

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

RSA-337-2009 (O&M)
Date of Decision: 14.12.2023

Kulyash Rai

...Appellant

versus

State of Punjab and others

...Respondents

CORAM : HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Arun Abrol, Advocate for the appellant.

Mr. Manipal Singh Atwal, DAG, Punjab.

AMAN CHAUDHARY, J

1. Challenge in the present regular second appeal is to the concurrent findings of facts returned by Courts below in favour of the defendant-respondent in a suit filed for declaration and mandatory injunction. For the sake of convenience, parties shall be referred as per their original status.

2. Plaintiff-appellant who was reinstated after having being acquitted of the criminal charge was granted the benefit of pension by treating him on duty up to the date of retirement and since he was not paid any salary for said period, a suit was filed by him for declaration to the effect that he was entitled to the salary alongwith interest @ 18%.

3. The defendants in the written statement, raised preliminary objections regarding maintainability of the suit and also stated that though admittedly, the plaintiff was convicted by the trial Court and in appeal before High Court, he was acquitted and reinstated in the service by

Director, Health & Family Welfare Punjab, Chandigarh vide his order dated

07.07.2005 but the authorities have rightly passed the order granting only pensionary benefits as he was not entitled to any other benefits.

4. The learned trial Court after framing the issues and on the basis of the evidence led by the parties, decreed the suit vide judgment and decree dated 15.05.1998 in favour of the defendant holding that in criminal case, the plaintiff was acquitted by giving benefit of doubt and when he remained out of service during his suspension period and after termination, he is not entitled to any salary for the said period, as per the legal pattern of 'no work no pay'.

5. The Court of Additional District Judge, Faridabad affirmed the findings of the trial Court, holding that the plaintiff is not entitled to any salary for the period he remained out of service, by relying on **Raj Kumar vs. State of Punjab and Ors.** 2006(5) SLR 838, which led to the filing of the present second appeal.

6. Learned counsel contended that the Courts below gravely erred in non-suiting the plaintiff as on his acquittal in the criminal case by the High Court, he was entitled to all the ancillary benefits as claimed in the suit. Reliance is placed on the judgments of this Court passed in **Ishwar Singh vs. State of Haryana and others** 2012 LIC 392; **Prabhu Dayal Madan vs. State of Haryana and another** 2015(1) PLR 86; **Vinod Kumar vs. State of Punjab and others** 2016(4) S.C.T.553 and **Gurbax Singh vs. State of Punjab and others** 2022(3) PLR 705

7. On the other hand, learned State counsel submitted that after appreciating the evidence led by the parties and the law, the Courts below have rightly rejected the claim of the plaintiff by dismissing the suit.

8. Heard learned counsel on either side and record perused.

9. The plaintiff, while being employed in the respondent-Department, was involved in a case under Section 302 IPC, as a result of which, he was placed under suspension and later on, after conviction, was dismissed from service. Subsequently, he was acquitted by the High Court. Insofar as the issue of whether the appellant is entitled to backwages after his acquittal, is concerned, the same is no longer *res integra*. In **Ranchhodji Chaturji Thakore vs. Gujarat Electricity Board**, (1996) 11 SCC 603, a case wherein after acquittal of the employee in a criminal case under Section 302 IPC, upon on his reinstatement, Hon'ble the Supreme Court had held that, " 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 proceedings 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." On strength of the afore-said, in **Raj Narain vs. Union of India and others** (2019) 5 SCC 809,

it was observed and held that an employee, who was earlier convicted under Sections 409, 467 and 420 IPC and acquitted in appeal, shall not be entitled to full backwages on his reinstatement, unless the prosecution is found to be malicious.

10. Moving to the present case, admittedly, the plaintiff was involved in a criminal case under Section 302 IPC, wherein he was convicted by the trial Court on 07.12.1999, on account of which, his services came to be terminated on 08.12.1999, but no disciplinary proceedings had been initiated. He was otherwise to retire on 31.10.2000. However, in an appeal filed against conviction before the High Court, he was acquitted by giving benefit of the doubt, vide judgment dated 01.09.2003. The criminal proceedings had no concern with his employment as neither were they initiated at the behest of the Department, nor was it a party to the prosecution, it being an FIR lodged under Section 302 IPC, thus, cannot in any way be concluded to be a case of malicious prosecution. On a representation being made by the appellant, vide letter dated 07.07.2005, he was granted the benefit of pension by treating him on duty only upto the date of retirement, but the salary for the period he remained out of service on account of the trial and conviction till his reinstatement was rightly rejected by the trial Court on the principle of 'no work no pay'. The first appellate Court also considered the matter in the correct perspective and dismissed the appeal.

11. The concurrent findings as recorded by the learned Courts harmoniously align with the established legal principles expounded in the afore-referred pronouncements. Consequently, even the judgments upon which the appellant relies fail to lend support to his cause, as no compelling

argument has been proffered to demonstrate any misreading or ignorance of the evidence.

12. There being no illegality or perversity found in the impugned judgments and decrees passed by the Courts below, the present appeal being meritless, is accordingly dismissed.

(AMAN CHAUDHARY)
JUDGE

14.12.2023
Hemant

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No