

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

**219**

**LPA-897-2017 (O&M)  
Decided on : 11.05.2022**

Uttar Haryana Bijli Vitran Nigam Ltd. and others

.....Appellants

Versus

Jagdish Lal

.....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, Advocate and  
Mr. Raghav Kakkar, Advocate for the appellants.

Ms. Baljit Mann, Senior Advocate with  
Ms. Sunita Gupta, Advocate for the respondent.

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**G.S. Sandhawalia, J. (Oral)**

Present letters patent appeal is directed against the order dated 03.03.2016 passed by learned Single Judge in **CWP No.20271 of 2015** filed by the respondent herein.

2. Learned Single Judge quashed the order dated 01.06.2012 and 01.05.2015, Annexures P-13 and P-17, respectively passed by the appellant-Nigam. Vide order dated 01.06.2012 (Annexures P-13), the appellant-Nigam came to the conclusion that charges in the departmental proceedings were not proved and the charge-sheet No.23 dated 07.06.2011 was dropped. Resultantly, the intervening period from the date of his arrest from 23.02.1995 to date of his reinstatement 18.01.2011 was to be treated as continuous service for the purpose of pension, but on the principle of 'No work no pay' wages were not to be paid. The promotion of the official

from ALM to Linesman was also to be considered under the relevant rules. Similarly, the authority vide order dated 01.05.2015 (Annexure P-17) treated the period from 04.12.1997 to 18.01.2011 for the purposes of continuation of services, keeping in view the orders passed on an earlier occasion in CWP No.16599 of 2011 filed by the employee. Vide the said order, the authority came to the conclusion that the employee was not entitled for the pay and allowances for the intervening period on the principle of no work no pay, on account of his conviction in the criminal case and that the Nigam was not to be saddled for the period he was out of service.

3. Learned Single Judge noted the judgment of the three Judge Bench of the Apex Court 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 and it was noticed that the charges levelled against the writ petitioner were not proved. Therefore, the charge-sheet had been dropped and the intervening period i.e. 23.02.19995 to 17.01.2011 had to be treated as continuous service for the purpose of pension, but without any wages. The competent authority having not considered the relevant provisions of Rule 7.5 of the Civil Services Rule, Vol. I, Part-I, the conclusion arrived at that it was for the officer concerned, as per the judgment of the Apex Court passed in Shashi Kumar's case (supra), to apply the provisions of Rules 7.3 and 7.5. Resultantly, on account of the said factor, the orders were quashed and directions had been issued

to make payment of full salary and allowance to the writ petitioner for the period he remained out of service i.e. from 23.02.1995 to 17.01.2011 alongwith interest @ 9% per annum.

4. Senior counsel for the Nigam has vehemently argued that on account of the own conduct as such of the employee, the Nigam is not required to pay salary for the said period. For the said purpose he has placed reliance upon the judgments passed in **Management of Reserve Bank of India, Delhi Vs. Bhopal Singh Panchal, 1994 (1) SCT 505; Union of India and others Vs. Jaipal Singh, 2004 (1) SCT 108; Gr. Hyderabad Municipal Corporation Vs. M. Prabhakar Rao, 2011 (4) SCT 46 and Raj Naraian Vs. Union of India and others, 2019 (2) SCT 582.**

5. Senior counsel for the employee on the other hand has relied upon the three Judge Bench judgment passed in **Brahma Chandra Gupta Vs. Union of India, (1984) 2 SCC 433 and Jaipur Vidyut Vitran Nigam Ltd. & others Vs. Nathu Ram, (2010) 1 SCC 428**, to submit that the writ petitioner had been exonerated on the criminal side and on the departmental side also the department was not able to nail him on account of any misconduct. Therefore, for no fault on his part, he cannot be denied his dues for the period he could not serve the Nigam on account of his conviction in the criminal proceedings, since he was reinstated after his acquittal. Reference has also been made to Rule 7.3 and 7.5 as reproduced in the writ petition, which are stated to be applicable to the Nigam.

