

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

**LPA-1532-2017 (O&M)
Reserved on: 21.12.2022
Decided on: 23.12.2022**

Chief Engineer (OP), UHBVNL & othersAppellant(s)

Versus

Smt. Shanti DeviRespondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE GURBIR SINGH**

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

Mr.Salil Bali, Advocate, for the respondent.

G.S. Sandhawalia, J.

The present Letters Patent Appeal arise out of the order passed by the learned Single Judge in CWP-24491-2014 decided on 17.05.2017.

Vide the impugned order, directions had been issued to extend the monetary benefits from 29.07.1997 to 30.06.2006 and the competent authority was asked to work out the arrears of pay with reference to the revision of pay for the said period and release the amount to the legal heirs. Further service benefits which were due to the deceased employee at par with the juniors was to be extended and the said exercise was to be done within 3 months failing which costs of Rs.25,000/- were liable to be imposed. The order was stayed in appeal on 22.08.2017 by the Co-ordinate Bench while issuing notice.

The learned Single Judge was of the considered view that on account of the conviction, the services had been terminated and on account of the acquittal he was entitled for the service benefits for the intervening

period from the date of suspension till the date of his retirement as the appellants herein had not resorted to any disciplinary proceedings in respect of the allegations relating to the offences under the Prevention of Corruption Act, 1988 (for short, the 'P.C. Act'). It was noticed that the legal heir of the employee was aggrieved against the order dated 31.01.2013 (Annexure P-10) wherein her husband who was working as Junior Engineer was notionally reinstated while withdrawing the earlier orders of termination and giving the benefit of reinstatement till the date of superannuation. However, the offending part was that the suspension period was to be treated as on duty for the purpose of continuity of service but with no back-wages for the intervening period.

The sequence of events which unfolded to the issue in question is that on account of the fact that an FIR was lodged on 28.07.1997 wherein there were allegations that Umed Singh, who was working as Junior Engineer had demanded Rs.1000/- as bribe for re-erection of electric pole which was supplying power to the tubewell as the same had been disrupted. On account of the arrest and lodging of the FIR, the employee was placed under suspension on 29.07.1997 and eventually he was convicted on 11.02.2003 by the Special Judge, Jhajjar for a period of 1 year under Section 7 of the P.C. Act. On account of his conviction, he was dismissed from service on 20.01.2004 (Annexure P-2) on the ground that the offence was of moral turpitude and resultantly though he was on bail during the pendency of appeal, it did not obliterate the stigma of conviction.

In CRA-380-SB-2003, he earned acquittal on 11.07.2011 (Annexure P-1) wherein this Court noticed that the electric pole had

already been re-installed on 26.07.2007 and therefore, there was no question of making a demand on a subsequent date. It was also noticed that prosecution witnesses had turned hostile and therefore, recovery of tainted money was not sufficient to convict the employee and accordingly it was held that the prosecution were not able to bring the charge beyond any reasonable doubt. Relevant portion reads as under:

“For the reasons aforesaid, I conclude that the prosecution has not been able to bring home the charge against the accused-appellant beyond reasonable doubt. It is well settled that if two views are reasonably possible, the view favourable to the accused should be taken. In the instant case, the accused appellant deserves the benefit of doubt for the reasons recorded hereinbefore. Accordingly, the instant criminal appeal is allowed and impugned judgment of conviction and order of sentence recorded by Special Judge, Jhajjar are set aside and the appellant-accused is acquitted of the charge against him by giving him benefit of doubt. Fine amount paid by the accused-appellant be refunded to him. Bail bonds furnished by the accused-appellant stand discharged.”

On the strength of the same, he was reinstated on his application filed on 08.08.2011 (Annexure P-7) vide order dated 11.10.2012 (Annexure P-9) from the date of his suspension order. Thereafter, the offending order was passed on 31.03.2013 (Annexure P-10) in continuation of the earlier order whereby the suspension period had been treated as duty period for the purposes of continuity of service but back-wages were declined. Unfortunately, the employee had expired on 17.10.2012, a week later of the initial letter of reinstatement. Resultantly, legal notice dated 16.01.2012 was served by the widow claiming back-wages from 29.07.1997 till the date of retirement and as noticed, the learned Single Judge gave the benefit.

Counsel for the Corporation has placed reliance upon the judgment of the Apex Court in **Union of India Vs. Jaipal Singh, 2004 (1) SCT 108** and **Gr.Hyderabad Mun.Corp. Vs. M.Prabhakar Rao, 2011 (4) SCT 46** to submit that the Nigam could not be burdened with the back-wages. He has also placed reliance upon **Banshi Dhar Vs. State of Rajasthan & another, 2006 (4) SCT 780** to submit that it was not a fit case for grant of back-wages.

It is not disputed that the said issue was decided by the judgment of a three Judge Bench of the Apex Court in Civil Appeal No.4114 of 2006 titled *Uttri Haryana Bijli Vitran Nigam & another Vs. Shashi Kumar*, decided on 26.09.2013 wherein Rule 7.3 of the Punjab Civil Services Rules, 1972 was subject matter of consideration. The Apex Court had held that it is for the competent authority to take a call as to how the said period is to be treated and it was for the employer to see whether there was full exoneration and whether the suspension order is wholly unjustified and whether an order for payment of proportionate pay and allowances is to be passed. Relevant portion 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.

In so far 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 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."

Thus, the Apex Court was dealing with the specific provisions of the Nigam itself and the said judgment would squarely cover the facts of the present case. However, it is to be noticed that the employee is no longer alive having expired on 17.10.2012 and his widow is now struggling for the benefits. In such circumstances, we are of the considered opinion that once the Corporation was itself remiss in taking a decision as to how the said period is to be counted as per the Rules in force pertaining to its own department. At this stage, it would not be appropriate to remand the matter for reconsideration as the employee has long expired as it would amount to putting a premium to the illegalities of the Nigam.

The judgment in Jaipal Singh (supra) is not applicable to the facts and circumstances of the present case as it was a case where the person had been charge-sheeted for an offence under Section 302 IPC and convicted and had earned acquittal which is a private dispute. Resultantly, it was held that the Department cannot be in any manner kept at fault for keeping the employee out of service since the law obliges a person convicted of an offence to be so kept out and not to be retained in service. In the present case, as noticed, the employee was suspended in pursuance of the fact that the dispute stemmed from his duties itself and acquittal had been earned, as discussed above. Relevant rules specifically mention how the said period is to be reckoned and acted upon which were not adhered to and even referred to at the time of decision making. Reliance can be placed upon the judgment passed by the Co-ordinate Bench of this Court in **Manager Operation Circle, Dakshin Haryana Bijli Vitran Nigam, Narnaul & others Vs. Mathura Dass Gupta, 2012 (4) SCT 7** wherein it

was held that on account of an acquittal, the employee would be entitled for reinstatement with all consequential benefits.

The Apex Court in **Jaipur Vidyut Vitran Nigam Ltd. Vs. Nathu Ram**, AIR 2010 SC 19, considered both the judgments in **Ranchhod Chaturji Thakore Vs. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar, Gujarat, 1997 (1) SCT 824** and **Jaipal Singh's case (supra)** came to the conclusion that once there is a specific provision under the Rules which provided that on exoneration, the employee 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's case (supra)** and **Jaipal Singh's case (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 has not even referred to the rules in question and 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.

The judgment in M.Prabhakar Rao (supra) was in reference to the specific rules wherein the Apex Court came to the conclusion that the competent authority had taken a possible view and held that the back-wages and consequential benefits were not liable to be paid which order had been set aside by the Tribunal. It was accordingly noticed that the said view could not be set aside by the Courts as the rules provided so and gave the power to the competent authority. In the present case, as noticed, the competent authority has not applied the provisions of the relevant rules in any manner and has passed an order denying the benefits without any application of mind though the judgment of the Apex Court had come which pertained to the appellant-Nigam itself at a subsequent point of time.

Similarly, in Banshi Dhar (supra) case, it was laid down that no hard and fast rules could be laid down in regard to back-wages and each case has to be determined on its own facts while noticing that departmental proceedings could be initiated and thus, in the peculiar facts and circumstances, since the issue had been left open, to file a representation with the competent authority after having been acquitted. It was thus held that the benefit of back-wages could not be granted since he

had been paid the retiral benefits and thus, the issue was never decided regarding the applicability of the rules and the decision making done by the authority at the relevant time and therefore, the said judgment is not applicable.

Accordingly, keeping in view the above, we are of the considered opinion that the appeal is liable to be allowed, to the extent that since the employee had been reinstated with notional effect from the date of his suspension which is after his retirement and therefore, he is liable to be paid back-wages from the date when his services were terminated till his date of retirement only and he is not entitled for the full financial benefits from 29.07.1997 as being under suspension, as he would have been paid the suspension allowance till he was reinstated.

Resultantly, the present appeal is partly allowed and the judgment of the learned Single Judge dated 17.05.2017 is modified to the extent that only the element of back-wages are liable to be paid from 20.01.2004 till the date of retirement of the employee i.e. 30.06.2006 which will off-course be as per the revision of pay as ordered by the learned Single Judge and any other service benefits which may have been extended to his juniors. The said exercise be completed within a period of 3 months from today.

(G.S. SANDHAWALIA)
JUDGE

23.12.2022
sailesh

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned : Yes
Whether Reportable : Yes