

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 3093 of 2014

Date of Decision : 07.02.2019

Santokh Singh

...Petitioner

Versus

The State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. R.K. Arora, Advocate for the petitioner.

Ms. Deepali Puri Sandhu, Addl. A.G., Punjab.

Harsimran Singh Sethi, J.(Oral)

In the present writ petition, the grievance which has been raised by the petitioner is that he has not been given the salary for the period when he remained under suspension from 17.06.2003 till 03.05.2010 in view of the criminal proceedings pending against him. The next prayer which has been made by the petitioner is that though he retired on 30.09.2012 but his actual benefits were released after an inordinate and unexplained delay and, therefore, the petitioner is entitled for the interest on the said delayed payments as well.

As per the facts mentioned in the writ petition, the petitioner joined as a Class-IV employee with the respondent-Department on 28.01.1977. While the petitioner was working as such, an FIR No. 101 dated 04.04.2003, under Section 420 IPC, Police Station Civil Lines, Amritsar was registered against him. In pursuance to the said FIR,

petitioner was arrested on 17.06.2003 and keeping in view the said fact, the respondent-Department passed an order on 25.06.2003 suspending the petitioner by invoking the provisions of Punjab Civil Services (Punishment & Appeal) Rules, 1970 w.e.f. 17.06.2003 itself. Petitioner continued under suspension due to the said criminal proceedings from 17.06.2003 till 03.05.2010.

It has been contended by the petitioner that before the criminal proceedings came to an end, the petitioner was re-instated in service on 04.05.2010 and he continued working till he superannuated from service on 30.09.2012.

It is to be highlighted here that the criminal proceedings in respect of FIR No. 101 dated 04.04.2003, came to be decided by the competent Court of law on 07.9.2011 (Annexure P-2) by which the petitioner was acquitted of the charges leveled against him. Therefore, on the date when the petitioner retired on 30.09.2012, there were no proceedings pending against him. Learned counsel for the petitioner states that though no proceedings were pending against the petitioner, the actual retiral benefits were released to the petitioner only starting from March, 2013 onwards till January, 2014. The details of release of the pensionary benefits is as under :-

GPF	₹1,01,918/-	29.03.2013
Leave Encashment	₹78,720/-	12.07.2013
Arrears of Pay	₹3,96,592/-	12.07.2013
DCRG	₹3,77,856/-	02.01.2014
Arrears of Pension	₹3,37,437/-	29.01.2014

Learned counsel for the petitioner contends that though the petitioner was entitled for the regularization of his suspension period i.e.

from 17.06.2003 till 03.05.2010 as well as for all the consequential benefits but the same were not being released by the respondents and the petitioner was forced to file CWP No. 21904 of 2012, which was disposed of by this Court on 29.11.2012 (Annexure P-5) directing the respondents to decide the claim of the petitioner in respect of his suspension period by passing an appropriate speaking order within a period of four months.

In pursuance to the same, the respondents passed an order on 25.07.2013 (Annexure P-8) vide which the period from 17.06.2003 till 30.09.2005 was treated as duty period, whereas the period from 01.10.2005 till 03.05.2010 was treated as a leave of kind due i.e. earned leave, half pay leave and leave without pay. The order dated 25.07.2013 reads as under :-

“In compliance of order passed by the Hon'ble Punjab and Haryana High Court, Chandigarh, the suspension period w.e.f. 17.06.2003 to 03.05.2010 (2513 days) of Sh. Santokh Singh S/o Sh. Banta Singh, C-IV (retired on 30.09.2012) is sanctioned in the following manner in terms of Rule 7.3(5) of the Punjab Civil Services Rules :-

- (i) The period from 17.06.2003 to 30.09.2005 is treated as duty period.*
- (ii) The period from 01.10.2005 to 03.05.2010 (1676 days) is treated as leave of kind due in the following manner:-*
 - 1. 01.10.2005 to 17.09.2006 (352 days) Earned Leave*
 - 2. 18.09.2006 to 11.11.2007 (420 days) Half Pay Leave*
 - 3. 12.11.2007 to 03.05.2010 (904 days) without pay/without Medical.*

*Sd/-
Medical Superintendent
ESI Hospital, Amritsar”*

This order is under challenge in the present writ petition.