6. We are in consonance with the arguments raised by the Senior Counsel for the employee.

7. A perusal of the paper-book would go on to show that in FIR No.27 dated 23.02.1995 under Sections 7 and 13 of the Prevention of Corruption Act, 1988, the employee was convicted on 04.12.1997, which led to the dismissal order being passed on 18.03.1998 (Annexure P-2), which was solely on the basis of the said conviction. He earned acquittal from this Court on 26.07.2010 in CRA-1015-SB-1997 (Annexure P-3), wherein it was held that the prosecution miserably failed to prove the essential ingredients of demand and acceptance. Rather a finding was recorded that the demand as such was by the Junior Engineer, whereas the employee was working as ALM. It was further found that complainant himself had stated that the Junior Engineer as such was dealing with increase of load of the electric meter of the consumer. It was in such circumstances, it was held that he was liable to be acquitted of the charge. Relevant portion of the said judgment reads as under:-

“The present appellant was then posted as ALM in HSEB Kahanaur. Complainant in the instant case is PW-1 Surat Singh. He was already having a tubewell connection, however, the load was to be extended. The legal position is no more res integra that primary requisite of an offence under the Prevention of Corruption Act is proof of a demand and then acceptance. In the instant case, the evidence of PW-1 Surat Singh suggests that there was no demand of illegal gratification by the accused-appellant. His statement right from the beginning is that it was the J.E.

whom he had been meeting and he had inspected his tubewell as well and it was J.E. who had not accepted the test report and he had been meeting for the last 1 ½ year but he did not do anything. Rather his statement suggests that the DSP when met him had enquired from him as to the name of the person who had demanded the money and he told the DSP that J.E. had demanded the money but directed him to meet Jagdish Lal, appellant, in the office. His statement also does not suggest if any direction was given by the said J.E. to him to make particular amount of payment to Jagdish Lal. Complainant Surat Singh admits that prior to 23.02.1995, he never approached Jagdish Lal, ALM. He also admits in cross-examination that even on that date, he had not demanded any bribe from him. Thus, the tenor of his evidence suggests that he on his own had given Rs.300/- to Jagdish Lal for doing his work, which he himself contradicts in cross-examination that ALM is not concerned with the extension of load and the said job was to be done by the JE. PW-1 Surat Singh in clear words has stated that money given to Jagdish Lal was for onward transmission to said JE for getting the work done, for which as discussed above there was no demand by the accused-appellant Jagdish Lal and it also looks that he had no instructions from J.E. to accept money as it has come in the statement of PW-1 Surat Singh, complainant, that he showed reluctance to accept the money and told that in case the J.E. accepted the money, he would hand over the same to him otherwise he will return it to him (complainant). PW-9 Constable Hari Om, the shadow witness, also does not say that when Surat Singh had met Jagdish Lal, he (Jagdish Lal) had made any demand. Thus, the evidence of the complainant, PW-1 Surat Singh hardly establishes the demand made by the accused-appellant and thus, the factum of demand remains not proved.

Similar is the position with regard to the acceptance. There is nothing to suggest that accused-appellant was a party to any kind of arrangement between complainant Surat Singh and said J.E. and rather as per evidence discussed, he even had no knowledge about any kind of settlement between the complainant and the said J.E. As discussed above, it has not been shown if the complainant was directed to pay Rs.300/- to Jagdish Lal or Jagdish Lal had got any such instructions from said J.E.; rather, for the sake of repetition, it is evident that upon a stress by the complainant, he took money with reluctance with the clear stipulation that if J.E. does not accept the money, he will return the same to him. The issue relating to the ingredients of acceptance was under consideration before the Hon'ble Supreme Court in **Sadashiv Mahadeo Yavaluje and Gajanan Shripatrao Salokhe V. The State of Maharashtra, AIR 1990 SC 287**, wherein it was held that merely because accused No.2 was entrusted with some money to be passed on to accused No.1, it could not be held that he was guilty of any one of these offences unless it was established that he was a party to the arrangement and the arrangement arrived at was that the money would be handed over to accused No.2 to be given over to accused No.1. In that case also, admittedly, accused No.2 had no knowledge about the settlement and it was held that under these circumstances, it could not be said that accused No.2 accepted this amount for any purpose and it was observed as follows:-

“At best as the complainant told him to pass this money on to accused No.1 he accepted it but on that basis it could not be held that he was sharing the intention with accused No.1 or was acting on his behalf. In the circumstances the conclusions of lower Courts could not sustained and the conviction and sentence against both the accused are to be set aside.”

The ratio of **Sadashiv Mahadeo Yavaluje's case (supra)**, is duly applicable in the circumstances of the present case. The prosecution has miserably failed to prove the essential ingredients of demand and acceptance.

In view of the discussion above, the present appeal is allowed, judgment and order of conviction and sentence qua the appellant is set aside and he stands acquitted of the charge. His bail bonds stand discharged.”

8. It was, thereafter, on 07.06.2011 (Annexure P-11) the charge-sheet was issued on the departmental side after reinstating the writ petitioner on 18.01.2011. The charge-sheet would also go on to show that the mis-conduct as such was that the demand by the J.E. was not reported and the money was being routed through the charged employee. The statement of allegations of the said charge-sheet reads as under:-

“While working under SDO “OP” HSEB, Kalanpur, under XEN S/U Divn. Rohtak you have been held responsible for committing the following acts of omission and commission and misconduct unbecoming of an official of HSEB.

