

IN THE HIGH COURT OF PUNJAB ANDHARYANAAT
CHANDIGARH

CWP No. 11419-2016
Date of decision:-29.05.2020

Ishwar Singh

.....Petitioner

vs.

State of Haryana and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Harkes Manuja, Advocate
for the petitioner.

Mr. Harish Nain, A.A.G Haryana

RITU BAHRI, J.

The present petition is for issuance of direction to the respondent to release the salary of the petitioner for the period w.e.f 07.04.2001 to 07.04.2014 which the petitioner was kept away from joining his duties.

On notice of the petition, a written statement has been filed on behalf of respondent Nos. 1 to 3 admitting that the petitioner was appointed in the Prisons Department as Clerk on 18.11.1987 on adhoc basis. The services of the petitioner were regularized w.e.f 01.01.1991. In para No. 2 of the written statement, it was mentioned that the petitioner remained wiffully absented from his duty on five different occassions. Thereafter, petitioner was placed under suspension w.e.f 25.02.2002 for gross negligence towards his duties. Thereafter, he was charge sheeted under Rule 7 of HCS (Punishment and Appeals) Rules, 1987. The Inquiry Officer had

submitted his report on 05.06.2003 and after considering this report, the

petitioner was dismissed from service vide order dated 09.09.2003. The petitioner preferred appeal which was rejected on 09.02.2010. Thereafter, the petitioner filed memorial nearly after 02 years and 03 months which was accepted by the Hon'ble Governor of Haryana and the orders were conveyed by the Government vide Endst Dated 4/7.07.2014. In compliance of this order, the petitioner was taken back in service vide order dated 01.08.2014. Thereafter, the petitioner was promoted from the post of Clerk to the post of Accountant vide order dated 28.10.2016 (R-1) and his salary was refixed vide order dated 30.12.2016 (R-2). The pay of the petitioner has also been refixed as per 7th pay commission report w.e.f 01.01.2016 vide order dated 07.02.2017 (R-3).

At the very outset, learned counsel for the petitioner refers to the order dated 04.07.2014 (P-7). The operative part of the order reads as under:-

“It appears that it was all done with malafides intention to harass and harm the memorialist. It seems to be a case of sheer intimidation against a subordinate employee by senior officer. Moreover, the appellate authority has taken 07 years to decide his case. Apparently, someone in an influential position in the department has manipulated the things against the memorialist for reasons best known to them. But this is a serious matter which calls for thorough probe by the Administrative Department. Therefore, there does not seem to be any justification in the punishment of dismissal on the charge of willful absence of duty for two days.”

Learned counsel for the petitioner submits that once the

Hon'ble Governor of Haryana was satisfied that it was a case of malafide intention to harass and harm the petitioner, thereafter, the respondent ought to have release the salary of the petitioner for the period w.e.f 07.04.2001 to 07.04.2014. The petitioner had been deliberately kept away from service from performing his duty. The principle of No Work No Pay could not be invoked in such circumstances.

Learned counsel for the petitioner is relying upon judgment of this Court in a case of ***Dr. D.C. Spah vs. State of Haryana and another, 2012 LIC 4241*** wherein also the petitioner was found absent from duty. The operative part of the judgment reads as under:-

“Petitioner has contended that the impugned order dated 5.10.2010 of the Higher Education Commissioner, Haryana-respondent No.2 wherein the period of his absence from 1.9.2007 to 20.3.2009 has been treated as 'No Work No Pay' with break in service has been passed without following the principles of natural justice, as no show cause notice has been issued to him nor any enquiry has been held against him. This fact has not been disputed by the respondents in their reply filed. It cannot be disputed that the impugned order carries with it civil consequences which will adversely affect the right of the petitioner as with the break in service, the period of service rendered by the petitioner from the date of his initially joining the service on 7.1.1994 till the date of his joining back after coming from South Korea i.e. 21.3.2009 would be washed off. Any order which had civil consequences attached therewith is required to be passed after following the principles of natural justice. The minimum which was required by the Competent Authority was to issue a show cause notice to the employee, consider the reply, if any, filed thereto and thereafter proceed to pass orders in accordance with law. If departmental

action is to be initiated against the petitioner, the same may be resorted to.

