

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

214

CWP-7837-2019

Date of Decision :09.01.2024

**Partap Singh****...Petitioner****Versus****State of Haryana and others****....Respondents****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. Avneesh Chopra, Advocate for  
Mr. Shekher Verma, Advocate for the petitioner.

Mr. Harish Rathee, Senior DAG, Haryana.

\* \* \*

**Harsimran Singh Sethi, J. (Oral)**

1. In the present petition, the grievance of the petitioner is that despite the fact that he has been exonerated of the allegations alleged against him, still a warning has been issued to the effect that the petitioner should remain careful in future, which warning has been recorded in his service book.

2. As per the averments made in the petition, the allegations alleged against the petitioner was with regard to the embezzlement of Rs.245/-. The petitioner, who was working as driver with the respondent-transport department alleged to have not issued the tickets to the passengers. An enquiry was conducted and initially the charges were proved and the services of the petitioner was terminated on 16.01.2014, which order was set aside by the Appellate Authority vide order dated 01.08.2014 with a direction to the punishing authority to pass a fresh appropriate order after

re-inquiring into the allegations alleged against the petitioner.

In pursuance to the said direction of the appellate authority, a fresh order was passed by the punishing authority wherein, by giving the benefit of doubt to the petitioner as the charges alleged against him were not proved, petitioner was reinstated in service but it was mentioned in the order that petitioner should remain alert in future and even for the period, the petitioner remained out of service, nothing was paid to him, which order was challenged by the petitioner before the appellate authority and the appellate authority vide order dated 18.02.2016 appended as Annexure P-9 again set aside the order passed by the punishing authority to the effect that petitioner will not be entitled for any benefit for the period he remained out of service rather the same was to be counted as service period but the decision of the punishing authority regarding issuance of warning to the petitioner to remain alert in future was kept alive.

Thereafter, the petitioner filed another revision before the authority concerned and again vide order dated 01.08.2017, appended as (Annexure P/10) qua the warning that petitioner should remain alert in future was kept alive and the petitioner was allowed 50% of the wages for the period he remained out of service. The said order is under challenge in the present petition.

3. Learned counsel for the petitioner argues that once the petitioner was a driver, it was not his duty to issue ticket to the passengers, which was the allegation alleged against the petitioner and once the said factual position has already been accepted by the respondents in departmental enquiry, there was no reason for the respondents while exonerating the petitioner of the allegations to issue warning to the

petitioner to remain alert in future as the same is a blot in the service career of the petitioner.

4. Learned counsel for the petitioner submits that the orders passed by the respondents directing that warning be recorded in the service book of the petitioner to the effect that petitioner should remain careful in future is liable to be set aside.

5. Learned counsel for the petitioner further submits that the petitioner remained out of service from 16.01.2014 to 04.08.2014 and only 50% of the salary and allowance have been paid to him for the said period on the ground that in case an employee is under suspension, he/she should get 50% of the salary or allowance. Learned counsel for the petitioner submits that once the allegations alleged against an employee have not been proved, the employee concerned is entitled for full salary for the period he remained out of service, which fact has not been noted by the authority concerned in the case of the petitioner while passing impugned order dated 01.08.2017, appended as Annexure P-12, hence, as in the present case, allegations alleged against the petitioner have not been proved in the inquiry proceedings but still the petitioner has only been granted salary for the period he remained out of service due to an illegal order passed by the respondents.

6. Learned State counsel submits that though, in the enquiry report, the petitioner has already been exonerated of the allegations of embezzlement but as connivance of the petitioner with the conductor could not be overruled, the petitioner was directed to remain careful in future, which warning is perfectly valid and legal.

7. With regard to the argument of the learned counsel for the

petitioner for the grant of full salary for the period the petitioner remained out of service, learned State counsel submits that once the petitioner has not discharged his duties while he remained out of service and his services have been regularized by taking a lenient view by the authority concerned, the order granting him 50% salary for the period he remained out of service, is perfectly valid and legal.

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

9. In the facts and circumstances of the present case where the petitioner is working as driver with the respondent-department and allegation was with regard to the embezzlement of Rs.245/- on account of non-issuance of tickets to the passengers, the respondents on their own have already come to the conclusion and the said allegation has not been established. It has come on record that the petitioner has been found innocent and the allegations have been dropped. Hence, once the allegations have been dropped, there was no reason even to record the warning to the effect that petitioner should remain alert in future as the warning is to be recorded where the allegations are proved and not otherwise.

10. The arguments of the learned State counsel that the petitioner's connivance with the conductor could not be ruled out, can not be accepted as nothing has come on record that the petitioner connived with the conductor with regard to the embezzlement in question and in case there was any connivance, the said allegation should have been proved.

11. With regard to the grant of full salary to the petitioner for the period he remained out of service, it may be noticed that back wages can only be stopped in case an employee does not work on his own but where

the services of the employee has been terminated wrongly and, thereafter, the order terminating his/her service has been set aside being arbitrary and illegal being contrary to the facts by the department itself an employee becomes entitled for full salary for the period in question. Even, where the departmental proceedings have been initiated but ultimately charges are not proved, the employee is entitled for the full salary as per the rules governing the service on the said aspect. When the said service rules are applied in the present case, as the petitioner has been exonerated of the charges alleged against him, the petitioner is entitled for full salary for the period he remained out of service instead of 50% salary as granted by the respondents, which is not in accordance with law.

12. Keeping in view the facts and circumstances recorded hereinbefore, present petition is allowed. The warning issued to the petitioner to the effect that 'he should remain careful in future, is set aside and in case the same has been recorded in the service book of the petitioner, the same be deleted. The petitioner is also held entitled for full salary for the period he remained out of service.

13. Civil miscellaneous application pending, if any, is disposed of .

**January 09, 2024**

*aarti*

**(HARSIMRAN SINGH SETHI)**

**JUDGE**

*Whether speaking/reasoned : Yes/No*

*Whether reportable : Yes/No*