

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

**LPA-1653-2018 (O&M)
Decided on : 14.10.2022**

State of Haryana and others

... Appellants

Versus

Satyapal @ Satpal

... Respondent

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE JAGMOHAN BANSAL**

Present: Mr. Hitesh Pandit, Addl. AG, Haryana.

Mr. B.K. Bagri, Advocate for the respondent.

G.S. Sandhawalia, J. (Oral)

Present letters patent appeal for consideration is directed against the order of the learned Single Judge 23.04.2018 passed in **CWP No.23909 of 2016 ‘Satyapal @ Satpal Vs. State of Haryana and others’**. The State is primarily aggrieved against the said order whereby the arrears of salary have been directed to be paid to the writ petitioner, on the principle of ‘No Work No Pay’, since he remained out of service on account of dismissal order passed on 28.05.2009 (Annexure P-2) till reinstatement was directed on 24.06.2016 (Annexure P-5) by the Inspector General of Police, Railways & Commando, Haryana, Panchkula. The same was done on account of the fact that he had been acquitted in view of the order dated 02.12.2015 (Annexure P-3) of this Court passed in CRR No.849 of 2009 and the benefit of reinstatement was granted, since the basis of conviction in FIR No.391/1998 having not subsisted any more, the Appellate Authority had allowed the appeal.

The State has relied upon the Rule 7.3 of the Punjab Civil Service Rules (as applicable to Haryana) which would govern the case.

The said rule reads as under:-

“7.3 (1) When a Government employee, who has been dismissed, removed, compulsory 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 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-rule (1) is of 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, has 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 a 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.”

The learned Single Judge was of the considered view that keeping in view the judgments of the Coordinate Bench of this Court passed in **Manager Operation Circle, Dakshin Haryana Bijli Vitran Nigam, Narnaul and others vs. Mathura Dass Gupta, 2012(4) S.C.T. 7** and **Jaswinder Kaur vs. Punjab State Power Corporation Limited and others, 2016(2) S.C.T. 218** and the judgments of the Apex Court in **Jaipur Vidyut Vitran Nigam Ltd. and others vs. Nathu Ram, 2010(1) SCC 428** and **Union of India vs. K.V. Jankiraman, AIR 1991 SC 2010**, if the employee was willing to work, but was kept away from performing duties by authorities, he was entitled for the said benefit.

The order of reversion to the post of Constable from Exemptee ASI on 15.05.2009 (Annexure P-1) which was passed on the ground that at the time of promotion as Exemptee Head Constable on 26.09.2002 and to the post of Exemptee ASI on 10.11.2008, the FIR had already been lodged and, therefore, the promotion having been made against the instructions, had also been set aside by the learned Single Judge on account of the fact that he was granted the benefit of acquittal.

We are of the considered opinion that while granting the benefit of acquittal on 02.12.2015 (Annexure P-3) the learned Single Judge of this Court in CRR No.849 of 2009, in which the writ petitioner was a party alongwith others was only granted the benefit of doubt. It was not a case of clean acquittal, which would be clear from the findings recorded, relevant part of which reads as under:-

“I have heard learned counsel for the parties and have gone through the record of the case.

The accused Mohar Singh, Surat Singh and Jasbir Singh were facing trial for the murder of the father of the complainant, Dalbir Singh. On 15.09.1998, they were produced in the Court. The murder trial was pending for evidence of the prosecution witnesses on that date. However, the evidence of witnesses could not be recorded on that date. Therefore, the case was adjourned to 16.09.1998 for the same purpose. In the evening of 15.09.1998, the accused Mohar Singh, Surat Singh and Jasbir Singh who were in the custody of Constable Balga Nand, Constable Attar Singh and Constable Satpal Singh, came to the residence of the complainant and criminally intimidated him that in case, he deposed against the accused, he would be eliminated. The ocular evidence in the shape of statements of the complainant Dalbir Singh and Swaran Singh is on the similar lines.

However, a perusal of Fard Spurdgi (Entrustment Memo) Ex.PW-2/A shows that the custody of accused Jasbir Singh was handed over to Constable Satpal Singh on 16.9.1998. If the custody of Jasbir Singh was handed over to Satpal Singh on 16.09.1998, then the prosecution story that the accused went to the residence of the complainant and threatened him while in custody of Constable Satpal Singh on 15.09.1998 becomes doubtful. In other words, before Constable Satpal Singh was given the custody of accused Jasbir Singh, how could he accompany him to the house of the complainant on 15.09.1998. The question remains unanswered. No explanation much less cogent explanation has come forth from the prosecution. Further, if the intention of the accused i.e. Mohar Singh, Surat Singh and Jasbir Singh was to threaten the complainant and stop him from deposing against the accused persons, the task could very well have been accomplished by their co-accused Pargat Singh and Gurmukh Singh who were already on bail. The story propounded by the prosecution leaves much to be desired.

Viewed from this angle, a dent stands created in the case of the prosecution. Thus, this Court is of the opinion that the prosecution has not been able to prove its case beyond a reasonable shadow of doubt. Consequently, both the revision

petitions are allowed. The impugned judgments and the order passed by the Courts below are set aside. The accused are acquitted of the charges framed against them. The bail bonds and surety bonds are discharged.”

