

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

CWP-590-2019
Reserved on : 22.08.2023
Pronounced on : 04.01.2024

Kamal Sharma

...Petitioner

Vs.

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA.

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

Mr. T.P.S. Walia, AAG, Punjab.

Mr. Jagmohan Singh Bhatti, Advocate
for respondent Nos.2 and 3.

DEEPAK MANCHANDA, J.

This petition has been filed under Article 226/227 of Constitution of India for issuance of a writ in the nature of mandamus directing the respondents to count the service of the petitioner from 19.10.2004 to 9.12.2013, (i.e. the period during which the appeal filed by the petitioner against his conviction remained pending) and to pay the financial benefits, i.e. full salary, allowances, benefits, increments, etc. for the said period. It has been further prayed to set aside the order dated 23.1.2015 (Annexure P-3) wherein respondent No.3 has decided to grant only subsistence allowance from 19.10.2004 to 9.12.2013, i.e. from the date of dismissal of the petitioner from service till the date of his acquittal, as the same has been treated as non-duty period except for pensionary benefits. And in the alternative, it has been prayed to direct the respondents to decide his representation dated 8.11.2018 (Annexure P-4).

It is the case of the petitioner that he was working as Upper Division Clerk with the respondent-Punjab State Power Corporation Ltd. (for short 'PPCSL') since the year 1987. Thereafter in the year 1996, the petitioner applied for the post of Internal Auditor and was promoted as Revenue Accountant. In the year 1998, an FIR No.39 dated 28.4.1998, under Section 7 and 13(2) of the Prevention of Corruption Act, 1998, Police Station Vigilance Bureau, Jalandhar was registered against him and the petitioner was placed under suspension vide order dated 30.4.1998 from the date of his arrest i.e.28.04.1998. Thereafter the petitioner got bail in the aforesaid case and was reinstated in service on 02.06.1998. The trial Court vide judgment dated 3.8.2004, convicted the petitioner for the offence under Section 7 and 13(2) of the Prevention of Corruption Act and was accordingly dismissed from service on 19.10.2004. The petitioner preferred an appeal before this Court vide CRA-1612-SB-2004 against the judgement of conviction which was allowed vide judgement dated 10.12.2013 and the petitioner was acquitted of the charges against him and his conviction was set aside. No appeal against the said judgement of acquittal was preferred by the respondent-State and the petitioner was taken back in service vide Order No.161 dated 22.5.2014.

Thereafter, the petitioner submitted a representation before the respondents claiming proportion of pay and allowances equivalent of subsistence allowance from 19.10.2004 to 9.12.2013, i.e. from the date of dismissal from service till acquittal and the said representation has been decided by the respondents vide the impugned order dated 23.1.2015 (Annexure P-3), wherein it has been ordered as under:-

“A. To allow a proportion of pay and allowance equivalent of subsistence allowance from 19.10.2004 to 9.12.2013, i.e. from

the date of dismissal from service till the date of acquittal by the Hon'ble Punjab & Haryana High Court. This period will be treated as non duty period for all intents and purposes except for pensionary benefits only.

B. From 10.12.2013 to 22.4.2014, i.e. from the date of acquittal till the date of re-joining on duty after re-instatement, the period be counted as duty for all purposes including Pay & Allowances.

C. That in this regard, it is brought to your attention that the period for which the appeal remained pending was not owing to any fault on part of the petitioner and it is well settled that the act of the Court shall not prejudice anyone.”

Against the aforesaid decision, the petitioner again filed a representation dated 8.11.2018(Annexure P-4) claiming full pay and allowances and all consequential benefits with respect to the period, i.e. 19.10.2004 to 9.12.2013, which has not been decided till date.

Learned counsel for petitioner contends that the respondents have erred in not counting the period from 19.10.2004 to 9.12.2013 as duty period, whereas petitioner stands acquitted from all the charges levelled against him and in appeal, his conviction has been set aside. He further contends that the judgement of acquittal passed by the appellate Court has to be taken into account retrospectively as there was no fault of the petitioner, although it took so many years of agony of criminal proceedings for the petitioner. Learned counsel also contends that once the petitioner has been acquitted of all the charges levelled against him, therefore, he is entitled for benefit of full pay and allowances w.e.f. 19.10.2004, till he earned acquittal and invocation of principle of 'No Work No Pay' is unsustainable and bad in law and would not apply in the case of the petitioner and the order passed on 23.1.2015 (Annexure P-3) deserves to be set aside. In support of his

contention, learned counsel for the petitioner has relied on **Union of India**

vs. Jaipal Singh, 2004(1) SCT 108, wherein it has been held that in a corruption case, where the official earns an acquittal, he cannot be made to suffer. He also placed reliance on decision rendered in CWP-1326-2013, decided on 30.04.2015, titled as “Surjit Singh vs. State of Haryana”, wherein detailed reference has been made to Rule 7.1 to 7.5 of Punjab Civil Service Rules, Volume I, and it has been held that in case the allegations are directly arising out of official conduct of the accused, then in case of acquittal, the person/official would have the right to full pay & allowances.

