

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-18461-2017 (O&M)
Date of Decision:- 2.9.2023

Gurcharan Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Rajeev Anand, Advocate for the petitioner.

Mr. Aman Dhir, DAG, Punjab.

GURVINDER SINGH GILL, J.

1. The petitioner seeks issuance of a writ in the nature of Certiorari so as to quash order dated 24.4.2017 (Annexure P-11) vide which the claim of the petitioner for grant of Proficiency Step-up i.e. ACP on completion of 4, 9 and 14 years of service has been declined. The claim of the petitioner for payment of interest on the arrears of pay and allowances as well as pensionary and retirement benefits has also been turned down.
2. A few facts necessary to notice for disposal of this petition are that while the petitioner was working as *Zileदार* with respondent department at Ramnagar, allegations were raised on 24.3.1999 against the petitioner to the effect that he had demanded illegal gratification from one Sukhmander Singh on the basis of which FIR No. 8 dated 24.3.1999 was lodged against the petitioner at Police Station Vigilance Bureau, Ferozepur for offences under Sections 7

and 13(2) of the Prevention of Corruption Act, 1988 and on account of the said allegations and the FIR, the petitioner was placed under suspension w.e.f. 24.3.1999. The petitioner was tried by the Special Judge, Mansa and vide judgment dated 1.10.2000, he was held guilty and sentenced to undergo rigorous imprisonment for 2 years and was imposed fine of Rs.1,000/-.

3. Aggrieved by his conviction, the petitioner filed an appeal in this Court i.e. Criminal Appeal No.1225-SB of 2000. During the said period, the petitioner was being paid subsistence allowance @ 75%. Vide order dated 19.7.2010 (Annexure P-1), the respondent terminated the services of the petitioner which was based solely on the factum of conviction of the petitioner, without conducting any department inquiry.
4. Appeal filed by the petitioner challenging his conviction was accepted on 13.8.2014 (Annexure P-3) and the conviction, as recorded by the trial Court, was set aside by giving him the benefit of doubt. The State did not choose to challenge the aforesaid judgment dated 13.8.2014 and consequently, the same attained finality.
5. The petitioner, thereafter, submitted a representation dated 17.11.2014 (Annexure P-5) followed by other representations dated 2.2.2015 (Annexure P-6), 14.2.2015 (Annexure P-7) and 24.2.2015 (Annexure P-8) requesting for his reinstatement. Upon getting no response, the petitioner filed a writ petition in this Court i.e. CWP No. 10859 of 2015 wherein directions were issued to the respondents to consider his representations. Since the department did not take any action, the petitioner was constrained to file a contempt petition i.e. COCP No. 2453 of 2015 in this Court. It was during the pendency of the said contempt petition that the petitioner was extended

some benefits. However, by way of impugned order dated 24.4.2017 (Annexure P-11), the petitioner was not granted the benefit of ACP. Even, the interest on the delayed payment of the salary and pensionary benefits was declined, though he had been ordered to be reinstated w.e.f. 24.3.1999 and superannuated w.e.f. 30.4.2012.

6. The learned counsel for the petitioner submits that once the petitioner had been acquitted of all the charges framed against him, it goes without saying that he had been falsely implicated and that the petitioner is entitled to be extended all the benefits while deeming that he had never been suspended or dismissed from service. The learned counsel, in this regard, has placed reliance upon a Division Bench judgment of this Court rendered in 2005(1) SLR 659 titled as Shashi Kumar versus Uttri Haryana Bijli Vitran Nigam and another.
7. On the other hand, the learned State counsel has vehemently argued that it is the case where the petitioner was acquitted while extending benefit of doubt and that despite the same the petitioner had been reinstated and had been paid the arrears of pay. It has further been submitted that as a matter of fact a sum of Rs. 61,595/- has been paid to the petitioner in excess as fixed travelling allowance whereas he was not entitled for the same and is required to be recovered back. The learned State counsel has further submitted that the benefit of ACP on completion of 4, 9 and 14 years can be extended to an employee only if his service record is upto the prescribed bench mark and since the petitioner had already retired from service before he was acquitted and had not served the department, therefore, he was not entitled to such like benefits. The learned State counsel, in order to hammer forth his submissions, has pressed into service a judgment of Hon'ble Apex Court

reported as (2019) 5 SCC 809 Raj Narain versus Union of India and others and 2021(5) SLR 643 Kapoor Singh versus State of Punjab.

8. This Court has considered rival submissions addressed before this Court.
9. The petitioner had been dismissed from service on account of specific allegations against him to the effect that he had been caught red handed while accepting bribe from one Sukhmander Singh. The said Sukhmander Singh had fully supported the case of the prosecution when he was further examined during the proceedings of the trial. Even the shadow witness during the course of his cross-examination fully supported the case of the prosecution. The petitioner, however, was acquitted as some doubt was expressed regarding movement of the file in respect of which the accused was alleged to have accepted bribe. The relevant extract from the said judgment dated 13.8.2014 (Annexure P-3) is reproduced herein-under :-

“It is a settled proposition of law that whenever there is any doubt in the prosecution case, benefit of the same has to be extended to the accused. In the present case, prosecution case is not free from doubt and consequently, appellant is liable to be acquitted from the charge framed against him by giving benefit of doubt.