A three Judges Bench of the Apex Court while setting aside the view passed by Division Bench of this Court in **Civil Appeal No.4114 of 2006 Uttri Haryana Bijli Vitran Nigam and another Vs. Shashi Kumar**’ decided on 26.09.2013, has held that it is for the authority to see whether is any exoneration or not under the Rules and then only the benefit of backwages is to be granted. Relevant part 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."

Another factor which missed the radar of the learned Single Judge was the fact that the writ petitioner was in custody from 24.03.2009 when his appeal had been dismissed by the Additional Sessions Judge and he was only granted the benefit of bail in November, 2009, as per the counsel for the respondent himself. Once he had remained in custody for the said period, he could not be granted the said benefit of arrears of salary. It is not disputed that the judgment passed in the case of **Shashi**

Kumar (supra) is subsequent to the judgments which had been relied upon of this Court and the judgment of the Apex Court was never brought to the notice of the learned Single Judge or the other Bench's

The Apex Court in **C.R. Radhakrishnan Vs. State of Kerala and others, (2017) 13 SCC 365** also examined the said aspect whereby the Kerala Service Rules, 1959 were under consideration and the condition of exoneration was also present. The conclusion arrived at was that it was not a case of honourable acquittal and it was only on benefit of doubt. Thus, the claim for the service benefit for the period the employee was out of service, as such would not be maintainable. Relevant portion of the said judgment reads as under:-

“2. The learned counsel for the appellant submits that since the appellant has been acquitted, under Rule 56 of the Kerala Service Rules, Part-I, the appellant is entitled to full service benefits. We find it difficult to appreciate the submission. Rule 56(1) and (2) of Kerala Service Rules, 1959 reads as follows:-

“56. (1) When an officer who has been dismissed, removed or compulsorily retired including an officer who has been compulsorily retired under Rule 60A, is reinstated as a result of appeal or review or would have been so reinstated, but for his retirement on superannuation while under suspension or not, the authority competent to order reinstatement shall consider and make a specific order-

(a) regarding the pay and allowances to be paid to the officer for the period of his absence from duty including the period of suspension preceding his dismissal, removal, or compulsory retirement, as the case may be,

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

(c) in the case of an officer who was compulsorily retired under Rule 60A and subsequently reinstated, for the recovery of the relevant benefits, if any, already paid to him.

(2) Where the authority competent to order reinstatement is of opinion that the officer who had been dismissed, removed or

compulsorily retired, has been fully exonerated, the officer shall, subject to the provisions of sub-rule (6) be paid the full pay and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be:

Provided that where such authority is of opinion that the termination of the proceedings instituted against the officer had been delayed for reasons directly attributable to the officer, it may, after giving him an opportunity to make his representation and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the officer shall subject to the provisions of sub-rule (7), be paid for the period of such delay, only such amount (not being the whole) of such pay and allowances as it may determine.”

3. This is not a case where the appellant has been fully exonerated, meaning thereby an honourable acquittal. Learned counsel for the appellant submits that going by the judgment, the finding arrived at by the High Court in the criminal appeal regarding benefit of doubt is not correct. We are afraid, under the present proceedings, we cannot appreciate the above submission. The correctness or otherwise of the judgment in the Criminal Appeal is not the subject matter of this case. In these proceedings we can only look at the findings in the judgment. The acquittal is only on benefit of doubt. Thus, we find no merits in these appeals and the same are, accordingly, dismissed.

4. Pending applications, if any, shall stand disposed of. There shall be no orders as to costs.”

Considering the above facts and the rule itself which is similarly worded, we are of the considered opinion that there has to be a complete exoneration and then only the service benefits are liable to be granted. We are of the considered view that the learned Single Judge did not refer to the relevant rules, though the writ petition had been filed mainly on the strength of the said rules itself read with Rule 16.3 of the Punjab Police Rules, 1934. In such circumstances, once the writ petitioner himself was responsible for the misconduct, on the basis of which he was

convicted and was granted the benefit of doubt and on the basis of which the reinstatement was granted. We are of the considered opinion that the claim as such for the period he remained out of service was unwarranted for. Keeping in view the fact that it is not a case of clean acquittal, but benefit of doubt was granted to the writ petitioner and to the persons who were alongwith him on the date when the threat was given to the eye witnesses, since the case was pending for the next date, the same arose out of the service misconduct.

Resultantly, the judgment of the learned Single Judge is not liable to be sustained to this extent. Accordingly, we allow the present appeal partly to the extent that for the period the writ petitioner remained out of service, the arrears of salary will not be granted to him. However, we do not interfere in the order whereby the reversion done on account of the pendency of the criminal proceedings had been set aside by the learned Single Judge.

Appeal is partly allowed, accordingly.

(G.S. SANDHAWALIA)
JUDGE

(JAGMOHAN BANSAL)
JUDGE

14.10.2022
Naveen

Whether speaking/reasoned :
Whether Reportable :

Yes/No
Yes/No