

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

LPA-2169-2016 (O & M)
Date of Decision: 23.11.2022

Dakshin Haryana Bijli Vitran Nigam Ltd. and others

.....Appellant(s)

Versus

Ranbir Singh

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. Parveen Chauhan, Advocate,
for Mr. Gagandeep Singh Wasu, Advocate,
for the appellants.

Mr. Vaidant Arora, Advocate,
for Mr. Sunil Kumar Bhardwaj, Advocate,
for the respondent.

G.S.SANDHAWALIA, J. (Oral)

CM-4493-LPA-2016

Application for condonation of delay of 203 days in filing the
appeal is allowed since no reply has been filed to the said application.

Delay of 203 days in filing the appeal is condoned.

CM stands disposed of.

LPA-2169-2016

Challenge in the present letters patent appeal is to the order
passed by the learned Single Judge dated 02.03.2016 passed in CWP No.
4465 of 2015, Ranbir Singh vs. DHBVNL and others. The learned Single
judge set aside the order dated 28.07.2014 (Annexure P-7) which was subject
matter of challenge whereby on the denial of pay and allowances for the
suspension period from 11.12.1992 to 10.10.1994 and the dismissal period

from 30.03.1997 to 28.07.2014, he was held entitled for full salary and allowances for the period under suspension. He was also held entitled for consideration for promotion and to calculate the amount with 9% interest in view of the judgments of the Apex Court in ***D.D. Tewari (D) through L.Rs. vs. UHBVNL and others, 2014 AIR (SC) 2861*** and ***Megh Varan Sharma vs. State of U.P. and others, 2015 (1) SCT 12***. The learned Single Judge had relied upon the judgment of the Apex Court dated 26.09.2013 in ***Civil Appeal No. 4114 of 2006, UHBVN and another vs. Shashi Kumar and Hukam Singh, Lecturer in Hindu Government Sr. Sec. School Indri vs. State of Haryana and another, 2001 (2) SCT 696***, a Division Bench of this Court and by placing reliance upon Rules 7.3 and 7.5 of the Punjab Civil Service Rules, which have also been relied upon in the grounds of appeal by the appellant. Resultantly, it was held that keeping in view the law laid down in ***Union of India vs. K.V. Jankiraman and others, AIR 1991 SC 2010*** since the employee was willing to work but was kept away from work for no fault of his, the benefit of salary and full allowances was given.

Counsel for the appellants has vehemently submitted that as per the Rules, the competent authority had passed the order denying the same and there was no reason as such to interfere.

We are of the considered opinion that the order passed by the learned Single Judge does not warrant any interference. The learned Single Judge has taken the view which has been settled beyond the anvil of doubt. The impugned order which was subject matter of challenge had reinstated the employee on account of his conviction being set aside and on account of the acquittal he had earned from this Court on 23.11.2010 (Annexure P-4) which

his duties that he had been involved in the said case and placed under suspension on 11.12.1992 (Annexure P-1). He had been suspended on 11.10.1994 and reinstated on 11.10.1994 (Annexure P-2) thereafter convicted on 03.03.1997. On account of the conviction, he had been dismissed on 08.09.1997 (Annexure P-3) w.e.f. 03.03.1997 and on account of the acquittal, he was reinstated but the benefits were denied by noting that it would be if departmental proceedings have been initiated. Apparently, there are no departmental proceedings which were separately initiated on the basis of which the writ petitioner had been proceeded against adversely. It is, thus, apparently non-application of mind at the highest level by the Chief Engineer that he was wrongly held not entitled for the benefit of the suspension period and for the purposes he remained out of service while noting it would be subject to departmental proceedings when they were none. In *Shashi Kumar's case (supra)*, it has been held that it is for the competent authority as such to take a call on the said period while relying upon the same set of Rules, which was not done in the proper perspective herein also and, therefore, the employee had to approach this Court. The relevant part of the judgment 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 as 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 allowance. In other case, an order for payment of proportionate pay and allowances has to be passed. In the first case, the period of the period of absence has to be treated as 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 noted 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 name 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 fully exonerated. Each one of them was given benefit of doubt by the High Court on the trial Court. Therefore, the High Court should have

directed the competent authority to pass appropriate order in terms of the rules reproduced above i.e 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 made 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.”

