

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

**LPA-7741-2018 (O&M)
Decided on : 14.11.2022**

Uttar Haryana Bijli Vitram Nigam Ltd. & others

.....Appellant(s)

Versus

Keshav Dutt

.....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.D.B.Bharghav, Advocate, for
Mr.R.K.Handa, Advocate, for the respondent.

G.S. Sandhawalia, J. (Oral)

CM-5165-LPA-2018

Application for condonation of delay of 140 days in filing the appeal, is allowed, in view of the averments made in the application, supported by affidavit. Delay of 140 days in filing the appeal is hereby condoned.

CM stands disposed of.

LPA-7441-2018 (O&M)

Consideration in the present appeal, filed by the appellant-Corporation, is to the judgment dated 04.07.2018, passed by the learned Single Judge in CWP-9684-2015. In the said judgment, the learned Single Judge has held that the employee is entitled to all consequential benefits while setting aside the orders dated 30.01.2013 and 06.08.2014. Directions were also issued for release of all consequential benefits and salary for the period in question i.e. 05.05.2006 to 30.11.2010. Reliance

has been placed upon Rule 7.5 of the Punjab Civil Services Rules, 1972 Vol-I while allowing the writ petition.

Admittedly, order dated 30.01.2013 (Annexure P-5) directed that the said period shall be treated as 'leave of kind due'. The benefit of pay was declined since the petitioner had been acquitted by the Apex Court in a case under the Prevention of Corruption Act, 1988 on 19.08.2010 by giving him the benefit of doubt. However, the impugned order passed by the competent authority never took into consideration relevant rules and regulations. 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, 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."

Keeping in view the above, we are of the considered opinion that as per the observations of the Apex Court, it is for the concerned authorities to take a decision as to how the said period is to be treated keeping in view the relevant rules.

Resultantly, the present appeal is allowed, the order dated 04.07.2018 passed by the learned Single Judge is set aside and the matter is remanded to the competent authority to decide the said issue as to how

the said period is to be treated, keeping in view the above observations.
Said process be completed within a period of 3 months from the receipt of
certified copy of this order.

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 :	Yes/No
Whether Reportable :	Yes/No