

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

**LPA-1780-2019
Decided on : 14.10.2022**

Sukhwinder Singh

... Appellant

Versus

State of Punjab and others

... Respondents

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE JAGMOHAN BANSAL**

Present: Mr. G.P. Vashisht, Advocate for the appellant.

Mr. Rohit Ahuja, DAG, Punjab.

G.S. Sandhawalia, J. (Oral)

Present letters patent appeal is directed against the order of the learned Single Judge dated 11.01.2019 passed in **CWP No.15927 of 2013 ‘Sukhwinder Singh Vs. State of Punjab and others’**. The appellant is aggrieved against the non-grant of the arrears of salary from 18.10.2002 to 16.04.2010. The learned Single Judge did not grant him the benefit while placing reliance upon the judgment of the Apex Court in **State Bank of India Vs. Mohammed Abdul Rahim, 2013(4) SCT 133** by coming to the conclusion that he had been involved in a criminal case registered under Sections 302, 364, 201 IPC and it was not the fault of the State that he got involved and, therefore, the department had no concern or responsibility.

It is to be noticed that in the said case the judgment of the Coordinate Bench of this Court passed in **Manager Operation Circle, Dakshin Haryana Bijli Vitran Nigam, Narnaul and others vs. Mathura Dass Gupta, 2012(4) S.C.T. 7** was distinguished on the ground that it was a case registered under Section 7 of the Prevention of Corruption Act and, therefore, it had something to do with his official

duties. Resultantly, the benefit was declined by holding that it was a independent act or a private dispute, in which he had been detained and ultimately had got his acquittal from this Court.

We are of the considered opinion that though the learned Single Judge had mentioned the rules in question which are applicable, but he had not applied the same with strict rigor, which was necessarily to be done and rather had relied upon on a judgment, on which there was no discussion qua the applicable rules. The case of the writ petitioner was based on the Punjab Civil Services Rules itself by pleading so in the writ petition, which would be clear from paragraph No.13 of the petition.

The State in its reply had also not denied the factum that the rules would be applicable and it is not disputed that even the order dated 04.02.2013 (Annexure P-6) whereby the benefit had not been granted is also based on the said rules. Even otherwise we are of the considered view that the matter is squarely covered against State in view of the judgment passed by a three Judges Bench of the Apex Court in **Civil Appeal No.4114 of 2006 Uttri Haryana Bijli Vitran Nigam and another Vs. Shashi Kumar'** decided on 26.09.2013, which was not brought to the notice of the learned Single Judge.

Relevant Rule 7.3 of the Punjab Civil Service Rules which would govern the case, 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 to which he would have been entitled, has he not been dismissed, removed, compulsorily retired or suspended, as the case may be.

(3) In other cases, the Government employee shall be given such proportion of such pay and allowances as such competent authority may prescribe:

Provided that the payment of allowances under sub-rule (2) or sub-rule (3) shall be subject to all other conditions under which such allowances are admissible. Provided further that such proportion of such pay and allowances shall not be less than the subsistence and other allowances admissible under rule 7.2.

(4) In a case falling under sub-rule (2) the period of absence from duty shall not be treated as a period spent on duty for all purposes.

(5) In a case falling under sub-rule (3) the period of absence from duty shall not be treated as a period spent on duty unless such competent authority specifically directs that it shall be so treated for any specified purpose:

Provided that if the Government employee so desires, such authority may direct that the period of absence from duty shall be converted into leave of any kind due and admissible to the Government employee.”

The said rule was subject matter of consideration before the Apex Court in the case of **Shashi Kumar (supra)**. Relevant observations of the three Judges passed in the said case reads as under:-

“On a plain reading of the above-reproduced rule, it becomes clear that when a Government employee who has been dismissed, removed, compulsorily retired or suspended is reinstated or would have been reinstated but for his retirement on superannuation, the authority competent to order reinstatement has

to consider and make a specific order regarding 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 and also whether or not the said period shall be treated as spent on duty. If the authority comes to the conclusion that the employee has been fully exonerated or his suspension was wholly unjustified, then it has to pass an order for payment of full pay and allowances. In other case, an order for payment of proportionate pay and allowances has to be passed. In the first case, the period of absence has to be treated as a period spent on duty. In the second case, the competent authority has to pass appropriate order whether the intervening period should be treated as a period spent on duty for any specified purpose. To put it differently, except in the cases of complete exoneration the competent authority has the discretion to pass appropriate order for payment of pay and allowances to the employee during the period of his absence and also the treatment to be meted out to that period.

