

2023:PHHC:078327

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

CWP-6370-2020

Date of decision : 26.05.2023

Mohan Lal

..... Petitioner

versus

State of Punjab and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Surinder Garg, Advocate
for the petitioner.

Mr. Inderpreet Singh Kang, AAG, Punjab.

PANKAJ JAIN, J. (Oral)

Petitioner has approached this Court aggrieved of order dated 03.01.2018/11.01.2018 (Annexure P-4), whereby his suspension period from 26.06.2013 to 04.03.2015 has been ordered to be treated as leave of kind due for all purposes.

2. Petitioner who was working as Superintendent of Police was booked and arrested in FIR No.263 dated 24.06.2013, registered for offence punishable under Section 306 of IPC at Police Station Zirakpur and was placed under suspension vide order dated 08.07.2013. The trial culminated in the order of acquittal dated 17.10.2013 observing as under:-

“XX XX XX

17. It is a cardinal principle of criminal jurisprudence that the prosecution is duty bound to prove its case beyond shadow of reasonable doubt. In this case when none of the prosecution witness has stated nothing incriminating against the

2023:PHHC:078327

accused, then, the said accused person cannot be connected with the commission of the offence. PW-1 Lakhwinder Singh, father of the deceased Lovpreet Kaur has taken a total U-turn to the stand taken by him in his complaint and that of her statement recorded before the Police. PW-2 Baljinder Singh uncle of the deceased Lovpreet Kaur has also not supported the prosecution story in any manner. After being declared hostile, their cross-examination by the learned Additional Public Prosecutor has not been able to fetch or extract anything in favour of the prosecution case, as stated in the averments of the complaint. During the course of their cross-examination, all the prosecution witnesses have refused to budge their earlier stand taken in the course of their examination-in-chief. Meaning thereby, the prosecution, despite its best efforts, has not been able to prove any incriminating material or evidence against any of the accused. In this view of the matter, prosecution has miserably failed to prove its case against the accused Mohan Lal and as such, he is hereby ordered to be acquitted of the charge framed against them. File be consigned to Record Room.”

3. Vide order dated 05.03.2015, the petitioner was ordered to be reinstated. However, decision regarding suspension period was ordered to be taken later. From the records of the case, it is discernible that the petitioner was served the chargesheet dated 13.11.2015 under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970. The petitioner responded thereto. Vide impugned order dated 03.01.2018/11.01.2018 (P-4), the chargesheet was ordered to be

2023:PHHC:078327

dropped. However, the suspension period of the petitioner from 26.06.2013 to 04.03.2015 was ordered to be treated as leave of kind due for all purposes. The petitioner represented against the same vide P-5. Request made by the petitioner stands consigned and he has been informed about the same vide communication dated 05.02.2020 (Annexure P-6). The issue thus involved is:

“Once the authorities have dropped the chargesheet and the petitioner stands acquitted by the Court of Competent Authority, can he be denied the benefits of suspension period?”

4. Counsel for the petitioner relies upon law laid down by this Court in ***CWP No.18208 of 2021*** titled as ‘***Constable Bhupinder Singh vs. State of Punjab and others***’, wherein it has been held as under:-

“7. A perusal of the aforesaid provisions makes it clear that the detention of an employee due to criminal charge has been considered by the Rule Making Authority as a circumstance beyond control of the employee and non-working for such period would not invite the general principle of 'No Work No Pay'. The authority is required to pass order after considering all these circumstances,. The petitioner herein was dismissed from the services on conviction. Such situation has been well canvassed by Apex Court in the case of ***Brahma Chandra Gupta vs. Union of India (1984) 2 SCC 433*** holding that where the employee was never proceeded against on departmental side but was prosecuted but acquitted and reinstated on such acquittal, the order granting full amount of salary to the employee on his reinstatement for the entire period is the correct approach.

2023:PHHC:078327

(emphasis supplied)

8. Similarly in the case of ***Raj Narain vs. Union of India and others, 2019(2) S.C.T. 582***, Apex Court after considering ***Ranchhodji Chaturji Thakore vs. Supdt. Engg. Gujarat Electricity Board, Himmatnagar (Gujrat) (1996) 11 SCC 603*** on the basis of which Baldev Singh's case (supra) has been passed held 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.

2023:PHHC:078327

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.”

5. In the present case, admittedly during the time, the petitioner was facing trial, he was never chargesheeted. Having earned acquittal and such acquittal not falling within the exceptions as carved out under Rule 16.3(1)(a) to (e), this Court is not able to comprehend a

2023:PHHC:078327

situation where the authorities could have taken a view different from that taken by the Court in trial. That being a case, the issuance of chargesheet to the petitioner subsequent to acquittal earned by the petitioner was inconsequential. Even though the same has been rightly dropped but in view of law laid down by Apex Court in '*Raj Naraiian vs. Union of India and others 2019(2) SCT 582*', this Court does not find it fit to sustain the order passed by the authorities treating the period of suspension of the petitioner as leave of kind due.

6. In view of aforesaid fact, the present petition is allowed. Order Annexure P-4 is hereby ordered to be quashed to the effect that period commencing from 26.06.2013 till 04.03.2015 has been ordered to be treated as leave of kind due. The suspension period is ordered to be treated as period on duty. Respondents are directed to release the consequential benefits to the petitioner deeming him entitled for full back wages for the period from 26.06.2013 to 04.03.2015 after adjusting the amounts already paid towards subsistence allowance.

7. Ordered accordingly.

(PANKAJ JAIN)
JUDGE

26.05.2023
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No