

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

CWP No.18208 of 2021

Date of decision : 30.01.2023

Constable Bhupinder Singh

....Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. N.P. Chandel, Advocate for
Mr. Punit Sharma, Advocate
for the petitioner.

Mr. Inderpreet S. Kang, Asstt. Advocate General, Punjab.

PANKAJ JAIN, J.

Petitioner seeks writ in the nature of certiorari in terms of quashing of order dated 12th of February, 2019 (Annexure P-5) whereby the period commencing from the date of his dismissal i.e. 22nd of March, 2003 till his reinstatement owing to acquittal from the criminal proceedings i.e. 10th of October, 2017 has been ordered to be treated as “dies non” thereby rejecting his claim for salary and allowances for the said period. Further challenge has been laid to the subsequent orders passed in appeal dated 28th of February, 2020 (Annexure P-7) affirming the said order. He further seeks writ in the nature of mandamus seeking directions to the respondents to pay him allowances from the date of suspension till reinstatement i.e. from 20th

of August, 1998 to 29th of November, 2002 and all benefits for the period from the date of dismissal i.e. 22nd of March, 2003 till acquittal i.e. 10th of October, 2017.

2. Petitioner was working as Constable with the Punjab Police. He was booked for offences punishable under Section 304-B/34 IPC in FIR No.49 dated 16th of July, 1998 of Police Station Thana Mod District Bathinda. On registration of the said case, the petitioner was ordered to be suspended w.e.f. 18th of July, 1998. On 24th of November, 2002 the suspension was revoked. FIR culminated in the order of conviction vide judgment dated 22nd of March, 2003. Resultantly, petitioner was ordered to be dismissed from service w.e.f. the date of his conviction vide order dated 5th of July, 2003 (Annexure P-2). The petitioner approached the High Court vide CRA-S No.886-SB of 2003 which was decided vide judgment dated 26th of October, 2016. This Court found that the prosecution miserably failed to prove its case and ordered acquittal of the petitioner. The acquittal of the petitioner further earned him reinstatement vide order dated 11th of October, 2017 (Annexure P-4). However, while passing the aforesaid order neither the suspension period of the petitioner was dealt with nor any order was passed w.r.t. the intervening period i.e. from the date of dismissal (22nd of March, 2003) till the date of reinstatement i.e. 10th of

October, 2017. However, in continuation of the order dated 11th of October, 2017, order dated 12th of February, 2019 was passed. The operative part of the same reads as under :-

“So, in pursuance of the above said letter of office of the Hon'ble Director General of Police, Punjab, Chandigarh, the period from dated 22.3.2003 from dismissal to 10.10.2017 of reinstatement, time spent out of duty (total 14 years, 6 months and 20 days) of Constable Bhupinder Singh no. 1203/ Bathinda (now 576/Bathinda) in service is treated as “dies non”. This period of this employee will not be counted in service and this employee will not be entitled to salary and allowances etc. of this period.”

3. The petitioner preferred appeal there against which stands dismissed vide order dated 28th of February, 2020. Counsel for the petitioner has relied on plethora of judgments to contend that in terms of Rule 7.3 of the Punjab Civil Services Rules, Volume I, Part I, once order of acquittal has been passed, the petitioner will be entitled for all consequential benefits including pay and allowances. Reliance is being placed upon judgment passed by this Court in **CWP No.5228 of 2011** titled as **Constable Sukhchain Singh vs. State of Punjab and others** appended to the present writ petition as Annexure P-10 and the judgment of Division Bench in **CWP No.12000 of 2007** titled as **Ex. Constable Kulwant Singh vs. State of Punjab and others** to hammer-forth the contention. In support of his arguments, Counsel for

the petitioner further relies upon various judgments rendered by this Court in **Civil Writ No.383 of 1963** titled as **Jagmohan Lal vs. State of Punjab and others** decided on 18th of August, 1966, **RSA No.897 of 1963** titled as **Prem Singh vs. State of Punjab (Now Haryana State)** decided on 13.10.1967, **CWP No.7178 of 2002** titled as **Bhim Singh vs. State of Haryana and others** decided on 12th of March, 2012, **CWP No.18618 of 2012** titled as **Amir Singh vs. State of Punjab and another** decided on 27th of April, 2015, **CWP No.26076 of 2013** titled as **Jaswinder Kaur vs. Punjab State Power Corporation Limited and others** decided on 24th of July, 2015, **CWP No.5139 of 2014** titled as **Mahesh Kumar Gupta vs. Uttar Haryana Bijli Nigam Limited** decided on 21st of May, 2015 and judgment rendered by Division Bench of this Court in **LPA No.897 of 2017** titled as **Uttar Haryana Bijli Vitran Nigam Ltd. and others vs. Jagdish Lal** decided on 11th of May, 2022.

4. Per contra, State Counsel submits that mere acquittal in appeal would not entitled the petitioner to the salary for the period he remained out of service as the effect of conviction does not get diluted by subsequent acquittal. He relies upon judgment of Apex Court in the case of **Baldev Singh vs. Union of India, Civil Appeal No.3892 of 1999** decided on 28th of October, 2005.

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

6. Facts are not much in dispute. Another fact which has attained pertinence in the light of issue involved is that the dismissal awarded to the petitioner was solely based upon his conviction. Department never proceeded against him. 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 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 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 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

less than the amounts earned during the employment elsewhere nothing shall be paid to the Government employee.

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.

(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 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 :

“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. 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 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. Keeping in view the aforesaid and the settled proposition of law in the light of undisputed fact that the dismissal awarded to the petitioner was solely based upon his conviction and the Department never proceeded against him, this Court finds that the impugned order Annexure P-5 whereby the petitioner has been denied benefits for the period he remained under dismissal cannot be sustained and the petitioner is entitled for getting the same treated as period spent on duty for all intents and purposes. Respondents are directed to calculate and release salary and allowances as admissible to the petitioner for the said period i.e. from 22nd of March, 2003 to 10th of October, 2017.

11. Likewise the authorities are directed to consider the case of the petitioner for suspension period as well and pass order *qua* that in accordance with law.

12. Needful be done within a period of 12 weeks from the date of receipt of certified copy of this order. There shall be no order w.r.t. interest and cost on the amount for which the petitioner is held to be entitled.

13. The Writ petition is allowed.

January 30, 2023

Dpr

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No