Accordingly, this appeal is allowed. Conviction and sentence of the appellant, as ordered by the Special Judge, Mansa vide judgment/order dated 01.12.2000 are set aside. Consequently appellant is acquitted of the charge framed against him.”

10. A perusal of the aforesaid extract clearly shows that the petitioner came to be acquitted on account of benefit of doubt, having been extended to him. There is no categorical finding to the effect that he had been falsely implicated. It is not in each and every case that a person is entitled to be put back in the same position as he was before his termination.

11. Rule 7.3 of the Punjab Civil Services Rules, Volume-I deals with the 'Allowances on Reinstatement', which reads as under :-

7.3(1) When a Government employee, who has been dismissed, removed, compulsory retired, or suspended, is reinstated, or would have been reinstated but for his retirement on superannuation the authority competent to order the reinstatement 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, occasioned by suspension and/or dismissal, removal or compulsory retirement ending with his reinstatement on or the date of his retirement on superannuation 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 mentioned in sub-rule (1) is of opinion that the Government employee has been fully exonerated or, in the case of suspension, that it was wholly unjustified, the Government employee shall be given the full pay and allowances, which he would have been entitled, had he not been dismissed, removed, compulsorily retired or suspended, as the case may be.

xxxx xxxx xxxx”

12. A bare perusal of the above rule would show that the employer has been given liberty to decide with regard to the payment of full salary during the suspension period in case, the employee is reinstated in service. As per the rule, the employee is not entitled for full allowances unless, he/she has been fully exonerated of the allegations or the suspension period was found to be wholly unjustified.

13. The issue as to whether, upon acquittal in a criminal case, when an employee is reinstated, the said employee is entitled to full benefits or not was

considered by the Hon'ble Supreme Court of India in 1996(11) SCC 603 Ranchhodji Chaturji Thakore Vs. Superintendent Engineer, Gujarat Electricity Board and another, wherein it held that where conduct of an employee resulted into his becoming disabled from rendering service either on account of conviction or incarceration in jail, the back wages can rightly be denied upon reinstatement. Hon'ble Supreme Court held that it is only where action taken against an employee in a disciplinary proceedings is later found to be unsustainable, that the employee can claim back wages. The relevant paragraph 3 of the said is as under :-

“3. The reinstatement of the petitioner into the service has already been ordered by the High Court. The only question is: whether he is entitled to back wages? It was his conduct of involving himself in the crime that was taken into account for his not being in service of the respondent. Consequent upon his acquittal, he is entitled to reinstatement for the reason that his service was terminated on the basis of the conviction by operation of proviso to the statutory rules applicable to the situation. The question of back wages would be considered only if the respondents have taken action by way of disciplinary proceeding and the action was found to be unsustainable in law and he was unlawfully prevented from discharging the duties. In that context, his conduct becomes relevant, Each case requires to be considered in its own backdrop. In this case, since the petitioner had involved himself in a crime, though he was later acquitted, he had disabled himself from rendering the service on account of conviction and incarceration in jail. Under these circumstances, the petitioner is not entitled to payment of back wages. The learned single judge and the Division Bench have not committed any error of law warranting interference.”

14. The same question again came up for consideration before the Hon'ble Supreme Court of India in Raj Narain's case (supra). Hon'ble Supreme Court of India once again reiterated that it is only where the prosecution of the accused has been held to be brought with the mala fides or with vexatious intent, due to which the said accused was acquitted, that an employee is entitled for the back wages, failing which, no benefit of back wages can be given upon reinstatement. The relevant paragraph is 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.”

15. This Court in Kapoor Singh's case (supra) while relying upon Raj Narain's case (supra) observed as under :-

“8. A bare perusal of the above reproduction would show that Hon'ble Supreme court of India has allowed the wages for the period when an employee remained out of service only in case the prosecution was held to be malicious.

9. No argument has been raised by the learned counsel for the petitioner in this regard. Further the petitioner was given benefit of doubt while acquitted and, therefore, keeping in view the law laid down by Hon'ble Supreme court of India in Raj Narain's case (supra), no benefit more than the suspension allowance can be allowed to the petitioner even after his acquittal.”

16. In the present case, as already noticed above, the petitioner was acquitted having been given the benefit of doubt. The petitioner, in any case, was ordered to be reinstated and was paid arrears of pay. The petitioner cannot be extended other benefits in the shape of ACP etc., as is being claimed or the interest on arrears as facts do not suggest that it is a case of malicious prosecution.

17. Having regard to the factual position and the settled position of law as noticed above, this Court does not find any ground to interfere with the impugned order and the same is upheld.

18. Finding no merit in the petition and the same is hereby dismissed.

2.9.2023

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**(Gurvinder Singh Gill)
Judge**

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No