

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

**CM-14578-CWP-2021 in/and
CWP No. 28550 of 2017**

DATE OF DECISION : 07.10.2021

Shakuntla Devi

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Ms. Anita Balyan, Advocate,
for the applicant/petitioner.

Mr. R. K. S. Brar, Addl. AG, Haryana.

(Presence marked through video conferencing).

ARUN MONGA, J. (ORAL)

CM-14578-CWP-2021

This is an application for hearing of the matter on some actual date.

For the reasons stated in the application, same is allowed and main case is pre-poned and taken up on Board today itself.

MAIN CASE

Petitioner herein *inter-alia* seeks issuance of a writ in the nature of mandamus directing the respondents to revoke an order dated 25.11.2016 (Annexure P-3), whereby her salary was re-fixed and she has been held entitled to subsistence allowance only for the period she remained under suspension and termination i.e 30.08.2007 to 28.04.2008

and 04.10.2013 to 27.08.2014) with a further prayer to release arrears of salary with all consequential benefits along with interest.

2. Succinct facts of the case first. Petitioner joined as Nurse on 07.09.1984. She worked as such until 30.08.2007, when an FIR was registered under Sections 7 and 13 of the Prevention of Corruption Act, 1988 (hereinafter referred to as “P.C. Act”) leading to her pre-trial arrest. She was placed under suspension on 30.08.2007, but later reinstated on 28.04.2008. Later, consequently vide judgment and order dated 04.10.2010, petitioner was convicted and sentenced to undergo rigorous imprisonment for a period of six months and imposed fine of Rs.500/-. Petitioner filed an appeal before this Court. Order of conviction was set-aside by this Court vide order dated 27.08.2014. The petitioner was, thus, acquitted of all the charges levelled against her by this Court by allowing her appeal.

3. Perusal of the reply filed by learned counsel for respondents reveals that subsequent to filing of present writ petition, another administrative order dated 19.12.2018 (Annexure R-2) was passed in super session of impugned order dated 25.11.2016 (Annexure P-3), whereby salary of the petitioner has been re-fixed. However, the arrears for the period she remained suspended as well as other consequential benefits have not been granted to her. On oral prayer in the course of arguments made by learned counsel for the petitioner to impugn the subsequent order passed during the pendency of the petition is accepted, for the reasons already recorded as aforesaid.

4. Learned counsel for the petitioner contends that though vide order dated 04.06.2015 (Annexure P-2) petitioner was allowed to join her

duties, but Civil Surgeon, Kaithal, vide an office order dated 25.11.2016 (Annexure P-3), has denied the benefit of salary and allowances to the petitioner for the period of her suspension with effect from 30.08.2007 to 28.04.2008 and 04.10.2010 to 27.08.2014 for the period she remained out of service on account of conviction order dated 04.10.2010.

5. While on the other hand, learned State counsel submits that petitioner has already been granted the benefit as per her entitlement. The period from 28.08.2014 to 11.06.2015 has been treated leave of kind due vide government order dated 02.11.2018. As per her entitlement, petitioner has already been granted first and second ACP vide order dated 06.12.2018 (Annexure R-3). He further contends that impugned order dated 25.11.2016 has been withdrawn by subsequent order dated 19.12.2018 (Annexure R-2) and pay of the petitioner has been re-fixed.

6. Having perused the record appended with the petition and after hearing the rival contentions of learned counsels for the parties, short point that emerges for consideration is that whether once an employee is acquitted of the criminal charges which led to departmental action, can the department take a plea that acquittal not being honourable, adverse consequences, therefore, must follow ?

7. Before proceeding further, reference may first be had to a Division judgment of this Court in case titled as “***Shashi Kumar v. Uttri Haryana Bijli Vitran Nigam Limited and another***” 2005 (1) SCT 576, relevant whereof is extracted herein below :

“7. In any event, the terms “honourable acquittal” or “fully exonerated” are unknown in the Code of Criminal Procedure or in Criminal Jurisprudence. These terms came up for consideration before a Division Bench of the Madras High Court in the case of Union of India Vs. Jayaram, AIR

1960 Madras 325. Rajammannar, C.J. Delivering the judgment of the Division Bench observed as under:-

There is no conception like “honourable acquittal” in Criminal Procedure Code. The onus of establishing the guilt of accused is on the prosecution, and if it fails to establish the guilt beyond reasonable doubt, the accused is entitled to be acquitted.

Clause (b) of Article 193 of the Civil Service Regulations which says that when a Government servant who was under suspension is honourably acquitted, he may be given the full salary to which he would have been entitled if he had not been suspended applies only to the case of departmental Inquiry.

Where the servant was suspended because there was a criminal prosecution against him, and he was acquitted therein, and reinstated he is entitled under the general law, to the full pay during the period of his suspension. To such a case Article 193 (b) does not apply.”

8. In somewhat similar circumstances, I had an occasion to deal with the matter, i.e. CWP-7794-2018, titled as Ex. HC (GD) Surender Singh versus Union of India and others, decided on 16.10.2019, wherein I had, in Para-15, opined as below :

15. Every acquittal is honourable acquittal. There is nothing in the Criminal Procedure Code nor is there any rule of criminal jurisprudence for treating the effects and consequences of an honourable acquittal from an acquittal on failure of the prosecution to prove the case beyond reasonable doubt.”

9. In the aforesaid premise, I need to add nothing more and the instant writ petition is allowed. The order dated 19.12.2018 (Annexure R-2) which was passed in supersession of impugned order dated 25.11.2016 (Annexure P-3) is hereby quashed with direction to the respondents to grant consequential benefits to the petitioner along with interest @ 5% per annum from the date of filing the petition till its actual realization. The arrears for the period the petitioner remained suspended

as well as other consequential benefits with full back wages released in her favour.

10. Let the needful be done within a period of two months from today.

OCTOBER 07, 2021
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : **Yes/No**

Whether reportable : **Yes/No**