

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-30664-2019 (O&M)
Date of Decision:- 2.9.2023

Kashmir Singh and another

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. A.K.Walia, Advocate for the petitioner.

Ms. Shivani Sharma, DAG, Punjab.

GURVINDER SINGH GILL, J.

1. The petitioners seek issuance of a writ in the nature of Certiorari so as to quash order dated 21.12.2017 (Annexure P-6) passed by respondent No. 1 whereby the intervening period between the dismissal and their reinstatement i.e. period w.e.f. 9.11.2012 to 7.3.2016 has been treated as non-duty period. The petitioners also seek quashing of order dated 6.7.2018 (Annexure P-8) vide which the said period has been treated as *dies-non*.
2. The petitioners were posted in District Jail, Nabha and during the course of their duties, they had been deputed to take a convict namely Gurpal Singh, Patwari to Civil Hospital, Nabha on the advice of jail doctor. However, said convict Gurpal Singh gave a slip and escaped on the night intervening 28/29.1.2010 and on account of which FIR No. 11 dated 29.1.2010 under Sections 223, 224 IPC, P.S. Kotwali Nabha came to be lodged. Eight

officials including the Superintendent of jail, Deputy Superintendent, three Assistant Superintendents and Warder were issued chargesheets for major penalty. Departmental inquiry was conducted against all the said 8 officials. The Inquiry Officer exonerated the Superintendent, Deputy Superintendent and the Assistant Superintendents while holding both the petitioners and a Warder Bara Singh guilty.

3. Petitioners were served with a show cause notice alongwith a inquiry report and were dismissed from service vide order dated 5.11.2012 (Annexure P-1). Upon an appeal filed by the petitioners, the Principal Secretary to Government, set aside the order of dismissal vide order dated 12.1.2016 (Annexure P-3). The petitioners, thereafter, were allowed to join duties w.e.f. 8.3.2016 while reinstating them w.e.f. 8.11.2012, as would be evident from order dated 8.3.2016 (Annexure P-5). Thereafter, the respondents passed order dated 21.12.2017 (Annexure P-6) wherein it was ordered that the period of dismissal i.e. from 9.11.2012 to 7.3.2016 cannot be treated as duty period.
4. The matter upon filing revision was again considered by the Additional Chief Secretary and vide order dated 6.7.2018, the period w.e.f. 9.11.2012 to 7.3.2016 was ordered to be treated as *dies-non*.
5. The learned counsel for the petitioners submits that once the petitioners had been acquitted of all the charges framed against them, it goes without saying that they had been falsely implicated and that the petitioners are entitled to be extended all the benefits while deeming that they had never been suspended or dismissed from service. The learned counsel, in this regard, has placed reliance upon a Division Bench judgment of this Court rendered

in 2005(1) SLR 659 titled as Shashi Kumar versus Uttri Haryana Bijli Vitran Nigam and another.

6. On the other hand, the learned State counsel submitted that the role of the petitioners in escape of convict had been found to be duly established in the departmental inquiry and that even if the petitioners have been acquitted in criminal trial, the same cannot *ipso facto* lead to setting aside of the inquiry report as the standard of proof required during criminal trial is much much higher than what is required in the departmental proceedings. The learned State counsel has submitted that it is well within the discretion of respondents to take into account all these facts for the purpose of treating the intervening period i.e. the period between dismissal and reinstatement as *dies-non*. The learned State counsel, in order to hammer forth his submissions, pressed into service a judgment of Hon'ble Apex Court reported as (2019) 5 SCC 809 Raj Narain versus Union of India and others and 2021(5) SLR 643 Kapoor Singh versus State of Punjab.
7. This Court has considered rival submissions addressed before this Court.
8. The petitioners had been dismissed from service on account of specific allegations of negligence of duty. The petitioners, however, were acquitted by the Sub-Divisional Judicial Magistrate, Nabha vide judgment dated 21.11.2013 by giving benefit of doubt. The relevant extract from the said judgment dated 21.11.2013 (Annexure P-3) is reproduced herein-under :-

“In view of the evidence available on record and foregoing discussion, the accused Gurpal Singh is held guilty U/s 224 of IPC and is liable to be convicted for the same. However, accused CT Warder Kashmir Singh, 1167, CT Warder Makhan Singh, CT Warder Bara Singh are hereby acquitted for the charges framed U/s 223 IPC by giving

benefit of doubt. Accused Gupral Singh be taken into custody. Let accused Gupral Singh be heard on the quantum of sentence.”

