

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-19659-2018

Date of decision: 05.02.2020

Phool Mati @ Phool Wati

...Petitioner(s)

V/s.

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. R.S.Malik, Advocate
for the petitioner.

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

RITU BAHRI, J. (Oral).

By this petition, the petitioner is seeking quashing of order dated 20.12.2017 (Annexure P-7) passed by respondent No. 3 by which service of the petitioner has been reinstated without arrears and with duty of the Chowkidar.

The brief facts of the case are that petitioner was appointed as safai karmachari on part time basis on 01.12.1990 and her services were regularized on 25.08.2000 in Government High School Katlupur Tehsil Kharkhoda, District Sonipat. On 04.09.2010, respondent No. 4 i.e. Headmaster had given the letter to the petitioner to join the duty as sweeper cum chowkidar in the same school. Annexure P-1 is the copy of letter dated 04.09.2010. The petitioner submitted the reply of letter dated 04.09.2010 that the lady cannot be appointed as chowkidar in night in the school. Thereafter respondent No.4 issued show cause notice to the petitioner. On 07.12.2010, the petitioner was suspended from the service. However vide order dated 05.01.2011 (Annexure P-2), the petitioner was reinstated.

Finally on 27.06.2011, the services of the petitioner were dismissed vide order dated 27.06.2011 (Annexure P-4) after the report of the Inquiry Officer. The petitioner filed CWP-4037-2015 challenging the order dated 27.06.2011. Vide office order dated 20.12.2017 (Annexure P-7) in compliance of direction given by this Court in CWP-4037-2015 on 02.05.2017, the appeal filed by the petitioner before District Education Officer, Sonipat was considered and it was held that termination of the appellant/petitioner was not as per the departmental rules as the main cause of termination was that the petitioner had not given night duty as chowkidar. The appeal was allowed and she was reinstated and condition of her appointment letter dated 25.08.2000 remained same. The break period was treated only for notional benefits and no salary/arrear was given to her.

Learned counsel for the petitioner refers to letter dated 01.07.2014 (Annexure P-9) whereby Director Secondary Education Haryana issued direction to all the District Education Officers of the State that no female class-IV employee be given duty as chowkidar in night time. Keeping in view this the appeal of the petitioner was allowed vide order 20.12.2017 (Annexure P-7).

After notice of motion, written statement on behalf of respondents No. 1 to 4 has been filed. Learned counsel for the State, while referring to written statement has argued that the petitioner is not entitled for arrears of salary on the principle of No work No Pay. Further the services of the petitioner were terminated on 27.06.2011 as an FIR No. 178 dated 08.06.2011 under Section 498A and 304B IPC was registered against her and she was in judicial custody during trial. On 25.09.2013 she was

acquitted by the trial Court and it is after acquittal, she filed CWP-4037-2015 against the order dated 27.06.2011 whereby her services were dismissed.

Heard learned counsel for the parties.

The services of the petitioner had not been terminated on account of registration of FIR. The appeal against the termination order dated 27.06.2011 was rightly accepted in view of instructions/letter dated 01.07.2014 (Annexure P-9). With respect to FIR, it was her private dispute and after acquittal from the criminal case, she had a right to be reinstated alongwith all consequential benefits as per Rule 7.5 of Punjab Civil Service Rules. Hence, in the present case, the trial cannot be made basis for denying the arrears of salary to her. Further the Department had not initiated any disciplinary proceedings and the Department had terminated the services of the petitioner on account of registration of FIR.

