

CM No. 6920-CWP-2023 in/and
CWP No. 20489 of 2014

2023:PHHC:124197

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(105)

CM No. 6920-CWP-2023 in/and
CWP No. 20489 of 2014
Date of Decision : 21.09.2023

Yoginder Singh Punia

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Arun Sharma, Advocate for the petitioner.

Mr. Pankaj Middha, Additional Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

CM No. 6920-CWP-2023

Present application has been filed for fixing the writ petition to an early actual date of hearing.

Learned counsel for the petitioner submits that the petitioner is a senior citizen of the age of 70 years, hence, his petition may kindly be heard and fixed to an early actual date of hearing.

Notice of the application to the counsel opposite.

Mr. Pankaj Middha, learned Additional Advocate General, Haryana, who is present in court, accepts notice on behalf of appellants-State and raises no objection for the grant of prayer as raised in the present application.

Keeping in view the above, application is allowed and the writ petition is taken up for hearing today.

CWP No. 20489 of 2014

In the present petition, the grievance of the petitioner is that while he was in service, an FIR was registered against him on 12.04.2010 under the Prevention of Corruption Act, 1988. Keeping in view the registration of the said FIR, the petitioner was arrested on 13.04.2010 and he remained in custody from the said date upto 01.06.2010. Thereafter, though the petitioner was released from the custody but he was placed under suspension and during the period of suspension itself, the petitioner attained the age of superannuation and retired on 31.12.2010.

After the trial, the petitioner was acquitted by giving him benefit of doubt and on the basis of the judgment of the learned Special Judge, Kurukshetra dated 27.09.2012, the petitioner has raised a claim that he is entitled for full salary for the period the petitioner remained under suspension as he has already been acquitted of the allegations alleged in the FIR.

The respondents, on the other hand, submits that in the present case, the petitioner was arrested red handed by the Vigilance Bureau on 12.04.2010 accepting bribe from a farmer and an FIR No. 5 dated 12.04.2010 was registered against him on the basis of a complaint made by the complainant and the department had only executed the rules governing the service and suspended the petitioner from service as he

was arrested and was behind bars after being arrested on 12.04.2010. Learned counsel for the respondents submits that even if the petitioner has been acquitted, he is not entitled for any actual financial benefit for the suspension period, though the said period has already been treated as a duty period for all other intents and purposes.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The only question arises in the present petition is whether, upon acquittal by giving the benefit of doubt to the petitioner, the petitioner will be entitled for the financial benefits for the period when he was under suspension to the tune that he should be paid full salary for the said period or not. The said question is no longer res-integra. The Hon'ble Supreme Court of India while considering the case of ***Raj Narain Vs. Union of India and others***, 2019(2) SCT 582, held that where an employee has been acquitted and claims the payment of back wages, the same cannot be granted retrospectively and the employee will only be entitled for prospective benefits as the department is not at fault. The relevant paragraph of the said judgment is as under :-

“5. This Court in Ranchhodji Chaturji Thakore (supra) considered the case of an employee who sought back wages for the period he was kept out of duty during the pendency of a criminal case for his involvement in an offence under Section 302, IPC. The claim of the Petitioner therein was that he was entitled to full wages on his acquittal by the Criminal Court. This Court rejected the said submission by holding that the question of payment of back

wages would arise only in case of termination of service, pursuant to findings recorded in a departmental enquiry. In the event of the dismissal order being set aside by the Court, the delinquent employee would be entitled to claim back wages as he was unlawfully kept away from duty by the employer. This Court was of the opinion that an employee against whom criminal proceedings are initiated would stand on a different footing in comparison to an employee facing a departmental inquiry. The employee involved in a crime has disabled himself from rendering his services on account of his incarceration in jail. Subsequent acquittal by an Appellate Court would not entitle him to claim back wages.

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.”

In the present case also, on being arrested by the Vigilance Bureau, the petitioner was behind the bars and it was only due to the said fact, keeping in view the rules governing the service, according to which, where an employee has been arrested and remains in custody, has to be suspended, the petitioner was suspended from service, hence, after the acquittal, the petitioner will not be entitled for the full salary for the period of suspension though, the said period will be treated as a duty period for all other purposes including the pensionary benefits, which benefit has already been extended to him.

No occasion arises for the grant of prayer as raised in the present petition.

Dismissed.

September 21, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No