215 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

CWP No.22894 of 2017
Date of Decision: 29.01.2020

Ex-Sub Inspector Ram Kishore

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr. R.K. Malik, Senior Advocate with
Mr. Digvijay Singh, Advocate
for the petitioner.

Mr. Gaurav Jindal, Addl. Advocate General, Haryana.

NIRMALJIT KAUR, J.

The prayer in the present petition is for quashing of order dated 30.05.2017 with a further prayer to issue a writ of mandamus directing the respondents to pay full salary and allowances for the period from 04.10.2008 to 28.12.2011 with interest.

It is stated that the FIR No.89 dated 30.10.2008 under Sections 119/213/342/368/370/120-B IPC and 7/8/49/88 of PC Act at Police Station, GRP, Jind, was registered against the petitioner on the allegation that the petitioner handed over the girl who was found on the railway station to one Satish and Satbir after receiving Rs.15,000/- and the said Satish thereafter brought the girl back to Jind Bus Stand and put her in the bus for Patiala and returned to his house. Meanwhile, the petitioner was suspended vide order dated 04.10.2008 because of the involvement in the above mentioned criminal case. However, the girl was never cited as a witness despite the fact that she was star witness and as a result, the prosecution failed to prove the

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case. Accordingly, the petitioner was acquitted vide judgment dated 14.03.2011 passed by the Special Judge under P.C. Act, Jind (for short, the trial Court) but at the same time, without holding any enquiry, the respondents proceeded to dismiss the petitioner, vide order dated 20.11.2008 by exercising the power under Article 311(2)(b) of the Constitution of India.

The petitioner challenged the said order by way of writ petition bearing CWP No.1157 of 2010. In the said writ petition, the High Court set aside the order dated 20.11.2008 on 29.07.2010 and granted liberty to the respondents to hold an enquiry and pass a fresh order.

In pursuance to the order passed by the High Court, the respondents did not find anything against the petitioner and while dropping the departmental enquiry simply issued a warning to the petitioner to remain careful in future, vide its order dated 28.12.2011. Thereafter, respondent No.2 vide its order dated 08.02.2012 ordered that the petitioner was not entitled to anything except the subsistence allowance already drawn by the petitioner and that the period from 20.11.2008 to 28.12.2011 being the period from the order of dismissal to the order of reinstatement, shall be treated as 'dies-non' and he would not be entitled for anything on the principle of 'No work No pay'.

The petitioner filed another writ petition bearing CWP No.11416 of 2012, challenging the said order dated 08.02.2012. The High Court allowed the said writ petition, vide judgment dated 14.03.2017 and set aside the order dated 08.02.2012 directing respondent No.2 to decide afresh the case of the petitioner by passing a speaking order. The

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respondents, thereafter passed the order dated 30.05.2017, which is impugned herein. Relevant part of said order is reproduced:

> "So, his suspension period from 04.10.2008 to 20.11.2008 shall be treated as spent on duty but he shall not be paid any allowance except subsistence allowance already given to him. Further his un-utilized 188 days earned leave (488-300=188) due in his account shall be treated as leave kind due, 240 days shall be treated as half pay leave as per rule 8.119 of CSR Vol.-II and the remaining days shall be treated as leave without pay. The above said monitory benefits will be given to the petitioner after the sanction/approval of the Finance Department, Haryana which is required as per Govt. instructions No.03/06/04-2 Pension dated 25.07.2005. Hence, the representation is disposed of in above terms."

While praying for setting aside the said order, learned counsel for the petitioner has submitted that:

a) The petitioner was suspended because of the involvement in a criminal case and once he has been acquitted, the suspension period although sought to be considered as duty period for all intents and purposes should also be counted towards salary and allowances.

b) The petitioner was dismissed from service on 20.11.2008 and the said dismissal order has been set aside by the High Court, vide judgment dated 29.07.2010 and once the dismissal order has been set aside, the petitioner deemed to be in service for all intents and purposes. Reliance was placed on the judgment rendered by the Full Bench of Hon'ble Apex Court in the case of *Radha Ram Vs. Municipal Committee, Barnala*, 1983 PLR 21

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as well as Full Bench of this Court in the case of *Ram Niwas Bansal Vs. State Bank of Patiala and others*, 2002 (2) RSJ 273.

c) Nothing was found in the regular enquiry against the petitioner and the disciplinary proceedings were concluded simply by giving a warning, which does not justify the depriving of the salary of the period, for which the petitioner was kept compulsory out of job. Reliance was also placed on the judgments rendered by this High Court in the case of *Surjit Singh Vs. State of Haryana and another*, CWP No.1326 of 2013, decided on 30.04.2015 as well as *Anil Kumar Tyagi Vs. Dakshin Haryana Bijli Vitran Nigam Ltd. and another*, CWP No.13988 of 2015, decided on 24.01.2017.