Unfortunately, in these cases the competent authority did not pass the required order in terms of Rule 7.3 of the Rules and when Shashi Kumar made representation for his reinstatement, the Chief Engineer arbitrarily rejected the same by assuming that even though he had been acquitted, the charge of illegal gratification could be treated as proved. In other cases, no order was passed by the concerned authority. Therefore, in the peculiar facts of these cases, the High Court was justified in ordering reinstatement of the respondents.

Insofar back wages are concerned, we are prima facie satisfied that the High Court was not justified in directing payment of full salary and allowances because the respondents had not been fully exonerated. Each one of them was given benefit of doubt by the High Court or the trial Court. Therefore, the High Court should have directed the competent authority to pass appropriate order in terms of the rules reproduced above. We may have adopted that course and directed the concerned authority to pass necessary order within a specified time frame, but, keeping in view the long lapse of time, we do not consider it proper to exercise the power of

this Court under Article 136 of the Constitution and interfere with the order for payment of full back wages.

With the above observations the appeals are dismissed.

However, the question of law is left open to be decided in appropriate case. We also make it clear that the impugned orders shall not be treated as precedent for other cases and the High Court shall decide the pending matters or which may be filed hereinafter without being influenced by the order passed in Shashi Kumar's case."

In the present case the dates which are mainly are to be noticed is the date of FIR No.42 dated 09.04.1998 and the conviction recorded under Section 364, 302 and 201 IPC by the learned Sessions Judge on 27.01.2000. The dismissal order was passed on 17.10.2002 (Annexure P-1) on account of the conviction of the employee and he earned his acquittal in CRA-D-74-DB-2000 on 25.02.2009 (Annexure P-2).

It is not disputed that the employee remained in jail from 27.01.2000 the date of his conviction till 12.12.2005, which would be clear from the impugned order dated 04.01.2013 (Annexure P-6). The reinstatement was made by the State on 16.04.2010 (Annexure P-3) by withdrawing the earlier order of dismissal dated 17.10.2002. Thereafter, on account of the request made in the legal notice and on account of directions issued by this Court, the order was passed on 04.01.2013 (Annexure P-6). The suspension period from 15.05.1998 to 17.10.2002 till the date of his dismissal was not interfered with by the concerned authority on the ground that it was an obligation to place him under suspension, as his involvement was there in the murder case. The factum that he remained in jail from 27.01.2000 to 12.12.2005 was also one reason to deny backwages for the said period, to which counsel for the appellant is

not in a position to agitate on the ground that there could be no salary to be paid for the said period. The authority has only granted the backwages after the date of acquittal i.e. 25.02.2009.

Counsel has thus argued that from 13.12.2005, the moment the sentence was suspended during the pendency of the appeal and on account of his acquittal he is entitled for back-wages, while placing reliance upon the rules wherein it is held that it is mandatory in case of exoneration. A Division Bench of this Court has acquitted him on merits and it is not the case of the State that he has been given the benefit of doubt and thus, he stands fully exonerated.

In a similar situation, the Apex Court in **Jaipur Vidyut Vitran Nigam Ltd. Vs. Nathu Ram**, AIR 2010 SC 19, while considering the judgments in **Ranchhod Chaturji Thakore Vs. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar, Gujarat, 1997 (1) SCT 824** and **Union of India Vs. Jaipal Singh, 2004 (1) SCT 108** came to the conclusion that once there is a specific provision under the Rules which provided that on exoneration, he is entitled to both pay and allowances from the date of his acquittal from the period of dismissal to the date of acquittal the benefit is to be granted. The judgments which have been relied upon by the State herein in both **Ranchhod Chaturji Thakore** and **Jaipal Singh (supra)** were distinguished. The relevant portion of the judgment passed in the case of **Jaipur Vidyut (supra)** reads as under:

“10. On a close examination of the Circular dated 3rd of September, 1975 and Regulation 41(2) of the Regulations, as noted hereinabove, it would be clear that the Circular of the Corporation specifically provides that the period between the date of dismissal and the date on which the respondent resumed his

duty should be dealt with under Regulation 41(2) of the said Regulations. At the same time, Regulation 41 also clearly says that when an employee who has been dismissed and thereafter reinstated, the authority competent to make the order of reinstatement shall consider the pay and allowances to be paid to the employee for the period of his absence from duty. This Circular along with Regulation 41, therefore, makes it clear that the authority is bound to take into consideration regarding pay and allowances to be paid to the employee for the period of his absence from duty. The Circular also clearly says that in doing so, the employee should be deemed to be entitled to full pay and allowances for the period from the date of his acquittal to the date of his reinstatement. From the above discussions, it is clear that the case of the respondent was fully covered by the Circular of the erstwhile Board dated 3rd of September, 1975. The period in question, as noted herein earlier, for payment of allowance is from the date of dismissal i.e. 28.12.1982 to the date of acquittal i.e. 15.12.1997. As noted herein earlier, last paragraph of the Circular dated 3rd of September, 1975 which is important for our purpose may be reproduced as follows :

"The period between the date of dismissal etc. and the date on which he resumes duty should be dealt with under Regulation No.41 of Rajasthan State Electricity Board Employee Service Regulation and in doing so he should be deemed to be entitled to full pay and allowances for the period from the date of his acquittal to the date of his reinstatement, such period being counted for duty for all purpose and for the period from the date of dismissal to the date of acquittal he should not be allowed pay and allowances less than what have been admissible to him had he remained under suspension."

It is not in dispute that the appellant-Corporation have themselves given full pay to the respondent from the date of suspension i.e. 30th of November, 1979 to the date of dismissal i.e. 28th of December, 1982 and from the date of acquittal i.e. 15th of December, 1997 to the date of reinstatement i.e. 3rd of June, 1998. Such being the state of affairs, it is not acceptable that there was any reason for the Corporation not to give the suspension allowances for the period of termination i.e. 28th of December, 1982 to the date of acquittal i.e. 15th of December, 1997 in terms

of the circular dated 3rd of September, 1975. This circular also says that the period from the date of dismissal to the date of acquittal, the employee should not be allowed to pay and allowances less than what would have been admissible to him had he remained under suspension. Therefore, from a reading of the Circular, it would be evident that the respondent may be paid the pay and allowances admissible to him had he remained under suspension. This was the view expressed by the learned Single Judge as well as the Division Bench of the High Court. Further, as noted herein earlier, the learned counsel for the Corporation had drawn our attention to two decisions of this Court. So far as the decision in Ranchhodji's case (supra) is concerned, we are of the view that the principle laid down in the said decision is not applicable to the facts and circumstances of the present case. The facts of the present case are quite different from that of the said decision. Apart from that, in that decision, a disciplinary proceeding was initiated and subsequently, it was decided that back wages should be paid if the employer had taken action by way of disciplinary proceeding and the action was found to be unsustainable in law. So far as the present case is concerned, no disciplinary proceeding was initiated. Only the termination order was passed by the Corporation as a result of his conviction in a criminal case. Accordingly, this decision in Ranchhodji's case (supra) is of no help to the Corporation.

11. So far as the other decision on which strong reliance was also placed by the learned counsel for the Corporation, namely, **Union of India & Ors. Vs. Jaipal Singh [2004 (1) SCC 121]** is concerned, similarly this decision of this Court, in our view, is also equally not applicable in the facts and circumstances of the present case. It is true that in that decision this Court has held that an employee is not entitled to pay back wages for the period of absence i.e. from the date of dismissal to reinstatement, which would otherwise be counted towards his service, but in view of the circular dated 3rd of September, 1975 particularly the last paragraph of the said circular as noted herein earlier, it cannot now be said that the respondent is not entitled to pay back wages as directed by the Division Bench of the High Court in the writ petition.