9. A perusal of the aforesaid extract clearly shows that the petitioners came to be acquitted on account of benefit of doubt, having been extended to them. There is no categorical findings to the effect that they had been falsely implicated. It is not in each and every case that a person consequent of acquittal in criminal case is entitled to be put back in the same position as he was before his termination.

10. Rule 7.3 of the Punjab Civil Services Rules, Volume-I deals with the 'Allowances on Reinstatement', which reads as under :-

7.3(1) When a Government employee, who has been dismissed, removed, compulsory retired, or suspended, is reinstated, or would have been reinstated but for his retirement on superannuation the authority competent to order the reinstatement 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, occasioned by suspension and/or dismissal, removal or compulsory retirement ending with his reinstatement on or the date of his retirement on superannuation 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 mentioned in sub-rule (1) is of opinion that the Government employee has been fully exonerated or, in the case of suspension, that it was wholly unjustified, the Government employee shall be given the full pay and allowances, which he would have been entitled, had he not been dismissed, removed, compulsorily retired or suspended, as the case may be.

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11. A bare perusal of the above rule would show that the employer has been given liberty to decide with regard to the payment of full salary during the suspension period in case, the employee is reinstated in service. As per the rule, the employee is not entitled for full allowances unless, he/she has been fully exonerated of the allegations or the suspension period was found to be wholly unjustified.
12. The issue as to whether, upon acquittal in a criminal case, when an employee is reinstated, the said employee is entitled to full benefits or not was considered by the Hon'ble Supreme Court of India in 1996(11) SCC 603 Ranchhodji Chaturji Thakore Vs. Superintendent Engineer, Gujarat Electricity Board and another, wherein it was held that where conduct of an employee resulted into his becoming disabled from rendering service either on account of conviction or incarceration in jail, the back wages can rightly be denied upon reinstatement. Hon'ble Supreme Court held that it is only where action taken against an employee in a disciplinary proceedings is later found to be unsustainable, that the employee can claim back wages. The relevant paragraph 3 of the said is as under :-

“3. 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 proceeding 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.”

13. The same question again came up for consideration before the Hon'ble Supreme Court of India in 2019(5) SCC 809 - Raj Narain Vs. Union of India and others, decided on 01.04.2019. Hon'ble Supreme Court of India once again reiterated that it is only where the prosecution of the accused has been held to be brought with the mala fides or with vexatious intent, due to which the said accused was acquitted, that an employee is entitled for the back wages, failing which, no benefit of back wages can be given upon reinstatement. The relevant paragraph is 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.”

14. This Court in *Kapoor Singh's case* (supra) while relying upon *Raj Narain's case* (supra) observed as under :-

“8. A bare perusal of the above reproduction would show that Hon’ble Supreme court of India has allowed the wages for the period when an employee remained out of service only in case the prosecution was held to be malicious.

9. No argument has been raised by the learned counsel for the petitioner in this regard. Further the petitioner was given benefit of doubt while acquitted and, therefore, keeping in view the law laid down by Hon’ble Supreme court of India in *Raj Narain's case* (supra), no benefit more than the suspension allowance can be allowed to the petitioner even after his acquittal.”

15. In the present case, as already noticed above, the petitioners were acquitted having been given the benefit of doubt. Although, the petitioners have been reinstated but the period w.e.f. 9.11.2012 to 7.3.2016 has been treated as dies-non. The petitioner cannot be extended other benefits as facts do not suggest that it is a case of malicious prosecution.

16. Having regard to the settled legal position and bearing in mind the totality of the facts and that the findings as recorded in the departmental inquiry have not been set aside, this Court does not find any infirmity in the impugned orders dated 21.12.2017 (Annexure P-6) and 6.7.2018 (Annexure P-8).
17. Finding no merit in the petition and the same is hereby dismissed.

2.9.2023

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No