

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

CWP No.6336 of 2016(O&M)

Reserved on:08.04.2022.

Date of Decision.19.04.2022.

Gurbax Singh

...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. Pawan Sharda, Sr. DAG, Punjab.

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JAISHREE THAKUR J.

1. The petitioner herein seeks to challenge the orders dated 23.10.2013, 03.03.2015 & 04.12.2015 passed by respondents No.4, 3 & 2 respectively whereby the petitioner has been denied salary for the period from 10.11.2011 to 23.10.2012 when he remained out of service i.e. from the date of his dismissal from service till his reinstatement in service, by considering it as a period of duty without salary on the basis of no work no pay.

2. Learned counsel appearing on behalf of the petitioner herein would contend that the petitioner was nominated as an accused in FIR No.130 dated 01.08.2002 under Sections 326, 324, 323, 149 IPC registered at Police Station Sadar Phagwara, District Kapurthala. He stood convicted vide judgment/order dated 14.05.2010 passed by the JMIC, Phagwara but was acquitted in appeal i.e. Criminal Appeal No.16 dated 20.05.2010 preferred against the aforesaid judgment vide judgment dated 15.06.2013 passed by the Sessions Judge, Kapurthala. On acquittal of the petitioner, he was reinstated in service vide order dated 23.10.2013 passed by respondent No.4 from the date of his dismissal; however, he was denied the benefits

of pay and allowances from the date of his dismissal to the date of his reinstatement in service. The petitioner challenged the order passed by respondent No.4 in appeal before respondent No.3, who vide order dated 03.03.2015 partly allowed the same and ordered to grant due benefits to the appellant (petitioner herein) from 15.06.2013 to 23.10.2013 i.e. from the date of acquittal of the petitioner till his reinstatement in service. The order dated 03.03.2015 was further challenged by the petitioner before respondent No.2, who while dismissing the appeal of the petitioner had also denied the relief that had been allowed to the petitioner by respondent No.3 of grant of pay and allowances from the date of acquittal till the date of his reinstatement in service. Against the aforementioned impugned orders, the instant writ petition has been filed.

3. Learned counsel for the petitioner would contend that the petitioner had been dismissed from service wholly on account of conviction of the petitioner in the aforesaid FIR, however, he stood acquitted in appeal. It is submitted that no departmental proceedings on the basis of the said FIR were initiated.

4. It is further contended that the impugned orders as passed by the respondents are unsustainable, while relying upon Rule 7.3 of the Punjab Civil Services Rules, Volume 1, Part 1. It is submitted that the principle of 'no work no pay' would not be applicable in a situation where the petitioner was kept away from work for no fault of his own. In support of his argument, he relies upon the judgments rendered in Sucha Singh Vs. State of Punjab and others 2014 (2) RSJ 370; Piara Singh Vs. State of Punjab and others 2014 (1) RSJ 241; Jaswinder Singh Vs. Punjab State Power Corporation Limited and others 2016 (4) RSJ 207; Ishwar Singh Vs. State of Haryana and others 2020 (3) SCT 50; Raghbir Singh Vs. State of Punjab and others 2021 (2) PLR 485 and Const. Sukhchain Singh Vs. The State of Punjab and others passed in CWP No.5228 of 2011 on 25.03.2013.

5. Per contra, learned counsel appearing on behalf of the respondent-State would submit that there is no infirmity in the orders so passed by the competent

authorities, as the petitioner was dismissed from service on account of his conviction in the FIR mentioned above. It was on his acquittal in criminal appeal that he was reinstated in service; however, since he had not worked for the period from his dismissal from service till his reinstatement, he would not be entitled to the pay and allowances as sought by him for the said period.

6. I have heard learned counsel for the parties and have perused the paper book as well as the case laws cited. Rule 7.3 of the Punjab Civil Services Rules, Vol. 1, Part 1 is reproduced 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 re-instatement 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 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.

(5) In a case falling under sub-rule (4), the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall not be treated as a period spent on duty, unless the 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 including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall be converted into leave of any kind due and admissible to the Government employee.

Note.—The order of the competent authority under the preceding proviso shall be absolute and no sanction of the higher authority shall be necessary for the grant of—

(a) extraordinary leave in excess of three months in the case of a temporary Government employee; and

(b) leave of any kind due in excess of five years in the case of a permanent and quasi permanent Government employee.

(6) The payment of allowances under sub-rule (2) or sub-rule (4) shall be subject to all other conditions under which such allowances are admissible.

(7) The amount determined under the proviso to sub-rule (2), or under sub-rule (4) shall not be less than the subsistence allowance and other allowances admissible under rule 7.2.

(8) Any payment made under this rule to a Government employee on his reinstatement, shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of removal, dismissal or compulsory retirement, as the case may be, and the date of reinstatement. Where the emoluments admissible under this rule are equal to or less than the amounts earned during the employment elsewhere nothing shall be paid to the Government employee.”

7. A reading of the said rule would make it clear that the authority competent to order re-instatement shall consider and make a specific order regarding

a government employee, who has been dismissed, removed, compulsorily retired or suspended, and shall consider whether the employee will be entitled to pay and allowances for the period of his absence from duty including the period of suspension, preceding his dismissal, removal or compulsorily retired, as the case may be. It is also an admitted fact that no departmental inquiry was initiated against the petitioner. The petitioner herein was dismissed from service on the basis of FIR that was registered against him under Sections 326, 324, 34 IPC and therefore, would be entitled to pay and allowances for the period he remained out of service. The judgments as relied upon by the counsel for the petitioner in **Const. Sukhchain Singh's case** (supra) would be fully applicable to the present case where in similar circumstances, the petitioner, who had been dismissed from service on account of criminal charges and subsequently acquitted, was held to be entitled for full pay and allowances by virtue of Rule 7.3 of the Punjab Civil Services Vol. 1 Part 1. The said judgment in **Sukhchan Singh's case** also took note of the judgment rendered by this Court in **General Manager Operation Circle, Dakshin Haryana Bijli Vitran Nigam, Narnaul and others Vs. Mathura Dass Gupta** passed in LPA No.1580 of 2011 on 10.02.2012 wherein the Division Bench held that the petitioner was entitled to be treated the period for which he was forced to remain out of service as duty period and the judgment rendered in **Ex. Constable Kulwant Singh Vs. State of Punjab and others** passed in CWP No.12000 of 2007 decided on 4.8.2008 where in similar circumstances, the petitioner therein had been held to be entitled for pay and allowances consequently by treating the period from the date of his dismissal till the date of his reinstatement in service as duty period.

8. In view of the finding rendered above, the writ petition stands allowed and the impugned orders are set aside. The period for which the petitioner remained out of service i.e. from the date of his dismissal till the date of his reinstatement in service shall be treated as period spent on duty for all intents and purposes.

Consequently, respondents are directed to calculate and release salary and allowances as admissible to the petitioner for the said period i.e. from 10.11.2011 till 23.10.2013 within a period of two months from the date of receipt of certified copy of this order.

(JAISHREE THAKUR)
JUDGE

April 19, 2022
Pankaj*

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