

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-853-2003 (O&M)
Date of Decision: 03.09.2024

Nahar Singh

...Petitioner

Versus

State of Haryana and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. R.K. Malik, Sr. Advocate with
Mr. Samrat Malik, Advocate for the petitioner.

Mr. Dushyant Saharan, AAG, Haryana.

AMAN CHAUDHARY, J.

1. The petitioner is aggrieved by the action whereby his date of reinstatement has not been considered from that of dismissal, it being, 22.10.1993 alongwith denial of consequential benefits. Further prayer has been made for quashing the order dated 11.11.2002, endorsed on 10.12.2002, whereby recovery has been ordered.

2. The factual matrix as emerges is that the petitioner, working as Assistant (Sub-Treasury), was initially dismissed on 22.10.1993 due to his conviction. Upon having been acquitted vide judgment dated 04.02.1997, was however reinstated with immediate effect vide order dated 16.12.1997/22.12.1997, later revised to be from 05.02.1997, which was subsequently changed to be w.e.f 22.12.1997, by the impugned order dated 11.11.2002/10.12.2002, hence recovery of excess salary was ordered to be effected in installments. This Court vide interim order dated 20.01.2003, stayed the same.

3. Notably, the petitioner, vide order dated 07.08.2006, has since been promoted to the post of Section Officer (earlier Senior Auditor) w.e.f. 31.01.1986,

however, only on temporary basis, pending outcome of the revision petition and

the period of dismissal was also held to be not counted in notional pay fixation. Further promotion was granted to him as Accounts Officer w.e.f. 14.05.1999, the date that of his junior, Sh P.P. Luthra.

4. Before adjudicating the matter, it is apposite to make a reference to Rules 7.3 and 7.5 Punjab Civil Services Rules, Vol. I, Part I, as applicable to the State of Haryana, in regard to the award of full salary during the period of dismissal, relevant portion whereof reads thus:

“ALLOWANCES ON REINSTATEMENT

7.3 (1) When a Government employee, who has been dismissed, removed, compulsory retired, or suspended, is reinstated, or would have been reinstated but for his retirement on superannuation 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 Government employee for the period of his absence from duty, occasioned by suspension and/or dismissal, removal or compulsory retirement ending with his reinstatement on or the date of his retirement on 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-rule (1) is of opinion that the Government employee has been fully exonerated or, in the case of suspension, that it was wholly unjustified, the Government employee shall be given the full pay and allowances to which he would have been entitled, had he not been dismissed, removed, compulsorily retired or suspended, as the case may be.

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

Provided that the payment of allowances under sub-rule (2) or sub- rule (3) shall be subject to all other conditions under which such allowances are admissible. Provided further that such proportion of such pay and allowances shall not be less than the subsistence and other allowances admissible under rule 7.2.

(4) In a case falling under sub-rule (2) the period of absence from duty shall not be treated as a period spent on duty for all purposes.

(5) In a case falling under sub-rule (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 Government 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 Government employee.

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SUSPENSION DURING PENDENCY OF CRIMINAL PROCEEDINGS, OR PROCEEDINGS FOR ARREST FOR DEBT, OR DURING DETENTION UNDER A LAW PROVIDING FOR PREVENTIVE DETENTION

7.5. An employee of Government against whom proceeding have been taken either for his arrest for debt or on a criminal charge or who detained under any law providing for preventive detention should be considered as under suspension for any periods during which he is detained in custody or is undergoing imprisonment, and not allowed to draw any pay and allowances (other than any subsistence allowance that may be granted in accordance with the principles laid down in rule 7.2) for such period until the final termination of the proceedings taken against him or until he is released from detention and allowed to rejoin duty, as the case may be. An adjustment of his allowances for such periods should thereafter be made according to the circumstances of the case, the full amount being given only in the event of the officer being acquitted of blame or (if the proceedings taken against him were for his arrest for debt), of its being proved that the officer's liability arose from circumstances beyond his control or the detention being held by the competent authority to be unjustified."

