

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 23047 of 2017

Date of decision:-09.01.2020

Dhyan Singh

.....Petitioner

vs.

State of Haryana and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Gurinder Pal Singh, Advocate
for the petitioner.

Mr. Harish Nain, AAG, Haryana.

RITU BAHRI, J.

The petitioner is seeking direction to the respondents for setting aside the order dated 02.03.2017 (Annexure P-7) whereby the period he remained out of job due to dismissal from service till his reinstatement, has not been treated as period spent on duty.

The petitioner was initially appointed as Inspector in the Haryana Roadways on 19.06.1985. He was promoted as Chief Inspector vide order dated 15.11.2002 (Annexure P-1). An FIR was registered against him on 16.06.2006 under Sections 7 and 13 of the Prevention of Corruption Act. This FIR was registered at the instance of department relating to his official work. In view of registration of FIR, the petitioner was suspended w.e.f. 21.06.2006 vide order dated 21.06.2006 (Annexure P-2). Order of suspension dated 21.06.2006 was reviewed by the Transport Commissioner and he was ordered to be reinstated vide order dated 30.01.2007 (Annexure P-3). The learned ASJ vide judgment dated 24.08.2009 convicted the

petitioner and ordered him to undergo sentence for a period of one year. In view of above conviction, the petitioner was ordered to be removed from service vide order dated 06.07.2010 (Annexure P-4). The petitioner filed an appeal i.e. CRA No. 2123-SB-2009 against the judgment of conviction dated 24.08.2009 which was set aside vide order dated 10.08.2015 (Annexure P-5). Thereafter the petitioner was reinstated vide order dated 01.08.2016 (Annexure P-6).

The claim of the petitioner for grant of consequential benefits arising out of his acquittal was rejected vide order dated 02.03.2017 (Annexure P-7) and the period from 06.07.2010 to 09.08.2015 (i.e. from the date of dismissal to the date of judgment of acquittal passed by the High Court) was not treated as period spent on duty.

The petitioner by way of this petition seeks to include the period from 06.07.2010 to 09.08.2015 as period spent on duty and consequential benefit of further promotion to the post of Station Supervisor and thereafter Traffic Manager at par with his junior. The service details of his junior are mentined in para 8 of the writ petition.

Learned counsel for the petitioner has referred to the following judgments:-

1. Shashi Kumar V/s. Uttri Haryana Bijli Vitran Nigam and another 2005(1) S.C.T 576 (Annexure P-8)
2. Sucha Singh V/s. State of Punjab and others 2014(1) S.C.T. 183 (Annexure P-9)
3. Ranbir Singh V/s. D.H.B.V.N.L and others 2016(3) S.C.T. 511 (Annexure P-10) and
4. Lachhman Dass Bansal V/s. Punjab State Power Corporation Limited and others (Annexure P-11)

While referring above judgments, learned counsel for the

petitioner contends that even in the case of acquittal by giving benefit of doubt under the Prevention of Corruption Act, an employee was held to be entitled for all consequential benefits including continuity of service and promotion etc.

Learned counsel for the State on the basis of stand taken in the written statement has argued that petitioner has been acquitted on the ground of benefit of doubt vide order dated 10.08.2015 (Annexure P-5) and the petitioner has tarnished the image and reputation being public servant. He has not rendered service during the period 06.07.2010 to 09.08.2015 and on the principle of 'No Work No Pay', he is not entitled to salary for this period. He has referred to decisions of Supreme Court in ***Commissioner of Police, New Delhi and another V/s. Mehar Singh*** 2013 (7) SCC 685, ***R.P. Kapur V/s. Union of India and another*** AIR 1964 SC 787 and ***Deputy Inspector General of Police and another V/s. S. Samuthiram*** 2013 (1) SCC 598.

Heard learned counsel for the parties.

