

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

CWP-8638-2023 (O&M)

Reserved on : 10.05.2023

Date of decision: 03.07.2023

Sandeep Sandhi

....Petitioner

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR JUSTICE ANIL KSHETARPAL

Present:- Mr. Manjinder Singh Saini, Advocate for the petitioner

Mr. R.S.Pandher, Sr. DAG, Punjab

ANIL KSHETARPAL, J

1. While praying for issuance of a writ in the nature of Certiorari to quash the order dated 27.03.2023, the petitioner, in substance, claims that he is entitled to directions to the respondents to release all the service benefits of the suspension period because pursuant to a settlement, he has been discharged in the criminal case.

2. The facts, in brief, are required to be noticed in order to grasp the controversy involved in the present case. The petitioner, after having been appointed as a Clerk, was posted as Senior Assistant in the office of Superintending Engineer Dholbaha Dam Construction Circle, Hoshiarpur. On account of dispute with his wife, a criminal complaint under Section 498-A, 323, 506 IPC read with Section 34 IPC was filed against the petitioner and his mother in the Court of Judicial Magistrate, First Class, in which they were convicted and sentenced to one year

rigorous imprisonment under Section 498-A whereas six months for the offence under Section 323, 506 IPC. The appeal filed by the petitioner was dismissed by the learned Sessions Judge, Hoshiarpur on 01.02.2021. On being intimated of the aforesaid development, the petitioner was placed under suspension with effect from 02.02.2021 as the petitioner was in judicial custody for a period of more than 48 hours. The criminal revision to challenge the judgments of conviction and orders of sentence, was filed in the High Court. The sentence of the petitioner was suspended on 01.03.2021 and he was released from the judicial custody. Thereafter, he is alleged to have reported on duty on 05.03.2021 with a request for reinstatement but he was reinstated only on 27.07.2022.

3. By a speaking order passed on 27.03.2023, the Chief Engineer, Head Quarter while relying upon Rule 7.3(b)(1) has held as under:-

“8. Since the rigorous imprisonment of one year under section 498-A of IPC and imprisonment of more than six months under section 323, 506 of IPC was awarded against the employee, therefore, it was mandatory to suspend him under Rule 4 of Punjab Civil Services rules (Punishment and Appeal), 1970. However, as the cases filed against petitioner were dismissed/ disposed of by the Hon’ble High Court and in view of the above said legal opinion of OSD(Litigation), the suspension period from 02.02.2021 to 27.02.2022 of the petitioner will be considered as follows:-

a) He shall not be entitled to pay and allowance for the said suspension periods except whatever he had already been paid in the form of subsistence.

b) The settled principle of “no work No pay” would be apply in the instant matter.”

4. Challenging the correctness of the aforesaid order, the present writ petition has been filed.

5. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

6. Learned counsel representing the petitioner contends that the conviction order has been quashed alongwith all subsequent proceedings on the basis of settlement between the parties. Hence, the principle of 'no work no pay' cannot be invoked, particularly, when the petitioner was denied opportunity to work, although, he was willing. Learned counsel further submits that his case falls in Rule 7.3(2) of Part 1 of the Punjab Civil Service Rules, Vol.I. which is extracted as under:-

“(2) “where the authority competent to order re-instatement is of opinion that the Government employee, who had been dismissed, removed or compulsorily retired, has been fully exonerated, the Government employee shall, subject to the provisions of sub rule (6), be paid his 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.”

7. This Court has considered the submission. In fact, by a detailed judgment passed in **Iqbal Singh vs. State of Punjab and others** (CWP-3737-2017) on 26.05.2023, the Court, after discussing case law on the subject, held as under:-

“9. In Jagdish Lal's case (supra), the Division Bench was considering a case where departmental proceedings as well as criminal case were simultaneously initiated. The charges against the petitioner in the departmental proceedings were dropped, whereas the

respondent therein earned an acquittal in FIR No.27, dated 23.02.1995, under Section 7 and 13 of the Prevention of Corruption Act, 1988. In that context, the Division Bench held that the respondent is entitled to the payment from the date of suspension till his acquittal.

10. However, in the present case the facts are entirely different. The murder case registered against the petitioner is not at the behest of the department. On account of his arrest in a murder case, he was suspended. Before acquittal in the criminal case, he was permitted to rejoin. He has been acquitted due to benefit of doubt. While invoking the principle of “no work no pay”, the State has refused to pay the service benefits to the petitioner apart from suspension allowance. In Ranchhodji Chaturji Thakore vs. Superintendent Engineer, Gujarat Electricity Board and another (1996) 11 SCC 603 and Union of India vs. Jai Pal Singh (2004) 1 SCC 121, it has been held that the employee who was dismissed from service on conviction but reinstated on acquittal in appeal is not entitled to back wages for the period of absence. The Court held that the employee is entitled to back wages only from the date of acquittal. In a recent judgment passed by the Supreme Court in Raj Narain vs. Union of India and others (2019) 5 SCC 809, the Supreme Court once again reiterated that the back wages can be paid only from the date of acquittal.

11. On careful reading of Rule 7.5 of the Punjab Civil Service Rules (extracted at page no.10 of the paper book) it is evident that on acquittal in criminal case the payment of complete pay for the period of suspension is not automatic but it is subject to certain conditions stipulated therein. It is in this context the State's counsel has correctly contended that the Disciplinary Authority is entitled to form an opinion.

12. Keeping in view the aforesaid settled law particularly when the judgment relied upon by the learned counsel representing the petitioner in Jagdish Lal's case (supra) is distinguishable. This court does not find it appropriate to issue the writ particularly when there is no allegation of malafide or arbitrariness on the part of the department.

13. Dismissed.”

8. It is evident that the petitioner has not been honorably acquitted. In fact, on reading of the impugned order, it is evident that after the petitioner was convicted by the trial court, which was also

upheld in appeal, by the learned Sessions Judge. However, the petitioner during the pendency of the criminal revision entered into a settlement in LokAdalat. It was on the basis of the aforesaid order that the complaint with consequent proceedings has been quashed on the basis of compromise the criminal revision petition filed by the petitioner was dismissed as infructuous vide judgment dated 25.05.2022. Thus, the petitioner was never honorably acquitted so as to invoke Part 1 of the Rule 7.3(2).

9. It is also evident that on receipt of the order, the competent authority after seeking opinion from OSD (Litigation) posted in the Department passed the impugned order. There is no unreasonable delay in passing the order of reinstatement as the criminal revision petition of the petitioner was declared infructuous on 24.05.2022 whereas he was reinstated on 27.07.2022.

10. The next argument of the learned counsel that the petitioner was work to perform but he was not permitted to work, also has no substance as the petitioner was suspended once on account of conviction in a criminal case which was also upheld in appeal by the learned Sessions Judge, the petitioner was in judicial custody for 48 hours. Hence, only the petitioner was placed under suspension. In such circumstances, the suspension of the petitioner was not unjustified.

11. Keeping in view the aforesaid facts and discussion, finding no merit, the writ petition is dismissed.

12. All the pending miscellaneous applications, if any, are also disposed of.

03.07.2023
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE