

RSA No.5630 of 2014

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.5630 of 2014

Date of Decision: 26th February, 2020

Ajit Singh

...Appellant

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Vikas Kumar, Advocate,
for the Appellant.

Mr. Manish Dadwal, AAG, Haryana,
for the State.

AUGUSTINE GEORGE MASI, J.

This Regular Second Appeal has been preferred by the appellant – plaintiff, who was appointed as Mali-cum-Chowkidar with the respondents and had joined duty on 09.11.1995. During the course of his employment, he was involved in a criminal case i.e. FIR No.349 dated 20.11.1997, under Sections 302/34 of the Indian Penal Code (hereinafter referred to as 'IPC'). The appellant – plaintiff was convicted vide judgment dated 26.10.1999 and sentenced vide order dated 27.10.1999 to undergo rigorous imprisonment for life for offence committed under Section 302 IPC read with Section 34 IPC with fine of ₹ 2000/- with default stipulation. In pursuance to the said judgment of conviction and order of sentence, he was placed under suspension and thereafter, vide order dated 20.10.2000, dismissed from service, although his appeal against the conviction and

sentence was pending before the Division Bench of this Court. The Division Bench of this Court, in appeal, acquitted the appellant – plaintiff and another co-accused Satish by giving them benefit of doubt vide judgment dated 10.09.2008, however, qua the other co-accused, conviction and sentence was upheld. After the acquittal, appellant – plaintiff submitted an application for reinstatement in service. Vide order dated 20.10.2010, dismissal order was revoked and he rejoined the service. He served a notice upon the respondents for granting him the benefit of full pay and allowances. Respondent – department had, after considering the application/ representation, reinstated him in service w.e.f. 20.11.1997 vide order dated 18.09.2009 and decision regarding arrears was to be taken later. The said aspect was decided by the respondents by granting him the subsistence allowance for the period of his suspension. The period between 20.11.1997 to 12.11.2000 was treated as duty period and the period from 13.11.2000 (the date of his conviction) to 17.09.2009 (the date of his reinstatement) as extraordinary leave. Appellant – plaintiff is claiming the benefit of full pay and allowances for the period of his suspension i.e. 20.11.1997 to 12.11.2000 and thereafter, the period between 13.11.2000 to 17.09.2009 along with interest.

2. The Civil Judge (Junior Division), Bhiwani, decreed the suit of the appellant – plaintiff vide judgment dated 27.02.2012 by holding the order dated 19.02.2010 passed by the respondents rejecting the back-wages as referred to above, as illegal, null and void with a declaration that the appellant – plaintiff is entitled to full back-wages from 10.11.1997 to

17.09.2009. This judgment and decree was challenged by the respondents before the District Judge, Bhiwani, in an appeal, who allowed the same vide judgment and decree dated 28.05.2014 and dismissed the suit of the appellant – plaintiff relying upon the judgment of the Hon'ble Supreme Court in Ranchhodji Chaturji Thakore Vs. The Superintendent Engineer, Gujarat Electricity Board, Himmatnagar (Gujarat) & another {1997 (2) R.S.J. 695 (SC)}, Union of India & others Vs. Jaipal Singh, {2004 (2) R.S.J. (63)} and Smt. K. Ponnamma Vs. The State of Kerala & others, {1997 (3) R.S.J. (32)}. This appeal has been filed challenging the judgment and decree passed by the lower Appellate Court reversing the judgment and decree passed by the Civil Judge (Junior Division), Bhiwani, dated 27.02.2012.

3. It is the contention of the learned counsel for the appellant that as per Rule 7.2 of the Punjab Civil Services Rules, Vol. 1 (as applicable to the State of Haryana), the appellant – plaintiff, in the light of the fact that he has been acquitted in the criminal case which was registered against him leading to his conviction because of which, he was initially suspended and thereafter, his services were dispensed with, would be entitled to not only reinstatement in service but also the all consequential benefits including full pay and allowances for the said period, for which period he was not able to perform his duties because of no fault of his, firstly, he being under suspension and thereafter, on his dismissal from service because of his conviction till his reinstatement. In support of this contention, he places reliance upon the judgments passed by the Division Bench of this Court in

Hukam Singh Vs. The State of Haryana & another {2001 (1) RSJ 201}, **Shashi Kumar Vs. Uttri Haryana Bijli Vitran Nigam & another**, {2005 (1) RSJ 718}, CWP No.16192 of 2010, titled as 'Sukhchain Singh Vs. State of Punjab & another', decided on 18.03.2013, CWP No.15977 of 2012, titled as 'Piara Singh Vs. State of Punjab & others', decided on 26.04.2013, which has been upheld by the Division Bench of this Court in LPA No.1634 of 2013, titled as 'State of Punjab & others Vs. Piara Singh', decided on 19.09.2013. He, thus, contends that the judgment and decree passed by the lower Appellate Court cannot sustain and deserves to be set aside and the judgment and decree passed by the trial Court restored.

