

CWP No.18954 of 2015

{1}

2023:PHHC:040929

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

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**Amended CWP No.18954 of 2015
Judgment reserved on:13.03.2023
Date of pronouncement:21.03.2023**

Kamla Sandhu

... Petitioner

Vs.

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. D.S.Rawat, Advocate
for the petitioner.

Mr. R.K.S.Brar, Addl.A.G., Haryana.

SUVIR SEHGAL, J.

Petitioner has approached this Court seeking issuance of a writ in the nature of certiorari for quashing of impugned order dated 02.12.2015 (Annexure P-5) as well as order dated 04.07.2017 (Annexure P-10). Petitioner has also sought a mandamus directing the respondents to reinstate the petitioner on the post of Supervisor w.e.f. 28.11.2013 when she was acquitted by the High Court alongwith all consequential benefits including salary w.e.f. 04.12.2009, i.e. the day when she was dismissed from service till reinstatement alongwith arrears and interest.

Factual matrix leading to filing of the petition is that due to the death of petitioner's daughter-in-law, FIR No.1214 dated 04.12.2009 was registered under Sections 498-A, 306, 34 IPC at P.S.City, Panipat and the petitioner, who was named as an accused, was arrested on the same day. During investigation offence under Section 304-B, IPC was added. She was

placed under suspension by order dated 18.12.2009 (Annexure P-1) with effect from the day of arrest. She was released on regular bail on 29.04.2010 and she reported for duty on 11.05.2010. A charge-sheet dated 28.06.2011 was served upon her for remaining absent from duty from 04.12.2009 to 11.05.2010, which was followed by another charge-sheet dated 14.09.2011 as she did not disclose the registration of criminal case and framing of charges against her. Petitioner submitted her reply to both the charge-sheets. By judgment dated 24.02.2012, learned Additional Sessions Judge, Panipat held the petitioner guilty for offences under Sections 306/34, 304-B IPC and imposed rigorous punishment of five years and seven years respectively. By order dated 19.11.2012 (Annexure P-2), petitioner was dismissed from service on account of conviction for commission of offence involving moral turpitude. Criminal appeal preferred by the petitioner was accepted by this Court, vide judgment dated 28.11.2013 (Annexure P-3) and the petitioner was acquitted of the charges, whereas, her son Chirag was held guilty for offence under Section 306 IPC and his conviction and sentence was upheld. Petitioner submitted representations for reinstatement. As the charge-sheets were pending, an enquiry officer was appointed, who submitted report on 28.11.2014 in favour of the petitioner. Disagreeing with the report of the enquiry officer, the punishing authority, ordered re-enquiry. At this stage, petitioner approached this Court by filing the present petition. During the pendency of the petition, order (Annexure P-2) was withdrawn and by impugned order dated 02.12.2015 (Annexure P-5), petitioner was reinstated into service as Supervisor. A copy of this order was supplied to the

petitioner after furnishing an undertaking (Annexure P-8) to the effect that she will withdraw the present writ petition. Upon rejoining, petitioner submitted a representation dated 14.12.2015 (Annexure P-9) seeking reinstatement from the date of dismissal. She retired from service on 31.12.2015 and by impugned order dated 04.07.2017 (Annexure P-10), the charge-sheets pending against the petitioner were dropped by taking a “lenient view”, subsistence allowance paid to her was ordered not to be recovered and the period spent by her out of service was treated as extraordinary leave (without pay), which will not be treated towards pensionary benefits. At this stage, petitioner amended the writ petition and challenged both the orders, Annexures P-5 and P-10 which were passed during the pendency of the petition.

Upon notice, writ petition has been contested by the respondents by filing a response. The respondent-authorities have supported the impugned orders.