Reply has been filed. As per the said reply, the authorities were fully justified in passing the said order in view of Rule 7.3 Volume I, Part I of Punjab Civil Services Rules, which shows that the competent authority on ordering reinstatement of an employee would take a decision whether or not the employee is entitled to full pay and allowances from the date of his suspension to the date of reinstatement or from the order of dismissal to the date of reinstatement or not and in case the authorities are of the opinion that the employee was fully exonerated, he can always be given the full salary but in the present case, he was never fully exonerated and he was given the punishment of censure. Secondly, he was suspended on account of a criminal case pending against him. He was acquitted in the said criminal case by granting him benefit of doubt. Since, he was not honourably acquitted and only on account of benefit of doubt, he was not entitled to full pay and allowances. Reliance was placed on the judgment rendered by this High Court in the case of *Jhilman Singh Vs. State of Punjab and others*,

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2014(2) RSJ 461.

Learned counsel for the parties were heard at length.

At the outset, learned counsel for the petitioner submitted that the petitioner does not wish to press his claim qua the salary for the suspension period. Therefore, the present writ petition survives only qua the salary for the period he was dismissed from service till his reinstatement i.e. from 20.11.2008 to 28.12.2011.

For proper adjudication, it would be appropriate to reproduce Rule 7.3 of the Punjab Civil Services Rules, Volume I, Part I:

> "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 while under suspension 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 shall be treated as a period spent on duty."

As per the judgment relied upon by learned counsel for the respondents in the case of ***Jhilman Singh*** (supra), it was held in para 8 as under:

> "8. A perusal of the above rule would show that the competent authority, on ordering reinstatement of an

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2020.02.04 09:34
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> employee, would take a decision whether or not the employee is entitled to full pay and allowances from the date of his suspension to the date of his reinstatement. As per the instructions relied upon by the respondents, where the benefit of doubt has been given by the Court in criminal proceedings, the competent authority can take into consideration the facts and circumstances of the case and proceed to take a decision with regard to the pay and allowances to be paid to the Government employee for the period of his absence from duty occasioned by suspension etc. Since the petitioner has been found to have been acquitted of the charges levelled against him by giving him benefit of doubt and not honourably, the period of suspension from 5.8.2006 to 10.2.2009 has been treated as leave of the kind due, which is in accordance with law and, therefore, does not call for any interference by this Court."

Thus, the question that requires to be decided before this Court is as to whether the petitioner was honourably acquitted or not. No doubt, as per judgment dated 14.03.2011, the trial Court acquitted the petitioner on account of lack of evidence and by also stating that the accused deserves the benefit of doubt. However, a close reading of the judgment shows that the trial Court while acquitting the petitioner also held as under:-

> "The accused in their statements under Section 313 Cr.P.C. have pleaded their innocence and false implication which appeals to be convincing and trustworthy as the guilt of the accused has not been proved beyond all reasonable doubts and possibility of implicating the accused falsely cannot be ruled out."

The petitioner had earlier also filed CWP No.11416 of 2012,

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which was decided on 14.03.2017. While setting aside the order vide which the petitioner was held as not entitled to the salary on account of no work no pay, the Co-ordinate Bench of this Court observed as under:-

> "Learned senior counsel for the petitioner has argued that firstly the order Annexure P-8 is a completely non-speaking order and secondly the direction to treat the period during which he remained out of service as dies-non is extremely harsh and completely dis-proportionate to the findings of the inquiry officer and the disciplinary authority.
>
> I find merit in both the grounds. The order is a four line order in which no reason has been given. Secondly in view of the findings of the disciplinary authority which has been extracted above it is clear that he was ultimately found guilty only of a small misdemeanour and that is why was punished with a warning. It is trite to say that a warning is a lightest punishment in Govt. service jurisprudence. Looked at from this angle the order of declaring a period of more than 3 years as dies-non is ex-facie dis-proportionate to the misdemeanour proved against the petitioner.
>
> In the circumstances the order Annexure P-8 is set aside and the respondent No.2 is directed to decide afresh the case of the petitioner by passing a speaking order. On the request of learned senior counsel the petitioner would be permitted to supplement his representation within a period of 10 days from the date of receipt of a certified copy of this order. Let necessary exercise be conducted within a period of two months."

Here, the whole case depended on the statement of Smt. Rekha, who was a star witness but she was not cited as a witness for reasons best

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known to prosecution. Moreover, the respondents too did not find anything in the departmental enquiry and proceeded to drop the same and rather accepted the report of the Investigating Officer that the action of the petitioner for not making any entry in the DDR, was negligence and not mala-fide in any manner. The argument that the petitioner was given warning in the departmental enquiry does not help. The warning too was on account of the petitioner having committed negligence in not entering the DDR and not because of any allegations either in FIR or in the enquiry.