In the present case, although it has been asserted by the respondents that the act of absence from duty by the petitioner from 1.9.2007 to 20.3.2009 constitutes a misconduct and unbecoming of a government employee but if an action is to be taken which has civil consequences, appropriate opportunities are required to be given to the employee to explain his position and thereafter the Competent Authority should proceed to take action in accordance with law. Counsel for the petitioner stated that the petitioner is entitled to the grant of leave under Rule 8.133 and 8.137 of the PCS Rules, whereas the counsel for the respondents has asserted and pressed that the petitioner is not entitled to the same. This Court is leaving it open to the Competent Authority to consider and pass appropriate orders on this aspect as well.

Reference has further been made to judgment of this Court in a case of ***M.P. Jindal vs. State Bank of Patiala and others, 2013 (2) SLR 251*** wherein the petitioner was not given back wages for the period he remained under suspension. It was held that Principle of No Work No Pay will not be applied in this case as it could be applied in a case where through work is offered but the employee did not perform the same. The operative part of the judgment reads as under:-

As has been noticed above, it is a case where complaint was made only against the Manager of the bank, namely, Mehar Chand Chhabra. The petitioner was working as Cashier in the bank. The complaint made by one Palu Ram was that the Manager of the bank had demanded illegal gratification from him for release of loan. The petitioner was also involved considering the fact that he was working as Cashier in the Branch and the amount was recovered from him. It was lying in the cash

box of the bank. His case was that on a direction of the Manager, the amount was to be deposited in his account and he in discharge of his duties had received the same and kept in cash box in his cabin. The aforesaid stand is even corroborated by the statement of the complainant, who never had a grouse against the petitioner. Though initially the petitioner was convicted by the trial court, however, he was acquitted in appeal by this court and conviction of Mehar Chand Chhabra-Manager, was upheld. Relevant paragraphs from the judgment of this court in Criminal Appeal No. 420-SB of 2002 filed by the petitioner are extracted below:

“The present case was set in motion on a complaint made by PW-1 Palu Ram. PW-1 Palu Ram has deposed that loan of Rs. 20,000/- each was sanctioned in favour of his wife and brother. The wife and brother of the witness had been interviewed by the bank officials. The manager of the bank demanded Rs. 4,000/- from him for release of the first instalment. Ultimately the matter was settled at Rs. 3,000/-. He had paid Rs. 1,000/- to the manager for release of the first instalment and two drafts of Rs. 8,000/- and Rs. 12,000/- were handed over to him. When he approached the manager for release of the second instalment the manager raised a demand of Rs. 2,000/- from him. The other accused had not made any demand from him in this regard. He moved a complaint in this regard to the office of Central Bureau of Investigation (CBI for short). Thereafter, he gave 20 currency notes of Rs. 100/- each and the same were returned back to him after application of phenolphthalein powder (P-Powder for short). The witness was also shown the demonstration qua working of the P-Powder. Thereafter the complainant went to the bank along with his wife, brother and Ram Bilas Gulia. The manager asked him if he had brought the amount and on his affirmation, the manager asked the witness to hand over the money to Mr. Jindal, Cashier, to be deposited in the account of the manager. He gave Rs. 2,000/- to Mr. Jindal. Mr. Jindal enquired from the manager as to what was to be done with Rs. 2,000/- and the manager told Mr. Jindal to deposit the same in his account (Manager account). Thereafter the

manager completed the formalities for handing over the drafts. After payment Mr. Gulia shadow witness, went outside the bank and gave signal to the raiding party. Thereafter the officials of CBI entered the bank and hands of Mr. Jindal were washed in a solution and the colour of the solution turned pink. The currency notes were recovered by the CBI officials from the cash box. The numbers of the currency notes were tallied by the officials.

