

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

CWP No.9535 of 2017

Date of Decision: 12.02.2020

Chand Singh

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Ranjit Singh Ghuman, Advocate,
for the petitioner.

Mr. Randhir Singh, Advocate,
for respondent-State.

RITU BAHRI, J. (ORAL)

Petitioner is seeking quashing of the order dated 09.08.2016 (Annexure P-5), whereby backwages granted to him have been restricted to 25% for the period, during which, he remained under termination.

Learned counsel for the petitioner has referred to the order dated 26.11.2015 (Annexure P-4), whereby details in respect of petitioner i.e. facing of trial, conviction and acquittal have been considered and he has been ordered to be reinstated with all consequential benefits.

A perusal of this order shows that the petitioner, who was posted as driver, was facing criminal trial in case FIR No.239 dated 05.07.2000, under Sections 363/366/376/506 IPC, registered at Police Station, Sector-5, Panchkula. Vide order dated 13.01.2001, he was placed under suspension w.e.f. 22.12.2000. Vide judgment dated 04.02.2003/05.02.2003, he was convicted and sentenced to undergo

rigorous imprisonment for a period of one year and nine months (already

undergone by him) and to pay a fine of Rs.2000/- for commission of offence punishable under Section 363 IPC. After conviction, services of the petitioner were terminated vide order dated 02.05.2003 by the General Manager, Haryana Roadways, Chandigarh and no regular enquiry was conducted. Against the judgment of conviction dated 05.02.2003, petitioner filed an appeal i.e. CRA-S-779-SB-2003, which was accepted vide judgment dated 20.09.2013 passed by this Court. It was further observed as under:-

“26. Therefore, if the crux of the peculiar facts and special circumstances, oozing out from the evidence on record, as discussed herein-above, are put together, then, to my mind, the conclusion is inescapable and irresistible that the evidence brought on record by the prosecution even falls short, as is required to prove the crime under Section 363 IPC, which entails the benefit of doubt and acquittal to the appellant under Section 363 IPC as well.

27. No other legal point, worth consideration, has either been urged or pressed by the learned counsel for the parties.”

After acquittal, the petitioner was reinstated in service with all consequential benefits vide order dated 27.11.2015. The above order and the facts are not disputed between the parties.

However, grievance of the petitioner arose when vide order dated 09.08.2016 (Annexure P-5), Director, State Transport, Haryana, granted 25% back wages to the petitioner for the period during which, he remained under termination. This order was passed in terms of Rule 90 of Haryana Civil Services (General) Rules, 2016. Hence, this petition.

Learned counsel for the petitioner has referred to the notification dated 19.07.2016 in respect of Haryana Civil Service (General) Rules 2016. Rule 90 of the above Rules is reproduced as under:-

“90. Where the competent authority is of the opinion that the Government employee has not been fully exonerated, he shall be given

such proportion of pay and allowances as the competent authority may prescribe. The payment of allowances shall be subject to all other conditions under which such allowances are admissible. The period of absence from duty shall not be treated as a period spent on duty unless the competent authority specifically directs that it shall be treated as duty for any specified purpose.”

Now, the question for consideration is, whether petitioner was fully exonerated or not.

Learned State counsel has not been able to justify that the petitioner had not been fully exonerated vide judgment dated 20.09.2013. A perusal of para No.26 of the judgment dated 20.09.2013 (Annexure P-1) clearly shows that as per evidence on record, the conclusion was inescapable and irresistible that the evidence brought on record by the prosecution even falls short to prove the crime under Section 363 IPC, which entailed the benefit of doubt and acquittal to the appellant (petitioner herein) under Section 363 IPC as well. It has not been observed in the judgment that the petitioner has not been fully exonerated.

Another point for consideration is that after acquittal of the petitioner, order dated 27.11.2015 (Annexure P-4) for his reinstatement was passed. Subsequently, on the basis of notification dated 19.07.2016, order dated 27.11.2015 (Annexure P-4) could not have been modified that the effect of this notification had to be prospective in nature. It could not be applied retrospectively to modify the order dated 27.11.2015. A perusal of the notification dated 19.07.2016 further shows that as per Rule 89, if 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 shall have been entitled, had he not been dismissed, removed, compulsorily retired or suspended, as

the case may be. The period of absence from duty shall also be treated as a period spent on duty for all intents and purposes. As per Note-1, there is no need for invoking the law of limitation at the time of payment of arrears. Further, as per Note-2, if a Government employee, under suspension, is acquitted by the Court of Law and the order of reinstating him is passed sometime after the date of acquittal, full pay and allowances shall be paid from the date of acquittal to the date of re-joining duty.

A perusal of judgment dated 20.09.2013 (Annexure P-1) passed by this Court shows that the trial Court had acquitted the petitioner of the charges framed under Sections 366, 376 and 506 IPC. Against the said acquittal, no appeal was filed by the respondent-State. In the absence of any direct evidence, the petitioner has been fully acquitted/exonerated. The respondents were bound to follow the order dated 26/27.11.2015 (Annexure P-4). Modification of the said order, vide impugned order dated 09.08.2016 (Annexure P-5) is against the provisions of Rule 90, which has been reproduced above.

In view of the above discussion, this petition is allowed and the impugned order dated 09.08.2016 (Annexure P-5) is set aside. Consequently, the petitioner is held entitled to all the consequential benefits. Arrears of salary be paid to the petitioner within a period of three months from the date of receipt of certified copy of this order.

(RITU BAHRI)
JUDGE

12.02.2020
ajp

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No