

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-22315 of 2017

Date of decision: 12.02.2020

Kapoor Singh

.... Petitioner

versus

State of Punjab and others

... Respondents

CORAM:HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. M.S. Rana, Advocate
for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

HARSIMRAN SINGH SETHI, J.

In the present writ petition, the prayer of the petitioner is that the respondents be directed to grant full salary to him for the period he remained under suspension from 16.01.2013 till 31.05.2013, which benefit has been declined by the respondents vide impugned order dated 20.11.2014 (Annexure P/5) and even the appeal filed by the petitioner before the Appellate Authority has also been rejected by the respondents on 27.7.2017 (Annexure P/7).

The facts as stated in the writ petition are that while the petitioner was working as Lecturer with the respondent-department an FIR No.104 dated 06.12.2012 under Sections 302/201/120B 148/149 IPC was registered against him and in connection with the said FIR, the petitioner was arrested on 08.12.2012. Immediately after the arrest of the petitioner, he was suspended on 16.01.2013 by the department, keeping in view the provisions of the Punjab Civil Services Rules. Upto the date of retirement i.e. 31.05.2013, the petitioner remained under suspension. After the retirement of the petitioner he was

acquitted by the competent Court of Law on 15.03.2014 (Annexure P/2). After the acquittal, petitioner submitted a representation to the respondents that his suspension period should be regularised and he should be paid full salary for the period he remained under suspension from 16.01.2013 till 31.05.2013.

The prayer of the petitioner was considered by the respondents and by passing detailed order 20.11.2014 (Annexure P/5), wherein, the request of the petitioner was declined. Against the said order, the petitioner preferred an appeal and even the appeal was rejected by the respondent-Education Board on 27.07.2017. Rejection of the claim of the petitioner vide order dated 20.11.2014 (Annexure P/5) as well as the rejection of the appeal vide order dated 27.07.2017 (Annexure P/7), are under challenge in the present writ petition.

Upon notice of motion, the respondents have filed reply, in which it has been stated that as the petitioner was arrested in connection with FIR No.104 dated 06.12.2012 and he remained in jail from 06.12.2012 till he retired on 31.5.2013, hence, he cannot be granted any benefit for the said period over and above the suspension allowance already paid. As per the reply, under the Punjab Civil Services Rules, whenever an employee has been arrested and remained in custody for a period of more than 48 hours, he is deemed to be under suspension for the said period therefore, once the petitioner remained under suspension and as he was behind the bars from 08.12.2012 onwards till he attained the age of superannuation on 31.05.2013, no benefit over and above the suspension allowance can be allowed in favour of the petitioner.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The facts which have been narrated hereinbefore are not in dispute.

It is not in dispute that the petitioner was arrested on 08.12.2012 after the registration of FIR No.104 dated 6.12.2012 and was behind the bars when he attained the age of superannuation i.e. 31.5.2013. Petitioner was released from the jail after he was acquitted by the competent Court of law on 15.03.2014. The question which is posed before this Court is whether an employee, who remains behind the bars during his suspension period will be entitled for full back wages upon his acquittal.

This question is no longer *res integra*. Hon'ble Supreme Court of India in **Raj Narain vs. Union of India and others 2019(2) S.C.T. 582** has held that where the services of the employee is terminated on account of conviction, later on when the said employee is acquitted by the competent Court of law, he cannot claim full back wages for the period he remained out. Hon'ble Supreme Court of India has relied upon the earlier judgment of the Court in **Ranchhodji Chaturji Thakore vs. Superintendent Engineer, Gujarat Electricity Board and another 1997(1) S.C.T. 824**. Relevant paragraphs of the judgment is as under:-

“This Court in Ranchhodji Chaturji Thakore (supra) considered the case of an employee who sought back wages for the period he was kept out of duty during the pendency of a criminal case for his involvement in an offence under [Section 302, IPC](#). The claim of the Petitioner therein was that he was entitled to full wages on his acquittal by the Criminal Court. This Court rejected the said submission by holding that the question of payment of back wages would arise only in case of termination of service, pursuant to findings recorded in a departmental enquiry. In the event of the dismissal order being set aside by the Court, the delinquent employee would be entitled to claim back wages as he was unlawfully kept away from duty by the employer. This Court was of the opinion that an employee against whom criminal proceedings are initiated would stand on a different footing in comparison to an employee facing a departmental inquiry. The employee involved in a crime has disabled himself from rendering his services on account of his incarceration in jail. Subsequent acquittal by an Appellate Court would not entitle him to claim back wages.

