rival contention of learned counsels and have perused the pleadings alongwith record appended thereto.

8. Learned counsel for the petitioner contends that the case of the petitioner is squarely covered by a Single Bench decision/judgment dated 17.08.2016 (Annexure P-7) rendered by this Court in CWP-18414-2010.

9. In the aforesaid judgment, my learned brother Kuldip Singh, J.
(as he then was) speaking for this Court observed as under:-

“It goes to show that if an employee, who has been dismissed or removed from service and subsequently, the said order is set aside and the board is of the opinion that the employee has been fully exonerated, then under sub-rule (2) of Regulation 7.3, he is to be paid such pay and allowances, as if he had not been dismissed, which would mean that he will be entitled to full pay and wages as if he was in service during said dismissal or removal, as the case may be. The authority of the Apex Court in Jaipur Vidyut Vitran Nigam Limited (supra) applies with full force to the facts of the present case. The Punjab Police Rules are different and involvement of employee in a murder case is altogether stand on the different footing. The matter is already considered by this Court in Vinod Kumar Versus State of Punjab and others, (arising out of CWP No. 7674 of 2014, decided on 5.8.2016, wherein in case of application of Punjab Civil Services Rules, Rule 7.3 of the Punjab Civil Services Rules, Volume-I, Part-1, Chapter-VII was considered. The sub-clause of the said rule is similar to sub-clause (2) of the Manual of Service Regulations, 1976, applicable to the case of the petitioner. This Court came to the conclusion that in the given circumstances, the petitioner was not at fault for his dismissal from service and he is entitled to salary, promotion, increments and other benefits as if he was in service during the said period. Consequently, I am of the view that the impugned order dated 24.9.2007 (Annexure-P-4) is not sustainable in the eyes of law and is accordingly quashed.”

10. Per contra, learned counsel for the respondents argues that the above judgment is not applicable in the case of the petitioner, as the

petitioner was acquitted in the criminal proceedings by giving the benefit of doubt whereas in the above judgment, the petitioner was acquitted on merits after appreciation of evidence adduced before the competent Criminal Court. She further relies on an Apex Court judgment titled as **Ajay Kumar Singh vs. The Flag Officer Commanding-In-Chief and Ors.** reported as 2016 (4) R.C.R. (Criminal), in support of her argument that acquittal by a Criminal Court by granting benefit of doubt does not entitle an employee to seek reinstatement and other consequential benefits as in the present case. She further asserts that only if an employee had been honourably acquitted, he could make such a claim of reinstatement and all the consequential pecuniary benefits.

11. A perusal of **Ajay Kumar Singh' judgment** *ibid*, would reveal that the controversy involved therein was whether an employee is entitled to automatic reinstatement on being acquitted in criminal proceedings even if he is acquitted by granting benefit of doubt. While adjudicating the said controversy, Hon'ble the Apex Court held that acquittal in criminal case, particularly, by granting benefit of doubt, does not entitle a person to automatic reinstatement. It was further enunciated that acquittal by a Criminal Court would not debar an employer from exercising power in accordance with the applicable Rules and Regulation in the disciplinary forces.

12. Learned counsel for the respondents further contends that there is no specific Rule and Regulation debarring an employee to seek reinstatement on being acquitted by Criminal Court either on merit or by granting benefit of doubt.

13. The case of the petitioner, herein, is on different footing

inasmuch as the petitioner was reinstated after having been acquitted in criminal proceedings though by granting benefit of doubt, but the period for which he remained out of service, he was not granted the salary for no fault of his.

14. To that extent, the case of the petitioner is covered by Division Bench judgment of this Court rendered in case titled as **Shashi Kumar vs. Uttri Haryana Bijli Vitran Nigam and another**, reported as **2005 (1) S.C.T. 576**. His Lordship, S.S.Nijjar, J. (as he then was) speaking for the Division Bench, observed as below:

*In any event, the terms “honourable acquittal” or “fully exonerated” are unknown in the Code of Criminal Procedure or in Criminal Jurisprudence. These terms came up for consideration before a Division Bench of the Madras High Court in the case of **Union of India v. Jayaram**, AIR 1960 Madras 325. Rajammannar, C.J. delivering the judgment of the Division Bench observed as under:—*

“There is no conception like “honourable acquittal” in Criminal Procedure Code The onus of establishing the guilt of accused is on the prosecution, and if it fails to establish the guilt beyond reasonable doubt, the accused is entitled to be acquitted.

Clause (b) of Article 193 of the Civil Service Regulations which says that when a Government servant who was under suspension is honourably acquitted, he may be given the full salary to which he would have been entitled if he had not been suspended applies only to the case of departmental inquiry.

Where the servant was suspended because there was a criminal prosecution against him, and he

was acquitted therein, and reinstated he is entitled under the general law, to the full pay during the period of his suspension. To such a case Article 193(b) does not apply”.

The aforesaid judgment of the Madras High Court was considered and followed by this Court in the case of Jagmohan Lal v. State of Punjab through Secy. to Punjab Govt. Irrigation and others, AIR 1967 (54) Punjab and Haryana 422 (Punjab). In that case, on acquittal, the petitioner was reinstated in service, but his period of suspension was not treated as the period spent on duty.”

15. The above view taken by the Division Bench was later followed by Division Bench of this Court in case titled as **Shiv Kumar Goel vs. State of Haryana and Another**, reported as 2007 (1) S.C.T. 739.

16. In view of my discussion above and reasons contained therein and also applying the ratio as enunciated in **Shashi Kumar's** judgment, *ibid*, present petition succeeds. Impugned order dated 31.08.2015 (Annexure P-6), denying the petitioner salary for the period he remained out of service for no fault of his, is set aside. Petitioner is held entitled for all consequential benefits for the period he was out of service. In another words, the petitioner shall be paid salary for the period starting from 17.05.2004 to 07.04.2014 by treating the said period on duty for all intents and purposes. The arrears of salary alongwith interest @ 6% per annum shall be paid to him.

05.11.2019
smriti

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No