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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 4762/2012

V.C.JAIN

..... Petitioner

Through: Mr. Rajat Aneja with Mr.
Rishabh Jain, Advocates.

(M): 9810727771

Email: raneja@anejaandaneja.com

versus

STATE BANK OF INDIA

..... Respondent

Through: Mr. Rajiv Kapur with Mr.
Akshit Kapur, Advocates.

(M): 9990955931

Email: rajiv@apkapur.com

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

31.10.2023

MINI PUSHKARNA, J:

1. The present writ petition has been filed with prayer for directions to the respondent to pay the arrears of salary to the petitioner with effect from 21st September, 2002 to 24th March, 2011, with further prayer to re-fix his pensionary and retirement benefits by treating the said period as spent on duty.

2. The facts in brief are as follows:-

2.1 The petitioner joined the services of the State Bank of India ("SBI")/respondent bank as a Cashier in the year 1972. He was posted as a Branch Manager (Scale-III) at Laxmi Nagar Branch in the year 2002, when a complaint was lodged against him by one Sh. Gurcharan Singh who alleged that the petitioner had sought bribe from him. First Information



Report (“FIR”) was registered against the petitioner by the Central Bureau of Investigation (“CBI”). Thus, CBI investigation was initiated, pursuant to which the petitioner was arrested on 21st September, 2002 and later on released on bail.

2.2 Consequently, the respondent bank suspended the petitioner vide letter dated 24th September, 2002 with effect from 21st September, 2002. In the meanwhile, respondent initiated departmental proceedings against the petitioner vide chargesheet dated 08th June, 2004 for committing various irregularities. While the disciplinary proceedings were pending against the petitioner, the Special Judge, CBI, Delhi convicted the petitioner vide judgment dated 11th July, 2005.

2.3 Aggrieved by the judgment and order on sentence dated 11th July, 2005, petitioner challenged the same before this Court in a Criminal Appeal bearing no. *Crl. A. No. 579/2005*. The sentence awarded against the petitioner was suspended during the pendency of the appeal.

2.4 In the light of the conviction of the petitioner, the respondent passed an order dated 14th October, 2005 thereby imposing penalty of dismissal upon the petitioner in terms of Rule 67(j) of the SBI Officers Service Rules, 1992 (“SBI Rules”) as prevalent at that point of time, read with Rule 68 (7)(ii) on the basis of the judgment dated 11th July, 2005, passed by the Special Judge, CBI, Delhi.

2.5 Against his dismissal order dated 14th October, 2005, the petitioner filed an appeal under Rule 69 of the SBI Rules before the Appellate Authority of the respondent bank. The appeal of the petitioner was dismissed by the Appellate Authority thereby confirming the penalty of



dismissal. Aggrieved by the same, the petitioner filed a writ before this Court, being *W.P. (C) No. 15726/2006*.

2.6 By judgment dated 24th December, 2010, the Criminal Appeal filed on behalf of the petitioner was allowed. The conviction and sentence against the petitioner was set aside and the petitioner was acquitted. Thus, petitioner made representation dated 30th December, 2010 to the respondent bank to reinstate him in service.

2.7 Upon consideration of the representation of the petitioner, the respondent bank reinstated the petitioner vide order dated 25th March, 2011. However, while reinstating the petitioner, the respondent bank put certain conditions on the petitioner, one of which was that the petitioner shall not be paid any salary and allowances for the period he remained under suspension/out of service and this period would not be counted as service for all purposes including calculation of terminal benefits.

2.8 Further, the said reinstatement order dated 25th March, 2011 stipulated that the disciplinary action against the petitioner which had been kept in abeyance by the respondent bank on account of dismissal of the petitioner from service, shall stand revived from the stage it had reached at the relevant time. It may be noted that a chargesheet

dated 8th June, 2004 had been served upon the petitioner for committing certain irregularities while he was posted as Chief Manager at Laxmi Nagar, Delhi Branch.

2.9 Thus, upon his reinstatement, the petitioner withdrew *W.P. (C) No. 15726/2006* vide order dated 05th April, 2011.



2.10 The respondent bank passed another order dated 23rd May, 2011 by which the promotion of the petitioner which had been kept in abeyance, was given effect to with effect from 01st November, 2001.

2.11 Subsequently, the respondent bank passed an order dated 23rd September, 2011 in the disciplinary proceedings pertaining to the petitioner, whereby a penalty of **“Reduction to a lower stage in time scale of pay by one stage till retirement”** was imposed upon the petitioner in terms of Rule 67(f) of the SBI Rules. Against the same, petitioner filed an appeal, which was rejected by the respondent vide order dated 25th August, 2012.

