

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

216

LPA-847-2016 (O&M)

Date of decision : 11.05.2022

Dakshin Haryana Bijli Vitran Nigam, Haryana,
Panchkula and others

....Appellants

V/s

Balwan Singh

....Respondent

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

Present: Mr. Puneet Jindal, Senior Advocate with
Mr. R.S. Longia, Advcoate for the appellants.

Mr. Balraj Singh, Advocate for the respondent.

G.S. SANDHAWALIA, J. (ORAL)

CM-1720-LPA-2016

Application seeking condonation of delay of 58 days in filing the present Letters Patent Appeal against the impugned order dated 19.02.2016, passed by the learned Single Judge has been filed.

In view of the averments mentioned in the application, duly supported by the affidavit, sufficient cause has been made out to condone the delay. Accordingly, the application is allowed and delay of 58 days in filing the appeal is condoned.

CM stands disposed of.

LPA-847-2016

Present Letters Patent Appeal arises out of the order dated 19.02.2016 passed by the learned Single Judge, filed by the respondent-writ petitioner.

The order under challenge was dated 13.03.2015 (Annexure P-5), which was set-aside by the learned Single Judge and the writ petitioner was held to be entitled to all consequential benefits i.e. promotion, regularization of the

period in which he remained out of service and release of salary along with all the retiral benefits from the date of superannuation. The learned Single Judge had also relied upon the judgment of the Coordinate Bench titled as *Shashi Kumar vs. Uttar Haryana Bijli Vitran Nigam Ltd. and others, 2005 (1) S.C.T. 576*, to come to the conclusion that the writ petitioner, who was initially convicted but later acquitted, was entitled to all the consequential benefits and no departmental inquiry could be initiated against him on identical and same charges.

A perusal of the paper-book would go on to show that along with the written statement, subsequent orders dated 09.10.2015 (Annexure R-1) and 04.11.2015 (Annexure R-2) had been attached wherein the competent authority on the departmental side, had imposed stoppage of two annual increments of the writ petitioner on the basis of departmental proceedings while disagreeing with the report of the enquiry officer. Similarly, the request as such of the writ petitioner regarding the suspension period from 03.09.1998 to 23.11.2000 and the removal period from 11.02.2004 to 30.04.2013 had been treated as regularized only for the purpose of continuity of service while denying the benefits of pay and allowance for the said period, on the ground of involvement in the proceedings initiated under the Prevention of Corruption Act and on the principle of the no work no pay

The said orders were not taken into consideration by the learned Single Judge while passing the impugned order. In such circumstances, we are of the considered opinion that the learned Single Judge has not taken the said order's into account which had been passed after the filing of the writ petition, and no steps had also been taken to amend the writ petition. The judgment of the Division Bench in *Shashi Kumar's* case (supra) had been challenged before the Apex Court vide Civil Appeal No. 4114 of 2006 titled as *Uttri Haryana Bijli Vitran Nigam and another vs. Shashi Kumar* and certain observations had come from three Judges Bench on 26.09.2013. The same read 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.”

The said directions were also not taken into consideration by the learned Single Judge. Thus, apparently the matter requires reconsideration on the strength of the aforesaid observations made by the Apex Court and also the fact that the complete factual matrix has not been apprised to the learned Single Judge, since the disciplinary authority had given reasons which had not been examined by the learned Single Judge while setting aside the earlier order passed.

Accordingly, the impugned order passed by the learned Single Judge cannot be not justified in any manner. The same is set-aside and the matter is remitted to the learned Single Judge for reconsideration, keeping in view the aforesaid observations.

Pending application(s), if any, also stands disposed of.

(G.S. SANDHAWALIA)
JUDGE

(VIKAS SURI)
JUDGE

May 11, 2022
Ajay

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