

2023:PHHC:047844

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

CWP-12703-2017

Date of decision : 02.02.2023

Constable Lakhwinder Singh

..... Petitioner

versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. R.K. Arya, Advocate
for the petitioner.

Mr. Sehajbir S. Aulakh, AAG, Punjab.

PANKAJ JAIN, J. (Oral)

On 02.08.2017, following order was passed:-

“Petitioner, who was serving as a Constable under the Punjab Police, was implicated in FIR No.25 dated 18.3.2006 under sections 325, 323, 34 I.P.C registered at Police Station, Kahnuwan, District Gurdaspur. The trial culminated in his conviction vide judgement dated 9.5.2014 (Annexure P-1), passed by the learned Additional Sessions Judge, Gurdaspur. Based on conviction the major penalty of dismissal from service was imposed upon the petitioner in the light of order dated 8.7.2014 (Annexure P-2).

Pleadings on record would indicate that during the pendency of an appeal that the petitioner had preferred against conviction, a compromise was arrived at with the complainant, who was none other than the real brother of the petitioner and taking cognizance of such compromise, this Court on 16.1.2015 allowed the appeal in terms of compounding the offence and thereby setting aside the conviction of the petitioner.

2023:PHHC:047844

Vide order dated 11.11.2016 (Annexure P-6) petitioner has been reinstated in service.

The short grievance raised in the instant petition is that even though, reinstatement has been directed but the arrears of salary in question for the period w.e.f. 8.7.2014 till 11.11.2016 have been declined.

Counsel would submit that the order of dismissal dated 8.7.2014 was based upon conviction. The acquittal of the petitioner based on compounding of the offence was in terms of order dated 16.1.2015, passed by this Court in Criminal Appeal No. CRA-S-2342-SB of 2014 and as such, since dismissal was based on conviction alone, petitioner was liable to be taken back in service w.e.f. such date i.e. 16.1.2015.

Counsel submits that he has instructions from the petitioner to confine the prayer in the instant petition for payment of salary for the period 16.1.2015 onwards and till the date of passing of the order of reinstatement in service. Counsel states that the petitioner is ready to forego salary for the period 8.7.2014 to 16.1.2015.

Notice of motion on such limited aspect alone, returnable for 19.1.2018.”

2. State counsel relies upon law laid down in ***State of Haryana and others vs. Satish Kumar*** rendered in LPA No.565 of 2020 to contend that the departmental proceedings are on different footing and the petitioner is not entitled to earn reinstatement merely on the basis of having earned acquittal in the FIR case.

3. I have heard counsel for the parties and gone through the records of the case.

4. The petitioner was booked for offences punishable under Sections 325, 323 and 34 IPC in FIR No.25 dated 18.03.2006 and was

2023:PHHC:047844

convicted vide judgment dated 09.05.2014 which led to his dismissal from services vide order dated 08.07.2014 (Annexure P-2).

5. In the appeal preferred by the petitioner, the order of conviction was set aside and he was acquitted of all the charges levelled against him. The petitioner was thereafter on the basis of acquittal earned by him, ordered to be reinstated in services on 14.11.2016. Admittedly, no independent inquiry has been conducted by the department. The department solely relied upon the order of conviction to dismiss the services of the petitioner and thereafter the order of acquittal to reinstate him. The issue relates to the salary for the period in the interregnum. On 02.08.2017, the petitioner confined his prayer for salary only from the date he earned acquittal i.e. 16.01.2015. The reliance placed by State Counsel on the law laid in **Satish Kumar's** case (supra) is misplaced.

6. Relevant provisions that need to be perused for adjudication of the issue in hand are Rule 16.3 of the Punjab Police Rules and Rules 7.3 and 7.3A of the Punjab Civil Services Rules, Volume I, Part I, which read as under :-

“16.3 Action following on a judicial acquittal

(1) When a Police Officer has been tried and acquitted by a criminal court he shall not be punished departmentally on the same charge or on a different charge upon the evidence cited in the criminal case, whether actually led or not, unless-

- (a) the criminal charge has failed on technical grounds; or
- (b) in the opinion of the court or of the Superintendent of Police, the prosecution witnesses have been won over; or
- (c) the court has held in its judgment that an offence was actually committed and that suspicion rests upon the police officer concerned; or
- (d) the evidence cited in the criminal case discloses facts unconnected with the charge before the court which justify

2023:PHHC:047844

departmental proceedings

(e) additional evidence admissible under rule 16.25 (1) in departmental proceedings is available.

