

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

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**LPA-1640-2018 (O&M)
Decided on : 26.05.2022**

Chairman, Uttar Haryana Bijli Vitran Nigam, Panchkula and others

.....Appellants

Versus

Jeet Singh and another

.....Respondents

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

Present: Mr. Puneet Jindal, Senior Advocate with
Mr. Amandeep Singh Meho, Advocate for the appellants.

Mr. Saurabh Arora, Advocate for the respondent.

G.S. Sandhawalia, J. (Oral)

Present letters patent appeal is directed against the order of the learned Single Judge dated 10.03.2018 passed in **CWP No.11735 of 2006 'Jeet Singh Vs. State of Haryana and others'**, wherein the punishment of stoppage of one increment with future effect, which was imposed upon the writ petitioner who was working as Assistant Lineman vide order dated 09.05.2005 (Annexure P-9) in pursuance of the show cause notice dated 04.05.2004 (Annexure P-8) was set aside. Alongwith it order whereby the period of suspension was regularized as leave of kind due, vide order dated 17.05.2006 (Annexure P-11), while acknowledging the fact that he was reinstated on 08.01.1998 and suspended again on 09.03.1998 and then reinstated on 16.04.2004 was also set aside.

2. It is also to be noticed the department had treated the suspension period as leave of kind due, which fact also finds mention in the office order dated 20.03.2006 (Annexure R-1) appended with the written

statement.

3. We are of the considered opinion that the learned Single Judge was in error to the extent whereby stoppage of annual increment in pursuance of inquiry proceeding was set aside. The issue primarily before the learned Single Judge was that how the period of suspension is to be treated, though the challenge had also been raised to Annexure P-9.

4. The learned Single Judge while delving deep into the issue came to the conclusion that the writ petitioner appeared to have been made a scapegoat while no action had been taken against senior officers. Keeping him out of service for six years was found wholly unjustified, discriminatory and unsustainable, keeping in view the fact that Adarsh Mohan had continued in service, who was similarly situated. The report of the Inquiry Officer dated 13.03.2004 (Annexure P-7) had also been taken into consideration that the finding was in favour of the employee and he himself could not alone be blamed for release of unauthorized connections being neither the sanctioning authority nor the final authority in this regard. It was noticed that Adarsh Mohan was convicted for three years rigorous imprisonment in FIR no.139 regarding some other matter and due to pendency of the criminal case persons junior to the writ petitioner had served on higher promotional posts i.e. Lineman and Foreman and even retired as such. Thus, a finding was record that he had been ignored due to the delay in resolution of his enquiry

and criminal trial and the matter was pending since the year 2006.

5. Resultantly, while keeping in mind the fact that to avoid multiplicity of proceeding where the petitioner would be compelled to approach this Court again and which would delay the matter by making an amendment in the prayer clause supported by introduction of supervening events to serve the ends of justice and keeping in mind the fact that the criminal trial had failed and the writ petitioner was deemed to be innocent as such a declaration had come at the hands of the Special Judge by granting acquittal, the orders were quashed. Resultantly, the writ petitioner was held entitled for the payment of arrears of pay etc. for the suspension period and the amount due to him was ordered to be disbursed within eight weeks from the date of receiving of certified copy of the order.

6. We are of the considered opinion that the order is well justified in the facts and circumstances. It is settled position of law that the Apex Court in its three Judge Bench judgment passed in **Civil Appeal No.4114 of 2006** titled as **Uttar Haryana Bijli Vitran Nigam and another Vs. Shashi Kumar** decided on 26.09.2013, while examining the relevant provisions of Punjab Civil Services Rules 7.3 & 7.5 (as applicable to the State of Haryana) came to the conclusion that it was for the competent authority to take a call as to how the period of suspension is to be treated. The relevant portion of the said judgment 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.

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."

7. In the present case, it is to be noticed that the writ petitioner had been suspended initially on 23.03.1997, though the FIR was of dated 27.04.1997. The same was on the ground that there was a promise to release out of turn electricity connections by misusing the authority. Adarsh Mohan had been arrayed as co-accused, who was the Assistant Foreman. The Executive Engineer, Operation Division, HSEB, Jind had addressed memo dated 26.03.1997 to the SHO, Police Station, Sadar Jind for taking action

against the erring officials posted at Sub-Division, HSEB, Nagruan, who had released unauthorized new connections in favour of the consumers. Resultantly, the writ petitioner alongwith Adarsh Mohan had been arrayed as accused.

8. It is a matter of record that on the same set of allegations the writ petitioner was also departmentally proceeded against on 11.06.1997 (Annexure P-5) just after the lodging of the FIR, wherein allegations were that he was involved in release of direct *Atta Chakki* connection of the consumer and he was negligent in discharging his official duties and was in the habit to contact the consumers for getting illegal gratification to carry out illegal work through his incharge. An enquiry report was also submitted on 13.03.2004 (Annexure P-7) by the SDO (OP), Sub-Division, UHBVN Jind, whereby the following conclusion was arrived in the departmental proceedings:-

“These are general nature objections no specific instance have been quoted other than mentioned above. No specific comments can be given. Although he cannot be excused by stating as ignorant of release of un-authorized connection on illegal working earlier to his Senior Officers regarding these cases. Also the other officials such as Meter Reader, BD, JE/AFM incharge of feeder/village should have also pointed out regarding these irregularities as they must be visiting the site of these cases.

From all above it means that there was routine of such illegal works being done with the consent of all concerned employees but it has been liquidated at

later stage after causing destruction in the aliened (sic.) and accordingly Sh. Jeet Singh, ALM alone cannot be blamed as he himself cannot release the unauthorized connection mentioned as above without the consent of his seniors. Although his own part cannot excused.