On dated 23-02-1995 an amount of Rs.300/- (Three hundred only) was accepted by you from Sh. Surat Singh for onwards transmission to JE for getting the work done i.e. extension of load. You was well aware that the money given to you for passing onto JE was for gratification to JE.

2. That an amount of Rs.300/- was handed over to you on 23-02-1995 for onwards transmission to JE which was readily accepted by you but you did not inform the higher authorities that Sh. Balwant Rai JE is indulging in unlawful activities thus you committed a misconduct. So

routing money though you shows that you do not possess sound integrity and you was easily made a route for transmission of gratification.”

9. The writ petitioner also filed the reply dated 04.07.2011 (Annexure P-12) that he had faced the trial before the Special Court for those charges and issuance of memorandum for the same charges was unjust. As noticed vide order dated 01.06.2012 (Annexure P-13) the charge-sheet itself was dropped by the competent authority, namely, Superintending Engineer, after proper application of mind. However, it was held that for the intervening period no wages were liable to be paid to the employee on the principle of 'No work no pay'. The said order was challenged before this Court in CWP No.16599 of 2011 whereby it was held that the order dated 01.06.2005 is counter to the statutory provisions and cannot be sustained and was set aside. Matter was remitted to the authorities to decide the issue in view of the Division Bench judgment passed in the case of **Shashi Kumar Vs. Uttar Haryana Bijli Vitran Nigam and another, 2005 (1) RSJ 718**. Resultantly, impugned order had been passed by referring to Rule 7.3 and coming to the conclusion that the department was not concerned with the criminal case.

10. We are of the considered opinion that the order itself was bereft of any reason to the extent that the department was not concerned with the criminal case. The same was on account of the fact that the writ petitioner was doing his work and on the basis of which he was involved in the criminal case, on account of mis-

conduct and demand by the J.E. As noticed he was already exonerated by this Court and on the departmental side also, the proceedings had been dropped.

Rule 7.3 and 7.5, which are relevant, read as under:-

“7.3 (1) 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 the reinstatement shall consider and make a specific order—

- (a) regarding the 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 ending with his reinstatement on or the date of his retirement on superannuation as the case may and
- (b) whether or not the said period shall be treated as a period spent on duty.

(2) Whether the authority mentioned in sub rule (1) is of the opinion that the Government employee has been fully exonerated or, in the case of suspension, that it was wholly unjustified, the Government employee shall be given the full pay and allowances to which he would have been entitled had he not been dismissed, removed, compulsorily retired or suspended, as the case may be,

(3) In other cases, the Government employee shall be given such proportion of such pay and allowances as such competent authority may prescribe:

Provided that the payment of allowances under sub-rule (2) or sub-rule (3) shall be subject to all other conditions under which such allowances are admissible.

Provided further that such proportion of such pay and allowances shall not be less than the subsistence and other

allowances admissible under rule 7.2

(4) In case falling under sub-rule (2) the period of absence from duty shall not be treated as a period spent on duty for all purposes;

(5) In a case falling under sub-rule (3) the period of absence from duty shall not be treated as a period spent on duty unless such competent authority specifically directs that it shall be so treated for any specified purpose;

Provided that if the Government employee so desires, such authority may direct that the period of absence from duty shall be converted into leave of any kind due and admissible to the Government employee.”

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7.5 An employee of Government against whom proceedings have been taken either for his arrest for debt or on a criminal charge or who is detained under any law providing for preventive detention should be considered as under suspension for any periods during which he is detained in custody or is undergoing imprisonment and not allowed to draw any pay and allowances (other than any subsistence allowance that may be granted in accordance with the principles laid down in rule 7.2) for such periods until the final termination of the proceedings taken against him or until he is released from detention and allowed to rejoin duty, as the case may be. An adjustment of his allowances for such periods should thereafter be made according to the circumstances of the case, the full amount being given only in the event of the officer being acquitted of blame or (if the proceedings taken against him were for his arrest for debt), of its being proved that the officer's liability arose from circumstances beyond his control or the detention being held by the competent authority to be unjustified.”

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.

13. The judgment in Jaipal Singh (supra) pertain to charges under Section 302 IPC, which obviously is not in relation to the

service conduct.

14. Similarly, in Bhopal Singh Panchal (supra) the charge is of Section 304 Part-I IPC.

15. The judgment in Raj Narayan (supra) also relied upon the judgment passed by the Apex Court in **Ranchhodji Chaturji Thakore Vs. Superintendent Engineer, Gujarat Electricity Board and another, (1996) 11 SCC 121**. Relevant portion of the said judgment reads as under:

“6. The decision of Ranchhodji Chaturji Thakore (supra) was followed by this Court in Union of India and Others v. Jaipal Singh (supra) to refuse back wages to an employee who was initially convicted for an offence under Section 302 read with Section 34 IPC and later acquitted by the High Court in a criminal appeal. While refusing to grant relief to the Petitioner therein, this Court held that subsequent acquittal would not entitle an employee to seek back wages. However, this Court was of the opinion that if the prosecution is launched at the behest of the department and the employee is acquitted, different considerations may arise. The learned counsel for the Appellant endeavored to distinguish the prosecution launched by the police for involvement of an employee in a criminal case and the criminal proceedings initiated at the behest of the employer. The observation made in the judgment in Union of India and Others v. Jaipal Singh (supra) has to be understood in a manner in which the department would become liable for back wages in the event of a finding that the initiation of the criminal proceedings was mala fide or with vexatious intent. In all other cases, we do not see any difference between initiation of the criminal proceedings by the

department vis-a-vis a criminal case lodged by the police. For example, if an employee is involved in embezzlement of funds or is found indulging in demand and acceptance of illegal gratification, the employer cannot be mulcted with full back wages on the acquittal of the person by a criminal Court, unless it is found that the prosecution is malicious.

7. The point that remains to be considered is whether the Appellant is entitled to payment of full wages between 1979 and 1987. The Appellant was placed under suspension on 23.10.1979 and his suspension was revoked on 21.10.1987. An interesting development took place during the interregnum by which the disciplinary proceedings were dropped on 21.03.1983. It is clear from the record that the Appellant was the one who was seeking postponement of the departmental inquiry in view of the pendency of criminal case. The order of suspension was in contemplation of disciplinary proceedings. By virtue of the disciplinary proceedings being dropped, the Appellant becomes entitled to claim full salary for the period from the date of his suspension till the date of closure of the departmental inquiry. Thereafter, the Respondents took four years to reinstate him by revoking his suspension. The order of suspension dated 23.10.1979 came to an end on 21.03.1983 which is the date on which disciplinary proceedings were dropped. The Appellant ought to have been reinstated immediately thereafter unless a fresh order was passed, placing him under suspension during the pendency of the criminal trial which did not happen. Ultimately, the Appellant was reinstated by an order dated 21.10.1987 by revocation of the order of suspension. Though, technically, the learned Additional Solicitor General is right in submitting that the impugned judgment does not even refer to the I.A., we

are not inclined to remit the matter to the High Court at this stage for fresh consideration of this point. We hold that the Appellant is entitled for full wages from 23.10.1979 to 21.10.1987 after adjustment of the amounts already paid towards subsistence allowance.”

16. A perusal of the said authority would go on to show that the disciplinary proceedings were dropped and the employee was ultimately reinstated and accordingly it was held that the appellant was entitled for the full wages for the period from 23.10.1979 to 21.10.1987, after adjustment of the amounts already paid, which supports the case of the respondent-employee.

17. In Brahma Chandra Gupta (supra) the Apex Court noticed that the employee was never proceeded against on the departmental side and upheld the order of the trial Court that full amount of salary be paid to the employee on his reinstatement for the entire period, which was held to be the correct approach.

18. In Nathu Ram (supra) while referring to the relevant rules, the views of the learned Single Judge and the Division Bench of the High Court were upheld, keeping in view the regulations and while noting that full pay had been granted from the date of suspension till the date of dismissal.

19. Thus, we are of the considered opinion that once the writ petitioner has earned his exoneration, both on the criminal side and on the departmental side, now the Nigam is not justified in agitating that he is to be denied pay and allowances for the

intervening period.

20. Resultantly, in view of the above discussion, the present appeal is dismissed. All pending civil miscellaneous applications, if any, also stand disposed of. However, learned Senior Counsel for the appellant-Nigam is well justified that the grant of interest @ 9% per annum is on the higher side, keeping in view the period involved which is around 16 years. In such circumstances, we modify the interest element down to 6% per annum, keeping in view the prevalent bank interest rates prevailing over the period of time.

**(G.S. SANDHAWALIA)**  
**JUDGE**

**May 11, 2022**  
*Naveen*

**(VIKAS SURI)**  
**JUDGE**

Whether speaking/reasoned :  
Whether Reportable :

Yes/No  
Yes/No