In ***Deputy Inspector's case (supra)***, the Supreme Court was examining a case where the police official working in the Police Department was facing criminal trial under Sections 509 and 294 for eve teasing and at the same time he was dismissed in the departmental proceedings. The High Court allowed the writ petition and set aside the impugned order dismissing him from service. The Supreme Court allowed the appeal filed by the Deputy Inspector General of Police keeping in view that respondent-police official was working in Tamil Nadu and as per their service rules, there was no provision for reinstatement after acquittal in the criminal trial. However, with respect to re-instatement, the Supreme Court observed as under:-

“23. As we have already indicated, in the absence of any provision in the service rule for reinstatement, if an employee is

honourably acquitted by a Criminal Court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, 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 assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say in the instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so.

24. We have also come across cases where the service rules provide that on registration of a criminal case, an employee can be kept under suspension and on acquittal by the criminal court, he be reinstated. In such cases, the re-instatement is automatic. There may be cases where the service rules provide in spite of domestic enquiry, if the criminal court acquits an employee honourably, he could be reinstated. In other words, the issue whether an employee has to be reinstated in service or not depends upon the question whether the service rules contain any such provision for reinstatement and not as a matter of right. Such provisions are absent in the Tamil Nadu Service Rules.”

This judgment cannot be applied in the facts of the present case, as in the present case after registration of the FIR, the petitioner was suspended and suspension order was reviewed and he continued to work till the judgment of conviction. After the judgment of conviction dated 24.08.2009, he was removed from service vide order dated 06.07.2010 (Annexure P-4) and conviction was set aside vide judgment dated 10.08.2015 (Annexure P-5). He was again reinstated vide order dated 01.08.2016 (Annexure P-6). No departmental proceedings were initiated against the petitioner and the only relief denied to the petitioner was of consequential benefits. However there are rules in the service rules that he can be reinstated after acquittal in criminal trial.

The judgment of *Commissioner of Police's case (supra)* is with respect to recruitment in Delhi Police where one candidate was involved in criminal case. The screening committee comprising high police officers considered the nature and involvement of the candidate in the crime and cancelled his candidature. The Supreme Court held that the policy framed by Delhi Police is not to be interfered with as its object is to ensure that only persons with impeccable character will enter in the police force. Even this case is not applicable in the present case because the petitioner has been working in Haryana Roadways since 19.06.1985 and his reinstatement after acquittal, is not an issue to be decided by this Court.

Even the judgment of *R.P.Kapur's case (supra)* is not applicable.

In the present case, there is provision in the service rules that petitioner can be reinstated after acquittal in the criminal trial. The question for consideration is whether he has right to be given salary from 06.07.2010 to 09.08.2015 (i.e. from the date of dismissal to the date of judgment of

acquittal passed by the High Court).

On this score, reference can be made to Division Bench judgment passed by this Court in ***Shashi Kumar V/s. Uttri Haryana Bijli Vitran Nigam and another*** 2005(1) S.C.T 576 (Annexure P-8) in which while interpreting Rule 7.5, the Division Bench held that if dismissal from service is only on account of conviction then after acquittal employee is entitled for all consequential benefits with full backwages. In para 10, it has been observed as under:-

“10. Furthermore a Division Bench of this Court, after examining the relevant rules in the case of Hukam Singh (supra) has held as under:-

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 take 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.

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, 1994(1) SCT 154 (P&H): 1993(8) Services Law Reporter 188.** Same view was expressed by this Court in the case of **Lehna Singh v. The State of Haryana and others, 1994(1) SCT 173 (P&H) : 1993 (3) Recent Services Judgments 119.** 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....”

This Court again in ***Ranbir Singh's case (supra)*** (Annexure P-

10) while following the judgment of ***Shashi Kumar's case*** allowed the writ

petition and granted consequential benefits of pay and allowances from the date of dismissal till reinstatement to the petitioner therein.

In para 17, it was observed as under:-

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 nonavailability 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 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/-.”

Keeping in view above observations, writ petition is allowed and order dated 02.03.2017 (Annexure P-7) is set aside. Respondents are directed to treat the period from 06.07.2010 to 09.08.2015 as duty period and grant him salary alongwith 6% interest within a period of three months from the date of receipt of certified copy of this order.

09.01.2020
Divyanshi

(RITU BAHRI)
JUDGE

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