

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.19874 of 2017
Reserved on: 01.09.2022
Date of decision: 09.09.2022

JASPAL SINGH

...Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. K. S. Boparai, Advocate
for the petitioner.

Mr. Sehajbir Singh Aulakh, AAG, Punjab.

JAISHREE THAKUR, J.

1. This is a petition that has been filed seeking issuance of a writ, order or direction in the nature of mandamus directing the respondents to grant all service benefits including seniority, promotion, salary, increments, revised pay, arrears of back wages, continuity of service and other benefits to the petitioner herein as he has been acquitted by this Court vide order dated 21.01.2015, whereby the conviction imposed upon him by the trial Court was set aside and he was reinstated and joined in service on 11.05.2016, but without pay for the period during which he remained under dismissal from service.

2. In brief, the facts are that the petitioner herein was serving as a permanent employee in Punjab Police as Constable. In the year 2001, a criminal case vide FIR No. 1059 dated 14.11.2001 was registered against

the petitioner under Sections 7/13(2) of the Prevention of Corruption Act, 1988 at Police Station Sadar Patiala. After trial, petitioner was convicted by the trial Court on 11.05.2005 and was sentenced to undergo rigorous imprisonment for a period of one year with a fine of Rs.2,500/- with default clause. On the basis of conviction, petitioner was dismissed from service vide order dated 08.01.2008 passed by the Senior Superintendent of Police, Patiala. Thereafter, against the order of conviction, the petitioner herein filed Criminal Appeal No.S-958-SB of 2005 in this Court, which appeal was allowed vide order dated 21.01.2015 and the petitioner was acquitted of the charge framed against him by the trial Court. Petitioner sent a legal notice dated 25.03.2015 (Annexure P-3) to the respondents for reinstating him in service along with all consequential benefits for which he is entitled but respondents did not take any steps in this regard. The petitioner approached the office of respondent No.3 and enquired about the status of his legal notice, upon which the official in the office of respondent No.3 pointed out that the authorities will reinstate him in service if he gets the order dated 21.01.2015 passed by this Court in Criminal Appeal No. S-958-SB of 2005 corrected as in the said order, name of the Police Station was wrongly mentioned as Vigilance Bureau, Patiala instead of Sadar Patiala. The petitioner firstly got the name corrected in the trial Court order and then in the order of this Court and, thereafter, order dated 04.09.2015 passed in this regard by this Court was delivered to the office of respondent No.3, upon which he was assured by the authorities that necessary action for his reinstatement will be taken.

3. Thereafter, when the respondents did not take any action on reinstatement of the petitioner and releasing the service benefits, the petitioner herein filed CWP No.1988 of 2016 against the respondents seeking all service benefits. This Court vide order dated 01.02.2016 directed respondent No.3 to take into consideration the legal notice dated 25.03.2015 of the petitioner and pass an appropriate order within a period of three months in accordance with law as provided under Rule 16.2 (2) of the Punjab Police Rules, 1934. In compliance of order dated 01.02.2016, respondent No.3 passed order dated 11.05.2016 (Annexure P-9) vide which, the petitioner herein was reinstated in service on the same post against which he was serving at the time of his dismissal and the period during his dismissal was treated as non-duty period i.e. by adopting the rule of “*No Work No Pay*”. On not being satisfied, petitioner moved a representation dated 19.07.2017 (Annexure P-10) to the respondents requesting them to grant all benefits of service including promotion, revised pay, arrears of back wages, continuity of service and other benefits but despite receiving the said representation, respondents did not allow the service benefits to the petitioner herein. Aggrieved against the act of the respondents, the instant writ petition has been filed.

4. Mr. K. S. Boparai, learned counsel for the petitioner herein would contend that the petitioner was honorably acquitted by this Court vide order dated 21.01.2015 passed in Criminal Appeal No. S-958-SB of 2005 as neither the allegations of demand or recovery were proved against the petitioner, so no case under the Prevention of Corruption Act, 1988, was made out. It was also held that the charges of corruption are also not proved

against the petitioner. He would contend that after the conviction order as passed by the trial Court was set aside and petitioner being acquitted of the charge framed against him, he was entitled to be reinstated in service with all consequential benefits. He would submit that order dated 21.01.2015, acquitting the petitioner herein has attained finality as the SLP No.2080 of 2016 filed by the State of Punjab against the said order was dismissed by the Supreme Court on 12.02.2016 and, therefore, order dated 11.05.2016 (Annexure P-9) as passed by respondent No.3 is liable to be modified to the extent that all service benefits are liable to be given to the petitioner as he has been declared innocent and charges levelled against him were not proved. He would rely upon the judgment rendered by Supreme Court in **Gowramma C. (Dead) by LRs versus Manager (Personnel) Hindustan Aeronautical Ltd. And another, Civil Appeal Nos.1575-1576 of 2022** dated **23.02.2022**, wherein it is stated that if an employee is not at all at fault and kept out of work by reasons of decision taken by employer, denial of fruits of him being vindicated at the end of the day would be unfair to the employee. In this very regard, learned counsel for the petitioner has also placed reliance upon the judgments rendered in **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 dated 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.**

5. Mr. Sehajbir Singh Aulakh, AAG, Punjab, learned State counsel would contend that the petitioner herein was acquitted by this Court vide order dated 21.01.2015 by giving him the benefit of doubt instead of honorably acquitting him. He submits that the benefits during the period of dismissal were not allowed to the petitioner on the principle of *No Work No Pay*. He further submits that the petitioner is a habitual absentee and his previous record is poor and in view of the above, the instant petition is not maintainable and is liable to be dismissed. He would rely upon a judgment rendered by Supreme Court in *Ajay Kumar Singh versus The Flag Officer Commanding-in-Chief and others, 2016 (6) JT 487*, wherein it is stated that if accused is acquitted by granting benefit of doubt, then he cannot seek for reinstatement and consequential benefits.

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 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 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. 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.

11. 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.

12. The petitioner was dismissed from service only on account of his conviction, and was reinstated in service thereafter. No departmental proceedings were initiated against him. The judgments as relied upon hereinabove are fully applicable to the facts of the present case.

13. Consequently, the instant writ petition is allowed and order dated 11.05.2016 (Annexure P-9) passed by respondent No.3 is set aside to the extent of treating the period during dismissal of the petitioner as non-duty period adopting the rule of No Duty No Pay. The petitioner is held entitled for the said 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.

09.09.2022
Chetan Thakur

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*