

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

CWP-646-2020

Reserved on 29.10.2022

Pronounced on: 04.11.2022

Jagmail Singh

.... Petitioner

Versus

State of Punjab and others

.... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Ashok Bhardwaj, Advocate,
for the petitioner.

Mr. Sehajbir Singh Aulakh, AAG, Punjab.

JAISHREE THAKUR.J

1. The petitioner herein seeks quashing of order dated 06.03.2019, Annexure P-3, passed in appeal whereby while reinstating him in service, he has been denied wages for the period w.e.f. 27.12.2016 to 06.03.2019 i.e. the date of dismissal to the date of reinstatement in service, as well as order dated 03.12.2019, Annexure P-5, whereby his revision petition to the aforesaid extent was dismissed.

2. The facts as pleaded are that the petitioner was appointed as Constable in Punjab Police on 02.11.1989 and was promoted as Head Constable in the year 2006. However, on 25.12.2016, an FIR No.103 was registered against him along with 8 other persons under Sections 420, 384, 489A, 489B, 489D, 489E, 120-B IPC and Sections 7/13(1)(D) of the Prevention of Corruption Act, 1988 at Police Station Khanauri, District

Sangrur. He was arrested in the said FIR on 25.12.2016. Due to registration of said FIR, he was dismissed from service by the Senior Superintendent of Police, Sangrur, vide order dated 27.12.2016 by invoking Article 311(2)(b) of the Constitution of India. However, during investigation of said FIR, petitioner along with others were found innocent and accordingly, a cancellation report was prepared, which was accepted by the learned Judge, Special Court, Sangrur, vide order dated 16.11.2018. Consequently, petitioner filed an appeal before the Inspector General of Police, Patiala Range, for his reinstatement in service as the very FIR on the basis of which he was dismissed from service, stood cancelled and a cancellation report has been accepted by the competent court. The appeal was accepted vide order dated 06.03.2019, Annexure P-3, directing the petitioner to be reinstated in service, but the period from dismissal till reinstatement was treated as “no work, no pay”. He challenged that part of the order before respondent No.2-Director General of Police, Punjab, by way of revision, but it was dismissed vide order dated 03.12.2019, Annexure P-5, by holding that during personal hearing, the petitioner could not produce any satisfactory evidence/reply which could prove him innocent. Hence, the present petition.

3 Learned counsel appearing on behalf of the petitioner would argue that since the petitioner was found innocent in the FIR and cancellation report was accepted by the competent court in this regard, there was no requirement for any further reply or evidence. The period in question is to be treated as spent on duty as provided under Rule 7.3 of the Punjab Civil Services Rules, Vol. Part 1.

4. On the other hand, learned State counsel would submit that though the petitioner has been reinstated in service, but since he remained out of service and remained in custody as well, he is not entitled to any pay and allowances for the period w.e.f. 27.12.2016 to 06.03.2019 in the light of “*no duty, no pay*” Rule.

5. I have heard learned counsel for the petitioner as well as learned State counsel and have gone through pleadings of the case.

6. The grievance of the petitioner is that despite having accepted the cancellation report in the FIR on the basis of which, he was dismissed from service, the period w.e.f. 27.12.2016 to 06.03.2019, when he was dismissed from service till reinstatement in service, has been wrongly treated as non-duty period.

7. Admittedly, the petitioner was dismissed from service vide order dated 27.12.2016 on the allegation that he was found involved in exchange of old currency notes. Recovery was also made in this regard. He was arrested on 25.12.2016 and remained in judicial custody upto 14.03.2017. Consequent to registration of FIR, he was dismissed from service by the Superintendent of Police, Sangrur, vide order dated 27.12.2016, by invoking Rule 16.1 of the Punjab Police Rules read with Article 311(2)(b) of the Constitution of India. He filed appeal which was accepted vide order dated 06.03.2019, setting aside the dismissal order. He was reinstated in service vide order dated 08.03.2019, however, the period from the date of his dismissal till reinstatement i.e. w.e.f. 27.12.2016 to 06.03.2019 was treated as non-duty period. Revision was also preferred but it was dismissed vide order dated

03.12.2019.

8. The service of the petitioner is governed under the Punjab Civil Service Rules, 1994. Under Rule 7.3 of the Punjab Civil Service Rules, Vol. I, Part I, it has been provided that in case, an employee is reinstated, he shall be given full pay and allowances to which he would have been entitled, had he not been dismissed. Rule 7.3 of the said Rules is reproduced as under:-

"7.3(1) When a Government employee, who has been dismissed, removed or compulsory retired, or suspended, is reinstated, or would have been reinstated but for his retirement on superannuation the authority competent to order re-instatement 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.

(2) Where the authority mentioned in sub rule (1) is of opinion that 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 would have been entitled, had he not been dismissed, removed, compulsorily retired or suspended, as the case may be.

(3) In other cases, the Government employee shall be given such proportion of such pay and allowances as such competent authority may prescribe: Provided that the payment of allowances under sub rule (2) of sub rule (3) shall be subject to

all other conditions under which such allowances are admissible.

Provided further that such proportion of such pay and allowances shall not be less than the subsistence and other allowances admissible under rule 7.2.

(4) In a case falling under sub-rule (2) the period of absence from duty shall be treated as a period spent on duty for all purposes.

(5) In a case falling under sub-rule (3) the period of absence from duty shall not be treated as a period spent on duty unless such competent authority specifically directs that it shall be so treated for any specified purpose :

Provided that if the Government employee so desires, such authority may direct that the period of absence from duty shall be converted into leave of any kind due and admissible to the Government employee.

Note.1 to 8 xxx xxx xxx

Note 9. Where a Government employee under suspension is acquitted by a Court of Law and the order reinstating him is passed some time after the date of acquittal, full pay and allowances have to be paid from the date of acquittal to the date of re-joining duty and period counted as duty for all purposes whereas for the period from the date of suspension/removal/dismissal to the date of acquittal he is to be allowed pay and allowances as directed by competent authority under sub rule (2) or sub rule (3) of this rule and the period treated as duty or non duty under sub rule (4) or sub rule (5) of this rule, as the case may be.”

9. A bare perusal of Rule 7.3(2) of the Punjab Civil Services Rules specifically provides that in the event of a government employee, who had been dismissed, removed or compulsorily retired or suspended, being

reinstated upon exoneration, shall be paid full pay and allowances to which he would have been entitled to, had he not been dismissed, removed or compulsorily retired or suspended. Sub Rule (4) of Rule 7.3 further provides for treating the entire period of suspension preceding dismissal, removal or compulsory retirement as a period spent on duty for all purposes

10. The petitioner herein was dismissed from service vide order dated 27.12.2016 and was then ordered to be reinstated on 06.03.2019. An employee, who stands compulsorily retired/dismissed from service on account of criminal proceedings initiated against him would be entitled to reinstatement if he stands acquitted, and would be entitled to all benefits for the period he was out of service. Reliance can be placed to judgment rendered in *Hukam Singh V. The State of Haryana and another 2001 (1) RSJ 201* where the Division Bench of this Court has held that when a person is acquitted of the criminal charge, he would be entitled to full salary and allowances between the period of suspension, dismissal and reinstatement, as well as on a judgment rendered in *Narinder Kumar Versus Dakshin Haryana Bijli Vitran Nigam Ltd. and others, 2016 (3) SCT 738 (P & H)*, where it has been held that once the petitioner has been exonerated, he would be entitled to all the benefits under Rule 7.3 of the Punjab Civil Services Rules.

11. In the instant case, the petitioner was exonerated of the charges levelled against him and accordingly, a cancellation report was prepared and accepted by the competent court. However, denial of salary benefits etc. for the period w.e.f. 27.12.2016 to 06.03.2019, is not justified in view of Rule 7.3 (3) of the Punjab Civil Services Rules, 1994.

12. Consequently, the instant writ petition is allowed and the impugned orders are set aside holding that the petitioner would be entitled to all the benefits as mentioned in Rule 7.3(3) of the Punjab Civil Services Rules, 1994 for the period he remained out of service.

(JAISHREE THAKUR)
JUDGE

04.11.2022

sanjeev

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No