

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.18609 of 2013 (O&M)

Reserved on: 20.12.2022

Date of Decision: 22.12.2022

Shishpal

...Petitioner

Vs

State of Punjab and others

...Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. K.G. Chaudhary, Advocate and
Ms. Sakshi Singh, Advocate
for the petitioner.

Mr. Sehajbir Singh Aulakh, AAG, Punjab.

-.-

JAISHREE THAKUR J.

1. The present writ petition has been filed seeking issuance of a writ in the nature of certiorari for quashing order dated 25.04.2012 passed by respondent No.3 to the extent that period from 16.11.2009 to 07.12.2009 during which he remained in custody; period during which he had remained under suspension and the period from the date of dismissal i.e. 02.07.2020 to the date on which the petitioner reported for duty, has been treated as non-duty period.

2. In brief, the facts are that an FIR No.294 dated 16.11.2009 under Section 15 of the NDPS Act had been registered against the petitioner at Police Station Sadar, Jalandhar when he was on deputation to CID Unit, Jalandhar Cantt., his parent department being 6th IRB Ladda Kothi, Sangrur. Owing to lodging of aforesaid FIR, petitioner remained in custody from 16.11.2009 to 05.12.2009 and reported for duty on 07.12.2009. He was placed under suspension and a departmental enquiry was ordered against him. The petitioner was reinstated in service on revocation of his suspension vide order dated 17.06.2010 passed by respondent No.4, however, on conclusion of departmental enquiry, he was dismissed from service vide order dated 02.07.2010 passed by respondent No.5.

Appeal and revision filed by the petitioner against order dated 02.07.2010 also stood dismissed by respondent No.4-DIG/Adm IRB, Patiala and IGP, IRB Patiala vide orders dated 16.11.2010 and 19.04.2011 respectively. Thereafter, petitioner filed a petition before respondent No.3-Additional Director General of Police, PAP, Jalandhar Cantt. under Rule 16.28 of the Punjab Police Rules, 1934 wherein while considering the fact that the petitioner herein after a thorough inquiry conducted by Additional Deputy Commissioner of Police-1, Jalandhar was found innocent and kept in column No.2 as well as the legal opinion of District Attorney that the petitioner had been declared innocent in the inquiry, therefore, no cause of action survived for initiating departmental action against the petitioner, respondent No.3 vide order dated 25.04.2012 set aside the impugned dismissal order and petitioner was ordered to be reinstated in service. However, while passing the aforesaid order by respondent No.3, period under which the petitioner remained in custody from 16.11.2009 to 07.12.2009, period during which he had remained under suspension and the period from the date of dismissal i.e. 02.07.2020 to the date on which the petitioner reported for duty, has been treated as non-duty period, which is wrong and contrary to the settled principle of law. Aggrieved against order dated 25.04.2012 to the above extent, the petitioner approached this Court by way of instant writ petition.

3. Learned counsel appearing for the petitioner would argue that once the petitioner had been found innocent in the inquiry conducted and kept in column No.2 and it was only the co-accused, who had been convicted in FIR No.294 dated 16.11.2009 under Section 15 of the NDPS Act, period of his custody from 16.11.2009 to 07.12.2009, period during which he remained under suspension and period 02.07.2020 till he reported for duty, ought to have been treated as period spent on duty. In support of his contention, learned counsel appearing for the petitioner would rely upon the judgment passed by a Coordinate Bench of

this Court in *Sucha Singh Vs. State of Punjab and others* 2014 (2) RSJ 370 wherein it has been held that petitioner, who was dismissed from service on the basis of conviction in criminal case, would be entitled to full salary and allowance for the period he remained out of service. Similarly, in judgment passed by another Coordinate Bench in *Dhani Ram Vs. UHVBVN and another* 2015 (2) RSJ 488 it has been held that upon setting aside judgment of conviction in appeal, the petitioner therein would be entitled for reinstatement in service with all consequential benefits and intervening period of dismissal and reinstatement be considered as period spent on duty. A Division Bench of this Court in *Poonam Rani Vs. Uttar Haryana Bijli Vitran Nigam Ltd.* 2008 (2) RSJ 205 also held that once petitioner is acquitted in criminal prosecution and exonerated in departmental enquiry, she is entitled to full pay during period of suspension and entitled to reinstatement in service with all consequential benefits. Reliance has also been placed upon a judgment passed by this Court itself in CWP No.6336 of 2016 titled as *Gurbax Singh Vs. State of Punjab and others* decided on 19.04.2022 holding that an employee, who had been dismissed from service on account of criminal charges and subsequently acquitted, was entitled for full pay and allowances, while referring to a judgment passed by the Division Bench in LPA No.1580 of 2011 on 10.02.2012 titled as *General Manager Operation Circle, Dakshin Haryana Bijli Vitran Nigam, Narnaul and others Vs. Mathura Dass Gupta* wherein it was held that the period for which an employee was forced to remain out of service shall be treated as duty period.

