

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(216)

CWP No. 17760 of 2017
Date of Decision : 14.10.2022

Suraj Bhan

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. R.K. Malik, Senior Advocate with
Mr. Sachmeet Singh Randhawa, Advocate for the petitioner.

Mr. Rajesh Gaur, Addl. A.G., Haryana.

Harsimran Singh Sethi J. (Oral)

In the present petition, the prayer of the petitioner is for setting-aside the order dated 15/02/2017 (Annexure P-8) by which, the period for suspension from 18.06.2004 to 20.10.2011 and the period for which the petitioner remained out of service up to his retirement i.e. 21.10.2011 to 29.02.2012 has been treated as a leave of the kind due. The prayer of the petitioner in the present petition is that after he was acquitted by the Appellate Court by giving him the benefit of doubt vide judgment dated 11.03.2013, he is entitled for all the benefits including full salary for the period he remained suspended as well as the increment during the suspension period so as to calculate his basic salary at the time of retirement so as to compute the pensionary benefits as well as the revised scale.

The facts leading to the filing of the present petition are as

under :-

The petitioner was appointed as S.S. Master on 08.07.1981 and was promoted as Lecturer on 25.01.1996. While the petitioner was working as Lecturer, an FIR being FIR No. 69 dated 20.05.2004 was registered for obtaining a fake degree of M.A. (English) from Magadh University, Bodh Gaya (Bihar). Keeping in view the registration of the said criminal case, the petitioner was placed under suspension, especially when, the petitioner had used the said degree to claim promotion to the post of Lecturer in the year 1996. The petitioner continued under suspension when the trial Court vide judgment dated 29.03.2010 held the petitioner guilty of the allegations and he was convicted. After the conviction of the petitioner, he was dismissed from service on 21.10.2011.

Petitioner challenged the conviction by filing appeal, which appeal came to be accepted by the Sessions Judge, Bhiwani vide judgment dated 11.03.2013 and he was given the benefit of doubt and he was acquitted of the charges leveled against him. After the acquittal gained by the petitioner on the basis of the benefit of doubt, the petitioner claimed re-instatement in service along with full salary for the period he remained under suspension and out of service and the consequential benefits including the pensionary benefits as he had attained the age of superannuation on 29.02.2012 i.e. before his acquittal by the competent court of law on 11.03.2013.

The respondents keeping in view the facts and circumstances of this case, passed an order on 15.02.2017 (Annexure P-8) as per which the period from 18.06.2004 to 20.10.2011 for which the petitioner remained under suspension as well as the period from 21.10.2011 to 29.02.2012 for

which period the petitioner remained out of service, would be treated as leave of the kind due and for the purpose of pensionary benefits, the same was to be treated as duty period. The said order is under challenge in the present petition.

Learned senior counsel appearing on behalf of the petitioner argues that once the petitioner was acquitted by the competent Court of Law of the allegations, he is entitled for full salary along with allowances for the period he remained under suspension as well as for the period he remained out of service, up to the date he attained the age of superannuation and, therefore, treating the period of suspension as well as the period for which he remained out of service as on duty and grant him full arrears of salary.

After notice of motion, the respondents have filed the reply, wherein, they have stated that in the present petition, in respect of the grievance of the petitioner that he should be paid the full salary for the suspension period, the same cannot be agitated keeping in view the settled principle of law by the Hon'ble Supreme Court of India in Civil Appeal No. 8565 of 2003 titled as ***Union of India Vs. Jaipal Singh***, decided on 03.11.2003 and also that the petitioner has already been paid the subsistence allowance for the period of his suspension and the said period is also counted for computing his pensionary benefits. With regard to the second claim of the petitioner that he should be paid full salary from the date of dismissal till the date he attained the age of superannuation i.e. full salary from 21.10.2011 to 29.02.2012, the same has been considered and has been treated as leave of the kind due and, therefore, the petitioner is not entitled for the grant of the said benefit.

I have heard learned counsel for the parties and have gone

through the record with their able assistance.