A Division Bench of this Court in the case of ***Hukam Singh V/s. State of Haryana and another*** 2001(2) S.C.T. 696 (Annexure P-10) was considering a case of Lecturer who had been convicted on 01.02.1986 for the offences punishable under Sections 302, 307 and 324 read with Section 34 IPC. His services were terminated and his appeal before the Supreme Court was allowed and he was acquitted. After acquittal, he was reinstated on 01.07.1998. His suspension period from 01.02.1986 to 01.05.1986 and dismissal period from 02.05.1986 to 18.02.1998 were not treated as duty period and backwages were also denied. The Division Bench allowed his writ petition by referring to Rule 7.5 of the Punjab Civil Services Rules as applicable to Haryana State and held that he is entitled for

full salary and allowances for the period of suspension and dismissal. In para 8, the Division Bench observed as under:-

“8. In our this view, we are supported by the judgment of this Court in the case of **Maha Singh v. State of Haryana and another, 1993(8) Services Law Reporter 188 : 1994 (1) SCT 154 (P&H)**. Same view was expressed by this Court in the case of **Lehna Singh v. The State of Haryana and others, 1993 (3) Recent Services Judgments 119 : 1994 (1) SCT 173 (P&H)**. Keeping in view the aforesaid, we have no hesitation in holding that the impugned order cannot be sustained. In terms of Rule 7.5 of the Rules, on petitioner's being acquitted, he would be entitled to full salary and allowances for the period of suspension and dismissal. The impugned order Annexure P-7 is accordingly quashed. The petitioner can thereafter be considered for any further promotion that may be due in accordance with the rules. No order as to costs.”

The aforesaid judgment was thereafter followed by this Court in *CWP-9139-2015 titled Dr. Anil Kumar Ranga V/s. State of Haryana* 2016(2) S.C.T. 420 and the relevant portion is as under:-

“6. Even a Division Bench of this Court in the case of ***Hukam Singh v. State of Haryana and another, 2001(2) SCT 696***, while considering the scope of Rule 7.5 of the Punjab Civil Service Rules had held as under:-

“8. In our this view, we are supported by the judgment of this Court in the case of ***Maha Singh v. State of Haryana and another, 1993 (8) Service Law Reporter 188: 1994 (1) SCT 154 (P&H)***. Same view was expressed by this Court in the case of ***Lehna Singh v. The State of Haryana and others, 1993 (3) Recent Services Judgments 119: 1994(1) SCT 173 (P&H)***. Keeping in view the aforesaid, we have no hesitation in holding that the impugned order cannot be sustained. In terms of Rule 7.5 of the Rules, on petitioner's being acquitted, he would be entitled to full salary and allowances for the period

of suspension and dismissal. The impugned order Annexure P-7 is accordingly quashed. The petitioner can thereafter be considered for any further promotion that may be due in accordance with the rules. No order as to costs.”

7. Such view has thereafter been noticed and followed by the Division Bench of this Court in **LPA No. 1660 of 2011** titled as '**Ishwar Singh vs. State of Haryana and others**' decided on 17.11.2011.

8. In the case of “**Surjit Singh vs. State of Haryana and another**” titled '**CWP No. 1326 of 2013**' wherein the petitioner who was serving on the post of Patwari under the Revenue Department, State of Haryana was placed under suspension on account of involvement in a criminal case under the Prevention of Corruption Act. He was reinstated back in service in consequence of the judgment of acquittal in the criminal case. The petitioner, however was held not entitled to the salary for the period he remained out of service. A Division Bench of this Court allowed the writ petition by observing that having been absolved of such allegations and charges, he would be vested with the right to full pay and salary for the period he remained out of service in the light of relevant statutory provisions i.e Rules 7.3 and 7.5 of the Punjab Civil Service Rules, Volume I as applicable to the State of Haryana. Hence the petitioner was held entitled to full pay and allowances for the period that he had remained out of service on account of his conviction.

The case of the petitioner is squarely covered by the aforesaid judgments. Hence, writ petition is allowed. Order dated 20.12.2017 (Annexure P-7) is modified to the extent that the benefits of arrears/salary be given to the petitioner w.e.f. 27.06.2011 till the date of her reinstatement and she would perform duty as sweeper (Class-IV) as per the letter dated 01.07.2014 (Annexure P-9). The respondents are directed to pay her arrears

and pass appropriate order within a period of three months from the date of receipt of certified copy of this order.

(RITU BAHRI)
JUDGE

05.02.2020
Divyanshi

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No