

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

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**LPA-89-2017 (O&M)
Decided on : 14.11.2022**

Punjab State Power Corporation Ltd. & others

.....Appellant(s)

Versus

Amarjit Singh & another

.....Respondent(s)

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

Present: Mr.Vivek Sharma, Advocate for the appellants.

Mr.Prateek Pandit, Advocate, for respondent No.1.

Mr.Rohit Ahuja, DAG, Punjab.

G.S. Sandhawalia, J. (Oral)

CM-166-LPA-2017

Application for condonation of delay of 6 days in filing the appeal, is allowed, in view of the averments made in the application, duly supported by affidavit. Delay of 6 days in filing the appeal is hereby condoned.

CM stands disposed of.

LPA-89-2017

Consideration in the present appeal, filed by the appellant-Corporation, is to the judgment dated 27.10.2016, passed by the learned Single Judge in CWP-25873-2014. Vide the said judgment, the benefit of the service period from 01.06.2005 to 18.01.2011 which was treated as without pay but considered as duty period for other benefits and pensionary benefits had been directed to be treated for full back-wages.

The Corporation is, thus, aggrieved against the said order on the ground

that challenge had been raised to the order dated 28.10.2011 (Annexure P-6) before the learned Single Judge whereby the claim was rejected on the ground that no service was performed in the Board/Corporation for the other benefits and therefore, keeping in view Rule 7.3 of the Punjab Civil Services Rules, 1972 Vol-I the benefit had been denied while granting certain other benefits for other purposes for which we are not concerned in the present appeal.

During the course of hearing, since the writ petitioner had only been granted the benefit of acquittal by the Apex Court on 18.01.2011 after his appeal had been dismissed on 21.02.2006 by this Court (Annexure R-2), it came to the notice of this Court that the employee would have remained in custody on account of him preferring a SLP. The custody certificate now has been produced by the State which verifies the fact that from 12.08.2006 to 11.11.2006 he remained in custody and apparently for the said period, the benefit cannot be granted as he cannot be treated to be on duty for the said period. Mr. Pandit is not in a position to oppose the said proposition which has now cropped up and which has now been brought to the notice of this Court.

He, however, rightfully pointed out that in view of the judgment of 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, necessary exercise has to be carried out by the competent authorities. The Apex Court in Shashi Kumar (supra) 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."

Specific regulations governing the employees of the appellant-Corporation which are para-materia and have a similar context as the Punjab Civil Services Rules, have been appended as Annexure R-1. Same reads as under:

"ALLOWANCES ON REINSTATEMENT

7.3(1) When a Board employee, who has been dismissed, removed, compulsorily retired or suspended, is reinstated, or would have been reinstated but for his retirement on superannuation while under suspension, 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 Board employee for the period of his absence from duty, or for the period of his absence from duty, or for the period of suspension ending with the date of his retirement on superannuation, as the case may be, and

(b) whether or not the said period shall be treated as a period spent on duty.

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

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

Provided that the payment of allowances under clause (2) or clause (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 a case falling under clause (2), the period of absence from duty shall be treated as a period spent on duty for all purposes:

(5) In a case falling under clause (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 Board 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 Board employee.”

Mr.Pandit accordingly submits that the authority did not consider these aspects and the relevant regulations itself provide that it has to decide as to what is the proportion of pay and allowances which is to be granted regarding the period of absence from duty on account of dismissal especially keeping in view the fact that the benefit of doubt was granted while allowing the appeal by the Apex Court and it was not on the merits. The order of the Apex Court reads as under:

“This appeal has been filed against the impugned judgment and order dated 21.2.2006 in RLA No.1265 of 2004 of the High Court of Punjab and Haryana at Chandigarh.

The facts of the case have been set out in the judgment of the High Court and hence we are not repeating the same here.

On the facts of the case, we are of the opinion that the appellant is entitled to benefit of doubt. Hence, we allow the appeal and acquit the appellant set aside the judgment of High Court and trial court.”

From the above, it would thus be clear that it was for the competent authority to take a decision as to how the period is to be treated from 01.06.2005 to 18.01.2011, keeping in view the relevant regulations of the Board itself which exercise was not carried out at the first instance.

Only on account of the fact that he had not worked, the benefit had been denied absolutely. In such circumstances, we are of the considered opinion that the matter needs to be relooked by the Corporation.

Accordingly, the present appeal is allowed and the order of the learned Single Judge dated 27.10.2016 is set aside. The Corporation shall take a fresh call on the said issue as to whether the period from 01.06.2005 to 18.01.2011 is to be calculated as duty period for other benefits after excluding the period from 12.08.2006 to 11.11.2006 for which the employee remained in custody and he is accordingly not entitled for any monetary benefits and the said period obviously cannot be counted to be on duty on any account. Since the employee is stated to have retired in 2011 and is a senior citizen, a decision be taken on the said issue within a period of 3 months from the receipt of certified copy of this order. If the same is in favour of the employees, the necessary benefits be disbursed. If the same is to be denied, then a reasoned order be passed and communicated to the employees.

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

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

14.11.2022
sailesh

Whether speaking/reasoned :	Yes/No
Whether Reportable :	Yes/No