

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

CWP No.17663 of 2018

Reserved on 13.02.2023

Pronounced on: 10.03.2023

Pritam Singh (since deceased) through his LRs Petitioner

Versus

Uttar Haryana Bijli Vitran Nigam Limited and others Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Rajinder Singh Rana, Advocate,
for the petitioner.

Mr. Vinod K. Kaushal, Advocate, for the respondents.

JAISHREE THAKUR.J

1. The instant writ petition has been filed under Article 226/227 of the Constitution of India seeking a writ in the nature of certiorari for quashing order dated 02.03.2017 (Annexure P-4) whereby two annual increments of the petitioner were stopped without future effect, suspension period was treated as leave of kind due and termination period as extraordinary leave besides order dated 07.06.2017 (Annexure P-5) whereby claim of the petitioner for back wages and other allowances for the period from 05.08.2001 to 02.03.2015, stood rejected, despite the fact that he has been acquitted of the charges levelled against him.

2. Brief facts of the case are that the petitioner joined the respondent-department i.e. Uttar Haryana Bijli Vitran Nigam Limited, as a

daily wage, in the year 1980. Thereafter, in 1985, he was regularized on the post of Store Mate, and in the year 1998, he was given promotion as a Driver. However, an FIR No.214, under Sections 392, 397, 120-B of IPC and Section 25 of the Arms Act, 1959, was registered against him at Police Station City Kaithal, on 15.05.2000 with the allegation that he, while working as Driver of the vehicle which was going to the Bank for remittance, looted an amount of Rs.3.27 lacs at gun point in connivance with private persons. He was served with a charge sheet dated 24.01.2001 and an Inquiry Officer was appointed, who, vide his report dated 11.02.2003, found the petitioner actively involved in the looting of cash. The trial Court as well held him guilty and convicted him under Section 411 IPC vide judgment dated 08.04.2003 and vide order dated 10.04.2003, sentenced him to undergo rigorous imprisonment for a period of three years. On conviction, the respondent department terminated the petitioner on 08.08.2003 from the date of conviction. Aggrieved, the petitioner approached this Court by way of filing appeal i.e. CRA-S-798-SB-2003, which was allowed vide judgment dated 14.05.2014 by giving him benefit of doubt and the judgment of conviction and order of sentence passed by the trial Court was set aside. Accordingly, the competent authority i.e. respondent No.3 reinstated the petitioner in service on 03.03.2015, pending charge-sheet. The competent authority, vide order dated 02.03.2017 (Annexure P-4), after considering the reply submitted by the petitioner as well as other relevant facts, awarded punishment of stoppage of two annual increments without future effect; his suspension order was treated as leave of kind due and termination period was treated as extra ordinary leave. Vide order dated 07.06.2017 (Annexure P-5),

his claim for back wages and other allowances for the period from 05.08.2001 to 02.03.2015, was rejected.

3. Learned counsel appearing on behalf of the petitioner would argue that once the petitioner has been acquitted, he cannot be deprived from the benefits of back wages. The principle of '*no work, no pay*' will not apply to the case of the petitioner as he was always ready and willing to perform his duties, but was stopped by the respondents. In support of his contentions, he has relied upon ***Jaipur Vidyut Vitran Nigam Limited and others Versus Nathu Ram, 2010(1) SCC 428; Ram Anjore Versus Uttari Haryana Bijli Vitran Nigam and others, 2016(2) S.C.T., 716; Prabhu Dayal Madan Versus State of Haryana and another, 2015(1) PLR 86.***

4. *Per contra*, learned counsel appearing on behalf of the respondents argued that merely because the petitioner was acquitted would not automatically entitle the petitioner to get salary for the period during which he remained out of service.

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

6. Admittedly, the petitioner herein while working with the respondent department was found involved in an FIR; he was dismissed from service; he lost before trial Court but in appeal before this Court, he was acquitted, leading to his reinstatement. However in departmental proceedings, his two annual increments without future effect were stopped and the suspension period/termination period was treated as leave of kind due and extra ordinary leave respectively vide order Annexure P-4 and vide

Annexure P-5, his claim for back wages w.e.f. 05.08.2001 to 02.03.2015 was rejected.

7. Learned counsel for the petitioner has relied upon judgments as referred above, in support of his argument, that on acquittal from the charges as framed under FIR, the petitioner would be entitled to the salary for the period he remained under suspension and out of service. However, the judgments, as relied upon, are not relevant to the case in hand and are distinguishable. In ***Prabhu Dayal Madan's case (supra)***, the petitioner was convicted under the Prevention of Corruption Act and then subsequently dismissed from service. On appeal, he was acquitted but superannuated during the pendency of the proceedings. On acquittal, he was allowed all retiral benefits but sought salary for the period he was out of service. The said writ petition was allowed by the High Court taking into account Rule 7.3 of the Punjab Civil Service Rules. In ***Jaipur Vidyut Vitran Nigam Limited's case (supra)***, on acquittal under Section 5(2) of Anti Corruption Act, 1947, the employee was taken back in service with all benefits of salary etc. for the period he was out of service. In ***Ram Anjore's case (supra)***, the State Vigilance Bureau filed a challan before the competent court of law at Ambala and the court vide its judgment dated 21.08.2007 found the petitioner therein guilty of offence under Section 7/13 of Prevention of Corruption Act, 1988 and convicted and sentenced him to undergo rigorous imprisonment for one year and to pay a fine. The appeal was allowed and the petitioner therein was acquitted of the charges framed against him. The High Court allowed the plea for full salary.

8. What needs consideration in the instant case is whether the petitioner had been convicted for an offence not connected with his office and he had got himself involved in something with which the department had no concern or responsibility. The allegations as against the petitioner were that he was booked in FIR No.214, dated 15.05.2000, as referred to above, with the allegation that he, while working as Driver of the vehicle which was going to the Bank for remittance, looted an amount of Rs.3.27 lacs at gun point in connivance with private persons. He was found guilty of the offence of receiving stolen goods under Section 411 IPC and sentenced accordingly. In the registration of such an FIR, the department had no role to play and, therefore, the judgments cited above have no relevance, as all of them pertain to registration of FIRs under the Prevention of Corruption Act.

9. The Supreme Court in ***Ranchhodji Chaturji Thakore Versus Superintendent Engineer, Gujarat Electricity Board, Himmatnagar (Gujarat) and another, 1996(11) SCC 603*** has held that a person who has disabled himself from working by being involved in a crime even though acquitted would not be entitled to back wages. It was held that the State cannot be made liable to pay for the period for which they could not avail the service of the delinquent employee. Similarly, in ***Reserve Bank of India Versus Bhopal Singh 1994 (1) SCT 505***, the Supreme Court held that in case an employee is absent for reasons of his own involvement and does not discharge duties, the Bank cannot be saddled with the liability to pay his salary and allowances for that period. In ***Raj Narain Versus Union of India, Civil Appeal No.3339 of 2019 decided on 01.04.2019***, the Supreme Court

has 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.”*

10. Consequently, keeping in view the judgment rendered by the Supreme Court in **Ranchhodji Chaturji Thakore's case (supra)** and other cases, as referred to above, the petitioner herein, who was involved in a

criminal case of a private nature, as he was booked under Sections 392, 397, 120-B of IPC and Section 25 of the Arms Act, 1959, though acquitted by this Court, is not entitled to have his suspension period regularized and claim the said period to be spent on duty and claim consequential benefits.

11. The writ petition is, accordingly, dismissed.

(JAISHREE THAKUR)
JUDGE

10.03.2023

sanjeev

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No