5. A gainful reference may also be made to **Jaipur Vidyut Vitran Nigam Ltd. vs. Nathu Ram¹**, wherein Hon'ble the Supreme Court while deliberating the rights of an employee acquitted on appeal for offences under IPC and the Prevention of Corruption Act, 1947, held that when specific provisions mandate the restoration of pay and allowances upon exoneration, such entitlements must be duly granted, including for the period extending from the date of dismissal, ensuring that the employee receives all due benefits as

prescribed by law and further observed that, “It is not in dispute that the appellant-Corporation have themselves given full pay to the respondent from the date of suspension i.e. 30th of November, 1979 to the date of dismissal i.e. 28th of December, 1982 and from the date of acquittal i.e. 15th of December, 1997 to the date of reinstatement i.e. 3rd of June, 1998. Such being the state of affairs, it is not acceptable that there was any reason for the Corporation not to give the suspension allowances for the period of termination i.e. 28th of December, 1982 to the date of acquittal i.e. 15th of December, 1997 in terms of the circular dated 3rd of September, 1975. This circular also says that the period from the date of dismissal to the date of acquittal, the employee should not be allowed pay and allowances less than what would have been admissible to him had he remained under suspension. Therefore, from a reading of the Circular, it would be evident that the respondent may be paid the pay and allowances admissible to him had he remained under suspension. This was the view expressed by the learned Single Judge as well as the Division Bench of the High Court.”

6. The Division Bench in **Hukam Singh vs. State of Haryana**², held the petitioner therein entitled to full salary and allowances for the period of suspension and dismissal, on account of his acquittal of offences under Sections 302, 307, and 324, read with Section 34 of the IPC by Hon’ble the Supreme Court. Apropos the scope of Rules 7.3 and 7.5 *ibid*, it was observed that, “It is abundantly clear that Rule 7.3 of the Rules is the general rule, while in case a person is acquitted, it is specific Rule 7.5 of the Rules that would be attracted. The law is well settled that special Rule will always taken precedence over the general rule and consequently it must follow that under Rule 7.5 of the Rules, referred to above, the petitioner was entitled to the full back wages because, as mentioned above, the earlier decisions referred to above have little application in the present

case.”

7. In light of the dictum laid down in the afore-referred judgment and **Brahma Chandra Gupta vs. Union of India**³, the Division Bench in **Ishwar Singh vs. State of Haryana**⁴ elucidated that since the appellant therein was reinstated being fully exonerated, as also period out of service, treated as ‘continuity in service’, was held entitled to full wages the said duration, observing that, “Applying the ratio of the aforesaid judgements, we are of the considered opinion that appellant's dismissal was purely on his conviction in the criminal case, where he has been acquitted by the High Court with the finding that the charge is improbable. No other allegation of misconduct is attributable to the appellant nor any such misconduct has been established in any departmental inquiry or otherwise found by the disciplinary/competent authority. There is no valid ground for denying him the wages for the period he remained out of service on account of criminal proceedings/conviction.”

8. This Court in **Satish Kumar Goel vs. State of Haryana and another**⁵, against which LPA⁶ and SLP⁷ stand dismissed, directed payment of entire remuneration for the duration out of service and suspension period to the petitioner therein, initially convicted but later acquitted by this Court on benefit of doubt, observing that, “In view of the settled law and in terms of Rule 7.5 of Punjab Civil Service Rules, order dated 22.04.2008 (P-2) is hereby quashed and the petitioner is entitled to pay and allowances for the period he has remained out of service and for the duration of his suspension period as well. The respondent-department is directed to pay the petitioner arrears of salary from 17.09.1999 to 16.11.2006 and further grant the petitioner pension and all other

³ 1984 (2) SCC 433.

⁴ 2012 (2) SCT 209.

⁵ 2018 (1) SCT 801.

pensionary benefits w.e.f 01.05.2009 forthwith along with interest @ 9% per annum on account of his promotion vide order dated 16.11.2006.”

9. As regards entitlement to full salary for the period spent out of service, in addition to restoration of status, it is now settled that the employee is liable to be granted the same once held to be fully exonerated of all charges. Since the petitioner was unable to work on account of the conviction order against him, which was overturned by appeal, he cannot be deprived of his wages.

10. On a cumulative consideration, the impugned order dated 11.11.2002 is hereby set aside. The respondents are directed to release the salary to the petitioner with consequential benefits for the period of suspension and dismissal, alongwith interest @ 6% per annum, within a period of three months.

(AMAN CHAUDHARY)
JUDGE

03.09.2024
ashok

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No