

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 7821 of 2018

Date of decision : April 12, 2019

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RAN SINGH

.....Petitioner

Versus

STATE OF HARYANA AND OTHERS

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. R.K Malik, Sr. Advocate with
Mr. Sandeep Dhull, Advocate for the petitioner.

Mr. Harish Nain, AAG, Haryana.

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RITU BAHRI, J.

The petitioner in the present case is seeking quashing of the order dated 17.4.2014 (Annexure P-3), whereby the petitioner has been deprived of the salary of the period from 30.12.2012 to 22.4.2014 and further quashing of the order dated 6.2.2018 (Annexure P-6) by which the claim of the petitioner has again been rejected.

Petitioner was appointed as Driver in the month of January, 1986. His services were terminated vide order dated 30.10.2012 (Annexure P-1) by the General Manager, Haryana Roadways, Delhi Depot. The petitioner filed statutory appeal (Annexure P-2) before the Director General,

Transport Department, Haryana. Vide order dated 17.4.2014 (Annexure P-3), his appeal was accepted and the order of termination dated 30.10.2012 (Annexure P-1) was set aside but a condition was imposed that the petitioner was not entitled to any salary of the period from 30.12.2012 to the date of reinstatement. The relevant portion of the order dated 17.4.2014 (Annexure P-3) is hereby reproduced as under:

“In the enquiry report, it has been concluded that the appellant could not produce copy of the post mortem report of the persons who died in the accident to prove that they had taken liquor. The Enquiry Officer has not discussed the evidence produced against the appellant for proving the charges. It has been mentioned in the conclusion by the Enquiry Officer that there is difference in the reply to the charge sheet filed by the appellant and his statement during the enquiry. A perusal of the reply to the charge sheet and his statement during the enquiry however belies the above. It is for the prosecution to prove the charge by leading positive evidence and not for the defence to prove its innocence. In this case the only evidence produced by the prosecution is in the shape of Sh. Balwan Singh, Inspector. He went on the site of accident after two days i.e on 09.03.2012. His statement is based on the local enquiry made by him at the spot. In his

statement, he has clearly stated that there is no fault on the part of the appellant in the said accident. Neither the enquiry report nor the impugned orders mention an iota about the deposition of the said prosecution witness, Sh. Balwan Inspector. The findings of the enquiry are not supported by any evidence what so ever. The impugned orders are entirely based on the findings in the enquiry report. Therefore, the impugned orders are not sustainable.”

The petitioner was thereafter acquitted by the Criminal Court vide judgment dated 25.1.2017 (Annexure P-4). After the acquittal, the petitioner filed the appeal (Annexure P-5) to the Director, State Transport, Haryana that he may be granted salary of the period from 30.12.2012 to 23.4.2014. This appeal was rejected vide order dated 6.2.2018 (Annexure P-6) and hence the present petition.

Heard counsel for the parties. In the present case, the departmental authorities vide order dated 17.4.2014 (Annexure P-3) had set aside the dismissal order dated 30.10.2012 (Annexure P-1) by recording a finding that the only prosecution witness Sh. Balwan Singh Inspector went on the site of accident after two days i.e on 09.03.2012. His statement was based on the local enquiry made by him at the spot. In his statement, he has clearly stated that there is no fault on the part of the appellant in the said accident. Thereafter a perusal of the judgment of acquittal (Annexure P-4)

further shows that two prosecution witnesses PW-2 Naresh and PW-3 Rakesh had stated in their chief examination that they had not seen the petitioner driving carelessly and they did not see him while hitting Jaspal and Kalwa. Moreover, they did not support their statements under Section 161 Cr.P.C in cross examination and later on both the witnesses were declared hostile. In this backdrop, the petitioner was acquitted. However before acquittal in the criminal case, vide order dated 25.1.2017 (Annexure P-4), petitioner had already been reinstated by the Department itself. Hence, in the present case, the case of payment of salary is to be seen keeping in view order dated 17.4.2014 (Annexure P-3) as he was reinstated vide order dated 22.4.2014 after this order was passed.

Since, the departmental authorities have themselves accepted that there was no evidence against the petitioner, the petitioner cannot be denied benefit of salary for the period from 30.12.2012 to 22.4.2014. Reference at this stage can be made to a judgment in the case of ***Chander Bhan vs. State of Haryana and others (CWP No. 26480 of 2014)*** decided on **12.4.2016**, whereby the petitioner was working in the Transport Department, Haryana. He joined there on 26.12.1989 and was removed vide order dated 21.10.2008 on account of conviction in FIR No.77 dated 26.2.2004 under Sections 279/337/338 IPC. However, on appeal, Sessions Judge, Jind vide order dated 24.01.2008 released him on probation for a period of one year. During the pendency of the writ petition, the petitioner attained the age of superannuation and could not be reinstated. This Court allowed the writ petition and set aside the termination order of the

petitioner. It was held that the punishing authority passed the order of removal from service without applying its mind and without considering the conduct of the petitioner not involving moral turpitude. Moreover, no regular departmental inquiry was conducted and no show cause notice was issued to the petitioner. The petitioner was held entitled for all consequential benefits of arrears of salary till the date of his superannuation.

Reference in this case can also be made to another judgment in the case of ***Man Singh vs. State of Haryana, 2010 (1) SCT 604***, wherein the petitioner, a Sub Inspector in Haryana Armed Police was dismissed from service due to his conviction in criminal charge despite having the unblemished service of nearly 40 years. This Court set aside the dismissal order of the petitioner and the matter was remitted back to the punishing authority to consider the case afresh. It was held that the punishing authority is to apply its mind to reach a definite conclusion that due to conviction, it is no more desirable to retain the employee in service. Dismissal straightway on account of conviction cannot be sustained. In paragraph 7 of this judgment, this Court observed as under:

*“7. A Division Bench of this Court in **Hari Ram Vs. Dakshin Haryana Bijli Vitaran Nigam Ltd. And another, 2006 (2) SCT 112** again took a similar view while relying upon Full Bench decision of this Court in Om Parkash's case (supra) and has held that upon conviction in a criminal charge, dismissal from service is not automatic. It is further held that the competent authority has to consider and apply its mind to*

*the judgment of the criminal Court and other material available on record and reach a definite conclusion that due to the conviction it is no more desirable to retain the employee in service. Dismissal straightway on account of conviction, thus, can not be sustained. Even in the case of **Union of India and another Vs. Tulsi Ram Patel**, AIR 1985 SC 1416, the Hon'ble Supreme Court held as under:-*

“Where a disciplinary authority comes to know that a government servant has been convicted on a criminal charge, it must consider whether his conduct which has led to his conviction was such as warrants the imposition of a penalty and, if so, what that penalty should be. For that purpose, it will have to peruse the judgment of the criminal Court and consider all the facts and circumstances of the case. Once the disciplinary authority reaches the conclusion that the government servant's conduct was such as to require his dismissal or removal from service or reduction in rank, he must decide which of these three penalties should be imposed on him. This too it has to do by itself and without hearing the government servant concerned by reason of the exclusionary effect of the second proviso. However, a conviction on a

criminal charge does not automatically entail dismissal, removal or reduction in rank of the government servant concerned and, therefore, it is not mandatory to impose any of these major penalties.”

Thereafter, a Coordinate Bench of this Court in the case of ***Kulwant Singh Ex. Driver No.136 vs. State of Punjab 2012 (3) SCT 587*** was examining a case of a driver in the Punjab Roadways who had been convicted in FIR No.29 dated 14.4.1998 under Sections 323, 324, 325, 427 and 34 IPC. In appeal the Additional Sessions Judge upheld the order of conviction but reduced the sentence that the petitioner had been awarded. The petitioner was placed under suspension by the General Manager, Punjab Roadways, Ludhiana vide order dated 19.8.2003. Thereafter, he was dismissed from service vide order dated 5.3.2004 on account of having been convicted in pursuance to the criminal proceedings. The order of dismissal was set aside by this Court on the ground that simply on account of conviction, services could not be terminated. The authorities were required to consider the role attributed to the petitioner in the criminal trial. In paragraphs 8 & 9, it was observed as under:

“8. A Constitution Bench of the Hon'ble Apex Court in case of Union of India vs. Tulsi Ram Patel reported as 1985 (2) S.L.R 576 has already dealt with such precise question and it was held as under:-

"Where a disciplinary authority comes to know that a government servant has been convicted on a criminal charge, it must consider whether his conduct which has led to his conviction was such as warrants the imposition of a penalty and, if so, what that penalty should be. For that purpose, it will have to peruse the judgment of the criminal court and consider all the facts and circumstances of the case. Once the disciplinary authority reaches the conclusion that the government servant's conduct was such as to require his dismissal or removal from service or reduction in rank, he must decide which of these three penalties should be imposed on him. This too it has to do by itself and without hearing the government servant concerned by reason of the exclusionary effect of the second proviso. However, a conviction on a criminal charge does not automatically entail dismissal, removal or reduction in rank of the government servant concerned and, therefore, it is not mandatory to impose any of these major penalties."

9. *A perusal of the impugned order dated 26.10.2010 (Annexure P-15) clearly reveals that the conduct of the*

petitioner which has led to his conviction has not been considered and no finding has been returned by the punishing authority that the conduct of the petitioner has been found to be of such a serious magnitude that it warrants dismissal from service. The judgment of the Criminal Court was required to be read and considered by the competent authority which had passed the impugned order and upon due application of mind it was required to be concluded as to whether the petitioner was worthy of retention in service or if, any other suitable punishment was required to be inflicted. Towards holding such view, I would draw support from two Division Bench judgments of this Court rendered in case of Hari Ram Vs. Dakshin Haryana Bijli Vitran Nigam Ltd. reported as 2006 (2) S.C.T 112 and Kaur Singh and another Vs. Punjab State Electricity Board and others reported as 2007 (4) S.C.T 426.

Thus the order of dismissal was set aside and the matter was remanded back for disciplinary action to consider the aspect of the conduct of the petitioner leading to his conviction before imposing the extreme penalty of dismissal from service. Reinstatement of the petitioner was kept in abeyance till the fresh order was passed.

However, in the present case, the petitioner has been reinstated in service vide order dated 17.4.2014 (Annexure P-3) passed by the

Additional Transport Commissioner cum-Appellate Authority. The petitioner was reinstated as there was no evidence led by the prosecution that the petitioner was negligent in causing accident. However, he was denied the benefit of salary for the period from 30.12.2012 to the date of reinstatement, the period during which he remained out of service. Even in the criminal trial, he has been acquitted vide judgment dated 25.1.2017 (Annexure P-4). Since, the departmental authorities found the petitioner to be not guilty and reinstated him, the petitioner has every right to be given arrears of salary keeping the full Bench Judgment passed by this Court in ***Ram Niwas Bansal vs. State of Bank of Patiala, 2002 (2) SLR 375.***

In view of all that has been discussed above, present petition is allowed and the petitioner is held entitled to the salary for the period from 30.12.2012 to 22.4.2014. Respondent authorities are directed to pay salary to the petitioner for the aforementioned period within a period of three months from the date of receipt of a certified copy of this order.

April 12, 2019
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(RITU BAHRI)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No