

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

**CWP No. 13420 of 2015
Date of decision : 15.01.2020**

G.R. Cholia

...Petitioner

versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Vikram Singh, Advocate
for the petitioner.

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

RITU BAHRI, J.

Petitioner has filed the present petition seeking quashing of impugned order dated 29.08.2013 (P-2) to the extent respondent No. 1 declined to treat the suspension period of the petitioner as duty period.

Brief facts of the case are that when the petitioner was posted as Treasury Officer Kurukshetra, F.I.R No. 8 dated 19.03.2009 was registered against him under Section 7/13 of the Prevention of Corruption Act (for short 'the Act'). The petitioner was suspended from service and faced trial. However, petitioner was acquitted in the criminal case by learned trial Court vide judgment dated 23.01.2013 (P-1) wherein it was held that the prosecution has failed to prove its case beyond reasonable shadow of doubts.

The petitioner then gave application for his reinstatement and was reinstated, vide order dated 29.08.2013 (P-2) conveyed to him on 03.09.2013 but his suspension period was not treated as his period spent on duty, relying upon provision made in note 9 Rule 7.3 CSR Volume I Part I read with instructions dated 03.10.1997. The petitioner then gave his

application dated 21.10.2013 (P-3) to respondent No. 1 to treat his suspension period as duty period.

Learned counsel for the petitioner contends that once the petitioner has been acquitted of the charges framed against him, then as per Rules 7.2, 7.3 and 7.5 of C.S.R Vol I Part I and the principle laid down by this Court as well as Hon'ble the Supreme Court in various judgments, the petitioner is entitled to salary and allowances with all consequential benefits like promotion and ACP scale for the period he remained under suspension as well as for the period of dismissal.

In the written statement filed by the respondents, it has been admitted that the petitioner was acquitted from the charges levelled against him and was reinstated vide order dated 03.09.2013 but his suspension period was not treated as period spent on duty, on the ground that he was acquitted by the criminal Court on the basis of benefit of doubt. Reference has been made to judgment of Hon'ble the Supreme Court in a case of ***Raghunath Bibhavnekar vs. State of Maharashtra and others, AIR 1997 SC 1434*** upon which instructions dated 03.10.1997 (R-1) were issued by the Government.

Heard learned counsel for the parties.

The point for consideration before this Court that whether the department can reject the claim of the petitioner on the ground that the petitioner has been acquitted on the basis of benefit of doubt.

Reference at this stage can be made to Note 9 of Rule 7.3 of CSR Vol-1, Part-I which reads as under:-

Note 9:- Where a Government employee under suspension is acquitted by a Court of Law and the order

reinstating him is passed some time after the date of acquittal, full pay and allowances have to be paid from the date of acquittal to the date of re-joining duty and the period counted as duty for all purposes whereas for the period from the date of suspension/removal/dismissal to the date of acquittal he is to be allowed pay and allowances as directed by competent authority under sub-Rule (2) or sub-Rule (3) of this rule and the period treated as duty or non-duty under sub-Rule (4) or sub Rule (5) of this Rule, as the case may be.”

The above Rule 7.3 is a general Rule and it specifically deals with reinstatement after departmental inquiries whereas Rule 7.5 applied to reinstatement after suspension for criminal proceedings. The Rule 7.3 applies to a Government employees who are prosecuted for commission of defalcation of public funds and fabrication of records. In the present case, the allegations against the petitioner are that he had sought Rs.5000/- from the complainant for grant of leave. Thus, the case of the petitioner falls under Rule 7.5, as the petitioner had not misused the public funds and had no allegations with regard to fabrication of records.

Reference at this stage can be made to a judgment passed by this Court in a case of ***Shashi Kumar v. Uttar Haryana Bijli Vitran Nigam Ltd. and others, 2005 (1) S.C.T 576*** who was dismissed from service on the basis of conviction. This Court held that if the removal from service was only on the basis of conviction without considering any other material or circumstances, the employee will be entitled to be reinstated with all consequential benefits and full back wages on acquittal by the appellate Court whether honourably or giving benefits of doubt the charge being not proved beyond reasonable doubt. Once the charge is not proved, the acquittal

is always honourable for all purposes. This Court allowed the writ petition by relying upon a division bench judgment of this Court in a case of ***Hukam Singh, Lecturer in Hindu Government Sr. Sec. School Indri v. State of Haryana and anr, 2001(2) SCT 696 (P&H)*** whereby Rule 7.3 and 7.5 of Punjab Civil Service Rules were considered in detail. In para 7 of the judgment, it has been observed 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 ending with his reinstatement on or the date of his retirement on superannuation as the case may be, and

(b) whether or not the said period be treated as a period spent on duty.

(2) Whether the authority mentioned in sub-rule (1) 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.”