2.12 In the meanwhile, the petitioner superannuated on 30th November, 2011. The petitioner was paid his retirement benefits by treating the period w.e.f. 21st September, 2002 to 20th October, 2005 as having been spent on suspension and entitled to subsistence allowance only during that period. Whereas, the period from 21st October, 2005 to 24th March, 2011 was not considered, as the petitioner had been dismissed from the bank’s service during that period.

2.13 Thereafter, the petitioner sent a legal notice dated 19th April, 2012 to the respondent bank for payment of arrears of his salary from 21st September, 2002 to 24th March, 2011, i.e. from date of his suspension to date of his reinstatement. By reply dated 08th May, 2012, the bank denied the averments made by the petitioner in the legal notice. Thus, the present writ petition has been filed.

3. On behalf of the petitioner, the following contentions have been raised:-

3.1 Termination of the petitioner has been rendered illegal because the said termination was solely based on the findings recorded in the judgment



dated 11th July, 2005 passed by the CBI Court by which the petitioner had been convicted. Since the petitioner was subsequently acquitted, therefore, there is no concrete reason/finding to withhold the salary of the petitioner during the period of his suspension/dismissal.

3.2 The previous track record of the petitioner was not considered. The petitioner has the responsibility to support his family.

3.3 The respondent imposed arbitrary conditions upon the petitioner while reinstating him vide order dated 25th March, 2011. At that point in time, the petitioner could not have negotiated the terms at which he was getting reinstated after having been dismissed for no fault and having remained out of service for 9 years.

3.4 Rule 68A (8) (i) of the SBI Rules state that if the officer has been fully exonerated or that the suspension was unjustified, the said officer shall be granted full pay to which he would have been entitled, had he not been so suspended, along with other allowances.

3.5 The salary of the petitioner could not be withheld, because once he is exonerated of the criminal charge, the respondent could not have held anything otherwise, which it did by reducing the pay scale by one stage.

3.6 On behalf of the petitioner, the following judgments have been relied upon:-

- i. ***Brahma Chandra Gupta Vs. Union of India, (1984) 2 SCC 433.***
- ii. ***Anil Kumar Ranga Vs. State of Haryana, 2016 SCC OnLine P&H 3759.***
- iii. ***S. Selvaraj Vs. The State of Tamil Nadu, MANU/ TN/1269/2009.***
- iv. ***S. Kamatchi Vs. Tamil Nadu State Transport Department, 1984 SCC OnLine Mad 93.***
- v. ***Umashankar Choubey Vs. Union of India, MANU/MP/1185/2006.***



vi. ***S. Samson Martin Vs. Union of India (CAT, Madras), 1989 SCC OnLine CAT 179.***

4. Per contra, on behalf of the respondent bank, the following contentions have been raised:-

4.1 The petitioner was paid subsistence allowance for the period from 2002 to 2005. For the period from 2005 to 2011, i.e. the period when the petitioner was convicted by CBI till he was acquitted in appeal, the law obliges a person convicted for an offence to be kept out and not retained in service. Therefore, the aforesaid period cannot be counted for the purpose of retirement benefits. The petitioner was absent for reason of his own involvement in misconduct and the bank is not responsible for keeping him away from his duty. Hence, the bank cannot be saddled with the liability to pay him his salaries and allowances for the said period, as the same will be against the Principle of “No work, No Pay”.

4.2 The petitioner having accepted the order of reinstatement dated 25th March, 2011 and having accepted the reinstatement of service without back wages and the decision for not counting the period of service for retirement benefits, the petitioner cannot challenge the decision after his retirement.

4.3 The effect of conviction does not get diluted by subsequent acquittal for the purpose of counting service. The petitioner having not rendered the service during the said period, he cannot be granted any arrears for the same.

4.4 The complaint was lodged before CBI at the behest of the complainant Sh. Gurcharan Singh and not the bank. Hence, the bank cannot be made liable to pay back wages. The petitioner was reinstated by the bank on 25th March, 2011. Hence, the decision to withhold the salary and not counting the said period for calculating terminal benefits is in accordance



with law. Further, the petitioner having accepted the terms and conditions specified in the letter dated 25th March, 2011 without reserving any right, cannot raise the objection now after accepting reinstatement/retirement benefits.