4. Per contra, learned counsel appearing for the respondent-State would argue that co-accused Tarsem Lal was convicted in the FIR in question, who was very well known to the petitioner being resident of the same village. Despite knowing the antecedents of said Tarsem Lal, he gave lift to him on his two wheeler and therefore, conduct of the petitioner being a member of disciplined

force was uncalled for. It was further argued that the petitioner is not entitled to be treated on duty for the period he remained out of service. In support of his argument, he relied upon the judgment passed by the Hon'ble Supreme Court in *Baldev Singh Vs. Union of India and others (2005) 8 SCC 747* wherein the Hon'ble Supreme Court held that the petitioner is not entitled to any salary for the period he remained out of service. Merely because there has been an acquittal, does not automatically entitle him to get salary for the concerned period nor said period will be counted towards pension. Further reliance has been placed upon judgment passed by the Hon'ble Supreme Court in *Banshi Dhar Vs. State of Rajasthan and another (2007) 1 SCC 324* holding that back wages need not be granted automatically although the order of termination passed against the concerned workman was found to be invalid. Further reliance has also been placed upon judgment rendered by the Hon'ble Supreme Court in *Union of India and others Vs. Jaipal Singh (2004) 1 SCC 121*; *Krishankant Raghunath Bibhavnekar Vs. State of Maharashtra, (1997) 3 SCC 636* and judgment passed by a Coordinate Bench of this Court in *Raj Kumar Vs. State of Punjab and others 2017 (1) SCT 479*.

5. I have heard learned counsel for the parties and with their assistance have gone through the pleadings of the case as well as the case laws cited.

6. The facts are not in dispute. The only issue to be determined by this Court is whether the petitioner would be entitled to the period of his custody from 16.11.2009 to 07.12.2009, period during which he had remained under suspension and the period from the date of dismissal i.e. 02.07.2020 to the date on which the petitioner reported for duty, to be treated as period spent on duty.

7. The petitioner remained out of service for the aforesaid period only on the basis of lodging of FIR No.294 dated 16.11.2009 under Section 15 of the NDPS Act against him and one Tarsem Lal. Tarsem Lal was convicted by the trial

Court, however, the petitioner was found innocent in the inquiry conducted by the respondents and he was kept in column No.2, which factum was duly noticed by respondent No.3 while setting aside the dismissal order of the petitioner. Therefore, once the petitioner was reinstated in service, there is no justification to deny him the service benefits for the period he remained out of service.

8. At this stage, it will be appropriate 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 re- instatement 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 noncompliance 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 reinstatement 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”

A bare reading of the provision would make it clear that once a Government employee who has been dismissed, removed, compulsorily retired or suspended, is re-instated 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.

9. Judgment relied upon by the counsel appearing for the respondent-State in *Baldev Singh's case* (supra) would not be applicable, as in that case the official did not report for duty despite being issued as many as nine letters/reminders to him and sending a person to his home. It is in that eventuality that it was observed by the Hon'ble Supreme Court that an acquittal does not automatically entitle him to get salary for the concerned period. In the case of *Banshi Dhar* (supra), the entire period during which the official remained under suspension was considered for calculating his pensionary benefits and continuity of service had not been denied to him, however, back wages were denied owing to the fact that during the period from 13.07.1976 till the time he attained age of superannuation i.e. in the year 1998, he did not work. Moreover, since the petitioner therein had already attained the age of superannuation, departmental enquiry could not be conducted. Therefore, in the peculiar facts and circumstances, though his service was counted for pensionary benefits, back wages were denied to him. Judgment rendered by the Hon'ble Supreme Court in *Krishankant Raghunath Bibhavnekar* (supra) is also not applicable, as in that case Rule 72(3) of the Maharashtra Civil Services (Joining Time, Foreign Services and Payment during Suspension, Dismissal and Removal) Rules, 1991 was taken into consideration while denying back wages, pensionary benefits and other consequential benefits. The judgments relied upon in *Jaipal Singh's case* (supra) and *Raj Kumar's case* (supra) are also distinguishable on the fact that in those cases termination was made on account of the FIR/complaint made by a private person and the employer was not responsible for the conviction.

10. In so far as application of the principle of 'No Work No Pay' is concerned, this Court in CWP-17952 of 2012 titled 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 categorical 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. This Court itself while dealing with similar issue in CWP No.6336 of 2016 titled as *Gurbax Singh Vs. State of Punjab and others* decided on 19.04.2022 and CWP No.1756 of 2019 titled as *Constable Major Singh Vs. State of Punjab and others* decided on 19.09.2022, has held that an employee, who had been

dismissed from service on account of criminal charges and subsequently acquitted, was entitled for reinstatement besides full pay and allowances.

12. In view of the finding rendered above, the writ petition stands allowed and the impugned order dated 25.04.2012 is set aside to the extent that period from 16.11.2009 to 07.12.2009 during which the petitioner remained under custody, period during which he had remained under suspension and the period from the date of dismissal i.e. 02.07.2020 to the date on which the petitioner reported for duty, shall be treated as period spent on duty for all intents and purposes. Consequently, the respondents are directed to calculate and release salary and allowances as admissible to the petitioner for the aforesaid period within a period of three months from the date of receipt of certified copy of this order.

(JAISHREE THAKUR)
JUDGE

December 22, 2022
Pankaj*

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No