

227 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.29715 of 2017 (O&M)

Date of decision : 13.03.2023

Rajesh Kumar

..... Petitioner

versus

State of Punjab & ors.

..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. J.S.Gill, Advocate
for the petitioner.

Mr. Inderpreet Singh Kang, AAG, Punjab.

PANKAJ JAIN, J. (ORAL)

By way of present writ petition the petitioner prays for issuance of a writ in the nature of certiorari quashing the order dated 17.11.2013 (Annexure P-6) passed by respondent No.4 denying him monetary benefits for the period 20.04.2007 till 17.11.2013. Further challenge is to the orders passed by the appellate authorities rejecting claim of the petitioner and affirming the order dated 17.11.2013. Petitioner who was recruited as Assistant Sub Inspector with the respondent-department was booked in FIR No.64 dated 22.11.1999 registered for offences punishable under Sections 7 & 13(2) of the Prevention of Corruption Act, 1988 on 22.11.1999. The petitioner was convicted on 26.11.2002 by the trial Court, however, he remained in service till 20.04.2007.

In the appeal preferred by the petitioner against judgment of conviction he earned acquittal vide judgment dated 19.12.2012 which has been placed on record as Annexure P-3. Consequent to the acquittal earned by the

petitioner he was reinstated in service where he joined back on 17.11.2013. Having reinstated the petitioner represented to the respondents for monetary benefits for the period intervening the date of dismissal i.e. 20.04.2007 till the date of his joining back i.e. 17.11.2013. The claim of the petitioner stands rejected by the competent authorities vide impugned order dated 17.11.2013.

Learned counsel representing the petitioner submits that the impugned order cannot be sustained as the same is in the teeth of Rule 7.3 of Punjab Civil Services Rules. He submits that it is a case wherein no departmental proceedings were ever initiated against the petitioner and the dismissal of the petitioner was owing to his conviction and the reinstatement of the petitioner has followed his acquittal. The contention raised is that once the authorities in their own wisdom found the petitioner worth reinstatement in the service, monetary benefits for the intervening period cannot be denied and the petitioner has to be treated on duty for all intents and purposes for the period intervening.

Per contra learned State counsel submits that since the petitioner earned acquittal getting benefit of doubt the authorities were well within their right to decline the monetary benefits to the petitioner. Reliance is being placed upon judgment rendered by Apex Court in ***Ajay Kumar Singh Vs. The Flag Officer Commanding-In-Chief & ors., (2016) 9 SCC 179.***

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

Admittedly the petitioner having not been proceeded against departmentally, Rule 16.3 of the Punjab Police Rules, 1934 will not come into play. The issue that falls for adjudication of this court is; *whether the claim of*

the petitioner would fall within the ambit of Rule 7.3 of the PCS Rules Vol. I Part I or the same has to be governed by the provisions as contained in Rule 7.3 A of the PCS Rules as held by the authorities. In order to adjudicate upon the aforesaid issue it will be apposite to peruse the aforesaid Rules which read as under :-

ALLOWANCES ON REINSTATEMENT

“7.3. (1) When a Government employee, who has been dismissed, removed or compulsorily retired, is reinstated as a result of appeal, revision or review, or would have been so reinstated but for his retirement on superannuation while under suspension or not, the authority competent to order re-instatement 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 including the period of suspension, preceding his dismissal, removal or compulsory retirement, 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 competent to order re-instatement 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.

(3) In a case falling under sub-rule (2), the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, shall be treated as a period spent

on duty for all purposes.

(4) In cases other than those covered by sub-rule (2) including cases where the order of dismissal, removal or compulsory retirement from service is set aside by the authority exercising powers of appeal, revision or review solely on the ground of non-compliance with the requirements of clause (2) of article 311 of the Constitution and no further inquiry is proposed to be held, the Government employee shall, subject to the provisions of sub-rules (6) and (7), be paid such amount (not being the whole) of 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, as the competent authority may determine, after giving notice to the Government employee of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period as may be specified in the notice:

Provided that any payment under this sub-rule to a Government employee other than a Government employee who is governed by the provisions of payment of Wages Act, 1936 (Act 4 of 1936) shall be restricted to a period of three years immediately preceding the date on which order for reinstatement of such Government employee are passed by the authority exercising the powers of appeal, revision or review, or immediately preceding the date of retirement on superannuation of such Government employee, as the case may be.

