

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

2024 PHHC 186353-DB



213

**LPA-1165-2019 (O&M)
Date of Decision: 12.12.2024.**

Shamsher Singh

...Appellant.

Versus

State of Punjab and others

....Respondents.

**CORAM: HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

Present: Mr. Aminder Singh, Advocate for the appellant.

Mr. Rohit Ahuja, DAG, Punjab.

LISA GILL, J. (Oral)

1. Prayer in this appeal is for setting aside order dated 18.07.2018 passed by learned Single Bench, whereby CWP No.13199 of 2014 filed by appellant/ writ petitioner was partly allowed.
2. Appellant/ writ petitioner, serving as Constable in Government Railway Police (GRP), was involved in FIR No.51 dated 25.04.1996, under Sections 392, 419 IPC read with Section 34 IPC, registered at Police Station GRP, Ludhiana, with the allegations that while on official duty in Howrah Mail (3006 Down), on 20.03.1996, he snatched 35 pound sterling, 2 US Dollars and Rs.3,200/- from a passenger i.e. complainant. Appellant was placed under suspension on registration of FIR and thereafter reinstated on 28.10.1996. He

was convicted for the offence punishable under Section 392 IPC, vide judgment dated 11.08.2005 and sentenced to undergo rigorous imprisonment for two years with fine of Rs.5,000/-. Competent Authority, vide order dated 23.11.2005, terminated services of appellant. Appellant filed an appeal challenging order dated 23.11.2005, which was partly accepted, vide order dated 06.01.2006, directing that order dated 23.11.2005 passed by Competent Authority shall be kept in abeyance till final outcome of the appeal filed by appellant challenging his conviction. Subsequently, show cause notice dated 28.01.2008 was served upon appellant proposing to dismiss him from service in view of letter dated 05.08.1998 issued by Department of Personnel and Administrative Reforms. Appellant was, thus, dismissed from service, vide order dated 23.04.2008. Subsequently, vide judgment dated 25.02.2011, appeal preferred by appellant challenging conviction was allowed and he was acquitted of the charges framed against him. Appellant submitted application dated 01.06.2011 before Additional Director General of Police, GRP, Punjab, Chandigarh, requesting for reinstatement in service. He was finally reinstated, vide order dated 12.03.2013, with period of dismissal from 28.01.2008 to 12.03.2013 directed to be treated as non-duty period on the principle of 'No Work No Pay' of learned Single Bench. Aggrieved therefrom, CWP-13199-2014 was filed.

3. Learned Single Bench, vide impugned order dated 18.07.2018, partly allowed the writ petition by directing that he is entitled to all service benefits from the date of filing his representation i.e. from 01.06.2011 to 08.03.2013. Aggrieved of only partial relief being afforded, this appeal has been filed.

4. Learned counsel for appellant vehemently argues that appellant is entitled to entire benefits from the period from 28.01.2008 to 08.03.2013

instead of 01.06.2011 to 08.03.2013 for the reason that appellant was involved in criminal proceedings only during the course of his employment. Learned counsel for the appellant relies upon the judgment of this Court in **M.P. Jindal Vs. State Bank of Patiala and others, 2013 (2) SLR 251i** and **Ram Singh Vs. State of Punjab and others 2016 (4) SCT 426** and a Division Bench judgment of this Court passed on 10.02.2012 in LPA-1580-2011, titled as **General Manager Operation Circle Vs. Mathura Dass Gupta**. It is thus prayed that this appeal be allowed, impugned order dated 18.07.2018 passed by learned Single Bench be set aside as prayed for.

5. Learned counsel for State has opposed the prayer while submitting that criminal proceedings were not initiated by the department and the same were in fact, set in motion on the basis of a complaint filed by a private individual. Therefore, in the given circumstances, judgments as relied upon do not come to rescue of the appellant. Learned counsel for State further submits that impugned order dated 18.07.2018 has since been complied with and necessary benefits as directed have been released. Dismissal of appeal is prayed for.

