

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

* * * * *

CWP No. 22587 of 2017

Date of decision : January 23, 2019

* * * * *

Karan Singh

.....Petitioner

Versus

Haryana Power Generation Corporation Ltd. and others

.....Respondents

* * * * *

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

* * * * *

Present: Mr. J.K Goel, Advocate for the petitioner.

Mr. Hitesh Pandit, Addl.A.G., Haryana.

* * * * *

RITU BAHRI, J.

The petitioner is seeking quashing of the order dated 25.8.2015 (Annexure P-4) and order dated 16.8.2017 (Annexure P-8) and further issue a writ in the nature of mandamus directing the respondent authorities to convert the absent period of the petitioner from 21.2.2014 to 01.12.2014 as leave of the kind due for all intents and purposes and release the arrears of salary and other benefits for the period from 21.2.2014 to 26.11.2014.

The background of the case is that FIR No. 147 dated 21.2.2016 was lodged against the petitioner under Section 304-B/34 IPC by

one Ram Chander alleging that his daughter was married to Ashwani son of

the petitioner and later on she committed suicide. The allegation of the complainant Ram Chander was that the accused had murdered her and then hanged her with the fan. The petitioner and his son Ashwini were arrested by the police and later on challan was filed before the Court of Law. The Additional Sessions Judge, Panipat exonerated the petitioner from all charges vide judgment dated 26.11.2014 (Annexure P-1). The petitioner was in police custody from 21.2.2014 to 26.11.2014 and could not join his duties. In this backdrop, the charge sheet was issued to the petitioner on 17.3.2015 (Annexure P-2) wherein it was alleged that the petitioner remained willfully absent from duty since 21.2.2014 to 01.12.2014 without any intimation. It was further alleged in the charge sheet that the petitioner came in the office on 02.12.2014 to join his official duties and replied through his explanation that he remained in police custody from 21.2.2014 to 26.11.2014 in the case related to the suicide of his son's wife. The petitioner replied to the charge sheet (Annexure P-3) and submitted that he was not willfully absent from 21.2.2014 to 1.12.2014 as alleged. The respondent authorities decided the charge sheet vide office order no.696 dated 25.8.2015 (Annexure P-4) and inflicted the minor punishment *“warning be issued to the official with a copy to be placed in personal file”*. Accordingly vide order dated 8.7.2015, minor punishment of warning was issued. The competent authority further decided the absent period/suspension period of the official be regularized as under:-

- 1. To regularize the absent period w.e.f 21.2.2014 to 26.11.2014 being police custody/jail period as extra*

ordinary leave/period on the principal of no work no pay but the said period will be counted for the purpose of continuity of service and disbursement of pensionary benefit only.

2 To regularize the absent period w.e.f 27.11.2014 to 1.12.2014 as leave of the kind due.

Against the order dated 25.8.2015 (Annexure P-4), petitioner filed the appeal/review before the competent authority taking the plea that the principle of 'no work no pay' is not applicable in his case as he was forcibly detained for no fault of his and finally petitioner was given an opportunity of personal hearing and his appeal was dismissed vide order dated 16.8.2017 (Annexure P-8).

Counsel for the petitioner has argued that while passing the impugned order dated 16.8.2017 (Annexure P-8), the authorities have not correctly appreciated the provisions of Rule 7.3 of Vol. I Part-I of Haryana Civil Service Rules. The petitioner was in custody and after his acquittal, his period of absence should have been treated as leave of the kind due as keeping in view the circumstances, the petitioner could not be put to disadvantage of not attending office work.

Counsel for the State has referred to a judgment in the case of ***Ranchhodji Chaturji Thakore vs. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar (Gujarat) AIR 1997 SC 1802***. In this case, the appellant was charged for an offence under Section 302 read with 34 IPC for his involvement in a crime committed on October 1, 1986. The Sessions Judge had convicted the appellant under Section 302 read with 34