4.5 On behalf of respondent, the following judgments have been relied upon:

- i. ***Sanat Kumar Dwivedi Vs. Dhar Jila Sahakari Bhoomi Vikas Bank Maryadit and Ors. (2001) 9 SCC 402***
- ii. ***The Greater Hyderabad Municipal Corporation Vs. M. Prabhakar Rao, (2011) 8 SCC 155***
- iii. ***Union of India and Others Vs. Jaipal Singh, (2004) 1 SCC 121***
- iv. ***Management of Reserve Bank of India Vs. Bhopal Singh Panchal, (1994) 1 SCC 541***
- v. ***South Bengal State Transport Corpn. Vs. Sapan Kumar Mitra and Ors., (2006) 2 SCC 584***
- vi. ***Union Territory, Chandigarh Vs. Brijmohan Kaur, (2007) 11 SCC 488***
- vii. ***State of Haryana and Others Vs. Babu Singh, (2008) 2 SCC 85***

5. I have heard learned counsel for the parties and have perused the record.

6. The grievance raised by the petitioner by way of the present petition is in respect of seeking the salary from the period 21st September, 2002 i.e. date of his arrest/suspension to 24th March, 2011 i.e. date of his reinstatement and for treating the said period as continuous service.

7. The petitioner was suspended w.e.f. 21st September, 2002 by order dated 24th September, 2002 issued by the respondent bank owing to his arrest by the CBI under provision of Section 7 of the Prevention of



Corruption Act, 1988. Thus, petitioner was paid subsistence allowance from the year 2002 to 2005.

8. Subsequently, the petitioner was dismissed from the service of the bank vide order dated 14th October, 2005 pursuant to his conviction by the Special Judge, CBI, Delhi for offences involving moral turpitude in terms of Rule 67 (j) and 68 (7) (ii) of the SBI Rules read with Section 10(1)(b)(i) of the Banking Regulation Act, 1949. The relevant provisions i.e. Rule 67 (j) and 68 (7) (ii) of the SBI Rules are reproduced herein under:-

“67. Without prejudice to any other provisions contained in these rules, any one or more of the following penalties may be imposed on an officer; for an act of misconduct or for any other good and sufficient reason:-

Minor Penalties

- (a)....
- (b)....
- (c).....
- (d).....

Major Penalties

- (e)....
- (f).....
- (g).....
- (h)
- (i).....
- (j) dismissal.

XXX XXX XXX

68. (7) (i)

(ii) *Without prejudice to what is stated in clause (i) above and notwithstanding anything contained in sub-rules (2),(3) and (4), the Disciplinary Authority or the Appointing Authority, as the case may be , may impose any of the penalties specified in rule 67, if the officer has been convicted of a criminal charge or on the strength of facts or conclusions arrived at by a judicial trial. Provided that before a penalty is imposed in terms of this clause, the officer employee may be given an opportunity*



of making representation on the penalty to be imposed, before any order is made."

9. Upon acquittal of the petitioner by this Court vide judgment dated 24th December, 2010, the petitioner was reinstated vide letter dated 25th March, 2011 subject to certain conditions as stipulated therein. The letter dated 25th March, 2011 reinstating the petitioner is reproduced as hereunder:

"State Bank of India

General Manager (Network-I)'s Secretariat, Local Head Office 11, Sansad Marg, New Delhi – 110001

Tel: BOPM - 011:23407108, GB - 23407110 comp. - 23407111, I & A: 23407114 RTI-23407149, HR-23407105, 23407107, IB-23407112 Fax : 011-23744197, 23361969

Letter No. : GM(NW-I):STAFF:2184

Date : 25.03.2011

*Shri V.C. Jain,
R/o B-107, Jivan Appartment,
Sector 06, Vasuudhra,
Ghaziabad*

Dear Sir,

STAFF : SUPERVISING

REINSTATEMENT

On account of your acquittal by the Delhi High Court as per the Judgment passed in CRL. A. No. 579/2005 arising out of case No. 26/03 (FIR No. RC-DA1-2002-A-0054) it has been decided to reinstate you in Bank's Service subject to the following terms and conditions:-

- 1. Your reinstatement will be effective from the date of your reporting to the AGM (HR),SBI, New Delhi LHO.*
- 2. You will not be paid any salary & allowances for the period you remained under suspension/out of service and this period will not be counted as service for all purposes including calculation of terminal benefits.*
- 3. The disciplinary action initiated against you vide letter No. VIGL/HSS/495 dated 08.06.2004 in respect of the irregularities committed by you while posted*



as Chief Manager at Laxmi Nagar Branch, Delhi which was kept in abeyance on account of your dismissal from service stands revived from the stage reached at the material time.