Counsel for the petitioner has contended that upon acquittal, petitioner was entitled to be reinstated into service alongwith all consequential service benefits from the date of acquittal and she was entitled to the arrears of salary from the day she was placed under suspension. He has placed reliance upon the judgments of this Court in CWP No.6336 of 2016 titled as '**Gurbax Singh Vs. State of Punjab and others**', decided on 19.04.2022; CWP No.7821 of 2018 titled as '**Ran Singh Vs. State of Haryana and others**', decided on 12.04.2019 against which LPA No.1372 of 2019 has been dismissed on 16.08.2019 and CWP No.19659 of 2018

titled as '**Phool Mati @ Phool Wati Vs. State of Haryana and others**', decided on 05.02.2020.

Countering the submissions, State counsel has made a reference to the judgments of this Court in '**Kapoor Singh Vs. State of Punjab and others**', 2020(4) S.C.T. 218 as well as in CWP No.26122 of 2013 titled as '**Balbir Singh Vs. State of Haryana and others**' decided on 28.11.2013 against which LPA No.514 of 2014 titled as Balbir Singh Vs. State of Haryana and others, has also been dismissed on 13.08.2014.

I have heard counsel for the parties at substantial length.

Legal position has been crystallized by the Supreme Court in '**Union of India and others Vs. Jaipal Singh**' 2004(1) SCC 121. Following the dictum laid down in '**Ranchhodji Chaturji Thakore Vs. The Superintendent Engineer, Gujarat Electricity Board and another**' 1996 (11) SCC 603, it has been observed as under:-

“4.....On going through the same, we are in respectful agreement with the view taken in 1996(11) SCC 603 (supra). If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest or by department itself, perhaps different considerations may arise. On the other hand, if a citizen the employee or public servant got involved in a criminal case and if after initial conviction by the trial Court, he gets acquittal on appeal subsequently, the department cannot in any manner be found fault with for having kept him out of service, since the law obliges, a person convicted of an offence to be so

kept out and not to be retained in service. Consequently, the reasons given in the decision relied upon for the appellants are not only convincing but are in consonance with reasonableness as well. Though exception taken to that part of the order directing reinstatement cannot be sustained and the respondent has to be reinstated, in service, for the reason that the earlier discharge was on account of those criminal proceedings and conviction only, the appellants are well within their rights to deny back wages to the respondent for the period he was not in service. The appellants cannot be made liable to pay for the period for which they could not avail of the services of the respondent. The High Court, in our view, committed a grave error in allowing back wages also, without advertng to all such relevant aspects and considerations. Consequently, the order of the High Court insofar as it directed payment of back wages are liable to be and is hereby set aside.

5. *The respondent will be entitled to back wages from the date of acquittal and except for the purpose of denying the respondent actual payment of back wages, that period also will be counted as period of service, without any break. The reinstatement, if not already done, in terms of the order of the High Court will be done within 30 days from today.”*

This judgment has been followed by the Apex Court in

subsequent judgment rendered in '**Raj Narain Vs. Union of India and others**' 2019(5) SCC 809. The judgments relied upon by the State counsel are following the line of reasoning given by the Supreme Court. On the other hand, the judgments upon which reliance has been placed by counsel for the petitioner have been delivered by Co-ordinate Benches of this Court. Though against the judgment rendered in **Ran Singh's case (supra)**, LPA has been dismissed by a Division Bench being barred by limitation. Further it may be mentioned that operation of the judgment rendered by this Court in '**Phool Mati @ Phool Wati's case (supra)**', has been stayed by a Division Bench of this Court, vide order dated 13.08.2020 in LPA No.498 of 2020 titled as '**State of Haryana Vs. Phool Mati @ Phool Wati**', which is pending.

In view of the above clear enunciation of law, petitioner is not entitled to salary from the day she was placed under suspension till the date of reinstatement. However, she will be entitled to grant of salary, though on notional basis, from the day of acquittal till actual reinstatement. It is clarified that service of the petitioner from the date of acquittal shall be counted for all intents and purposes except for payment of actual salary. Impugned orders are modified accordingly.

A direction is issued to the competent authority to pass consequential orders within a period of four months from the date of communication of a copy of this order.

Writ petition is disposed of.

March 21, 2023

savita

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes