

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

CWP-8790-2020

Reserved on 19.04.2022

Pronounced on: 06.05.2022

SATINDER SINGH

.... Petitioner

Versus

STATE OF PUNJAB AND ORS.

.... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Vikas Kuthiala, Advocate,
for the petitioner.

Ms. Ambika Bedi, AAG, Punjab.

JAISHREE THAKUR.J

1. The petitioner herein is seeking a writ in the nature of certiorari quashing the impugned order dated 09.01.2020 (Annexure P-8) whereby the period w.e.f. 03.03.2015 to 25.04.2019 has been treated as no work period and no pay/subsistence allowance has been paid for the said period.
2. In brief, the facts are that the petitioner joined as a Constable in the Punjab Police and in the year 2010 he was recruited in the team of SWAT of the State of Punjab police. However, an FIR No.16, dated 02.03.2015, under Sections 302, 201, 120-B, 406, 420 IPC, was registered against the petitioner at Police Station Mehtiana, District Hoshiarpur, and he was arrested on 03.03.2015. Due to his arrest, the respondent-department placed the petitioner under suspension vide order dated 04.03.2015 (Annexure P-2). Departmental enquiry was ordered but since the petitioner

was in jail and his presence was required in enquiry proceedings, the respondent-department vide its order dated 06.05.2015 (Annexure P-3) ordered that the enquiry, that was ordered to be initiated, be kept pending till his release from the jail. The petitioner was acquitted by the Court of Additional Sessions Judge, Hoshiarpur vide order dated 25.04.2019 (Annexure P-4). Thereafter, vide order dated 16.05.2019 (Annexure P-5), the respondent-department allowed the petitioner to rejoin his services in the Punjab police. The respondent department also obtained legal opinion as to whether the custody period of the petitioner w.e.f. 03.03.2015 to 25.04.2019 is to be treated as duty period or not and it was opined that the said period cannot be treated as duty period. Moreover, as the petitioner was acquitted by judgement dated 25.04.2019, he was supposed to join duty immediately thereafter and join departmental proceedings but joined only on 06.05.2019 and thus remained absent from duty for 10 days. This period has now been treated as period spent on duty. Aggrieved against the order dated 09.01.2020 whereby the period from 03.03.2015 to 25.04.2019 has been treated as no work period for the purposes of salary, the petitioner has filed a departmental appeal which is pending consideration.

3. Mr. Vivek Kuthalia, learned counsel appearing on behalf of the petitioner herein would argue that treating his suspension period as no work period is not sustainable as no notice or opportunity of hearing was afforded to him. He would further argue that once the charge-sheet and the enquiry proceedings have been dropped arising out of the FIR (Annexure P-1) whereby he was acquitted of the charges levelled against him, his suspension period is to be treated as period spent on duty and he is entitled to be paid all

the service benefits. He would further argue that the petitioner could not join his duty for 10 days and the delay explained by him is accepted by the Enquiry Officer and accordingly exonerated him from the said charge. This period too has been treated as non-duty period which again is not sustainable. Counsel for the petitioner relies upon judgments rendered in ***Raj Narain Versus Union of India and others-2019(2) SCT 582; Bhim Singh Versus State of Haryana and others-2012(3) SCT 434; Shiv Kumar Goel Versus State of Haryana and another-2007(1) SCT 739*** and ***Shashi Kumar Versus Uttri Haryana Bijli Vitran Nigam and another-2005(1) SCT 576***.

4. On the other hand, learned counsel appearing on behalf of the respondent-State would argue that since the petitioner did not put in any work w.e.f. 03.03.2015 to 25.04.2019, the same has rightly been treated a non-duty period. It is argued that in ***Reserve Bank of India Versus Bhopal Singh-1994 (1) SCT 505***, the Supreme Court has held that in case an employee is absent for reasons of his own involvement and does not discharge duties, the bank cannot be saddled with the liability to pay his salary and allowances for that period. Similar view has been taken in ***Ranchhodji Chaturji Thakore Versus The Superintendent Engineer, Gujarat Electricity Board-1997 (1) SLR 14***.

5. I have heard learned counsel for the petitioner as well as the learned State counsel and have gone through the paper book.

6. A perusal of the impugned order 09.01.2020 would reflect that no notice had been issued to the petitioner before the imposition of penalty. The Commandant considered the inquiry report and proceeded to hold that the period when the petitioner remained in custody from 03.03.2015 to

25.04.2019 is to be treated as period of suspension and his absence from duty for 10 days is to be included in his duty period. The appeal is pending consideration.

7. It is an admitted position that no notice was issued to the petitioner before passing of the impugned order. Even the written statement does not reflect notice having been issued as envisaged under Rule 7.5 of the Punjab Police Rules, 1934. Reference may be made to the judgement rendered in ***B.D. Gupta Versus State of Haryana-AIR 1972 (SC) 2472*** subsequently followed in ***B. D. Singla Versus Chief Engineer 1991 (2) SCT 319*** and ***Suraj Bhan Versus the Uttar Haryana Bijli Vitran Nigam Ltd and Others, CWP No 17112 of 2004.***

8. Consequently, the instant writ petition is allowed. The impugned order is set aside insofar as the period from 03.03.2015 to 25.04.2019 has been ordered to be treated as period of suspension with no pay. It is left open to the respondents to pass any order afresh in accordance with law after issuance of notice under Rule 7.5 of the Punjab Police Rules, 1934. Let the needful be done expeditiously preferably within a period of six months on receipt of certified copy of this order.

(JAISHREE THAKUR)
JUDGE

06.05.2022

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