IPC but later on he was acquitted of the offence by the High Court. The High Court directed the respondents to reinstate the petitioner into service, however, denied backwages. On being denied backwages, he filed special leave petition before Hon'ble the Supreme Court of India, wherein it was observed that the question of back wages would be considered only if the respondents have taken action by way of disciplinary proceedings and the action was found to be unsustainable in law and he was unlawfully prevented from discharging the duties. In that context, his conduct becomes relevant. Each case required to be considered in its own backdrop. In this case, since the petitioner had involved himself in a crime, though he was later acquitted he had disabled himself from rendering the service on account of conviction and incarceration in jail. Under these circumstances, the petitioner is not entitled to payment of back wages. The learned Single Judge and the Division Bench have not committed any error of law warranting interference. Hence the Special leave petition was dismissed. This judgement has been followed in various other cases. Reference has also been made to a judgment of this Court in the case of ***Sat Pal Dhawan vs. State Bank of Patiala and others (LPA No. 930 of 2012)*** decided on **1.4.2013**, wherein a question of law arose for consideration as to whether the petitioner was entitled for payment of full wages from the period he remained under suspension. It was held that as the petitioner's suspension was because of involvement in case of corruption, respondent was not responsible to keep petitioner away from his normal duties. Therefore, appellant was not held entitled to salary and allowances during suspension

period. In *Union of India (UOI) and others vs. Jaipal Singh JT 2003 (10) SC 103* decided on 3.11.2003, services of respondent were terminated on ground of his conviction by trial Court in a murder case, but respondent was acquitted by High Court. Since respondent was not reinstated, High Court directed his reinstatement with full back wages and consequential benefits. In appeal, it was held by Hon'ble the Supreme Court that High Court was not justified in directing payment of full back wages. Department was not at fault for having kept him out of service. Order of High Court directing payment of back wages was set aside. However, respondent was held to be entitled to back wages from the date of acquittal and except for the purpose of denying the respondent actual payment of back wages that period also will be counted as period of service without any break.

In the facts of the present case, the petitioner had faced a criminal trial in the FIR No.147 dated 21.2.2016 lodged against him under Sections 304-B/34 IPC which was registered on account of the death of his daughter-in-law. The respondent-Department had no role to play in keeping him out of service as the criminal proceedings had nothing to do with his official duties. After acquittal, he has been reinstated and as per the order dated 25.8.2015 (Annexure P-4), the period spent in custody has been treated to be extraordinary leave on the principle of '*no work no pay*', however, it was further clarified that the said period will be counted for the purpose of continuity of service and disbursement of pensionary benefit only. This order has been passed keeping in view the provisions of Rule 7.3 of Vol.I, Part-I of Haryana Civil Services Rules sub clause which reads as

under:-

7.3(1) When a Government employee, who has been dismissed, removed, compulsorily retired or suspended is reinstated or would have been reinstated but for his retirement on superannuation the authority competent to order the reinstatement 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, occasioned by suspension and/or dismissal, removal or compulsory retirement on superannuation as the case may be, and

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

(2) Whether the authority mentioned in sub-rule 91) is of opinion that the Government employee has been fully exonerated or, in the case of suspension, that it was wholly unjustified, the Government employee shall be given the full pay and allowances to which he would have been entitled, had he not been dismissed, removed, compulsorily retired or suspended as the case may be.

(3) In other case, the Government employee shall be given such proportion of such pay and

allowances as such competent authority may prescribe:

Provided that the payment of allowances under sub-rule (2) or sub-rule (3) shall be subject to all other conditions under which such allowances are admissible.

Provided further that such proportion of such pay and allowance shall not be less than subsistence and other allowances admissible under rule 7.2.

(4) In case falling under sub-rule (2) the period of absence from duty shall be treated as period spent on duty for all purposes.

(5) In a case falling under sub-rule (3) the period of absence from duty shall not be treated as a period spent on duty unless such competent authority specifically directs that it shall be so treated for any specified purpose.

Provided that if the Government employee so desires, such authority may direct that the period of absence from duty shall be converted into leave of any kind due and admissible to the Government employee.

As per the aforementioned Rule, the competent authority has been given the powers to pass orders whether the absence period can be treated as period spent on duty. He was absent being in custody. The

competent authority has rightly rejected his appeal by treating this period as extraordinary leave as his absence from duty was on account of his custody in which the Department had no role to play.

In view of all that has been discussed above, present writ petition is dismissed.

January 23, 2019
ritu

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No