Once the dismissal was on the basis of criminal prosecution and there was an acquittal by this Court by noticing that the prosecution was not able to prove its case beyond a reasonable doubt. Rather it was held that the complainant had played a fraud with the department and prepared forged documents and apparently in order to wriggle out of the situation, he had presented himself with an affidavit before the Deputy Commissioner. Finally, he had approached the police and the vigilance after a long period and the conclusion that it was on account of the fact that there was disconnection of the tubewell, the proceedings had been initiated against him. It is apparent that the involvement was on account of entwined duties of the employee and, therefore, it cannot be said that he will not be entitled for the financial benefits as such and it is not that he was involved in criminal

Single Judge while acquitting him read as under:-

“Though he denied the suggestion that after the enquiry, Sub Divisional Officer had concluded that the appellants were innocent and it was he, who had played fraud with the department and prepared forged documents, yet the fact remains that the tubewell connection was disconnected and in fact, the Sub Divisional Officer had recommended for registration of the case against him. Apparently, in order to wriggle out of the situation created by himself that PW-10 Mohinder Singh came up with his affidavit Ex.PB which he presented before the Deputy Commissioner. Of the appellants had received illegal gratification from him then he should not have waited till 21.12.1992 when he submitted his affidavit before the Deputy Commissioner. His not approaching the police or the Vigilance for a long period of time after giving illegal gratification to the appellants points to the one and only conclusion that he had, at no stage given any illegal gratification to the appellants and only when his tubewell connection was disconnected and proceedings sought to be initiated against him and submitting forged documents for the purpose of obtaining tubewell connection that he came up with the belated version by submitting his affidavit Ex.PB.”

In such circumstances, we are of the considered opinion that the judgment passed by the Apex Court in ***Jaipur Vidyut Vitran Nigam Ltd. and others vs. Nathu Ram, (2010) 1 SCC 428*** would be directly applicable, in which it was held 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.”

Resultantly, it was held by the Apex Court that the employee could not be not held entitled to pay which he was to be paid with back wages as directed by the Division Bench while upholding the order passed by the Division Bench of the Rajasthan High Court. In similar circumstances, we had dismissed **LPA No. 897 of 2017, UHBVN Ltd. vs. Jagdish Lal** on 11.05.2022 by observing as under:-

“11. A perusal of the above would go on to show that once there is a reinstatement of the Government employee, who had been dismissed from service, a specific order has to be made and sub-rule (2) further provides that once there is exoneration, the Government employee shall be given full pay and allowances to which he would have been entitled, had he not been dismissed from service. As noticed, the dismissal was on the basis of conviction which had been upset and thereafter, there was reinstatement itself by the authorities. On the departmental side also, inspite of the acquittal, proceedings had been initiated but dropped. In such circumstances, the benefit of the said rule would be applicable to the employee.

12. Similarly, Rule 7.5 also talks about the action

taken against the employee and the adjustment of the allowances on account of the criminal charge where he had been in custody or undergoing imprisonment. It talks about the officer's liability in the circumstances beyond his control and the detention by the competent authority was unjustified. The circumstances had to be taken into account but the needful was never done by the competent authority. In such circumstances, we are of the considered opinion that the judgments relied upon by the learned Senior Counsel for the appellant-Nigam is without any basis and are distinguishable on facts.”

Accordingly, we do not find that the judgment of the learned Single Judge dated 02.03.2016 suffers from any infirmity which would warrant interference in the present letters patent appeal and the same stands dismissed.

(G.S. SANDHAWALIA)
JUDGE

23.11.2022
shivani

(HARPREET KAUR JEEWAN)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No