

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

LPA No. 2155 of 2016 (O & M)

Date of decision: 26.05.2022

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Dakshin Haryana Bijli Vitran Nigam Ltd. and others

....Appellant(s)

Versus

Naresh Kumar

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Mr. Puneet Jindal, Sr. Advocate,
with Mr. A.S. Meho, Advocate, for the appellants.

Mr. Sunil Hooda, Advocate, for the respondent.

G.S.SANDHAWALIA, J. (Oral)

The present letters patent appeal is directed against the judgment dated 14.07.2016 passed by the learned Single Judge in CWP No. 17432 of 2015 wherein, the order dated 21.07.2015 (Annexure P-7) was quashed and the suspension period from 24.08.2011 to 03.01.2014 was ordered to be treated as duty period and payment of full pay and allowances for the said period was directed. The learned Single Judge had granted the relief on the basis of the fact that the employee who was working as an Assistant Linesman with the appellant-Nigam had been reinstated on 03.01.2014 after having earned acquittal in FIR No. 298 dated 24.08.2011 lodged under Sections 304-B and 498-A IPC, P.S. Narnaund on the basis of which, the employee had been taken into custody.

Senior counsel for the appellants has accordingly submitted that

the same was on account of his personal domestic issues and, therefore, the

said period had been treated as leave of kind due vide order dated 14.03.2014 (Annexure P-3) by the Executive Engineer and reiterated by the Superintending Engineer on 03.04.2014 (Annexure P-5), where the observations had come that the Court had given the benefit of doubt as such. It is further pointed out that CWP No. 8745 of 2014 had been filed before this Court by the employee seeking reconsideration and the matter had been remanded to the authorities to decide afresh.

Vide the impugned order dated 21.07.2015 (Annexure P-7), the Executive Engineer came to the conclusion that the suspension period was not directly attributed to the Nigam account and that the official had also concealed the fact why he remained absent from active service. The decision of treating suspension period as leave of kind due was within Rules and Regulations and was confirmed accordingly.

In such circumstances, counsel for the Nigam has relied upon the judgment of the Apex Court in ***Raj Narain vs. Union of India and others, 2019 (2) SCT 582*** to submit that an employer cannot be mulcted with full back wages on acquittal of a person by criminal Court unless it is found that the prosecution is malicious.

A perusal of the said judgment would also go on to show that the judgment of the Apex Court in ***Union of India and others vs. Jaipal Singh, (2004)1 SCC 121*** had also been considered. The relevant portion of the said judgment in *Raj Narain's case (supra)* reads thus:-

“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.

7. The point that remains to be considered is whether the Appellant is entitled to payment of full wages between 1979 and 1987. The Appellant was placed under suspension on 23.10.1979 and his suspension was revoked on 21.10.1987. An interesting development took place during the interregnum by which the disciplinary proceedings were dropped on 21.03.1983. It is clear from the record that the Appellant was the one who was seeking postponement of the departmental inquiry in view of the pendency of

criminal case. The order of suspension was in contemplation of disciplinary proceedings. By virtue of the disciplinary proceedings being dropped, the Appellant becomes entitled to claim full salary for the period from the date of his suspension till the date of closure of the departmental inquiry. Thereafter, the Respondents took four years to reinstate him by revoking his suspension. The order of suspension dated 23.10.1979 came to an end on 21.03.1983 which is the date on which disciplinary proceedings were dropped. The Appellant ought to have been reinstated immediately thereafter unless a fresh order was passed, placing him under suspension during the pendency of the criminal trial which did not happen. Ultimately, the Appellant was reinstated by an order dated 21.10.1987 by revocation of the order of suspension. Though, technically, the learned Additional Solicitor General is right in submitting that the impugned judgment does not even refer to the I.A., we are not inclined to remit the matter to the High Court at this stage for fresh consideration of this point. We hold that the Appellant is entitled for full wages from 23.10.1979 to 21.10.1987 after adjustment of the amounts already paid towards subsistence allowance.

8. For the reasons mentioned above, we approve the judgment of the High Court by holding that the Appellant shall be entitled for back wages only from the date of acquittal on 31.08.2001, till the date of his reinstatement on 20.01.2003. Further, the Appellant shall be entitled to full salary from 23.10.1979 to 21.10.1987.

9. Accordingly, the appeal is disposed of.”

Another aspect which is to be considered as such is that the employee as such also, on his arrest on the lodging of the FIR dated

24.08.2011, remained in custody till 18.12.2013, which would be clear from the judgment of the Additional Sessions Judge, Special Court, Hisar. This aspect apparently missed the notice of the learned Single Judge and, therefore, relief which has been granted that the same has to be treated as duty period and release of full pay and allowances for the said period is not sustainable in any manner.

Even otherwise, under Rules 7.3 and 7.5 of the Punjab Civil Service Rules (as applicable to Haryana) as per the judgment of the three-Judge Bench of the Apex Court in ***Civil Appeal No. 4114 of 2006, Uttri Haryana Bijli Vitran Nigam and another vs. Shashi Kumar***, the said exercise is to be done by the authorities and the applicability of the said Rules and the amount payable is to be seen by them in the manner in which payment is to be made for the said period. The relevant portion reads thus:-

“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."

Reliance upon ***Jaipur Vidyut Vitran Nigam Ltd. and others vs. Nathu Ram, (2010) 1 SCC 428*** is without any basis since the said case was regarding the termination of service on account of the criminal misconduct, which is not the case in the present situation.

Keeping in view the above facts and circumstances, we are of the considered opinion that the learned Single Judge was in error while allowing the writ petition and granting the necessary relief by relying upon various other judgments. The peculiarity of the fact as such of the writ petitioner-employee being in custody was never been adverted to and, therefore, the reasoning which had been given in the impugned order dated 21.07.2015 which also though does not notice this aspect but is based on the correct appreciation on the law laid down in *Jaipal's case (supra)*.

Accordingly, the appeal is allowed and the said judgment dated 14.07.2016 passed by the learned Single Judge in CWP No. 17432 of 2015 is set aside and the writ petition is dismissed.

(G.S. SANDHAWALIA)
JUDGE

26.05.2022
shivani
Whether reasoned/speaking
Whether reportable

(VIKAS SURI)
JUDGE

Yes/No
Yes/No