Reply dated 23.10.2019 was filed on behalf of respondents No.2 and 3 wherein it has been stated that the petitioner was acquitted of the charges framed against him by granting 'benefit of doubt' vide judgement dated 10.12.2013 and since the petitioner was acquitted by granting 'benefit of doubt', he has been paid proportionate pay and allowances equivalent of subsistence allowance for the period 19.10.2004 to 9.12.2013, as per Regulation 7.3 of MSR Vol-1 Part-1 and Note 8 appended to said Regulation. Further it has been contended that since the petitioner was acquitted by giving 'benefit of doubt', therefore, he is not entitled to the benefits as prayed for by him. In support of his contention, he has relied on a judgement passed by the Hon'ble Supreme Court in Civil Appeal Nos.4511-4512 of 2017 titled as “C.R. Radhakrishnan vs. State of Kerala & Ors” decided on 27.3.2017, vide which it has been clearly stated that acquittal is only on benefit of doubt and therefore, the appellant is denied full service benefits for the period he was kept out of service. Therefore, since the petitioner has not worked from the period 19.10.2004 to 9.12.2013, he is not entitled to full pay and allowances and for that period the principle of 'No Work No Pay' would apply and writ petition deserves to be dismissed.

Heard learned counsel for the parties and perused the case file.

The petitioner while working as a Government Servant was placed under suspension vide order dated 30.4.1998 from the date of his arrest, on account of registration of a criminal case under Prevention of Corruption Act, 1988, wherein, he was convicted by the trial Court vide judgement dated 3.8.2004 and resultantly was dismissed from service on 19.10.2004. Thereafter an appeal was preferred by the petitioner against the judgement of conviction and vide judgement dated 10.12.2013, the appeal was allowed and judgement of conviction was set aside and the petitioner was acquitted of the charges against him by giving him the benefit of doubt. Incidentally, no appeal against the said judgement of acquittal was preferred by the respondent-State and the petitioner was taken back in service vide Order No.161 dated 22.5.2014. Thereafter, the petitioner submitted a representation before the respondents claiming full pay and allowances and all consequential benefits from the date of dismissal from service till the date of his acquittal by this Court. However, while deciding his representation vide order dated 23.1.2015, it has been decided that the petitioner will be paid pay and allowance equivalent of subsistence allowance from 19.10.2004 to 9.12.2013, i.e. from the date of dismissal from service till the date of acquittal by this Court in CRA-1612-SB-2004 and the said period will be treated as non duty period for all intents and purposes except for pensionary benefits only. It has been further decided that from 10.12.2013 to 22.5.2014, i.e. from the date of acquittal till the date of re-joining on duty after re-instatement, the period will be counted as duty for all purposes including Pay & Allowances.

Against the aforesaid decision, the petitioner submitted a

representation dated 08.11.2018 (Annexure P-4) claiming full pay and allowances and all consequential benefits with respect to the period, i.e. 19.10.2004 to 9.12.2013, which is still pending.

On the other hand, in the reply filed on behalf of respondents No.2 and 3, it is the categorical stand of the answering respondents that since the petitioner has gained acquittal on account of 'benefit of doubt', therefore he has rightly been paid subsistence allowance for period 19.10.2004 to 9.12.2013, as per Instructions contained in Regulation 7.3 of MSR Vol.I Part I and Note 8 appending to said Regulation, which is as under:-

“7.3(1) When a Board employee who has been dismissed removed retired or suspended is reinstated or would have been reinstated but for his requirement on while under suspension 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 board employee for the period of his absence from duty, or the period of suspension ending with the date of his retirement or 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-regulation (1) is or option that the Board employee has been fully exonerated or in case of suspension, that it was wholly unjustified, the Board employee shall be given the full pay and allowances to which he would have been entitled, had he not been dismissed, removed, compulsory retired or suspended as the case may be.

(3) In other cases, the Board employee shall be given such proportion of such pay and allowances as the Board may prescribe:

Provided that the payment of allowances under Clause(2) or Clause(3) shall be subject to all other conditions under which such allowances are admissible:

Provided further that such proportion of such pay and allowances admissible under Regulation 7.2.

(4) In a case falling under Clause(2) the period of absence from duty shall be treated as a period spent on duty for all purpose.

(5) In a case falling under Clause (3) the period of absence from duty shall not be treated as a period spent on duty unless such competent authority specifically directs that it shall be so treated for any specified purpose.

Provided that if the Board employee so desires, such authority may direct that the period of absence from duty shall be converted into leave of any kind due and admissible to the Board employee:

Note-8: Where a Board employee under suspension is acquitted by a Court of Law and the order reinstating him is passed some time after the date of acquittal, full pay and allowances have to be paid from the date of acquittal to the date of re-joining duty and the period counted as duty for all purposes whereas for the period from the date suspension/removal/dismissal to the date of acquittal he is to be allowed pay and allowances as directed by a competent authority under as duty or non-duty under clause (4) or clause (5) of the regulation, as the case may be.”

