

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.10047 of 2016
Reserved on: 21.10.2022
Date of decision: 17.11.2022

BHUPINDER PAL SINGH

...Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Lakhwinder Singh Mann, Advocate
for the petitioner.

Mr. Sehajbir Singh Aulakh, AAG, Punjab.

JAISHREE THAKUR, J.

1. The instant writ petition has been filed under Articles 226/227 of the Constitution of India, seeking issuance of a writ in the nature of certiorari for quashing orders dated 18.12.2015 (Annexure P-5), dated 01.12.2012 (Annexure P-4) and dated 12.11.2012 (Annexure P-2) to the extent whereby dismissal period after the conviction in the criminal case has been treated as non-duty period in service with effect from 06.10.2007 to 12.11.2012, in spite of the fact that the petitioner herein has already been acquitted from the charges in FIR No.0025 dated 03.05.2001, under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988 registered at Police Station Vigilance Bureau vide

judgment dated 12.12.2011 (Annexure P-1) passed by this Court in Criminal Appeal No.451-SB of 2004.

2. In brief, the facts are that the petitioner joined as a permanent employee in Punjab Police as Constable on 11.12.1990. In the year 1995, the petitioner was selected for the promotion of Head Constable and his name was entered in C-II list. An FIR No.0025 dated 03.05.2001 was registered against the petitioner under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988 at Police Station Vigilance Bureau. On 18.03.2004, the petitioner was convicted and sentenced to undergo imprisonment for a period of five years with a fine of Rs.1000/- with default clause. On the basis of conviction, petitioner was dismissed from service vide order dated 16.03.2007 passed by Senior Superintendent of Police, Kapurthala. Against the order of conviction, the petitioner herein filed Criminal Appeal No.451-SB of 2004 in this Court, which appeal was allowed vide order dated 12.12.2011 (Annexure P-1) and the petitioner was acquitted of the charges framed against him by the trial Court.

3. Thereafter, the petitioner was ordered to be reinstated back in service vide order dated 12.11.2012 (Annexure P-2) passed by respondent No.3-Senior Superintendent of Police, Kapurthala. The dismissal period from 16.03.2007 to 05.10.2007 has been considered as earned leave whereas from 06.10.2007 till the order of reinstatement i.e. 12.11.2012, has been considered as non-duty period, without pay. The petitioner approached the respondents number of times regarding his pay for the aforesaid period and also filed representations to the respondents for giving all the benefits to him after being acquitted by this Court, but to no avail. When the respondents did not take any action on the representations of the petitioner, the petitioner herein filed CWP

No.11517 of 2015 seeking a direction to be issued to release the salary of the petitioner for the period in which the petitioner remained dismissed from service till his reinstatement along with other benefits. This Court vide order dated 22.07.2015 directed respondent No.3 to consider and decide the claim of the petitioner as set out in his representations, within a period of three months in accordance with law. In compliance of order dated 22.07.2015, respondent No.3 passed order dated 18.12.2015 (Annexure P-5). Aggrieved against the impugned orders, the instant writ petition has been filed.

4. Mr. Lakhwinder Singh Mann, learned counsel for the petitioner herein would contend that the petitioner was honorably acquitted by this Court vide order dated 12.12.2011 passed in Criminal Appeal No.451-SB of 2004. He would submit that after the conviction order as passed by the trial Court is set aside and petitioner being acquitted of the charges framed against him, he is entitled to be reinstated in service with all consequential benefits. He would submit that as per Rule 16.3 of the Punjab Police Rules, 1934, after the judicial acquittal of the police officer, he is entitled for benefits as per Rule 7.3 of Punjab Civil Services Rules, Vol. 1, Part 1. He would also rely upon various judgments rendered by the Apex Court as well as by this Court, wherein it has been held that an employee cannot be deprived from the benefits to back wages after his acquittal from the criminal cases, namely **Commissioner, Karnataka Housing Board versus C. Muddaiah, (2007) 4 SCT 452, Raghbir Singh versus State of Punjab and others, 2021(1) S.C.T. 402, Sucha Singh versus State of Punjab and others, CWP No.22023 of 2012** decided on **11.09.2013, Satish Kumar Goel versus State of Haryana, CWP No. 10487 of 2104** decided on **14.01.2016, Gen Manager Operation Circle, DHBVNL, Narnaul and others**

versus Mathura Dass Gupta, 2012 (4) S.C.T 7, EASI Mohd. Alam @ Alam versus State of Haryana and others, CWP No.12031 of 2019, decided on *19.09.2022* and *Balbir Kumar versus State of Punjab and another, CWP No.22633 of 2012,* decided on *22.09.2015.*

5. Mr. Sehajbir Singh Aulakh, AAG, Punjab, learned State counsel would contend that the petitioner herein was acquitted by this Court vide order dated 12.12.2011 by giving him the benefit of doubt instead of honorably acquitting him. He would submit that as per provision contained in Rule 16.2(2) of the Punjab Police Rules, 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.

6. I have heard learned counsel for the parties and have also perused the pleadings of the case as well as case laws cited.

7. The short question that arises for consideration is as to whether the petitioner herein could be denied his pay and allowances for the period in question i.e. from the date of his dismissal till the date of his reinstatement in service?

8. In this regard, it would be necessary to advert to Rule 7.3 of the Punjab Civil Services Rules, Vol. I, Part I, Chapter VII, which reads as under:-

"7.3. (1) When a Government employee, who has been dismissed, removed or compulsorily retired, is reinstated as a result of appeal, revision or review, or would have been so reinstated but for his retirement on superannuation while under suspension or not, the authority competent to order reinstatement 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 including the period of suspension, preceding his dismissal, removal or compulsory retirement, 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 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.

(3) In a case falling under sub-rule (2), the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, shall be treated as a period spent on duty for all purposes.

(4) In cases other than those covered by sub-rule (2) including cases where the order of dismissal, removal or compulsory retirement from service is set aside by the authority exercising powers of appeal, revision or review solely on the ground of non compliance with the requirements of clause (2) of Article 311 of the Constitution and no further inquiry is proposed to be held, the Government employee shall, subject to the provisions of sub-rules (6) and (7), be paid such amount (not being the whole) of 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, as the competent authority may determine, after giving notice to the Government employee of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period as may be specified in the notice.

Provided that any payment under this sub-rule to a Government employee other than a Government employee who is governed by the provisions of the payment of Wages Act, 1936 (Act 4 of 1936) shall be restricted to a period of three years immediately preceding the date on which order for re-instatement of such Government employee are passed by the authority exercising the powers of appeal, revision or review, or immediately preceding the date of retirement on superannuation of such Government employee, as the case may be.

xxxx xxxx xxxx..."

9. A bare reading of the above provision would make it clear that in case a Government employee, who has been dismissed, removed, compulsorily retired or suspended, is reinstated upon having been fully exonerated, then he shall be given full pay and allowances to which he would have been entitled to

had he not been dismissed, removed, compulsorily retired or suspended, as the case may be.

10. An employee, who stands 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 made to judgments rendered in **Hukam Singh versus 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 and 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. In *Mathura Dass Gupta's case (supra)*, this Court was considering a case of an employee, who was acquitted of charges levelled against him by the Appellate Court, but was denied salary and allowances on the ground of “No Work No Pay”. This Court held that it is not fair and the rule of “No Work No Pay” is not applicable to cases where employee although willing to work is kept away from work by the authorities for no fault of his. Similarly, it has been held in **Union of India versus K.V. Jankiraman etc., 1991(3) S.C.T 317: AIR 1991 Supreme Court 2010**, that when an employee is completely exonerated in criminal/disciplinary proceedings and is not visited with the penalty even of censure, indicating thereby that he was not blameworthy in the least, he should not be deprived of any benefits including the salary of the promotional post. The normal rule of

"No Work No Pay" is not applicable to such cases where the employee, although willing to work is kept away from work by the authorities for no fault of his. In *Sucha Singh's case (supra)*, the Coordinate Bench of this Court again allowed the release of full salary for the period of dismissal till reinstatement after interpreting Rule 7.3 of the Punjab Civil Services Rules.

11. The petitioner was dismissed from service only on account of his conviction, and was reinstated in service after the conviction order was set aside. No departmental proceedings were initiated against him. The judgments as relied upon herein above are fully applicable to the facts of the present case.

12. Consequently, the instant writ petition is allowed and orders dated 18.12.2015 (Annexure P-5), dated 01.12.2012 (Annexure P-4) and dated 12.11.2012 (Annexure P-2) are set aside. The petitioner is held entitled for the relief as claimed in the petition with regard to the disputed period to be treated as duty period with all consequential benefits. Let the arrears of salary etc. for the said period be released to the petitioner herein, within a period of three months from the date of receipt of certified copy of this order, failing which, the amount due shall carry interest at the rate of 6% per annum till payment.

17.11.2022
Chetan Thakur

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No