Please acknowledge receipt of this letter and report to the AGM (HR), State Bank of India, New Delhi LHO for further deployment.

Yours faithfully,

Sd/-

**CHIEF GENERAL MANAGER
APPOINTING AUTHORITY"**

10. The petitioner superannuated on 30th November, 2011 and received the retirement benefits, as indicated by the respondent, as follows:

- a) Gratuity of Rs. 10 Lakh paid on 30.11.2011.
- b) Provident Fund Rs. 21,57,364 paid on 28.12.2011 (Interest Rs 13166)
- c) Leave Encashment 7 months 9 days Rs. 4,94,460
- d) Pension Rs. 16,765 + DA
- e) House loan extended till 70 years of age.

11. Thus, it is seen that the petitioner remained under suspension w.e.f 21st September, 2002. Subsequently, in view of his conviction by the CBI Court, the petitioner was dismissed by the bank and was later on reinstated in view of his acquittal. Therefore, the petitioner remained out of service from the year 2005 to the year 2011. The facts on record clearly manifest that the petitioner was absent from duty for the reason of his own involvement in misconduct and the bank was nowhere responsible for keeping him away from his duty. Hence, the bank cannot be saddled with the liability to pay the petitioner his salaries and allowances for the period when he did not discharge his duties, firstly, owing to his suspension and subsequently owing to his dismissal.



12. The petitioner has already been paid the subsistence allowance for the period of his suspension in accordance with Rule 68A (7)(i) of the SBI Rules. Therefore, there is no question of payment of any further amount to the petitioner for the said period of suspension. Further, in terms of Rule 68A (8)(ii) of the SBI Rules, the discretion lies with Disciplinary Authority to decide as regards the pay and allowances payable to an official during the period of his suspension. Rule 68A (7)(i) and Rule 68A (8)(ii) of the SBI Rules are reproduced as hereunder:

“Suspension

68.A.

.....
.....
.....

(7)(i) An officer who is placed under suspension shall be entitled to receive during the period of such suspension and subject to clauses (ii) and (iii) subsistence allowance equal to half his substantive salary and such other allowances as the competent authority may decide.

.....

68.A. (8)(ii) In all cases other than those referred to in clause (i) above and where the officer has not been subjected to the penalty of dismissal, the period spent under suspension shall be dealt with in such a manner as the Disciplinary Authority may decide and the pay and allowances of the officer during the period adjusted accordingly.”

13. In terms of the aforesaid Rules, the competent authority by its order dated 14th October, 2005 at the time of passing the dismissal order against the petitioner had specifically held that the period of suspension will be treated as such and that the petitioner will not be paid any salary and allowances for the period of suspension, except the subsistence allowance already paid. Further, by order dated 25th March, 2011 when the petitioner was reinstated, it was specifically stated that the petitioner will not be paid



any salary/allowances for the period he remained under suspension/out of service.

14. Holding that a bank cannot be saddled with the liability to pay salary and allowances for the period of suspension and that the Regulations of the bank vest the power exclusively in the bank to treat the period of suspension on duty or on leave or otherwise, Supreme Court in the case of ***Management of Reserve Bank of India, New Delhi Versus Bhopal Singh Panchal***¹, has held as follows:

“15. We have already pointed out the effect of the relevant provisions of Regulations 39, 46 and 47. The said regulations read together, leave no manner of doubt that in case of an employee who is arrested for an offence, as in the present case, his period of absence from duty is to be treated as not being beyond circumstances under his control. In such circumstances, when he is treated as being under suspension during the said period, he is entitled to subsistence allowance. However, the subsistence allowance paid to him is liable to be adjusted against his pay and allowances if at all he is held to be entitled to them by the competent authority. The competent authority while deciding whether an employee who is suspended in such circumstances is entitled to his pay and allowances or not and to what extent, if any, and whether the period is to be treated as on duty or on leave, has to take into consideration the circumstances of each case. It is only if such employee is acquitted of all blame and is treated by the competent authority as being on duty during the period of suspension that such employee is entitled to full pay and allowances for the said period. In other words, the Regulations vest the power exclusively in the Bank to treat the period of such suspension on duty or on leave or otherwise. The power thus vested cannot be validly challenged. During this period, the employee renders no work. He is absent for reasons of his own involvement in the misconduct and the Bank is in no way responsible for keeping him away from his duties. The Bank, therefore, cannot be saddled with the liability to pay him his salary and allowances for the period. That will be against the principle of ‘no work, no pay’ and positively inequitable to those who have to work and earn their pay. As it is, even during such period, the employee earns subsistence allowance by virtue of the Regulations. In the circumstances, the Bank's power in that behalf is unassailable.”