Upon notice of motion, the respondents have filed the reply,

wherein, it has been stated that the action with regard to the decision in

respect of the suspension period has already been taken and the order by which the period of suspension was treated to be leave of kind due is perfectly valid and legal.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

It is a matter of record that the petitioner was arrested on 17.06.2003 in respect of an FIR No. 101 dated 04.04.2003 and, therefore, the petitioner was placed under suspension keeping in view the provisions of the Punjab Civil Services (Punishment and Appeal) Rules, 1970. Further, there is no denial that after the trial, the petitioner was acquitted of the charges and, therefore, it can be safely said that the allegations which were alleged against the petitioner in the said FIR, were not true. Respondents suspended the petitioner and he continued under suspension till 03.05.2010 i.e. approximately for a period of seven years. It is the respondents, who kept the petitioner under suspension due to the allegations. It is not the case that the petitioner refused to discharge the duties. Once the petitioner was acquitted of the charges, he is to be treated as innocent and is entitled for all the benefits which he would have got as if the respondents had not suspended him on the basis of the allegations alleged in the FIR No. 101 dated 04.04.2003. No prejudice can be caused to the petitioner once he has been found innocent in the allegations, otherwise, the petitioner will be suffering prejudice without his fault.

Learned counsel for the petitioner states that even according to Rule 7.3 (2) of the Punjab Civil Services Rules, Volume-I, Part-I, the petitioner is entitled for all the benefits after he was acquitted. The relevant Rule reads as under :-

“(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.

(3) In a case falling under sub-rule (2), the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, shall be treated as a period spent on duty for all purposes.”

Learned counsel for the petitioner states that the case of the petitioner is squarely covered by the above reproduced rules and as the petitioner has been acquitted, he is entitled for the benefit of the said Rule by granting him all the benefits for the period for which he remained under suspension.

Learned counsel for the respondents is unable to rebut the said contention that once an employee has been acquitted of the charges, how can he/she be prejudiced by denial of the benefit for the period when the

employee remained on 'Forced Suspension'. Further, this Court while deciding CWP No. 16192 of 2010, titled as ***Sukhchain Singh Vs. The State of Punjab and another***, decided on 18.03.2013 while interpreting Rule 7.3(2) held that where there is an acquittal, the employee will entitle for all the benefits for the suspension period. The relevant portion of the said judgment is as under :-

“The fact that the petitioner was dismissed from service on the basis of his conviction without holding any departmental inquiry, stands admitted. It is also not in dispute that the Criminal Revision Petition which was preferred by the petitioner in this Court, he stands acquitted vide order dated 16.09.2008 (Annexure P-5). In the light of this factual position the statutory rules governing the claim of allowances on reinstatement which would be applicable to the case of the petitioner is Rule 7.3(2) of the Punjab Civil Services Rules, Volume-I, Part-I, which reads as follows:-

“(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.

(3) In a case falling under sub-rule (2), the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, shall be treated as a period spent on duty for all purposes.”

In some what similar cases, a Division Bench of this Court while deciding CWP No. 12502 of 2006, on 21.01.2008 has held that the employee will be entitled to full pay and allowances for the period of suspension with all consequential benefits after the acquittal. The relevant paragraph 7 of the said judgment is as under :-

*“Learned Additional Chief Judicial Magistrate, Jind, has ordered acquittal of the petitioner after threadbare examination of the evidence. It has been noticed that the prosecution has miserably failed to connect the accused with the commission of offences for which they have been charge-sheeted. It has further been noticed that no guilt can be attributed to the accused and due to lack of evidence charges are not sustainable against them. In such circumstances, it can hardly be said that the acquittal of the petitioner is not honourable. As such, contention of the learned counsel for the Nigam, to the contrary, cannot be accepted. The petitioner was suspended because of criminal prosecution against her. Once she is acquitted therein and reinstated into service, she is entitled to full pay during the period of her suspension. Similar view was taken by a Division Bench of this Court in the case reported as **Shashi Kumar vs. Uttar Haryana Bijli Vitran Nigam and another, 2005 (1) Service Cases Today 577.***