In fact, the Full Bench of this Court in the case of ***Radha Ram*** (supra), found that the employee cannot be denied the salary for the period he remained out of service on account of the order of termination, which was subsequently set aside. Para 12 of the said judgment is reproduced below:

> "12. Now apart from precedent on larger consideration of principle as well the stand of the appellant herein commends itself for acceptance. Once the relief of setting aside or quashing the order of termination has been granted, or a declaratory decree has been passed to the similar effect, it necessarily follows that the employee in the eye of law continues to be in service and as a necessary consequence thereof would be entitled to all the emoluments flowing from the status. He must be deemed to be in a position identical with that existing prior to the passing of the order of termination of his service. In the felicitous language of their Lordships the emoluments of the post are a logical consequence of setting aside the order of termination. In such a situation to insist upon the filing of a second suit for a relief which directly flows from the declaratory decree can hardly be

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2020.02.04 09:34
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> warranted. The hallowed rule that the law disfavours multiplicity be recorded in the original proceedings itself. This seems to be the more so in view of the recent judgments of the final court adverted to above holding that in essence the cause of action for the claim to salary and emoluments is co-terminus with the decree setting aside the wrongful termination. Therefore no issue or bar of limitation now raises any hurdle in this context. It deserves recalling that on the earlier view that the right to salary and emoluments was likely to become barred after a period of three years from the date of the order of termination itself there might have been some jurisdiction for the need of a separate suit for emoluments etc. to test it on the envil of limitation. However, since such a view has now been given the go-by and its anomalous results have been authoritatively noticed by the final Court in State of Madhya Pradesh Vs. State of Maharashtra and Maimoona Khatun's case, it seems wholly wasteful to require a fresh spurt of litigation for the recovery of emoluments which necessarily flow from the quashing of the termination order or the grant of the declaratory decree."

Another Full Bench of this Court in almost similar set of circumstances in the another case of ***Ram Niwas Bansal*** (supra), held in para 20 as under:

> "20. I agree with the conclusion reached by my Brother Swatanter Kumar, J. that the applicant whose termination from service was quashed by this Court is entitled to be paid his salary from the date of termination of his services till the date an appropriate order is passed by the disciplinary authority or till the date of his

SANDEEP
2020.02.04 09:34
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superannuation, whichever is earlier."

Learned Single Bench of this Court in the case of *Surjit Singh* (supra), while taking note of the various judgments including the judgment relied upon by learned counsel for the respondents in the case of *Union of India and others v. Jaipal Singh*, 2004(1) SCT 108, held in almost similar set of circumstances as under:-

> "19. The criminal trial that the present petitioner has faced and which has finally culminated in his acquittal was in relation to allegations having direct nexus with the work and functions in the course of his employment. The petitioner 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 by applying the ratio of aforenoticed judgments and in the light of the 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."

Learned Single Bench in another case *Anil Kumar Tyagi* (supra), held as under:-

> "7. That apart, having regard to the provisions of Punjab Civil Service Rules, Volume I in particularly Rules 7.3 and 7.5 which deals relating to regulating his suspension period as well as out of service like termination dismissal etc. Rule 7.3 and 7.5 is crystal clear that if an employee is involved in a criminal case or in a disciplinary proceedings if he is exonerated or acquitted in such circumstances, the employee is entitled to monetary benefits like payment of salary during the suspension period so also salary for the out of service kept by the respondents. As long as rule is not amended

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> appropriately by the competent authority, extending monetary benefits with reference to acquittal and exoneration in a disciplinary proceedings cannot be denied."

There is another way to look at the facts of the present case. Even if there was a slight doubt in the allegation, there was nothing to stop the respondents from holding the petitioner guilty in the departmental enquiry as the level of proof required in the departmental enquiry is not the same as the strict proof required in a criminal case. The petitioner having been exonerated both in the criminal case & in the departmental enquiry also shows that his acquittal was not simply on account of technical reason but also on account of it probably being a case of false implication as already discussed above. That being so, decision of the competent authority to deprive the petitioner of his salary is nothing but contradiction because on the one hand, the petitioner was reinstated and on the other, he was deprived of his salary. Sub Rule 2 of Rule 7.3 of the Punjab Civil Services Rules also specially provides that in the event of a government employee, who has been dismissed from service but has been fully exonerated, upon reinstatement shall be paid full pay and allowances to which he would have been entitled, if he had not been dismissed.

In view of the above, the present writ petition is allowed and the order dated 30.05.2017, vide which, the petitioner has been denied the salary for the period from 04.10.2008 to 28.12.2011 is set aside except the part qua the period of suspension from 04.10.2008 to 20.11.2008 and that too in view of the statement made by learned counsel for the petitioner. The

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2020.02.04 09:34
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respondents are directed to give the full salary for the period from the order of dismissal to the order of reinstatement i.e. from 20.11.2008 to 28.12.2011. Needful be done within four weeks from the receipt of certified copy of this order.

(NIRMALJIT KAUR)
JUDGE

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Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No

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2020.02.04 09:34
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