

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

CWP No. 12031 of 2019 (O&M)

Reserved on September 1, 2022

Date of Pronouncement: September 19, 2022

EASI Mohd. Alam @ Alam

...petitioner

Versus

State of Haryana and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Mohnish Sharma, Advocate
for the petitioner.

Ms. Upasana Dhawan, AAG, Haryana.

JAISHREE THAKUR, J.

1. The present writ petition has been filed by the petitioner under Article 226 of the Constitution of India, with a prayer to issue a writ in the nature of Certiorari for quashing the order dated 20.11.2017 (Annexure P-2) and order dated 01.01.2018 (Annexure P-3) to the extent of denying back wages passed by respondent No. 3, vide which the claim of the petitioner for back wages and other service allowances for the period from 02.08.2012 to 20.11.2017 was rejected in spite of the fact that the petitioner has already been acquitted from the charges in FIR No. 476 of 16.11.2002 under Sections 223, 224 IPC vide judgment dated 09.06.2017 (Annexure P-1) passed by this Court in Criminal Revision No. 1309 of 2012.

2. Brief facts of the case are that petitioner joined as a regular employee on the post of Police Constable on 08.12.1998 in Haryana Police. He was promoted as Head Constable and thereafter, EASI in Haryana Police

Department. Sub Inspector Narain Singh filed a complaint against the petitioner alleging that Constable Krishan Kumar, Constable Ashok Kumar, Murli Krishan, Zonal Manager of XPS Company, Mahipalpur Delhi and Pratap Chand Jha, Area Manager alongwith accused Tahir, who was already in custody in case FIR No. 427 dated 28.10.2002 under Sections 395, 397, 364, 342, 506, 412 of IPC and Section 25 of Arms Act, were going to Delhi in the search of co-accused Jarnail. When they reached Badarpur Border, accused Tahir desired to attend the call of nature, therefore, the vehicle was stopped and accused Tahir was permitted to attend the call of nature in the custody of present petitioner, but the accused succeeded in escaping from police custody due to the negligence of the petitioner, upon which an FIR No. 576 dated 16.11.2002 under Sections 223 and 224 IPC was registered at Police Station Sarai Khawaja, Faridabad against the petitioner.

3. The Trial Court vide its order dated 01.10.2011 and order of sentence dated 05.10.2011 convicted the petitioner and sentenced him to undergo two years simple imprisonment for the commission of offence punishable under Section 223 of IPC. The petitioner preferred an appeal against the above said order before the learned Additional District and Sessions Judge, Faridabad, who also dismissed the appeal vide order dated 06.04.2012. Thereafter, the petitioner was dismissed from service vide order No. 25004-13 dated **02.08.2012** under Rule 16.2 (2) PPR as he was convicted and sentenced to undergo two years simple imprisonment in above mentioned FIR. Aggrieved against the order dated 06.04.2012, whereby his appeal stood dismissed, the petitioner filed a Criminal Revision No. 1309 of 2012 titled as *Alam son of Harun v. State of Haryana* before this Court. This Court vide order dated

09.06.2017 allowed the revision petition and conviction of the petitioner for the offence punishable under Section 223 of IPC as well as order of sentence were set aside.

4. Thereafter, the petitioner submitted a representation in the office of Deputy Commissioner of Police, Faridabad i. e. respondent No. 4 for his reinstatement in service with all consequential benefits. In pursuance of the order dated 09.06.2017 passed by this Court and keeping in view the provision contained in Rule 16.2 (2) Punjab Police Rules, 1934 ('PPR, 1934' for short) the petitioner was reinstated in service vide order dated 20.11.2017. However, his dismissal period from **02.08.2012 to 20.11.2017** was treated as *dies-non* on the principle of “*No work-No pay*”. Therefore, the petitioner was reinstated in service but was not paid back wages from 02.08.2012 to 20.11.2017. Aggrieved against that action, the petitioner filed an appeal against the punishment of “*No work-No pay*” before the Commissioner of Police, Faridabad, who vide his office order dated 02.01.2018 rejected the appeal mentioning that as per Rule 16.29 of the PPR, 1934 (as applicable for Haryana), no appeal lies against the order of 'No work-No pay'. Aggrieved against the said order, the petitioner filed a revision petition before the Director General of Police, Haryana, who vide his order dated 04.10.2018 dismissed the revision Petition. However, on the other hand, as claimed by the petitioner, the said revision petition is still pending consideration.