The first prayer of the petitioner is that he should be paid full salary for the period he remained suspended keeping in view the fact that he was acquitted by the Competent Court of Law though, the trial Court had convicted him. It is also a conceded fact that the acquittal of the petitioner by the appellate Court is after giving the benefit of doubt to the petitioner. Whether, under these circumstances, the petitioner is entitled for the grant of salary for the period he remained suspended needs to be adjudged.

Rule 7.3 of the Punjab Civil Services Rules, Volume-I (as applicable to the State of Haryana) deals with the 'Allowances on Reinstatement', which reads as under :-

7.3 (1) When a Government employee, who has been dismissed, removed, compulsory retired, or suspended, is reinstated, or would have been reinstated but for his retirement on superannuation the authority competent to order the 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, 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, which he would have been entitled, had he not been dismissed, removed, compulsorily retired or suspended, as the case may be.

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***SUSPENSION DURING PENDENCY OF CRIMINAL
PROCEEDINGS, OR PROCEEDINGS FOR ARREST
FOR DEBT, OR DURING DETENTION UNDER A
LAW PROVIDING FOR PREVENTIVE DETENTION”***

A bare perusal of the above rule would show that the employer has been given liberty to decide with regard to the payment of full salary during the suspension period in case, the employee is reinstated in service. As per the rule, the employee is not entitled for full allowances unless, he/she has been fully exonerated of the allegations or the suspension period was found to be wholly unjustified.

In the present case, it cannot be said that in the facts and circumstances of the present case, that suspension of the petitioner was unjustified. It is a conceded position that after the registration of an FIR, the petitioner was arrested and he remained behind bars and as per the rules governing the service, an employee, who has been arrested, is under deemed suspension and the employer is within its jurisdiction to keep an employee under suspension during the pendency of the criminal proceedings. Hence, keeping in view the facts and circumstances of this case where, the trial Court had convicted the petitioner and it is only by giving the benefit of doubt, the appellate Court acquitted the petitioner, it cannot be said that the suspension of the petitioner was not justified.

In order to get the complete salary for the suspension period, the employee has to be fully exonerated of the allegations. The word “Fully Exonerated” has to mean that the charges alleged against the employee have been found baseless and there was no evidence to connect the said employee with the allegations even remotely. Though, the appellate Court exonerated

the petitioner but it was only by giving him benefit of doubt and the same cannot mean that the petitioner was “Fully Exonerated” as required for under Rule 7.3 to claim the benefit of full salary during the suspension period.

Keeping in view the facts and circumstances of this case, the withdrawal of the order of dismissing the petitioner from service is not based on securing honorable exoneration and the order suspending the petitioner cannot be said to be unwarranted in the facts and circumstances of the present case. The decision of the employer not to grant the full salary to the petitioner for the above said period cannot be treated as arbitrary or illegal so as to need interference by this Court.

The second prayer of the petitioner is that for the period the petitioner remained out of service after he was dismissed on the basis of the conviction, till he attained the age of superannuation, the petitioner be granted full salary, the same is also to be considered in view of Rule 7.3 coupled with the settled principle of law on the said aspect. The claim of the petitioner under Rule 7.3 has already been discussed in the preceding paragraph and need not be reiterated once again that the petitioner is not entitled for the full salary for the period either he remained under suspension or after he was dismissed from service, till the date he attained the age of superannuation, upon acquittal by the appellate Court by giving him the benefit of doubt. The law on the issue as to whether, upon acquittal in a criminal case, when an employee is reinstated, the said employee is entitled to full benefits or not, has also been settled by the Hon'ble Supreme Court. The said question was decided by the Hon'ble

Superintendent Engineer, Gujarat Electricity Board and another, SLP No. 22538 of 1996, decided on 28.10.1996, wherein, the Hon'ble Supreme Court of India has held that where conduct of an employee resulted into the fact that he became disabled from rendering the service either on account of conviction or incarceration in jail, the back wages can rightly be denied upon reinstatement. Hon'ble Supreme Court of India has held that it is only where in a disciplinary proceedings, the department initiated against an employee, which was found to be unsustainable later on, that the employee can claim back wages. The relevant paragraph 3 of the said is as under :-