In the case of Shiv Kumar Goel v. State of Haryana and another, 2007 (1) Service Cases Today 739, also a Division Bench of this Court observed as under:-

“If the Criminal Court recorded finding that there was no evidence to prove the charge of corruption against the charged employee, notwithstanding observations as to acquittal by benefit of doubt, it will be considered honourable acquittal. His benefits of pay and allowance over and above subsistence allowance cannot be forfeited still observing him guilty of the same charges.”

Besides, in this case the Inquiry Officer had completely exonerated the petitioner by holding that there was no doubt of any kind against her integrity and that none of the witnesses produced by the Presenting Officer pointed towards involvement of the petitioner in the incident of robbery.

For the aforesaid reasons, we are of the considered view that the petitioner is entitled to be reinstated in service with all consequential benefits. We quash the impugned orders dated March 13, 2006 (Annexure P-14) and dated July 17, 2006 (Annexure P-16). The respondents are directed to reinstate the petitioner into service with full back wages. No order as to costs.

Petition allowed.”

In view of the above, the action of the respondents in treating the suspension period of the petitioner as a leave of kind due is contrary to the law and, therefore, cannot be sustained and is liable to be set-aside.

Further, because of this order, the petitioner has not been granted the benefit of calculation of the service from 12.11.2001 till 03.05.2010 as a qualifying service for computing the pensionary benefits and towards the increments also. It would put premium on the act of the respondents in case the benefits are denied to an employee, who have found innocent by a competent court of law after a trial. Therefore, the impugned

order dated 25.07.2013 (Annexure P-8) is set-aside and the respondents are directed to treat the entire period of suspension i.e. from 17.06.2003 till 04.05.2010 as a period spent on duty and the petitioner will be entitled for all the consequential benefits for the said period including difference of pay/arrears on re-fixation of his pensionary benefits.

In respect of the second prayer, learned counsel for the petitioner argues that though petitioner retired on 30.09.2012, the payments were only released to him starting from March, 2013 onwards. The details of the payments have already been mentioned hereinbefore which clearly shows that the payments were made after a delay ranging from six months to one and half year.

No justification has been given by the respondents in the reply as to why the payments were released after inordinate and unexplained delay and petitioner will not be entitled for interest for the delayed release of the retiral benefits. Only the details with regard to the payments have been given in the reply.

It is a settled principle of law settled by the Full Bench of this Court in ***A.S. Randhawa Vs. State of Punjab, 1997 (3) SCT 468*** that the employee who receives the retiral benefits after an unexplained delay, is entitled for interest on the delayed release of the payments. The relevant paragraph of the said judgment is as under :-

“Since a Government employee on his retirement becomes immediately entitled to pension and other benefits in terms of the Pension Rules, a duty is simultaneously cast on the State to ensure the disbursement of pension and other benefits to the retiree in proper time. As to what is proper time will depend on the facts and circumstances of each case but normally it would not exceed two months from the date of

retirement which time limit has been laid down by the Apex Court in M. Padmanabhan Nair's case (supra). If the State commits any default in the performance of its duty thereby denying to the retiree the benefit of the immediate use of the money, there is no gainsaying the fact that he gets a right to be compensated and, in our opinion, the only way to compensate him is to pay him interest for the period of delay on the amount as was due to him on the date of his retirement.”

Not only this, a Coordinate Bench of this Court in **J.S. Cheema Vs. State of Haryana and others, 2014(13) RCR (Civil) 355** has held that if the amount has been retained by the department and use the same, the employee will be entitled for the interest. The relevant paragraph of the said judgment is as under :-

“The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is lying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it.”

In view of the above, the petitioner is held entitled for interest on the delayed release of the payment @ 9% per annum from the date it became due till release of the same.

The writ petition stands allowed in above terms.

February 07, 2019
kanchan

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned? Yes
Whether reportable? Yes