12. In view of our discussions made hereinabove and considering the Circular dated 3rd of September, 1975, we do not find any merit in this appeal. No other point was urged by the learned counsel for the Corporation before us. Accordingly, this appeal fails and dismissed. There will be no order as to costs.”

Similar is the view as noticed in the case of **Shashi Kumar (supra)** wherein a distinction was made while directing that it is for the authorities to take a call on the relevant rules. In the present case, as noticed, the authority though has referred to the rules in question but has failed to notice the fact that there is a specific mandate provided under the rules and in the absence of any specific finding or reasoning, the benefits were necessarily to flow. Reliance placed upon the judgment by the **State in Rajkumar Vs. State of Punjab and other, 2017 (1) SCT 479** a judgment of the learned Single Judge would also be of no help in view of the binding precedent of the three Judge Bench of the Apex Court in the case of **Shashi Kumar (supra)**, which was not brought to the notice of the Court. Even otherwise the learned Single Judge noticed **Jaipur Vidyut (supra)** but did not deal with it, though it was binding upon it.

Similarly, in **C.R. Radhakrishnan Vs. State of Kerala and others, (2017) 13 SCC 365** the issue was considered as to whether on account of being fully exonerated the full service benefits have to be granted. In the said case while relying upon the Kerala Service Rules, 1959 it was noticed that the employee had not been fully exonerated and there was no honourable acquittal and it was only on the benefit of doubt and, therefore, the relief was not granted while dismissing the appeal of the employee. Relevant portion of the said judgment reads as under:-

“2. The learned counsel for the appellant submits that since the appellant has been acquitted, under Rule 56 of the Kerala Service Rules, Part-I, the appellant is entitled to full service

benefits. We find it difficult to appreciate the submission. Rule 56(1) and (2) of Kerala Service Rules, 1959 reads as follows:-

“56. (1) When an officer who has been dismissed, removed or compulsorily retired including an officer who has been compulsorily retired under Rule 60A, is reinstated as a result of appeal 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 officer 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,

(b) whether or not the said period shall be treated as a period spent on duty, and

(c) in the case of an officer who was compulsorily retired under Rule 60A and subsequently reinstated, for the recovery of the relevant benefits, if any, already paid to him.

(2) Where the authority competent to order reinstatement is of opinion that the officer who had been dismissed, removed or compulsorily retired, has been fully exonerated, the officer shall, subject to the provisions of sub-rule (6) be paid the 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 officer had been delayed for reasons directly attributable to the officer, it may, after giving him an opportunity to make his representation and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the officer 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 such pay and allowances as it may determine.”

3. This is not a case where the appellant has been fully exonerated, meaning thereby an honourable acquittal. Learned counsel for the appellant submits that going by the judgment, the finding arrived at by the High Court in the criminal appeal regarding benefit of doubt is not correct. We are afraid, under the present proceedings, we cannot

appreciate the above submission. The correctness or otherwise of the judgment in the Criminal Appeal is not the subject matter of this case. In these proceedings we can only look at the findings in the judgment. The acquittal is only on benefit of doubt. Thus, we find no merits in these appeals and the same are, accordingly, dismissed.

4. Pending applications, if any, shall stand disposed of. There shall be no orders as to costs.”

Accordingly, we are of the considered opinion that the learned Single Judge was not right in relying upon the judgment which did not relate to or mention the rules, which would be relevant and, thus, the same would not be applicable to the parties. Resultantly, the present appeal is partly allowed, to the extent that the appellant will also be entitled for the full back-wages also from 13.12.2005, i.e. the date of his release till his acquittal i.e. 25.02.2009. The appellant shall also be entitled for interest @ 6% per annum on the said amounts which have to be granted on account of the State wrongly denying him the said benefits in spite of the rule providing so.

Appeal stands partly allowed, accordingly.

(G.S. SANDHAWALIA)
JUDGE

(JAGMOHAN BANSAL)
JUDGE

14.10.2022

Naveen

Whether speaking/reasoned :
Whether Reportable :

Yes/No
Yes/No