6. The decision of Ranchhodji Chaturji Thakore (supra) was

followed by this Court in [Union of India and Others v. Jaipal Singh](#) (supra) to refuse back wages to an employee who was initially convicted for an offence under [Section 302](#) read with [Section 34](#) IPC and later acquitted by the High Court in a criminal appeal. While refusing to grant relief to the Petitioner therein, this Court held that subsequent acquittal would not entitle an employee to seek back wages. However, this Court was of the opinion that if the prosecution is launched at the behest of the department and the employee is acquitted, different considerations may arise. The learned counsel for the Appellant endeavored to distinguish the prosecution launched by the police for involvement of an employee in a criminal case and the criminal proceedings initiated at the behest of the employer. The observation made in the judgment in [Union of India and Others v. Jaipal Singh](#) (supra) has to be understood in a manner in which the department would become liable for back wages in the event of a finding that the initiation of the criminal proceedings was mala fide or with vexatious intent. In all other cases, we do not see any difference between initiation of the criminal proceedings by the department vis-a-vis a criminal case lodged by the police. For example, if an employee is involved in embezzlement of funds or is found indulging in demand and acceptance of illegal gratification, the employer cannot be mulcted with full back wages on the acquittal of the person by a criminal Court, unless it is found that the prosecution is malicious.

7. The point that remains to be considered is whether the Appellant is entitled to payment of full wages between 1979 and 1987. The Appellant was placed under suspension on 23.10.1979 and his suspension was revoked on 21.10.1987. An interesting development took place during the interregnum by which the disciplinary proceedings were dropped on 21.03.1983. It is clear from the record that the Appellant was the one who was seeking postponement of the departmental inquiry in view of the pendency of criminal case. The order of suspension was in contemplation of disciplinary proceedings. By virtue of the disciplinary proceedings being dropped, the Appellant becomes entitled to claim full salary for the period from the date of his suspension till the date of closure of the departmental inquiry. Thereafter, the Respondents took four years to reinstate him by revoking his suspension. The order of suspension dated 23.10.1979 came to an end on 21.03.1983 which is the date on which disciplinary proceedings were dropped. The Appellant ought to have been reinstated immediately thereafter unless a fresh order was passed, placing him under suspension during the pendency of the criminal trial which did not happen. Ultimately, the Appellant was reinstated by an order dated 21.10.1987 by revocation of the order of suspension. Though, technically, the learned Additional Solicitor General is right in submitting that the impugned judgment does not even refer to the I.A., we are not inclined to remit the matter to the High Court at this stage for fresh consideration of this point. We hold that the Appellant is entitled for full wages from 23.10.1979 to 21.10.1987 after adjustment of the amounts already paid towards subsistence allowance.

A bare perusal of the above reproduction would show that Hon'ble Supreme Court of India has allowed the wages for the period, when an employee remained out of service only in case the prosecution was held to be malicious.

No argument has been raised by the learned counsel for the petitioner in this regard. Further, the petitioner was given benefit of doubt while acquitted and, therefore, keeping in view the law laid down by Hon'ble Supreme Court of India in **Raj Narain's case (supra)**, no benefit more than the suspension allowance can be allowed to the petitioner even after his acquittal.

No ground for interference by this Court is made out.

Dismissed.

(HARSIMRAN SINGH SETHI)
JUDGE

12.02.2020.
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| 1. | Whether speaking/non-speaking? | Yes/No |
| 2. | Whether reportable? | Yes/No |