Rule 7.5 of the Rules also assumes importance. In this connection, reference can well be made to Rule 7.5 of the Rules which deals with suspension during pendency of criminal proceedings and effect thereafter. It reads as under :-

“7.5 An employee of Government against whom proceeding have been taken either for his arrest for debt or on a criminal charge or who is detained under any law providing for preventive detention should be

considered as under suspension for any period during which he is detained in custody or is undergoing imprisonment, and not allowed to draw any pay and allowances (other than any subsistence allowance that may be granted in accordance with the principle laid down in rule 7.2) for such period until the final termination of the proceedings taken against him or until he is released from detention and allowed to rejoin duty, as the case may be. An adjustment of his allowance for such periods should thereafter be made according to the circumstances of the case, the full amount being given only in the event of the officer being acquitted of blame or (if the proceedings taken against him were for his arrest for debt), of its being proved that the officer's liability arose from circumstances beyond his control or the detention being held by the competent authority to be unjustified."

It is abundantly clear that Rule 7.3 of the Rules is the general rule, while in case a person is acquitted, it is specific Rule 7.5 of the Rules that would be attracted. The law is well settled that special Rule will always taken precedence over the general rule and consequently it must follow that under Rule 7.5 of the Rules, referred to above, the petitioner was entitled to the full back wages because, as mentioned above, the earlier decisions referred to above have little application in the present case."

The terms honourable acquittal or fully exonerated came up for consideration before a Division Bench of Madras High Court in a case of ***Union of India vs. Jayaram, AIR 1960 Mad 325*** wherein it has been observed as under:-

"There is no conception like "honourable acquittal" in Criminal C.P. The onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is entitled to be acquitted.

Clause (b) of Article 193 of the Civil Service Regulations which says that when a Government servant who was under suspension is honourably acquitted, he may be given the full salary to which he would have been entitled if he had not been suspended

applies only to the case of departmental inquiry.

Where the servant was suspended because there was a criminal prosecution against him and he was acquitted therein, and reinstated he is entitled under the general law, to the full day during the period of his suspension. To such a case Article 193 (b) does not apply.”

The above said judgment of Madras High Court was considered and followed by this Court in cases of ***Jagmohan Lal vs. State of Punjab through Secy to Punjab government Irrigation and others, AIR 1967 (54) Punjab and Haryana 422 (Punjab) and Ramsinhji Viraji Rathod, Parmanand Society v. State of Gujarat and anr, 1971 SLR 743***

The judgment of ***Shashi Kumar*** was challenged before the Supreme Court which was dismissed on 26.09.2013. However, with regard to the backwages, it has been observed that High Court was not justified in directing payment of full salary and allowances because the respondents had not been fully exonerated. Each one of them was given the benefit of doubt by the High Court or the trial Court. Thereafter, the High Court should have directed the competent authority to pass appropriate order in terms of Rules reproduced above. We may have adopted that course and directed the concerned authority to pass necessary order within a specified time frame, but keeping in view the long lapse of time, we do not consider it proper to exercise the power of this court under Article 136 of the Constitution of India and interfere with order for payment of full backwages.

Reference at this stage can now be made to judgment of Hon'ble the Supreme Court in a case of ***Union of India v. K.V. Kankiraman AIR 1991 SC 2010*** wherein it has been held that normal rule of “No Work No Pay” is not applicable to cases where the employee is willing to work but

kept away from work by authorities for no fault of his.

Similar view has been expressed by Hon'ble the Supreme Court in a case of ***Punjab National Bank vs. Virender Kumar Goel and others, RSJ 2004 (1) 701*** whereby Hon'ble the Apex Court rejected the plea of the Bank-management applying the principle of No Work No Pay and held that the applicants were out of their job for no fault of theirs.

This Court in ***Hukam Singh's case (supra)*** was dealing with a case where petitioner was convicted for the offences punishable under Sections 302/307/324/34 IPC. Subsequently, he was acquitted and was reinstated in service but intervening period was not treated as on duty and back wages were denied. This Court allowed the writ petition in terms of Rule 7.5 and held the petitioner entitled to full salary and allowances for the period of suspension and dismissal.

Recently, this Court in a case of ***Gen Manager Operation Circle, DHBVNL, Narnaul and others vs. Mathura Dass Gupta, 2012(4) S.C.T 7*** was considering a case of an employee who was acquitted of charges levelled against him by Appellate Court but he was denied salary and allowances on the ground of No Work No Pay. This Court held that it is not fair and the rule of No Work No Pay is not applicable to cases where employee although willing to work is kept away from work by the authorities for no fault of his. The relevant para reads as under:-

“3. The representation of the writ petitioner-respondent was decided by the competent authority vide order dated 7.7.2008 (P-5). The principle of ‘no work no pay’ was applied to deny him the back wages. The competent authority after due consideration of the pros and cons of the case has decided to withdraw the termination order

dated 20.12.1996 subject to the condition that the writ petitioner-respondent would not be entitled to claim arrears of salary and allowances of the suspension as well as termination period except the subsistence allowance already paid to him. The aforesaid order became subject matter of challenge before the learned Single Judge and the same has been set aside by holding as under:-