xx xx xx

First of all, let us take the case of appellant M. P. Jindal. So far as the said appellant is concerned, it is a case of no evidence against him. PW-1 Palu Ram has categorically deposed that no demand of bribe money was made from him by cashier M. P. Jindal. So far as the shadow witness Ram Bilas Gulia, Sujata Devi and Mukesh Kumar are concerned, they have not supported the prosecution case. Although the hand wash solution qua appellant M. P. Jindal turned pink but PW-1 has explained in his cross-examination that the tainted currency notes were handed over to the cashier at the instance of Manager M. C. Chhabra. This witness has further explained that Manager M. C. Chhabra had directed the cashier M. P. Jindal to deposit the amount in his account. The money in question was also recovered from the cash box in which cash was kept by the cashier. From this, it is evident that the cashier had neither demanded money nor had accepted the same on his own behalf. Although recovery of the cash of the tainted money was made from the cash box of appellant M. P. Jindal but from the testimony of PW-1, it is evident that the same had been kept in the cash box on behalf of appellant M. C. Chhabra. In these circumstances the conviction and sentence qua appellant M. P. Jindal is liable to be set aside.”

No departmental proceedings were held against the petitioner. The petitioner though was initially suspended, however, during trial, he was reinstated but was again dismissed when he was convicted by the trial court. After his acquittal by this court, the petitioner represented for his reinstatement back in service.

The same having been allowed, the petitioner was taken back in service. It is thereafter that the petitioner claimed that wages for the period he remained under suspension and/or dismissal be paid to him as he was not at fault. He was always ready and willing to work. The principle of 'no work no pay' will not be applicable in the case in hand as it could be applied in a case where though work is offered but the employee did not perform the same. It cannot be said that the case in which the petitioner was involved had no relation with his employment. It was not for something done by him in his personal life. It was only because he was working in the bank as Cashier that he was involved in the case merely because in discharge of his duty, he had received certain cash from a person on instructions from the Manager for deposit in his account. The amount was not recovered from his pocket, rather, it was in the cash box of the bank. The petitioner herein is the sufferer of the circumstances in the course of his employment. He cannot be said to be at fault.

In LPA No. 1580 of 2011—General Manager Operation Circle, Dakshin Haryana Bijli Vitran Nigam, Narnaul and others v. Mathura Dass Gupta, decided on 10.2.2012, a Division Bench of this court upheld the order passed by the learned Single Judge granting consequential benefits to an employee who was reinstated back in service after acquittal in a criminal case on the plea that principle of 'no work no pay' would not be applicable therein and further that normal rule of 'no work no pay' is not applicable where the employee although he is willing to work is kept away from work by the authorities for no fault of his. The case may be different where an employee is convicted for an offence not connected with his office and got himself involved in something with which the department had no concern or responsibility. The case in hand is also similar. As has already been noticed above, involvement of the petitioner in criminal case was only during the course of his employment though ultimately he was acquitted by this court.”

Learned State counsel on the other hand contends that the petitioner was a habitual absentee as per details given in para No. 2 of the written statement. Vide order dated 01.08.2014, the petitioner was taken back in service in compliance of order dated 04/07.07.2014 but no monetary benefits were granted to him. The dismissal period of the petitioner w.e.f 11.09.2003 to 07.07.2016 was treated as period on duty, in view of memo dated 07-13/10/2016. Thereafter, the petitioner was promoted to the post of Accountant from the date his junior Ram Dhari Clerk was promoted to the post of Account, vide order dated 28.10.2016 (R-1). Thereafter, his pay was notionally fixed from 01.01.2003 to 01.07.2014 and increment was granted to him from 01.07.2015, vide fixation order dated 30.12.2016 (R-2). The pay of the petitioner has also been refixed as per 7th pay commission report w.e.f 01.01.2016 vide order dated 07.02.2017 (R-3).

Lerarned State counsel has admitted that the Governor of Haryana has accepted the memorial of the petitioner and it has been stated that “He will however, not be entitled to any remuneration for the period for which he actually did not perform any duty”

Heard.