¹ (1994) 1 SCC 541



(emphasis supplied)

15. The order dated 25th March, 2011 reinstating the petitioner clearly stipulated that the petitioner shall not be paid any salary and allowances for the period he remained under suspension/out of service. The petitioner having joined the service of the bank pursuant to the aforesaid order dated 25th March, 2011, clearly accepted the correctness of the order of reinstatement without back wages. Under these circumstances, the subsequent dispute raised by the petitioner regarding back wages, is clearly not maintainable. (*See: State of Punjab and Others Versus Krishan Niwas, (1997) 9 SCC 31 and Sanat Kumar Dwivedi Versus Dhar Jila Sahakari Bhoomi Vikas Bank Maryadit and others, (2001) 9 SCC 402*)

16. Reliance by the petitioner upon Rule 68A (8)(i) of the SBI Rules is totally misplaced. The said Rule is reproduced as under:

“68A. (8)(i) Where the Appointing Authority holds that the officer has been fully exonerated or that the suspension was unjustifiable, the officer shall be granted the full pay to which he would have been entitled, had he not been so suspended, together with any allowance of which he was in receipt immediately prior to his suspension or may have been sanctioned subsequently and made applicable to all officers. The period of absence from duty in such a case shall, for all purposes, be treated as period spent on duty.”

17. Bare perusal of the aforesaid Rule shows that it is only when an officer has been fully exonerated or that the suspension was unjustifiable, the officer shall be granted the full pay to which he would have been entitled. However, that is not the position in the present case. The petitioner has been acquitted on account of benefit of doubt. Relevant para of the judgment dated 24th December, 2010 passed in *Crl. A. No. 579/2005* is reproduced hereunder:

“29. In view of the discussion above, I am of the view that the prosecution case is full of doubt. Therefore, I find myself unable to



sustain the impugned judgment of conviction and consequent order on sentence. Appeal is, accordingly, accepted. Impugned judgment and order on sentence are set aside and the appellant is acquitted on both counts, giving him benefit of doubt.”

18. The issue as to whether upon acquittal in a criminal case, an employee is entitled or not to full back wages, has been considered by Courts in a catena of judgments. The Courts have brought forth the difference in cases where an action is taken against an employee by the department itself and cases where an employee is himself involved in some crime. Thus, in cases where disciplinary action is taken by the department which is subsequently found to be unsustainable in law, an employee may be held entitled to payment of back wages for the period when he was prevented from discharging his duties. However, where in cases an employee is involved in a criminal case and initially convicted, but subsequently acquitted, such an employee will not be entitled to back wages upon reinstatement. In such cases, the department cannot be held to be at fault in keeping such an employee out of service, therefore, no back wages are payable to such an employee upon reinstatement. Thus, Supreme Court in the case of ***Ranchhodji Chaturji Thakore Versus Superintendent Engineer, Gujarat Electricity Board, Himmatnagar (Gujarat) and Another***², held as follows:

“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 proceedings and the action was found to be unsustainable in law and he was unlawfully prevented from

² (1996) 11 SCC 603



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.”

(emphasis supplied)

19. Similarly, holding that subsequent acquittal by an Appellate Court would not entitle an employee to claim back wages, Supreme Court in the case of ***Raj Narain Versus Union of India and Others***³, held as follows:

“5. This Court in *Ranchhodji Chaturji Thakore* [*Ranchhodji Chaturji Thakore v. Gujarat Electricity Board*, (1996) 11 SCC 603 : 1997 SCC (L&S) 491] 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 enquiry. 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* [*Ranchhodji Chaturji Thakore v. Gujarat Electricity Board*, (1996) 11 SCC 603 : 1997 SCC (L&S) 491] was followed by this Court in *Union of India v. Jaipal Singh* [*Union of India v. Jaipal Singh*, (2004) 1 SCC 121 : 2004 SCC (L&S) 12] 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

³ (2019) 5 SCC 809



is launched at the behest of the department and the employee is acquitted, different considerations may arise. The learned counsel for the appellant endeavoured 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 v. Jaipal Singh [Union of India v. Jaipal Singh, (2004) 1 SCC 121 : 2004 SCC (L&S) 12] 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-à-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.”