(5) In a case falling under sub-rule (4), the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specified purpose:

Provided that if the Government employee so desires such authority may direct that the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall be converted into leave of any kind due and admissible to the Government employee.

Note:- The order of the competent authority under the preceding proviso shall be absolute and no sanction of the higher authority shall be necessary for the grant of-

- (a) extraordinary leave in excess of three months in the case of a temporary Government employee; and*
- (b) leave of any kind due in excess of five years in the case of a permanent and quasi-permanent Government employee.*
- (6) The payment of allowances under sub-rule (2) or sub-rule (4) shall be subject to all other conditions under which such allowances are admissible.*
- (7) The amount determined under the proviso to sub-rule (2), or under sub-rule (4) shall not be less than the subsistence allowance and other allowances admissible under rule 7.2.*
- (8) Any payment made under this rule to a Government employee on his reinstatement, shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of removal, dismissal or compulsory retirement, as the case may be, and the date of reinstatement. Where the emoluments admissible under this rule are equal to or less than the amounts earned during the employment elsewhere nothing shall be paid to the Government employee.”*

Learned counsel for the petitioner is right in contending that Rule 7.3 A of the PCS Rules is applicable only where an employee earns reinstatement owing to violation of Article 311 of the Constitution of India. So far as the employee who has been dismissed, removed or compulsorily retired is reinstated after having been exonerated, the same would be covered under the provisions of Rule 7.3 of the PCS Rules. So far as ratio of law laid down in the case of ***Ajay Kumar Singh's case supra*** is concerned there is no dispute with the proposition that where the acquittal by the criminal Court is not honourable, the employer is well within its power to exercise power in accordance with Rules and Regulations in force. However, in the present case once the employer has opted not to proceed against the employee departmentally and has found the employee worth reinstatement the consequential benefits can be withheld only if provided under the rules.

Dealing with similar situation in CWP No.18208 of 2021 titled as

Constable Bhupinder Singh Vs. State of Punjab & ors., decided on 30.01.2023

this Court while relying upon Rule 7.3 of the PCS Rules held as under :-

*“7. A perusal of the aforesaid provisions makes it clear that the detention of an employee due to criminal charge has been considered by the Rule Making Authority as a circumstance beyond control of the employee and non-working for such period would not invite the general principle of 'No Work No Pay'. The authority is required to pass order after considering all these circumstances,. The petitioner herein was dismissed from the services on conviction. Such situation has been well canvassed by Apex Court in the case of **Brahma Chandra Gupta vs. Union of India (1984) 2 SCC 433** holding that where the employee was never proceeded against on departmental side but was prosecuted but acquitted and reinstated on such acquittal, the order granting full amount of salary to the employee on his reinstatement for the entire period is the correct approach.*

*8. Similarly in the case of **Raj Narain vs. Union of India and others, 2019(2) S.C.T. 582**, Apex Court after considering **Ranchoodji Chaturji Thakore vs. Supdt. Engg. Gujarat Electricity Board, Himmatnagar (Gujrat) (1996) 11 SCC 603** on the basis of which Baldev Singh's case (supra) has been passed 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.

7. The point that remains to be considered is whether the Appellant is entitled to payment of full wages between 1979 and 1987. The Appellant was placed under suspension on 23.10.1979 and his suspension was revoked on 21.10.1987. An interesting development took place during the interregnum by which the disciplinary proceedings were dropped on 21.03.1983. It is clear from the record that the Appellant was the one who was seeking postponement of the departmental inquiry in view of the pendency of criminal case. The order of suspension was in contemplation of disciplinary proceedings. By virtue of the disciplinary proceedings being dropped, the Appellant becomes entitled to claim full salary for the period from the date of his suspension till the date of closure of the departmental inquiry. Thereafter, the Respondents took four years to reinstate him by revoking his suspension. The order of suspension dated 23.10.1979 came to an end on 21.03.1983 which is the date on which disciplinary proceedings were dropped. The Appellant ought to have been reinstated immediately thereafter unless a fresh order was passed, placing him under suspension during the pendency of the criminal trial which did not happen. Ultimately, the Appellant was reinstated by an order dated 21.10.1987 by revocation of the order of suspension. Though, technically, the learned Additional Solicitor General is right in submitting that the impugned judgment does not even refer to the I.A., we are not inclined to remit the matter to the High Court at this stage for fresh consideration of this point. We hold that the Appellant is entitled for full wages from 23.10.1979 to 21.10.1987 after adjustment of the amounts already paid towards subsistence allowance.”