6. We have heard learned counsel for the parties and have perused the file with their able assistance.

7. Factual aspect of appellant, who was serving as Constable with GRP, being involved in FIR No.51 dated 25.04.1996, under Sections 392, 419 IPC read with Section 34 IPC, registered at Police Station GRP, Ludhiana, his subsequent suspension and ultimate dismissal from service on the date as has been mentioned in the foregoing paras is a matter of record. Issue before learned Single Bench was, as to whether appellant is entitled to entire benefits from 28.01.2008 to 08.03.2013 which was treated as non duty period on the principle of 'No Work No Pay' by the department, vide order dated 12.03.2013.

Admittedly, FIR in this case was registered on the basis of a complaint by a private person. Arguments raised by learned counsel for appellant that FIR was registered only in the course of duty, therefore, the matter is covered in favour of appellant in the cases of **M.P. Jindal and Ram Singh** (supra) is devoid of merit for the reason that in both cases, FIR was registered under the Prevention of Corruption Act at the behest of department itself. It is pertinent to note that Hon'ble the Supreme Court in the case of **Union of India and others Vs. Jaipal Singh, 2004(1) SCC 121**, held that in cases where the department could not in any manner be found at fault for keeping the appellant out of service, it is not necessary to grant back wages for the period, employee was not in service. It was observed in the said case of Jaipal Singh, supra as under:-

“4. On a careful consideration of the matter and the materials on record, including the judgment and orders brought to our notice, we are of the view that it is well accepted that an order rejecting a special leave petition at the threshold without detailed reasons therefore does not constitute any declaration of law by this Court or constitute a binding precedent. Per contra, the decision relied upon for the appellant is one on merits and for reasons specifically recorded therefore and operates as a binding precedent as well. On going through the same, we are in respectful agreement with the view taken in [1996] 11 SCC 603 (supra). If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest or by department itself, perhaps different considerations may arise. On the other hand, if as a citizen the employee or a public servant got involved in a criminal case and it after initial conviction by the trial court, he gets acquittal on appeal subsequently, the department cannot in any manner be found fault with for having kept him out of service, since the law obliges, a person convicted of an offence to be so kept out and not to be

retained in service. Consequently, the reasons given in the decision relied upon, for the appellants are not only convincing but are in consonance with reasonableness as well. Though exception taken to that part of the order directing re-instatement cannot be sustained and the respondent has to be re-instated, in service, for the reason that the earlier discharge was on account of those criminal proceedings and conviction only, the appellants are well within their rights to deny back wages to the respondent for the period he was not in service. The appellants cannot be made liable to pay for the period for which they could not avail of the services of the respondent. The High Court, in our view, committed a grave error, in allowing back wages also, without adverting to all such relevant aspects and considerations. Consequently, the order of the High Court in so far as it directed payment of back wages are liable to be and is hereby set aside.”

8. Gainful reference can also be made in this regard to judgment of Hon'ble the Supreme Court in **Ranchhodji Chaturji Thakore Vs. The Superintendent Engineer, Gujrat Electricity Board, 1997(1) SCT 824**, which has also been referred to in Jaipal Singh's case (supra). Reliance by learned counsel for the appellant on decision dated 10.02.2012 in LPA No.1580 of 2011 titled 'General Manager Operation Circle, Dakshin Haryana Bijli Vitran Nigam, Narnaul and others Vs. Mathura Dass Gupta' is of no avail to appellant, as employee therein was admittedly involved in a matter under Prevention of Corruption Act, FIR having been registered at the instance of the department. In the case of *M.P. Jindal's case* (supra) also, FIR was under Prevention of Corruption Act. Thus, though at the time of commission of offence, appellant may have been on duty, that by itself does not entitle him to wages for period in question.

9. Therefore, in the given facts and circumstances, we do not find

any illegality, infirmity or perversity in the impugned order dated 18.07.2018, passed by learned Single Judge, which calls for any interference by this Court.

10. No other argument has been addressed.

11. Keeping in view the facts and circumstances as above, this appeal is dismissed with no order as to cost.

12. Pending application(s), if any, stand(s) disposed of accordingly.

(LISA GILL)
JUDGE

(SUKHVINDER KAUR)
JUDGE

12.12.2024.

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Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No