

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

CWP No. 7072-2018

Date of decision : 22.01.2019

Kamal Kumar Aneja

...Petitioner

versus

**Uttar Haryana Bijli Vitran Nigam
through its Managing Director & anr.**

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Mohti Garg, Advocate
for the petitioner.

Mr. Udit Garg, Advocate
for the respondent

RITU BAHRI, J. (Oral)

Petitioner is seeking a writ in the nature of certiorari for quashing impugned order dated 15.12.2014 (P-7), 15.10.2015 (P-9) and 16.11.2017 (P-11) whereby the respondent-department has ordered that suspension period from 07.01.2011 to 30.09.2013 be regularized by treating it to be kind of leave due.

The facts in brief are that the petitioner was issued a show cause notice dated 14.02.2011 (P-1) with the allegations that he is habitual of slipping from office. He remained absent from duties. Further he manhandled G.S. Narang, A.O/collection on 03.01.2011. Petitioner was placed under suspension on 07.01.2011. On 14.12.2012, he was issued charge sheet. The petitioner was then reinstated in to service on 08.03.2013. Thereafter, a note dated 10.06.2014 was given by concerned officer who has levelled allegations of manhandling that he has no evidence against the

petitioner of mandhandling. The respondent-department then decided on 18.07.2014 to drop the charge sheet against the petitioner. However, on 15.12.2014 the respondent-authorities passed impugned order that the period of suspension be treated as kind of leave due. The petitioner preferred an appeal and revision against this order, which were also dismissed on 15.10.2015 (P-9) and 16.11.2017 (P-11).

Learned counsel for the petitioner submits that it is a settled law that once the competent authority took a conscious decision there is no ground on which employee can be proceeded against and no fault can be attributed to the delinquent employee, in those circumstances, the suspension of the concerned employee would be totally unjustified and the employee would be entitled for full back wages and the suspension period be regularized as duty period.

Reference has been made to a judgment of this Court in a case of *Narender Kumar v. DHBVN and others, 2016 (3) S.C.T 738* wherein also after acquittal of an employee, the suspension and dismissal order were found to be unjustified. Petitioner was held to full back wages for that period.

On the other hand, learned counsel for the respondent has stated that the petitioner was reinstated and posted in the office of Chief Accounts Officer, UHBVN, Panchkula without prejudice to the pending enquiry/charge sheet against him vide office order dated 08.03.2013 (R-5). Further the Enquiry Officer held that petitioner is responsible for slipping away from the duties during office hours and is irresponsible in official work. In this background, he was charge sheeted. However, the competent

authority took a lenient view and decided to drop the charge sheet and gave warning to the petitioner to be careful in future.

The judgment in Narender Kumar's case is directly applicable to the facts of the present case where petitioner was placed under suspension on account of his involvement in a case under Prevention of Corruption Act, 1988. The departmental proceedings were initiated against him but was reinstated pending the outcome of the departmental proceedings as also criminal prosecution. Initially the petitioner was convicted but on filing appeal, he was acquitted and thus was reinstated vide order dated 17.01.2014 subject to outcome of the departmental proceedings. Thereafter, he was served with a charge sheet. An order was passed on 28.05.2014 vide which the suspension period and the period of dismissal from service was regularized and was treated as duty period. The petitioner claim for pay and allowances for the period of suspension as also the period spent out of service on account of dismissal but the same was rejected. This Court allowed the writ petition and observed in para 22 as under:-

In the case of Banshi Dhar (supra) relied upon by learned counsel for the respondent-Nigam, it had been clearly held by the Apex Court that the judgment of acquittal itself would not exonerate a delinquent of the charges levelled against him and it was always open for the employer to have proceeded further in the matter in a departmental proceeding. While upholding the decision of the authorities concerned in denying to Banshi Dhar, the benefit of backwages, it had been noticed that departmental proceedings against him could not be held as on the date of passing of judgment of acquittal in his favour, he had already attained the age of superannuation. The facts of the case in hand, however, are clearly

distinguishable. The respondent- Nigam herein has taken a conscious decision to drop the departmental proceedings during the course of employment of the petitioner and in the light of his acquittal as also the reply furnished by him. Respondent-Nigam having chosen to do so, the action of denial of pay and allowances for the period in question cannot sustain.

In the present case as well, the departmental proceedings initiated against the petitioner was dropped and hence the petitioner having been absolved of the allegations and the respondent-Nigam having taken a conscious decision to even drop the charge sheet issued against him, he would be vested with the right to pay full pay and salary for the period of suspension as also the period he remained out of service on account of order of dismissal, in the light of the relevant statutory provisions i.e Rules 7.3 and 7.5 of the Punjab Civil Service Rules, Vol I, as applicable to State of Haryana.

For the reasons recorded above, the writ petition is allowed. Impugned orders dated 15.12.2014 (P-7), 15.10.2015 (P-9) and 16.11.2017 (P-11) are set aside. The suspension period of the petitioner be treated as duty period and petitioner is entitled to all consequential benefits.

(RITU BAHRI)
JUDGE

22.01.2019
G Arora

Whether speaking/reasoned
Whether reportable

Yes
No