9. *Likewise following the aforesaid ratio of law Co-ordinate Bench*

in case of Gurbax Singh vs. State of Punjab and others CWP No.6336 of 2016 after considering Rule 7.3 held as under :

“7. A reading of the said rule would make it clear that the authority competent to order re-instatement shall consider and make a specific order regarding a government employee, who has been dismissed, removed, compulsorily retired or suspended, and shall consider whether the employee will be entitled to pay and allowances for the period of his absence from duty including the period of suspension, preceding his dismissal, removal or compulsorily retired, as the case may be. It is also an admitted fact that no departmental inquiry was initiated against the petitioner. The petitioner herein was dismissed from service on the basis of FIR that was registered against him under [Sections 326, 324, 34](#) IPC and therefore, would be entitled to pay and allowances for the period he remained out of service. The judgments as relied upon by the counsel for the petitioner in Const. Sukhchain Singh's case (supra) would be fully applicable to the present case where in similar circumstances, the petitioner, who had been dismissed from service on account of criminal charges and subsequently acquitted, was held to be entitled for full pay and allowances by virtue of Rule 7.3 of the Punjab Civil Services Vol. 1 Part 1. The said judgment in Sukhchan Singh's case also took note of the judgment rendered by this Court in ***General Manager Operation Circle, Dakshin Haryana Bijli Vitran Nigam, Narnaul and others Vs. Mathura Dass Gupta passed in LPA No.1580 of 2011 on 10.02.2012*** wherein the Division Bench held that the petitioner was entitled to be treated the period for which he was forced to remain out of service as duty period and the judgment rendered in ***Ex. Constable Kulwant Singh Vs. State of Punjab and others passed in CWP No.12000 of 2007 decided on 4.8.2008*** where in similar circumstances, the petitioner therein had been held to be entitled for pay and allowances consequently by treating the period from the date of his dismissal till the date of his reinstatement in service as duty period.”

10. *Keeping in view the aforesaid and the settled proposition of law*

in the light of undisputed fact that the dismissal awarded to the petitioner was solely based upon his conviction and the Department never proceeded against him, this Court finds that the impugned order Annexure P-5 whereby the petitioner has been denied benefits for the period he remained under dismissal cannot be sustained and the petitioner is entitled for getting the same treated as period spent on duty for all intents and purposes. Respondents are directed to calculate and release salary and allowances as admissible to the petitioner for the said period i.e. from 22nd of March, 2003 to 10th of October, 2017.”

Learned State counsel has very candidly admitted that there is no such rule that provides for withholding of such benefits despite the employee having been found to be worth reinstatement. As per settled law a public authority has to exercise its power only with the backing of statutory rules. Once a power exercised is not backed by any relevant rule the same has to be stuck down as arbitrary. Resultantly, the denial of the monetary benefits to the petitioner for the period commencing from the date of his dismissal till the date of his reinstatement cannot be sustained and the petitioner is held entitled for monetary benefits commencing from 20.04.2007 i.e. date of his dismissal till 12.06.2013 i.e. when he was reinstated. For the period from the date of order of reinstatement till he joined back i.e. 17.11.2013 he will not be entitled for any monetary benefits on the principle of *no-work-no-pay*.

Petition stands disposed off.

(PANKAJ JAIN)
JUDGE

13.03.2023
Pooja sharma-I

Whether speaking/reasoned	Yes
Whether Reportable :	No