5. Mr. Mohnish Sharma, learned counsel on behalf of the petitioner would submit that before passing the order of punishment dated 02.08.2012, vide which the petitioner was dismissed from service due to the registration of an FIR against him and judgment of conviction and sentence passed by the

trial court, neither any show cause notice was served upon the petitioner nor any enquiry was conducted and, therefore, the petitioner cannot be deprived from the back wages with all consequential service benefits, as he was acquitted by this Court in Criminal Revision No. 1309 of 2012. Further, he would submit that as per Rule 16.3 of the PPR, 1934, after the judicial acquittal of a police officer he is entitled for benefits as per Rule 7.3 of Punjab Civil Service Rules, Vol. 1, Part I. Learned counsel for the petitioner would also rely on the various judgments passed by the Apex Court as well as this Court, in which it has been held that an employee cannot be deprived from the benefits to back wages after his acquittal from the criminal cases, namely **Jaipur Vidyut Vitran Nigam Ltd & Others v. Nathu Ram, 2010 (1) SCC 428, General Manager Operation Circle, Dakshin Haryana Bijli Vitran Nigam Narnaul & Others v. Mathura Dass Gupta, 2012 (4) RSJ 306, Satyapal @ Satpal v. State of Haryana and Others, 2018 (3) SCT 109, Commissioner, Karnataka Housing Board v. C. Muddaiah, (2007) 7 SCC 689, Raghbir Singh versus State of Punjab and others, 2021(1) S.C.T. 402, Sucha Singh vs. State Of Punjab 2013(4) S.C.T. 832 ;, Satish Kumar Goel vs. State of Haryana CWP No 10487 of 2104 decided on 14.1.2016 ,Gen Manager Operation Circle, DHBVNL, Narnaul and others v. Mathura Dass Gupta, 2012 (4) S.C.T 7 .**

6. Per contra Ms. Upasana Dhawan, learned counsel for the respondents—State would submit that as per provision contained in Rule 16.2 (2) PPR, 1934, any police official/officer convicted by the criminal court for more than one month, should not be kept in service and be dismissed/removed from the department. He would further rely on the Standing Order No.

114/2006 circulated by DGP, Haryana vide order dated 20.02.2006, which provides that -

“ If a Govt. Servant, be it a Police Officer, is convicted by a criminal court, he can be dismissed/removed from service on the ground of his conduct which led to his conviction. Such a step can be taken without holding an enquiry and it is not only in the cases of offences involving moral turpitude that such a step is warranted, but there are many other aspects which need to be looked into...”

Therefore, the respondent State would submit that the competent punishing authority can dismiss police personnel under Rule 16.2 (2) PPR, 1934, who have been convicted by the courts without waiting for the final decision of their appeals/revisions.

7. I have heard the counsel for the parties and with their assistance have gone through the pleading of the writ petition and the case law cited.

8. The petitioner was dismissed from service on account of being convicted in proceeding initiated against him by the department under Section 233 IPC that he was instrumental in allowing an accused to escape police custody while he was attending the call of the nature. The conviction was upheld in appeal but set aside by this Court, vide judgment rendered in **CRR No. 1309 of 2012 titled as Alam son of Harun v. State of Haryana dated 9.6.2017**. He was reinstated in service and would now claim the benefits of salary and consequential benefits denied to him during the period he was out of service. Reliance is placed on Rule 7.3 (2) of the Punjab Civil Services Rules, which is reproduced hereunder:-

“7.3(2) Where the authority competent to order reinstatement is of opinion that the Government employee, who had been dismissed,

removed or compulsorily retired, has been fully exonerated, the Government employee shall, subject to the provisions of sub-rule (6), be paid his full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended, prior to such dismissal, removal or compulsory retirement, as the case may be:

Provided that where such authority is of opinion that the termination of the proceedings instituted against the Government employee had been delayed due to reasons directly attributable to the Government employee it may, after giving him an opportunity to make representation and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government employee shall, subject to the provisions of sub-rule (7), be paid for the period of such delay only such amount (not being the whole) of pay and allowances, as it may determine.”

