

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

134

2023:PHHC:119467

**RSA-3968-2019(O&M)
Date of decision: 12.09.2023**

KASHMIR SINGH

..Appellant

Versus

STATE OF PUNJAB AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rakesh Sobti, Advocate
for the appellant.

Mr. Ajit Singh Natt, AAG, Punjab.

ANIL KSHETARPAL, J(Oral)

1. The correctness of the concurrent findings of fact arrived at by the Courts below is assailed by the plaintiff in this second appeal.
2. The dispute is with respect to the entitlement to the pay and allowances during the period the appellant remained in custody i.e. 204 days. The appellant claims that on his acquittal in a criminal case, he is entitled to pay and allowances for the period he remained in custody. Both the Courts have concurrently found that the plaintiff is not entitled to the same.
3. This Bench has heard the learned counsel representing the appellant at length and with his able assistance perused the paperbook.
4. The learned counsel representing the appellant submits that the appellant was deputed on an official duty with the then Member of Legislative Assembly (MLA) Sh. Jasbir Singh @ Dimpa and therefore, his duty was to grant protection to him. He submits that there was a quarrel between the two groups, which resulted in registration of the FIR. Hence, it can be inferred that the appellant was discharging his official duties and

therefore, he is entitled to pay and allowances. On a perusal of the judgments passed by the both the Courts below, it is evident that the plaintiff never asserted that the incident took place during the course of discharge of his official duties. FIR No.21 of 2007 was not registered under Section 302 of the India Penal Code, 1860 at the behest of the Department of Police, whereas, another FIR No.142 of 2006, was also registered against the appellant.

5. However, the learned counsel representing the appellant submits that the appellant was discharging his official duties. This Court for the first time in the second appeal cannot permit the appellant to set up a new case, which was never projected before the Courts below.

6. The learned counsel representing the appellant relies upon the judgment passed in **Bhim Singh Vs. State of Haryana and others, CWP-7178-2002, decided on 12.03.2012**, to contend that on acquittal, the employee is entitled to pay and allowances. He also relies upon the judgment passed in **Sucha Singh Vs. State of Punjab, CWP-6131-2012, decided on 12.09.2013** and **Jaswinder Kaur Vs. Punjab State Power Corporation Ltd and others, CWP-26076-2013, decided on 24.07.2015**.

7. It may be noted here that the Hon'ble Supreme Court has drawn distinction between the cases where the employee was involved in a criminal case at the behest of the department or in some other dispute. In **Ranchhodji Chaturji Thakore Vs. Superintendent Engineer, Gujarat Electricity Board and another, (1996) 11 SCC 603**, it was held that if the employee was not involved in a criminal case at the behest of the department then he will not be entitled to the wages for the period he never worked. Again in **Union of**

India Vs. Jaipal Singh (2004) 1 SCC 121, the Supreme Court drew this distinction and held that the employee is entitled to backwages only from the date of acquittal and not during the period when he was unable to discharge his duties.

8. In fact, in **Bhim Singh's case (supra)**, a Coordinate bench did not notice the aforesaid two Supreme Court judgments.

9. In **Sucha Singh's case (supra)** and **Jaswinder Kaur's case (supra)**, the employee was involved in a criminal case under the Prevention of Corruption Act, 1988, at the behest of the department. In that context, the distinction was drawn by the Court.

10. In the present case, as already noticed, it is not the case of the appellant that he was involved in a murder case at the behest of the department or it was part of his duty to participate in a fight between the two rival groups.

11. Keeping in view the aforesaid facts, no ground to interfere in the concurrent findings of fact, is made out.

12. Dismissed accordingly.

13. All the pending miscellaneous applications, if any, are also disposed of.

September 12th, 2023

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(ANIL KSHETARPAL)
JUDGE

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