“3. The reinstatement of the petitioner into the service has already been ordered by the High Court. The only question is: whether he is entitled to back wages? It was his conduct of involving himself in the crime that was taken into account for his not being in service of the respondent. Consequent upon his acquittal, he is entitled to reinstatement for the reason that his service was terminated on the basis of the conviction by operation of proviso to the statutory rules applicable to the situation. The question of back wages would be considered only if the respondents have taken action by way of disciplinary proceeding and the action was found to be unsustainable in law and he was unlawfully prevented from discharging the duties. In that context, his conduct becomes relevant, Each case requires to be considered in its own backdrop. In this case, since the petitioner had involved himself in a crime, though he was later acquitted, he had disabled himself from rendering the service on account of conviction and incarceration in jail. Under these circumstances, the petitioner is not entitled to payment of back wages. The learned single judge and the Division Bench have not committed any error of law warranting interference.”

The said question again came up for consideration before the

Hon'ble Supreme Court of India in ***Jaipal Singh's case (supra)***, wherein it was held that where an employee was convicted for an offence committed by him in his private life, when acquitted, upon reinstatement, back wages cannot be claimed because employer cannot be blamed and made liable for the personal conduct of an employee. It is only where the termination of the services of an employee is upon the complaint of the employer for any act and conduct of the employee in the course of his employment, the employee can claim the back wages. The relevant paragraph 4 of the said judgment is as under :-

“4. On a careful consideration of the matter and the materials on record, including the judgment and orders brought to our notice, we are of the view that it is well accepted that an order rejecting a special leave petition at the threshold without detailed reasons therefor does not constitute any declaration of law by this Court or constitute a binding precedent. Per contra, the decision relied upon for the appellant is one on merits and for reasons specifically recorded therefor and operates as a binding precedent as well. On going through the same, we are in respectful agreement with the view taken in 1996(11) SCC 603 (supra). If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest or by department itself, perhaps different considerations may arise. On the other hand, if a citizen the employee or a public servant got involved in a criminal case and if after initial conviction by the trial Court, he gets acquittal on appeal subsequently, the department cannot in any manner be found fault with for having kept him out of service, since the law obliges, a person convicted of an offence to be so kept out and not to be retained in service. Consequently, the reasons given in the decision relied upon, for the appellants are not only convincing but are in consonance with reasonableness as well. Though exception taken to that part of the order directing re-instatement cannot be sustained and the respondent has to be re-instated, in service, for the reason that the earlier discharge was on account of those criminal proceedings and

conviction only, the appellants are well within their rights to deny back wages to the respondent for the period he was not in service. The appellants cannot be made liable to pay for the period for which they could not avail of the services of the respondent. The High Court, in our view, committed a grave error, in allowing back wages also, without adverting to all such relevant aspects and considerations. Consequently, the order of the High Court in so far as it directed payment of back wages are liable to be and is hereby set aside.”

In the present case, the allegation against the petitioner was leveled by a 3rd person relating to cheating wherein, the petitioner was held guilty and it was only upon his conviction, keeping in view the rules governing the service, as said conduct reflected upon the moral of the petitioner, the petitioner was dismissed from service on the basis of the said conviction and it cannot be said that the department had any role to play either in initiating criminal proceedings or conviction thereafter. Hence, keeping in view the judgment of the Hon'ble Supreme Court of India in ***Jaipal Singh's case (supra)***, the petitioner cannot be granted the said benefit.

The same question again came up for consideration before the Hon'ble Supreme Court of India in Civil Appeal No. 3339 of 2019 titled as ***Raj Narain Vs. Union of India and others***, decided on 01.04.2019. Hon'ble Supreme Court of India once again reiterated that it is only where the prosecution of the accused has been held to be brought with the mala fides or with vexatious intend, due to which, the said accused was acquitted, an employee is entitled for the back wages, failing which, no benefit of back wages can be given upon reinstatement. The relevant paragraph is as under