4. On the other hand, learned counsel for the State has placed reliance upon the various judgments passed by the Hon'ble Supreme Court to contend that an employee, who has been initially placed under suspension after his conviction and after some time, dismissed from service, is not entitled to back-wages on he being acquitted and reinstated in service especially when the criminal proceedings, which have been initiated against him, are not at the behest of the department. In support of this contention, he has placed reliance upon the judgments of Hon'ble Supreme Court in the cases of *Ranchhodji Chaturji Thakore, Smt. K. Ponnamma and Jaipal Singh* (supra), **State of U.P. & others Vs. Mahindra Nath Tiwari** {2010 (2) SCC 252}, **Corp. Mithilesh Kumar @ Mithilesh Singh Vs. Union of India & others** {2010(13) Scale 98}, **State Bank of India & another Vs. Mohammed Abdul Rahim** {2013 (11) SCC 67}, **Civil Appeal No.3339 of 2019**, titled as '**Raj Narain Vs. Union of India & others**', decided on

01.04.2019. Reliance has also been placed upon the judgments of this Court in Darshan Singh Vs. The Punjab State Warehousing Corporation & another {2017 (4) RSJ 179}, Harbajan Singh Vs. State of Punjab & others {2017 LIC 2732}, Randhir Singh Vs. State of Punjab {2018 (1) S.C.T. 592}, wherein, it has been held that no absolute right vested on a delinquent employee to full pay and allowances for the period under suspension or dismissal except when the Competent Authority records findings to the effect that detention of the employee is unjustified or the liability having arisen from circumstances beyond control. This Court has further held in these judgments that if the employee was involved in a criminal case on a private complaint and was convicted, on acquittal in appeal, no fault can be attributed to the employer and the State exchequer cannot be burdened to compensate the employee for the period he was not working with the employer for no fault of the employer, however, in case of acquittal, if the delay occurs in deciding his representation, the same would be attributable to the employer and for this period, he would be entitled to all consequential benefits from the date of his representation for reinstatement, as submitted.

5. I have considered the submissions made by the learned counsel for the parties and with their assistance have gone through the records of the case including the judgments cited by them.

6. The judgments on which reliance has been placed by the learned counsel for the appellant – plaintiff are those, in which the judgments given by the Hon'ble Supreme Court which have been referred to

by the learned counsel for the respondents had not been taken into consideration as it appears that they were not brought to the knowledge of the Court. The latest judgments of the Hon'ble Supreme Court, after the passing of the various judgments by this Court, lays down clearly that the claim for back-wages from the date of termination would only be maintainable where the criminal charges, which were levelled against the employee, were at the instance of the employer, which resulted in his acquittal and similarly, where the Competent Authority records findings as regards the detention of an employee to be unjustified or the liability having arisen from circumstances beyond control.

7. Those judgments, therefore, have to prevail especially when the Hon'ble Supreme Court in the judgments referred to above such as *Ranchhodji Chaturji Thakore, Smt. K. Ponnamma and Jaipal Singh, Mahindra Nath Tiwari, Corp. Mithilesh Kumar @ Mithilesh Singh, Mohammed Abdul Rahim, Raj Narain's* cases (supra) has laid down the above law. Meaning thereby, the employee, if was, facing criminal prosecution arising out of a complaint of private nature leading to his suspension or dismissal on account of his conviction, the action of the department cannot be held to be wholly unjustified, which would bring the claim of the employee for full salary and allowances for the period from the date of his suspension to the date of his reinstatement within the scope of Rules 7.3 and 7.5 of the Punjab Civil Services Rules, Vol.-1 Para 1.

8. However, the above law, as has been settled upto the Hon'ble Supreme Court, would depend upon the facts and circumstances of each

case and to assess whether it would fall within the parameters and the situations covered by the said judgments, the case has to be assessed on facts.

9. Present is a case where the appellant – plaintiff along with co-accused was arrested in an FIR, which was registered against them under Section 302 IPC read with Section 34 IPC, for which, the trial was ensued, wherein he was convicted along with others vide judgment dated 26.10.1999 and sentenced vide order dated 27.10.1999 to undergo rigorous imprisonment for life for the offence punishable under Section 302 IPC read with Section 34 IPC with fine of ₹ 2000/- with default stipulation. It is, after that conviction, the appellant – plaintiff was placed under suspension on 20.11.1997. He preferred an appeal against his conviction and sentence before the Division Bench of this Court, where the conviction was not stayed leading to the order of dismissal being passed by the department against him on 20.10.2000. He, however, along with one Satish, was acquitted by giving them the benefit of doubt by this Court vide judgment dated 10.09.2018, however, qua the other co-accused, the judgment of conviction and order of sentence was upheld. He submitted an application for his reinstatement to the Competent Authority for revoking his dismissal order dated 20.10.2000 and reinstating him in service, which was accepted and he was reinstated in service w.e.f. 17.09.2009.

10. In view of the above facts, it is apparent that the department had no role to play so far as the initiation of the criminal proceedings against the appellant – plaintiff are concerned. In fact, it was a private

complaint on the basis of which the FIR was registered, where he was put on trial and found guilty. No fault, thus, can be attributed to the respondent – department and therefore, the State exchequer cannot be burdened to compensate him for the period he was out of service. Fault, if any, would be attributed to him alone. That apart, it is not a case where the allegations against him have been found to be false or motivated as he has been given the benefit of doubt. His claim, therefore, for full back wages and treating the period 10.11.1997 to 17.09.2009 as on duty period for all intents and purposes cannot be accepted.

11. In view of the above, the appeal as preferred by the appellant – plaintiff cannot be accepted, rather the judgment and decree as passed by the lower Appellate Court, dated 28.05.2014, being in accordance with law, does not call for any interference by this Court. Therefore, the appeal stands dismissed.

26th February, 2020
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No