

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

**CWP No. 27550 of 2015 (O&M)
Reserved on: January 27, 2023
Date of Decision: February 23, 2023**

Sat Pal

...Petitioner

Versus

Uttar Haryana Bijli Vitran Nigam Limited and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Ashwani Bakshi, Advocate
for the petitioner.

Mr. Kartar Singh Malik, Advocate,
for the respondents.

JAISHREE THAKUR, J.

1. The instant writ petition has been filed under Article 226 of the Constitution of India praying for issuance of a writ in the nature of Certiorari quashing/modifying the order dated 21.10.2009 (Annexure P-6) passed by respondent No.3, vide which the petitioner's suspension period has been ordered to be treated as 'leave of kind due' instead of 'period on duty'; with a further prayer for issuance of a writ in the nature of Mandamus directing the respondents to treat the suspension period of the petitioner as a period on duty and to grant him all the consequential benefits.

2. The facts leading to the filing of the instant writ petition are that the petitioner joined erstwhile Haryana State Electricity Board, now known as UHBVNL as T. Mate in the year 1972 and was promoted as ALM in the year 1979. He was suspended on 26.5.1995 in pursuance of

registration of a FIR No. 198 dated 7.5.1995 registered under Section 302 etc. IPC. After trial, the petitioner was acquitted in the aforesaid case by Additional Sessions Judge, Yamuna Nagar on 10.12.1998. The respondent-State filed an appeal against the judgment of acquittal in this Court. However, despite acquittal of the petitioner by the trial court and pendency of the State's appeal, the respondent-Nigam served a charge sheet dated 9.4.2001 (P-1) on the petitioner. The petitioner filed a detailed reply to the charge sheet stating therein that he was falsely implicated in the said FIR and in fact the petitioner was on duty on the day of alleged occurrence and in view of the reply so filed, no further action was taken on the charge sheet so served on the petitioner and rather he was taken back on duty on 11.7.2001, while revoking his suspension. Thereafter, the petitioner made a representation dated 3.11.2006 (P-2) to respondent No.3 stating that the department had not granted him any increment and full salary for the period of suspension. Therefore, he requested regularization and payment of full salary of suspension period. In the meantime, the appeal filed by the respondent—State against acquittal of the petitioner stood dismissed by this Court on 18.7.2008.

3. Pursuant to the dismissal of the State's appeal against judgment of acquittal, respondent No.3 passed an order dated 22.12.2008 (P-3) dropping the charge sheet dated 9.4.2001. Consequently, the petitioner again represented the competent authority for regularization of his suspension period from 19.5.1995 to 11.7.2001. Respondent No.3, while agreeing with the request of the petitioner, wrote a letter dated 8.4.2009 (P-4) to respondent No.2 recommending regularization of petitioner's

suspension period. When the competent authority did not act on the recommendation so made by respondent No.3, the petitioner served a legal notice dated 20.10.2009 (P-5) claiming regularization of suspension period and all consequential benefits. While acting on the legal notice, respondent No.3 passed another order dated 21.10.2009 (P-6), modifying his earlier order dated 22.12.2008 to the effect that the suspension period of the petitioner from 19.5.1995 to 11.7.2001 be treated as leave of kind due. By impugned order dated 21.10.2009, respondent No.3 though ordered regularization of petitioner's suspension period but at the same time it was ordered that the said period be treated as leave of kind due. In the meantime, the petitioner retired from service as ALM on 31.01.2012. After retirement, again the petitioner represented respondent No.3 on 13.9.2012, who in turn sought advice of L.R. HPU, Panchkula on the issue. When nothing was done, the petitioner again represented on 5.6.2013 and 18.2.2015 but of no avail, hence the instant writ petition.

4. Learned counsel for the petitioner would argue that the action of the respondents in treating the petitioner's suspension period as leave of kind due instead of period on duty is totally wrong, unjustified and arbitrary. It is submitted that the petitioner stood acquitted in the FIR, on the basis of which he was suspended and even the appeal filed against the judgment of acquittal stood dismissed by this Court, still the suspension period of the petitioner has not been regularized.