Sd/- 13.3.2004
S.D.O. (OP) Sub-Divn.
UHBVN Jind”

9. The said inquiry proceedings, thus, would go on to show that Om Parkash had been given the benefit of connection unauthorizedly. However, a finding was also recorded that accepting of Rs.2,000/- as illegal gratification could not be proved due to non production of record. Thereafter, show cause notice dated 04.05.2004 (Annexure P-8) was also issued to the employee regarding stoppage of three annual increment without future effect. Eventually, the stoppage of punishment of one annual increment was imposed without future effect, in view of the reply submitted and the in the light of the record and material available in the office, vide order dated 09.05.2005 (Annexure P-9). Relevant portion of the said order reads as under:-

“Sh. Jeet Singh, A.L.M was served with Show cause notice vide this office memo No.Ch.83/PF-3143 dated 4.5.2004 on account of the release the illegal connection as per enquiry report, conducted by Sh. R.K. Singla, SDO, (OP) S/Divn. Jind.

The reply submitted by the official to the ibid show cause notice has been considered by the competent authority in the light of record/material available in the

office and comments offered by the field office and it has been decided to stop his one increment without future effect on this account.

As such one annual increment of Sh. Jeet Singh, ALM is hereby stopped.”

10. It is, thus, apparent that on the departmental side the writ petitioner had apparently been punished for his lapses. We are of the considered opinion that the competent authority failed to keep in mind this aspect, though while passing order dated 17.05.2006 (Annexure P-11) and it was ordered that the suspension period was to be regularized as leave of kind due and thus infact imposed another punishment upon the employee.

11. A perusal of the said order would go on to show that it is apparent that the employee had been suspended firstly on 23.03.1997 and reinstated on 08.01.1998, but again suspended on 09.03.1998 and reinstated only on 16.04.2004, once the report of the Inquiry Officer had come in his favour. It was, thereafter, he had earned acquittal on the criminal side on 04.10.2004 (Annexure P-4). Rather the finding of the criminal Court is also to be taken into consideration that the evidence which was brought on record failed to connect the accused, even remotely, with the commission of the alleged offences and there was no evidence to show that connections had been released by the accused persons and they had demanded illegal gratification. Rather the benefit of doubt was not given to them and they were acquitted honourably of the charges, which had

been framed against them. The relevant portion of the said judgment reads as under:-

“20. This is the entire evidence which has been brought on record by the prosecution in this case but it fails to connect the accused, even remotely, with the commission of the alleged offences. It is the case of the prosecution that the accused had demanded and accepted bribe money from S/Sh. Ranbir, Sh. Ran Singh, Om Parkash and Rajmal. Sh. Om Parkash and Sh. Rajmal have not been examined whereas the other two have not imputed any motive to the accused. Therefore, the ingredients of demand and payment are not proved in this case.

21. It is established that accused Adarsh Mohan and Jeet Singh are public servants who were posted at H.S.E.B Sub-Station, Naguran in the month of March, 1997 and that atleast unauthorized and illegal connections had been released by ignoring the seniority list of the consumers but there is no evidence on record to show that the connections had been released by the accused persons. There is also no evidence on record to prove that they had ever demanded illegal gratification other than legal remuneration from the consumers or that they had accepted bribe money at any point of time for releasing out of the turn electricity connections.

22. The prosecution has utterly failed to bring home the guilt to the accused, who are, consequently, acquitted of the charge framed against them for the commission of the offences punishable under sections 7 and Sec. 13 (I) (d) of Prevention of Corruption Act, 1988. Their bail bonds are discharged. File be consigned to the record room.”

12. This aspect had also been totally ignored by the

competent authority, though it was a under bounden duty to do so, in view of the law laid down by the Apex Court in the case of **Shashi Kumar (supra)**. In our considered opinion keeping in view the peculiar facts, the learned Single Judge was well justified in exercising his extra-ordinary writ jurisdiction while granting the benefits, keeping in view the fact that his suspension period in comparison was much more than a similarly situated person who was also involved in another criminal case, but had been reinstated at the earliest. Rather the writ petitioner had to suffer suspension for long six years for the second time during the departmental proceedings. The discussion which had been exercised by the learned Single Judge does not suffer from any infirmity or illegality, which would warrant interference in the present letters patent appeal. It was always open to the department to pass an order of dismissal on the basis of the inquiry report or differ with the same, but it failed to do so. In such circumstances, we are of the considered opinion that having been acquitted of the charges on the criminal side and a minor punishment having been imposed on the employee, it was not justified to hold back the dues for the suspension period, in the peculiar facts and circumstances.

13. Accordingly, the present appeal is partly allowed by modifying the order of the learned Single Judge to the extent that the first order dated 09.05.2005 (Annexure P-9) is liable to be sustained, whereby punishment of stoppage of one annual increment without

future effect was imposed. There was an alternative remedy of filing an appeal against the said order before the appellate authority and for the negligence the employee had been punished by imposing minor punishment against a proposed three annual increments. Accordingly, the said order is sustained. Qua the other order dated 17.05.2006 (Annexure P-11) the appeal is dismissed. The order dated 20.03.2006 (Annexure R-1) also would not adversely affect the employee on the issue of the suspension period to be treated as leave of kind due.

(G.S. SANDHAWALIA)
JUDGE

May 26, 2022
Naveen

(VIKAS SURI)
JUDGE

Whether speaking/reasoned :

Yes/No

Whether Reportable :

Yes/No