The two questions to be decided in the present writ petition are, first whether the principle of 'No Work No Pay' has correctly been applied by the respondent-Corporation, and secondly, whether denying the petitioner full pay and allowances from 19.10.2004 to 9.12.2013 i.e. the period during which petitioner remained out of service was correct/justified? The factum of the petitioner having been dismissed from service based solely upon conviction and no separate departmental proceedings had been initiated by the respondent-Corporation and further the petitioner having been reinstated in service upon order of conviction having been set aside, stands admitted.

The bare reading of Rule 7.1 reveals that a Government employee becomes disentitled to pay and allowances on his dismissal or removal from service. Rule 7.2 deals with the payment of subsistence allowance to an employee placed under suspension. Rule 7.3(i) empowers the competent authority to decide in respect to the period of a board employee who remained dismissed, removed or compulsorily retired or suspended. Sub Rule (2) of Rule 7.3, however, specifically prescribes that in the event of a board employee who had been dismissed, removed or compulsorily retired and has been fully exonerated, upon reinstatement, he shall be paid full pay and allowances to which he would have been entitled to, had he not been dismissed, removed or compulsorily retired or suspended. Sub Rule (iv) of Rule 7.3 further provides for treating the entire period of suspension preceding dismissal, removal or compulsory retirement as a period spent on duty for all purposes in a case falling under Clause 2. Rule 7.5 specifically prescribes that in the event of a Government employee acquitted of the blame and it is proved that the official's liability arose from circumstances beyond control or the detention being held by the competent authority to be unjustified, he would be entitled to full salary.

The Coordinate Bench in CWP-1326-2013 titled as “***Surjit Singh Vs. State of Haryana***”, CWP-18208-2021, titled as “***Constable Bhupinder Singh Vs. State of Punjab***” and CWP-29715-2017 titled as “***Rajesh Kumar Vs. State of Punjab***”, has dealt with the issue wherein in similar circumstances, the benefit of arrears of entire salary during the period of trial was granted. Further, reliance has been placed by learned counsel for the respondents in “***Union of India and others Vs. Methu Meda, 2022 (1) SCC (L&S)***” and “***The State of Rajasthan and others Vs. Love Kush***

Meena” in Civil Appeal No.3894-2020 on the ground that none of these two judgments apply to the case in hand as the present case is not about appointment, but grant of arrears of salary after reinstatement/acquittal. Moreover, the acquittal in case of Methu Meda (supra) was on the technical ground that the prosecution witness turned hostile, whereas the criminal case was based on moral turpitude, and the acquittal was on technicalities. The acquittal was thus not stated to be honourable. Further, as per **Eknath Shankar Kamble Vs. Chief Executive Officer and others**” passed in CWP-12326-2017 decided on 08.06.2023, the entire judgment of acquittal has to be seen/examined and this usage of the words “benefit of doubt” which would not constitute as an impediment in inferring honourable acquittal. Furthermore, no reference has been made to any rule, which permits the authorities to carve out an artificial distinction based on the nature of the acquittal in the relevant rules.

In the facts of the present case, the petitioner was involved in a criminal case, but this Court while examining the appeal preferred by the petitioner against an order of conviction, found that the charge against him was unjustified and accordingly, acquitted him. Based upon the judgement of acquittal, the petitioner has been reinstated in service, but without any salary for the period he remained out of service. Perusal of the order dated 23.01.2015 (Annexure P-3) deciding the representation of the petitioner would reveal that the period from 09.10.2004 to 09.12.2013 has been treated as non-duty period for all intents and purposes except for pensionary benefits and the period from 10.12.2013 to 22.05.2014 i.e. from the date of acquittal till date of re-joining on duty after reinstatement, has been counted as duty for all purposes including pay and allowances. The decision of the competent

authority to deprive the petitioner of the wages would be seen as an inherent contradiction and especially when no reasoning has been given for not granting benefit to the petitioner for the disputed period as mentioned above. As, on one hand, the petitioner has been reinstated being fully exonerated and on the other hand, he has been deprived of his wages in spite of treating the entire period towards continuity in service.

The criminal trial that the present petitioner has faced and which has finally culminated in his acquittal was in relation to allegations having direct nexus with the work and functions in the course of his employment. The petitioner having been absolved of such allegations and charges he would be vested with the right to full pay and salary for the period he remained out of service by applying the ratio of afore noticed judgments and in the light of the relevant statutory provisions i.e. Rules 7.3 and 7.5 of the Punjab Civil Service Rules, Volume I, as applicable to the State of Punjab.

For the reasons recorded above, the writ petition is allowed. The order dated 23.1.2015 (Annexure P-3) is modified to the extent that the period of his absence, i.e. from 19.10.2004 to 9.12.2013 shall be treated as duty period and the petitioner is held entitled to full pay and allowances for the period that he had remained out of service on account of his conviction. Let such benefit be calculated and released to the petitioner within a period of two months from the date of receipt of certified copy of this order.

Petition is allowed in the aforesaid terms.

January 04, 2024
Gulati/vanita

(DEEPAK MANCHANDA)
JUDGE

Whether Reportable	:	Yes/No
Whether Speaking/Reasoned	:	Yes/No