5. Per contra, learned counsel appearing on behalf of the respondents would argue that the petitioner is not entitled to full salary for the suspension period on the principle of 'no work no pay' and he was

entitled to only terminal benefits, which have already been given to him.

6. I have heard learned counsel for the parties and have gone through the record carefully.

7. The sole question that falls for consideration in this case is, whether the suspension period of the petitioner from 19.5.1995 to 11.7.2001 be treated as leave of kind due or it be treated as period on duty, in view of the fact that the petitioner stood acquitted in the FIR on the basis of which he was suspended?

8. It is an admitted fact that the petitioner herein, namely Sat Pal was arrested in case FIR No. 198 dated 7.5.1995 registered under Section 302 etc. IPC and consequently was placed under suspension vide office order dated 26.5.1995. He stood acquitted by the trial Court vide judgment dated 10.12.1998, however, the said order was challenged in appeal by the State before this Court. The petitioner was charge-sheeted in 2001 but proceedings were dropped and he was reinstated in service on 11.7.2001 and now seeks to claim the benefits of salary etc. for the period he remained suspended. The petitioner herein was involved in the FIR which was registered on account of a private dispute in the village which led to the death of a private citizen. The claim to get his period of suspension to be considered as duty stands rejected. Rule 7.3 (2) of the Punjab Civil Services Rules, which deals with such a situation, is reproduced hereunder:-

“7.3(2) Where the authority competent to order reinstatement 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.”

9. A bare reading of the provision would clearly reflect that a government employee, who has been dismissed, removed, compulsorily retired or suspended, if reinstated upon having been fully exonerated, would be entitled to full salary and allowances for the period i.e. the date of dismissal/suspension till the date of reinstatement. The employer has been given liberty to decide the question with regards to payment of full salary during the suspension period in case the employee has been reinstated. Learned counsel for the petitioner has relied upon a judgment in **Sucha Singh Versus State of Punjab and others 2014 (1) SCTR 183**, where the petitioner therein had been nominated as accused in an FIR registered under the Prevention of Corruption Act and on exoneration sought reinstatement in the department as during the pendency of the proceedings before the criminal court, he stood dismissed from service. The petitioner therein had been reinstated but the period of absence from duty from dismissal till the

date of reinstatement was treated as 'no work, no pay'. As a sequel to such order, the writ petition was filed and subsequently allowed. However, the facts of the present case are different from the facts in ***Sucha Singh's case***. In ***Sucha Singh's case***, the proceedings had been initiated by the department under the Prevention of Corruption Act, whereas the petitioner herein had been involved in a *private dispute* wherein Section 302 etc. IPC were invoked and the petitioner was named in the FIR and subsequently arrested. The petitioner stood acquitted and thereafter reinstated in service. Therefore, in the opinion of the Court, the law as settled in ***Sucha Singh's case*** would not be applicable to the instant case. In the judgment rendered in ***Union of India and others Versus Jaipal Singh, 2000 (1) SCT 108***, it has been held that an employee who has been convicted for an offence committed by him in his private life and thereafter stands acquitted in appeal, he would be entitled to reinstatement but cannot be granted backwages because the employer cannot be blamed and made liable to pay him for the period that he remained out of service. 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 services of an employee. In similar case, in the matter of ***Reserve Bank of India v. Bhopal Singh 1994 (1) SCT 505***, the Supreme Court has 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 Vs Union of India** Civil Appeal No 3339 Of 2019 decided on 1.4.2019, 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 in **Jaipal**

Singh's case (supra) and other cases as referred to above, the petitioner herein who was involved in a criminal case of a private nature, though acquitted by the High Court, is not entitled to have his suspension period regularized and claim the said period to be spent as on duty and claim consequential benefits due, as he was facing trial under Section 302 IPC. The writ petition is, accordingly, dismissed.

February 23, 2023
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No