Reference at the very outset can be made to order dated 09.09.2003 whereby the petitioner was dismissed from service. In this order, petitioner was issued charge sheet under Rule 7 of HCS (Punishment and Appeal) Rules, 1987 on being absent from duty w.e.f 01.07.2001 without permission unathorizedly and intentionally with his own free will. The petitioner was given 15 days time to file reply but he chose not to file any reply to the charge sheet. He was proceeded ex parte. The Inquiry Officer

then gave his report that the petitioner has been continuing absent from duty w.e.f 01.07.2001 with his own free will. No leave application has been received in the office of District Probation Officer, Karnal. The petitioner was then issued show cause notice regarding punishment of removal from service, vide memo dated 15.07.2003. The show cause notice was sent through Supdt. District Jail, Karnal. A reply dated 16.08.2003 was given by the petitioner, which was not found to be satisfactory.

A bare perusal of order dated 04/07.07.2014 shows that the petitioner has submitted letter dated 07.03.2014 obtained through RTI addressed by Supdt, District Jail Karnal to Director General, Jails, Haryana in which it has been clearly mentioned that both the letters in question have been found in their office record which were placed in another file. He also submitted a copy of letter dated 04.04.2014 addressed by Supdt, District Jail Karnal to Director General, Jails, Haryana along with copies of statements of Sunil Kumar, Clerk and Surender Kumar, Clerk that the UPC letters under reference was found in a separate file in a dilapidated conditions.

In this order, it has been observed that it was done with a malafide intention to harass and harm the petitioner. It seems to be a case of sheer intimidation against a subordinate employee by a senior officer. Moreover, the appellate authority has taken 07 years to decide his case.

It has now to be examined in the present case whether Principle of No Work No Pay can be taken against the petitioner.

Reference at this stage can be made to Division Bench judgment of this Court in a case of Pawan Kumar vs. State of Haryana and

another, 2006 (1) RSJ 439 wherein petitioner was ready to join after availing of leave on medical grounds but was not allowed to do so by the employer. It has been held that principle of No Pay No Work would not apply.

Reference at this stage can further be made to Division Bench judgment of this Court in a case of ***Housing Board, Haryana vs. Sh. S.B. Kumar, Asstt. Engineer and another, 2012 (1) SCT 613*** whereby the petitioner was held to be not allowed to join the work and thus authorities were directed to grant him all benefits considering as if he had worked. In Para 7 to 9, it has been observed as under:-

7. The remedy of revision is in the nature of a statutory safeguard available to an employee under the 1987 Rules. Under no circumstances can it be regarded as a mere eye-wash. A perusal of the order dated 21.1.2011 passed by respondent No.2 would make it apparent that material irregularities in the proceedings of the Enquiry Officer have been noticed. To be specific, respondent No.2 has taken a specific note of the fact that the biased reports of the technical Audit Committee headed by Shri V.P.Gupta,

Superintending Engineer were examined and relied upon by the Enquiry Officer and the same were also taken on record at the back of respondent No.1. Respondent No.2 has, accordingly, held such conduct of the Enquiry

Officer to be against basic principles of equity, fair play and natural justice. We find that respondent No.2 has acted well within the scope and ambit of Rule 13 of the 1987 Rules in passing the order dated 21.1.2011, whereby the order of imposition of penalty of dismissal upon respondent No.1 has been set aside.

8. It has also been argued before us that respondent No.1 could not have been granted full pay and wages for his period of suspension as

*also from the date of imposition of the penalty of dismissal till his date of superannuation. We are mindful of the fact that under normal circumstances, the principle of 'no work no pay' would apply where an employee has not discharged the duties of his post for any particular period. However, the facts of the instant case are peculiar. After having been placed under suspension in the year 1995, the matter was entrusted to the Vigilance Department for an enquiry. A technical opinion as regards execution of the work/project with which respondent No.1 was associated, was also sought. In spite of no finding having been returned against respondent No.1, a technical audit is also approved and that too, at the hands of an Officer which the State Government had, itself, opined to be an interested and biased person. Ultimately, it is such report which is relied upon by the Enquiry Officer while holding respondent No.1 guilty. The matter does not end here. Upon having imposed the penalty of dismissal vide order dated 13.3.2003, the Appellate Authority sets aside the order of dismissal vide order dated 22.12.2003. In spite of such order, respondent No.1 is not permitted to join back. The Board of Directors then passed a resolution and took a decision for the Appellate Authority to take a fresh look at the matter. Accordingly, in terms of order dated 14.9.2005, the Appellate Authority passes a fresh order disposing of the appeal filed by respondent No.1. It is only in 2011 that respondent No.2, exercising its revisional jurisdiction, passes the order dated 21.1.2011 setting aside the order of dismissal and holding respondent No.1 to be entitled to all consequential benefits including full pay and wages for the period he had been under suspension, as also from the date of passing of the dismissal order i.e. 13.3.2003 till his date of superannuation i.e. 31.1.2008. Under such circumstances, the fault, if any, is attributable to the employer and not to the employee. The Hon'ble Supreme Court in the matter of **The Commissioner, Karnataka Housing Board v. C.Muddaiah** reported as **2007(4) SCT 452** observed as*

under:

“The matter can be looked at from another angle also. It is true that while granting a relief in favour of a party, the Court must consider the relevant provisions of law and issue appropriate directions keeping in view such provisions. There may, however, be cases where on the facts and in the circumstances, the Court may issue necessary directions in the larger interest of justice keeping in view the principles of justice, equity and good conscience. Take a case, where ex facie injustice has been meted out to an employee. In spite of the fact that he is entitled to certain benefits, they had not been given to him. His representations have been illegally and unjustifiably turned down. He finally approaches a Court of Law. The Court is convinced that gross injustice has been done to him and he was wrongfully, unfairly and with oblique motive deprived of those benefits. The Court, in the circumstances, directs the Authority to extend all benefits which he would have obtained had he not been illegally deprived of them. Is it open to the Authorities in such case to urge that as he has not worked (but held to be illegally deprived), he would not be granted the benefits? Upholding of such plea would amount to allowing a party to take undue advantage of his own wrong. It would perpetrate injustice rather than doing justice to the person wronged. We are conscious and mindful that even in absence of statutory provision, normal rule is 'no work no pay'. In appropriate cases, however, a Court of Law may, nay must, take into account all the facts in their entirety and pass an appropriate order in consonance with law. The Court, in a given case, may hold that the person was willing to work but was illegally and unlawfully not allowed to do so. The Court may, in the circumstances, direct the Authority to grant him all benefits considering 'as if he had worked'. It, therefore, cannot be contended as an absolute proposition of law that no direction of payment of consequential benefits can be granted by a Court of Law and if such directions are issued by a Court, the Authority can ignore them even if they had been finally confirmed by

the Apex Court of the country (as has been done in the present case). The bald contention of the appellant – Board, therefore, has no substance and must be rejected.”

9. We have no hesitation in observing that the Housing Board, Haryana has made a clear attempt to victimize and harass respondent No.1. The order dated 21.1.2011 passed by respondent No.2, whereby the order of dismissal from service of respondent No.1 has been set aside and he has been held entitled to all consequential benefits does not warrant any interference.

The ratio of the above judgment is directly applicable to the facts of the present case as while allowing the memorial appeal of the petitioner, it has been categorically observed that someone in an influential position in the department has manipulated the things against the petitioner. Thus, the petitioner was always ready and willing to work but was deprived by the respondents. Thus, Principal of No Work No Pay cannot be invoked.

In view of the above, the writ petition is allowed and respondents are directed to release the salary of the petitioner for the period w.e.f 07.04.2001 to 07.04.2014. The petitioner is entitled to all consequential benefits. This exercise shall be completed within a period of four months from the date of receipt of certified copy of this order.

29.05.2020
G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No