(emphasis supplied)

20. Therefore, this Court holds that the petitioner is not entitled to salary for the period from 21st September, 2002 to 24th March, 2011, as claimed in the present petition. However, the said period from 21st September, 2002 to 24th March, 2011 shall be treated as continuous service for the purposes of his pensionary and retirement benefits.

21. Division Bench of this Court in the case of **Vinod Kumar Versus G.N.C.T. of Delhi and Others**⁴, has held that suspension period shall be treated as “not spent on duty” only for the purposes of back wages and that an employee would not be entitled to any pay or allowances except subsistence allowance for the suspension period. However, the period of suspension shall be counted for assessing and granting seniority and consequential benefits. Thus, it has been held as follows:

⁴ 2023 SCC OnLine Del 6011



*“35. Now the question would be whether the petitioner is entitled to seniority in line with his batch-mates. The stand taken by the respondents is that as his period of suspension was treated as ‘period not spent on duty’ for all intents and purposes, the petitioner cannot be granted seniority and consequential benefits. Such a stand, if accepted, would have serious consequences, inasmuch as, the period between November 18, 1996 and July 16, 2012 would be written off in the career of the petitioner, significantly impeding his career advancement. Such a situation cannot be allowed to happen, more so when the petitioner has been acquitted by the Appellate Court and reinstated in service from the date of his initial dismissal. **A necessary corollary of such reinstatement shall be that even the period treated as ‘not spent on duty’ will be counted for the purpose of seniority, and also for all consequential benefits. The period treated as ‘not spent on duty’ must be construed for the purposes of back wages only and not for the purposes of seniority, promotion etc.**”*

*36. On account of the foregoing, we are of the view that the period from November 18, 1996 to July 16, 2012 cannot be treated as period not spent on duty for all intents and purposes. **The period shall be counted for assessing and granting seniority and consequential benefits including promotion to the petitioner. However, on the basis of the principle of ‘no work, no pay’, he would not be entitled to any pay or allowances except subsistence allowance that is to be granted to him on the strength of this order.**”*

(emphasis supplied)

22. Likewise, Division Bench of this Court in the case of ***Jagannath Naik Versus Inspector General of Police and Others***⁵, has held that upon reinstatement in service, the employee has rightly been denied financial benefits as he did not perform his duty. However, upon reinstatement, the period of dismissal is to be considered as “continuation on duty” and the employee would be entitled to get consequential benefits of fixation of pay, promotion etc. Thus, it has been held as follows:

*“32. On this aspect we find that for the period from 31.01.2006, that is a day after petitioner was ‘dismissed from service’ till 17.02.2017, **when he has been reinstated in service, he did not perform his duty and, therefore, he has rightly been denied financial benefits. However, the respondents have implied the condition that the said period shall not be counted as his continuation in service nor as**”*

⁵ 2023 SCC OnLine Del 1543



break in service, we find that once petitioner has been reinstated in service vide order dated 17.02.2017 in view of the fact that he has been acquitted of the offences charged with and it is established that he has been kept away from duty due to his 'dismissal from service' and he was not 'willfully' away from duty, the period from 31.02.2006 till 17.02.2017 has to be considered as 'continuation on duty' and petitioner shall be entitled to get consequential benefits of fixation of pay, promotion, seniority etc. for the said period.

(emphasis supplied)

23. Holding that the period when an employee remains out of service due to his dismissal, upon his reinstatement after acquittal, the said period would be counted as period of service, without any break, Supreme Court in the case of *Union of India and Others Versus Jaipal Singh*⁶, has held as follows:

"5. The respondent will be entitled to back wages from the date of acquittal and except for the purpose of denying the respondent actual payment of back wages, that period also will be counted as period of service, without any break. The reinstatement, if not already done, in terms of the order of the High Court will be done within thirty days from today."

24. In view of the detailed discussion hereinabove, it is held that though the petitioner is not entitled to back wages for the period from 21st September, 2002 to 24th March, 2011, the said period shall be counted as period of service without any break. Thus, the respondents are directed to re-fix the pensionary and retirement benefits of the petitioner by treating the aforesaid period as having been spent on duty.

25. The present petition is disposed of in the aforesaid terms.

**(MINI PUSHKARNA)
JUDGE**

OCTOBER 31, 2023/ c/ak

⁶ (2004) 1 SCC 121