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“6. The decision of Ranchhodji Chaturji Thakore (supra) was followed by this Court in Union of India and Others v. Jaipal Singh (supra) to refuse back wages to an employee who was initially convicted for an offence under Section 302 read with Section 34 IPC and later acquitted by the High Court in a criminal appeal. While refusing to grant relief to the Petitioner therein, this Court held that subsequent acquittal would not entitle an employee to seek back wages. However, this Court was of the opinion that if the prosecution is launched at the behest of the department and the employee is acquitted, different considerations may arise. The learned counsel for the Appellant endeavored to distinguish the prosecution launched by the police for involvement of an employee in a criminal case and the criminal proceedings initiated at the behest of the employer. The observation made in the judgment in Union of India and Others v. Jaipal Singh (supra) has to be understood in a manner in which the department would become liable for back wages in the event of a finding that the initiation of the criminal proceedings was mala fide or with vexatious intent. In all other cases, we do not see any difference between initiation of the criminal proceedings by the department vis-a-vis a criminal case lodged by the police. For example, if an employee is involved in embezzlement of funds or is found indulging in demand and acceptance of illegal gratification, the employer cannot be mulcted with full back wages on the acquittal of the person by a criminal Court, unless it is found that the prosecution is malicious.”

Learned senior counsel appearing on behalf of the petitioner has cited the judgment of a Co-ordinate Bench of this Court in CWP No. 13988 of 2015 titled as **Anil Kumar Tyagi Vs. Dakshin Haryana Bijli Vitran Nigam Limited and another**, decided on 24.01.2017, to claim that upon acquittal by the competent Court of Law and after considering the

judgment of the Hon'ble Supreme Court of India in ***Jaipal Singh's case (supra)***, the benefit of full back wages was granted, hence, the same benefit should be extended to the petitioner as well.

The above noted argument of the learned senior counsel cannot be accepted for two reasons. Firstly, after the judgment of the Co-ordinate Bench in ***Anil Kumar Tyagi's case (supra)***, the Hon'ble Supreme Court of India in ***Raj Narain's case (supra)***, has again held that it is only where the criminal prosecution was found to be initiated with mala fide or vexatious intent by the employer, back wages can be claimed. Hon'ble Supreme Court of India did not find any reason to differentiate between a criminal proceeding initiated by the department or the police and held that where an employee is involved in the embezzlement of fund or is found indulging in demand and acceptance of illegal gratification, the employer cannot be mulcted with full back wages upon acquittal of such kind of person. Keeping in view the said decision of the Hon'ble Supreme Court of India in ***Raj Narain's case (supra)***, no benefit can be granted to the petitioner of the judgment of the Co-ordinate Bench of this Court in ***Anil Kumar Tyagi's case (supra)***.

Even otherwise, the facts in ***Anil Kumar Tyagi's case (supra)*** were different as that in case of petitioner. In ***Anil Kumar Tyagi's case (supra)***, the Co-ordinate Bench of this Court has held that the allegations therein related to the service as in ***Anil Kumar Tyagi's case (supra)*** the allegations related to the prevention of Corruption Act as petitioner therein was accused of abusing the power in the official capacity whereas, in the present case, the allegation against the petitioner is of forging a document

discharge of duties. Hence, even on factual aspect, the judgment of the Coordinate Bench in *Anil Kumar Tyagi's case (supra)*, is not applicable in the facts and circumstances of this case. Hence, the distinction pointed out by the learned Single Judge in *Anil Kumar Tyagi's case (supra)*, for not following *Jaipal Singh's case (supra)*, is missing in the present case, the petitioner cannot be granted the benefit as being claimed in the present petition. The similar are the facts in CWP No. 1326 of 2013 titled as *Surjit Singh Vs. State of Haryana and another*, decided on 30.04.2015, wherein also the allegation related in respect of the prevention of Corruption Act as in *Anil Kumar Tyagi's case (supra)*. Hence, the judgments being relied upon by the learned senior counsel for the petitioner are not applicable in the facts and circumstances of this case for the grant of full salary upon reinstatement keeping in view the judgment in *Jaipal Singh's case (supra)*, *Ranchhodji Chaturji Thakore's case (supra)* and *Raj Narain's case (supra)*.

Keeping in view the above and facts and circumstances of the present case, it is held that the petitioner is not entitled for the grant of full salary either in respect of period when he remained under suspension or for the period, the petitioner remained out of service after the passing of the order dismissing the petitioner from service, till the petitioner attained the age of superannuation keeping in view the subsequent exoneration in the criminal cases.

Dismissed.

October 14, 2022
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(HARSIMRAN SINGH SETHI)
JUDGE

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