A bare reading of the provisions would clearly reflect that once a government employee, who has been dismissed, removed, compulsorily retired or suspended, if reinstated upon having been fully exonerated, would be entitled to full salary and allowances for the period i.e. the date of dismissal till the date of reinstatement.

9. In the facts of the present case, once the order of dismissal was quashed by this Court and the petitioner was reinstated in service, there is no justification or valid reasoning to deny him the service benefits for the period the petitioner remained out of service, by applying the principle of 'No Work No Pay', particular when it is not the case of the respondents that the petitioner ever refused to perform his duty.

10. Now coming to the legal position, insofar as application of the

principle of 'No Work No Pay' is concerned, this Court in **CWP-17952 of 2012** tilted as '**Kailash Chander Sharma Vs. State of Haryana and another**', **decided on 13.10.2014** held that where the departmental proceedings were dropped by recording the fact that the charges were not proved, the denial of the consequential benefits of actual arrears of the salary for the period the person remained out on the basis of 'no work no pay' is arbitrary and cannot be sustained. The relevant paragraphs of the judgment, wherein, the law on the subject has been noticed while giving finding, are as under: -

“7. The applicability of the rule of 'no work no pay' in a situation where departmental proceedings had been initiated against an employee, sealed cover procedure having been resorted to and such employee after exoneration having been promoted came up for consideration before Hon'ble Supreme Court of India in Union of India v. K.V.Jankiraman, 1991(3) SCT 317 and it was held as under:

“The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him.”

It was further held that:

“.....We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been

promoted but for the disciplinary/criminal proceedings.”

8. *The Hon'ble Supreme Court in State of Kerala and others Vs. E.K.Bhaskaran Pillai, (2007) 6 Supreme Court Cases 524 has held that principle of 'no work no pay' cannot be accepted as a rule of thumb and where Administration has wrongly denied his due, he should be given full benefits. The Hon'ble Supreme Court in E.K.Bhaskaran Pillai's case (supra) has laid down as under:-*

“So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered. Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to grant full back wages or 50 per cent of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the matter when the person is superseded and he has challenged the same before court or tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, in that case the court may grant sometimes full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors. However, it is very difficult to set down any hard-and-fast rule. The principle “no work no pay” cannot be accepted as a rule of thumb. There are exceptions where courts have granted monetary benefits also.”

9. *The Hon'ble Supreme Court in the matter of The*

Commissioner, Karnataka Housing Board v. C.Muddaiah reported as 2007(4) SCT 452 observed as under:

“The matter can be looked at from another angle also. It is true that while granting a relief in favour of a party, the Court must consider the relevant provisions of law and issue appropriate directions keeping in view such provisions. There may, however, be cases where on the facts and in the circumstances, the Court may issue necessary directions in the larger interest of justice keeping in view the principles of justice, equity and good conscience. Take a case, where ex facie injustice has been meted out to an employee. In spite of the fact that he is entitled to certain benefits, they had not been given to him. His representations have been illegally and unjustifiably turned down. He finally approaches a Court of Law. The Court is convinced that gross injustice has been done to him and he was wrongfully, unfairly and with oblique motive deprived of those benefits. The Court, in the circumstances, directs the Authority to extend all benefits which he would have obtained had he not been illegally deprived of them. Is it open to the Authorities in such case to urge that as he has not worked (but held to be illegally deprived), he would not be granted the benefits? Upholding of such plea would amount to allowing a party to take undue advantage of his own wrong. It would perpetrate injustice rather than doing justice to the person wronged. We are conscious and mindful that even in absence of statutory provision, normal rule is 'no work no pay'. In appropriate cases, however, a Court of Law may, nay must, take into account all the facts in their entirety and pass an appropriate order in consonance with law. The Court, in a given case, may hold that the