(2) Departmental proceedings admissible under sub-rule (1) may be instituted against Lower Subordinates by the order of the Superintendent of Police but may be taken against Upper Subordinates only with the sanction of the Deputy Inspector-General of Police; and a police officer against whom such action is admissible shall not be deemed to have been honourably acquitted for the purpose of rule 7.3 of the Civil Services Rules (Punjab), Volume I, Part I.”

Rule 7.3. (1) When a Government employee, who has been dismissed, removed or compulsorily retired, is reinstated as a result of appeal, revision or review, or would have been so reinstated but for his retirement on superannuation while under suspension or not, the authority competent to order re-instatement 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 including the period of suspension, preceding his dismissal, removal or compulsory retirement, 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 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:

Provided that where such authority is of opinion that the termination of the proceedings instituted against the Government employee had been delayed due to reasons directly attributable to the Government employee it may, after giving him an opportunity

2023:PHHC:047844

to make representation and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government employee 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 pay and allowances, as it may determine.

(3) In a case falling under sub-rule (2), the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, shall be treated as a period spent on duty for all purposes.

(4) In cases other than those covered by sub-rule (2) including cases where the order of dismissal, removal or compulsory retirement from service is set aside by the authority exercising powers of appeal, revision or review solely on the ground of noncompliance with the requirements of clause (2) of article 311 of the Constitution and no further inquiry is proposed to be held, the Government employee shall, subject to the provisions of sub-rules (6) and (7), be paid such amount (not being the whole) of 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, as the competent authority may determine, after giving notice to the Government employee of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period as may be specified in the notice: Provided that any payment under this sub-rule to a Government employee other than a Government employee who is governed by the provisions of the payment of Wages Act, 1936 (Act 4 of 1936) shall be restricted to a period of three years immediately preceding the date on which order for re-instatement of such Government employee are passed by the authority exercising the powers of appeal, revision or review, or immediately preceding the date of retirement on superannuation of such Government employee, as the case may be

(5) In a case falling under sub-rule (4), the period of absence from duty including the period of suspension preceding

2023:PHHC:047844

his dismissal, removal or compulsory retirement, as the case may be, shall not be treated as a period spent on duty, unless the 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 including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall be converted into leave of any kind due and admissible to the Government employee.

Note.—The order of the competent authority under the preceding proviso shall be absolute and no sanction of the higher authority shall be necessary for the grant of—

- (a) extraordinary leave in excess of three months in the case of a temporary Government employee; and
- (b) leave of any kind due in excess of five years in the case of a permanent and quasi permanent Government employee.

(6) The payment of allowances under sub-rule (2) or sub-rule (4) shall be subject to all other conditions under which such allowances are admissible.

(7) The amount determined under the proviso to sub-rule (2), or under sub-rule (4) shall not be less than the subsistence allowance and other allowances admissible under rule 7.2.

(8) Any payment made under this rule to a Government employee on his reinstatement, shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of removal, dismissal or compulsory retirement, as the case may be, and the date of reinstatement. Where the emoluments admissible under this rule are equal to or 7.3-A. (1) Where the dismissal, removal or compulsory retirement of a Government employee is set aside by a court of law and such Government employee is re-instated without holding any further inquiry, the period of absence from duty shall be regularised and the Government employee shall be paid pay and allowances in accordance with the provisions of sub-rule (2) or sub-rule (3) subject to the directions, if any, of the court.

2023:PHHC:047844

(2) (i) Where the dismissal, removal or compulsory retirement of a Government employee is set aside by the court solely on the ground of non-compliance with the requirements of article 311 of the Constitution, and where he is not exonerated on merits, the Government employee shall, subject to the provisions of sub-rule (7) of rule 7.3, be paid such amount (not being the whole) of the pay and allowances, to which he would have been entitled had he not been dismissed, removed or compulsorily retired, suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the Government employee of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period as may be specified in the notice :

Provided that any payment made under this sub-rule to a Government employee other than a Government employee who is governed by the provisions of the Payment of Wages Act, 1936 (Act 4 of 1936) shall be restricted to a period of three years immediately preceding the date on which the judgment of the court was passed or the date of retirement on superannuation of such Government employee, as the case may be.

(ii) The period intervening the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of judgment of the court shall be regularised in accordance with the provisions contained in sub-rule (5) of rule 7.3.

(3) If the dismissal, removal or compulsory retirement of a Government employee is set aside by the court on the merits of the case, the period intervening the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement shall be treated as spent on duty for all purposes and he shall be paid full pay and allowances for that period 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

2023:PHHC:047844

retirement, as the case may be.

(4) 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.

(5) Any payment made under this rule to a Government employee on his reinstatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of dismissal, removal or compulsory retirement and the date of reinstatement. Where the emoluments admissible under this rule are equal to or less than those earned during the employment elsewhere nothing shall be paid to the Government employee.”

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.

8. Similarly in the case of **Raj Narain vs. Union of India and others, 2019(2) S.C.T. 582**, Apex Court after considering **Ranchoodji 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 :

2023:PHHC:047844

“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.

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.

2023:PHHC:047844

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.”

9. Likewise following the aforesaid ratio of law Co-ordinate Bench in case of **Gurbax Singh vs. State of Punjab and others CWP No.6336 of 2016** after considering Rule 7.3 held as under :

“7. A reading of the said rule would make it clear that the authority competent to order re-instatement shall consider and make a specific order regarding a government employee, who has been dismissed, removed, compulsorily retired or suspended, and shall consider whether the employee will be entitled to pay and allowances for the period of his absence from duty including the period of suspension, preceding his dismissal, removal or compulsorily retired, as the case may be. It is also an admitted fact that no departmental inquiry was initiated against the petitioner. The petitioner herein was dismissed from service on the basis of FIR that was registered against him under Sections 326, 324, 34 IPC and therefore, would be entitled to pay and allowances for the period he remained out of service. The judgments as relied upon by the counsel for the petitioner in Const. Sukhchain

2023:PHHC:047844

Singh's case (supra) would be fully applicable to the present case where in similar circumstances, the petitioner, who had been dismissed from service on account of criminal charges and subsequently acquitted, was held to be entitled for full pay and allowances by virtue of Rule 7.3 of the Punjab Civil Services Vol. 1 Part 1. The said judgment in Sukhchan Singh's case also took note of the judgment rendered by this Court in ***General Manager Operation Circle, Dakshin Haryana Bijli Vitran Nigam, Narnaul and others Vs. Mathura Dass Gupta passed in LPA No.1580 of 2011 on 10.02.2012*** wherein the Division Bench held that the petitioner was entitled to be treated the period for which he was forced to remain out of service as duty period and the judgment rendered in ***Ex. Constable Kulwant Singh Vs. State of Punjab and others passed in CWP No.12000 of 2007 decided on 4.8.2008*** where in similar circumstances, the petitioner therein had been held to be entitled for pay and allowances consequently by treating the period from the date of his dismissal till the date of his reinstatement in service as duty period.”

10. The question involved in the said case was:

(i) whether the department is well within its right to form an independent opinion irrespective of the outcome of the criminal proceedings.

11. It was in those circumstances that the Division Bench held that Single Judge ought not have interfered in the departmental inquiry by quashing the chargesheet and inquiry report only on the ground that they were overlapping with the criminal proceedings and acquittal earned in the criminal proceedings would have an effect on the department proceedings as well. There cannot be dispute about aforesaid proposition. However, in

2023:PHHC:047844

the present case, there is no independent departmental inquiry held by the respondents. Thus, the question is that once respondents are solely relying upon the conviction and subsequent acquittal, can they deny benefits to the petitioner from the day he earned acquittal. Answer is no.

12. In the considered opinion of this Court, the petitioner would be entitled for all benefits from the date of acquittal.

13. Resultantly, the present petition is allowed. Impugned order Annexure P-6 is hereby ordered to be set aside. Respondents are directed to grant benefits to the petitioner for the intervening period prior to 11.11.2016. The same be released within a period of 12 weeks alongwith interest @ 6% per annum from the date of entitlement of the petitioner till the date of actual realization.

14. Ordered accordingly.

(PANKAJ JAIN)
JUDGE

02.02.2023

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : Yes