

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

**LPA-161-2017 (O&M)
Decided on : 14.11.2022**

Uttar Haryana Bijli Vitram Nigam Ltd. & others

.....Appellant(s)

Versus

Sahib Singh

.....Respondent(s)

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

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

Mr.Dinesh Arora, Advocate, for the respondent.

G.S. Sandhawalia, J. (Oral)

CM-334-LPA-2017

Application for condonation of delay of 290 days in filing the appeal, is allowed, in view of the averments made in the application, duly supported by affidavit. Delay of 290 days in filing the appeal is hereby condoned.

CM stands disposed of.

LPA-161-2017 (O&M)

Consideration in the present appeal, filed by the appellant-Corporation, is to the judgment dated 09.02.2016, passed by the learned Single Judge in CWP-7406-2014. In the said judgment, the learned Single Judge has allowed the writ petition and directed that the writ-petitioner should be reinstated in service with all consequential benefits and the principle of 'no work no pay' could not be made applicable to him.

Reliance has been placed upon the judgment of this Court in **Shashi**

Kumar Vs. Uttri Haryana Bijli Vitram Nigam & another, 2005 (1) SCT 576, to take the said view. Unfortunately, it was not brought to the notice of the learned Single Judge that the said order was subject matter of the judgment passed by the Apex Court in Civil Appeal No.4114 of 2006 titled **Uttri Haryana Bijli Vitram Nigam & another Vs. Shashi Kumar**, decided on 26.09.2013. The Apex Court in the said case while considering the relevant provisions held 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."

It is also not disputed that during the pendency of the writ petition, specific order dated 24.09.2014 (Annexure R-2) was passed wherein the benefit of the intervening period from 15.05.2003 till the superannuation dated 31.05.2004 was treated as continuous service for the purpose of pensionary benefits while withdrawing the termination order dated 15.05.2003. However, the employee was not held entitled for salary and allowances as he remained out of service due to his conviction which was noticed and his conduct and on the principle of 'no work no pay'.

On 26.05.2022, the following order was passed:

"During the course of the arguments, it transpires that for the FIR dated 10.03.1996, departmental proceedings were also initiated on 09.09.2002 (Annexure R-1). The employee retired on

31.05.2004. Thus, it is not clear as to whether the appellant-Nigam as such dropped the proceedings without taking the same to its logical end, as admittedly the employee was acquitted on 03.10.2013 (Annexure P-2) by this Court in appeal. Thus, on that account he remained out of service. Due to conviction, the competent authority had treated the said period from 11.03.1996 to 15.05.2003 i.e. the termination order till his date of retirement as 'no work no pay', but treated the same for the purposes of pensionary benefits.

Let, necessary affidavit be filed regarding this aspect on or before the next date of hearing.

List on 01.09.2022.”

Today, the affidavit has been filed that the record is not traceable and the status of the chargesheet which was issued is not available with the Nigam.

Counsel for the respondent-employee has brought to our notice that the acquittal order was passed on 03.10.2013 by this Court in CRA-1627-SB-2002 (Annexure P-2) and it was more on merits as the prosecution had failed to discharge its burden. It has been recorded that the prosecution has failed to establish that there was any acceptance of bribe and therefore, the benefit of doubt had been given. It is thus submitted that once that was so, keeping in view the observations of the Apex Court, fresh decision on merit is required to be taken as per the regulations of the Nigam which are also couched in similar terms.

Accordingly, keeping in view the above, we are of the considered opinion that the matter needs to be relooked keeping in view the law laid down by the Apex Court and the fact that the writ petitioner had never even challenged the order dated 24.09.2014 (Annexure R-2) which was passed during the pendency of the writ petition. The learned Single Judge has decided the issue on the basis of the judgment which

stood overruled and unfortunately, this fact was not brought to the notice

of the learned Single Judge. In such circumstances, the present appeal is allowed, the order of the learned Single Judge dated 09.02.2016 is set aside. The Nigam shall take a decision afresh on the said issue keeping in view the above said observations. Since the employee has already retired on 31.05.2004, it is expected that the said decision will be passed within a period of 3 months from the receipt of certified copy of this order. If the same is in favour of the employee, the necessary benefits be disbursed. If the same is to be denied, then a reasoned order be passed and communicated to the employee.

With the above observations, the present appeal stands disposed of.

(G.S. SANDHAWALIA)
JUDGE

14.11.2022
sailesh

(HARPREET KAUR JEEWAN)
JUDGE

Whether speaking/reasoned :
Whether Reportable :

Yes/No
Yes/No