person was willing to work but was illegally and unlawfully not allowed to do so. The Court may, in the circumstances, direct the Authority to grant him all benefits considering 'as if he had worked'. It, therefore, cannot be contended as an absolute proposition of law that no direction of payment of consequential benefits can be granted by a Court of Law and if such directions are issued by a Court, the Authority can ignore them even if they had been finally confirmed by the Apex Court of the country (as has been done in the present case). The bald contention of the appellant – Board, therefore, has no substance and must be rejected.”

10. Adverting back to the facts of the present case, it has gone uncontroverted that departmental proceedings were initiated against the petitioner by issuance of a charge sheet in the year 1997. For no fault of the employee i.e. the present petitioner, such proceedings were kept pending and not finalized for a period of 13 long years. Finally, vide order dated 24.6.2010, Annexure P3, a categoric finding came to be recorded that the charge levelled against him is not established and as such, the disciplinary case was dropped. Relevant finding recorded in the order dated 24.6.2010 passed by the General Manager, Irrigation Department, Haryana reads in the following terms:

“.....On careful examination of the record, it does not establish at this stage that there was any back date entry any where in the Measurement Book. Therefore, the explanation given by the Sub Divisional Clerk seems to be tenable. This case was also considered at the Government level and on consideration Government decided to drop the disciplinary cases against the officers involved in the case. Record also reveals that the Junior Engineer who was also involved in this matter could not be charge sheeted

because of his death. In such circumstances, when the officers who actually carried out the work and made entries and with whom the onus of the charges lies, have been exonerated after a thorough enquiry it will not be justifiable to punish a junior level staffer who just checked the entry arithmetically.

Keeping in view all the facts and circumstances of this case the defence stated by the Sub Divisional Clerk during the course of hearing, it is concluded that the charge against him is not established. It is therefore, decided to drop the disciplinary case against Shri Kailash Chander, Sub Divisional Clerk. Ordered accordingly.

*Sd/-
(Tilak Raj)
General Manager,Irrigation
Department, Haryana,
Panchkula.”*

11. Under such circumstances and by applying the dictum laid down by the Hon'ble Supreme Court in State of Haryana v. OP Gupta, State of Kerala and others v. E.K.Bhaskaran Pillai and The Commissioner, Karnataka Housing Board v. C.Muddaiah (supra), the petitioner cannot be denied the consequential benefit of actual arrears/salary for the period in question. It is not the case where the petitioner had declined to work on the promoted post, rather he was denied the opportunity to occupy the promotional posts on account of pendency of departmental proceedings and which were also dragged and delayed for no fault of his. The principle of 'no work no pay' would have no applicability in the peculiar facts and circumstances of the present case.”

11. From the facts and the legal position discussed above, it is clear that the petitioner had been consistently pursuing his legal remedy; he never

refused to perform his duties and thus there is no fault attributable to the petitioner for the protracted litigation. He was well within his right to pursue his legal remedy. Therefore, the action on the part of the respondents in declining the service benefits including the arrears for the period the petitioner remained out of service, is not justifiable and consequently, the instant writ petition is allowed and the impugned orders are set aside. It is directed that the petitioner will be treated in service uninterruptedly for all intents and purposes and the period for which he remained out of service will be treated as a duty period for all intents and purposes including for the grant of increments and fixation of pay.

12. Let the said exercise be done by the respondents within a period of three months from the date of receipt of copy of this order and the arrears for which the petitioner is found entitled for be released to him within a period next three months, failing which such sum shall carry an interest of 6% per annum.

September 19, 2022

(JAISHREE THAKUR)

prem

JUDGE

Whether speaking/reasoned :

Yes

Whether Reportable :

No