*“The petitioner was available for work but was denied the same. The termination was on the basis which is now not found justified and proper. Can principle of No Work, No Pay strictly apply in this case once the termination on the basis of his conviction, has subsequently been set aside? The petitioner cannot be made to suffer the consequences of his conviction. The principle of No Work No Pay may not appear to apply in this case. Reference in this regard can be made to observations made in the case of Union of India versus Union of India versus **K.V. Jankiraman etc., AIR 1991 Supreme Court 2010** . It is held in this case that when an employee is completely exonerated in criminal/disciplinary proceedings and is not visited with the penalty even of censure indicating thereby that he was not blameworthy in the least, he should not be deprived of any benefits including the salary of the promotional post. The normal rule of “no work no pay” is not applicable to such cases where the employee although he is willing to work is kept away from work by*

the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons.

It may have been a different matter, had the petitioner been convicted for an offence not connected with his office and he had got himself involved in something with which the department had no concern or responsibility. As observed in K.V. Jankiraman's K.V. Jankiraman case (supra), there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on accounts of non-availability of evidence due to the acts attributable to the employee etc. in such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such LPA No. 1580 of 2011 (O&M) 6 circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated in disciplinary/criminal proceedings he should be entitled to all salary for the

intervening period is to undermine discipline in the administration and jeopardize public interests. Therefore to deny the salary to an employee would not in all circumstances be illegal.

This is not a case where the salary is denied due to any of consideration as noticed by the Hon'ble Supreme Court. It is a case where the petitioner has been accused of offence which has a connection with the service. Once the petitioner is acquitted of offence under the Prevention of Corruption Act, denying him salary, and allowances on the ground of No Work No Pay may not be fair. Even in terms of rule position, the denial of pay and allowances for the period under suspension could be ordered only after following the procedure prescribed under the rules, which apparently has not been done.

The writ petition is, accordingly, allowed. The petitioner is held entitled to pay and allowances for the period he has remained out of service and for the duration of his suspension period as well. The petitioner is also held entitled to costs, which are assessed as `10,000/-."

The LPA filed by the department was dismissed by upholding the above said opinion of Single Bench.

Similar issue came up for consideration before a Division Bench of this Court in a case of ***Chander Singh Dalal vs. Hry. Diary Development Co-op Fed. Ltd, Chandigarh through its MD and others, 2008(3) S.C.T 33***

whereby a criminal case was registered against an employee and three others

and in departmental inquiry he was found guilty by the Inquiry Officer and thus, he was removed from service. He filed an appeal against this order and he was taken back in service by reducing the punishment of removal from service to stoppage of three annual increments with cumulative effect vide order dated 12.10.1998. On judicial side, he was convicted along with his co-accused to undergo rigorous imprisonment for 03 years and the petitioner was removed from service, vide order dated 30.05.2003 and he filed an appeal against this order on the ground that his sentence had been suspended, vide order dated 19.04.2003. His appeal was dismissed being time barred. A writ was filed against the order of suspension, which was allowed on 17.05.2005 and direction was issued to the Appellate Authority to pass an order on the merits of controversy. The appellate Authority dismissed the appeal on 06.12.2005 and the order was conveyed to the petitioner. Thereafter, this Court in para 9 of the judgment, has observed as under:-

*“Similar view was taken by a Division Bench of this Court in the case reported as **Shashi Kumar vs. Uttari Haryana Bijli Vitran Nigam and another, 2005 (1) Service Cases Today 577.** The argument of the learned counsel for the respondents that the acquittal of the petitioner is not honourable one because it has been recorded by the Additional Sessions Judge, Jhajjar, on account of certain technical flaws like non-mentioning of the articles in the Stock Register, entrustment of articles to the petitioner having not been proved etc., does not legally hold the field. In the case of **Shiv Kumar Goel v. State of Haryana and another, 2007 (1) Service Cases Today 739**, a Division Bench of this Court observed that if the Criminal Court recorded finding*

that there was no evidence to prove the charge of corruption against the employee, notwithstanding observations as to acquittal by benefit of doubt, it will be considered honourable acquittal. It has further been observed that his benefits of pay and allowances over and above subsistence allowance cannot be forfeited still observing him guilty of the same charges.”

In the present case as well, the petitioner has been acquitted as the prosecution has failed to prove his guilt beyond reasonable shadow of doubts.

In view of the settled law and in terms of Rule 7.5 of Punjab Civil Service Rules, impugned order dated 29.08.2013 (P-2) is modified to the extent that the respondents are directed to consider the suspension period of the petitioner as period spent on duty. The petitioner is entitled to all consequential benefits. The respondents are directed to calculate the amount @ 6% per annum from the date of filing of the writ petition till the payment is made.

The petition stands allowed.

(RITU BAHRI)
JUDGE

15.01.2020
G Arora

Whether speaking/reasoned	:	Yes
Whether reportable	:	No