

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(109)

LPA-1092-2024 (O&M)

Decided on : 02.05.2024

Punjab State Power Corporation Ltd. & anotherAppellant(s)

Versus

Kamal Sharma & others

.....Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA,
ACTING CHIEF JUSTICE
HON'BLE MS.JUSTICE LAPITA BANERJI**

Present: Mr.Gagneshwar Walia, Advocate for the appellant (s).

G.S. Sandhawalia, Acting Chief Justice (Oral)

CM-2645-LPA-2024

1. Application for condoning the delay of 61 days in filing the appeal is allowed in view of the averments made in the application duly supported by affidavit of the official. Delay of 61 days in filing the appeal is hereby condoned.

2. CM stands disposed of.

LPA-1092-2024 (O&M)

3. Consideration in the present appeal is to the judgment dated 04.01.2024 passed by the Learned Single Judge in CWP-590-2019 whereby the writ petition was allowed and the order dated 23.01.2015 (Annexure P-3) was modified and the employee was granted the benefit of the duty period, full pay and allowances for the period he remained out of service on account of his conviction from 19.10.2004 to 09.12.2013.

4. The Learned Single Judge placed reliance upon various judgments of the Learned Single Benches of this Court in CWP-1326-2013 titled *Surjit Singh Vs. State of Haryana*, CWP-18208-2021 titled *Constable Bhupinder Singh Vs. State of Punjab* and CWP-29715-2017 titled *Rajesh Kumar Vs. State of Punjab* while distinguishing the judgment

Methu Meda, 2022 (1) SCC 1 and The State of Rajasthan & others Vs. Love Kush Meena, AIR 2021 SC 1610 whereby the acquittal was stated not to be honourable and therefore, different view was taken. It was accordingly held that the employee had been acquitted by this Court in the criminal appeal filed by him and therefore, he had been reinstated in service but had not been granted salary for the period he had remained out of service. The decision of the authority to deprive the appellant of the wages was held to be an inherent contradiction without any reasoning. Having been granted the benefit of reinstatement and having been absolved of the allegations and charges, he would be vested with the right to full pay and salary for the period he remained out of service in view of Rules 7.3 and 7.5 of the Punjab Civil Service Rules, Vol-I, as applicable to the State of Punjab.

5. Mr.Walia has vehemently tried to distinguish the proposition by placing reliance upon the judgments of the Apex Court in **Ranchhodji Chaturji Thakore Vs. The Superintendent Engineer, Gujarat Electricity Board, 1997 (1) SCT 824, Union of India & others Vs. Jaipal Singh, 2004 (1) SCT 108 and State Bank of India & another Vs. Mohammed Abdul Rahim, 2013 (4) SCT 133**. It is pointed out that after the acquittal on 09.12.2013, when the employee was reinstated on 22.04.2014 and all the benefits were granted, there was an application of mind by the competent authority while passing the order dated 23.01.2015 (Annexure P-3) and therefore, the Learned Single Judge had wrongly granted the benefit.

6. We have examined the judgments relied upon by counsel for the appellant-Corporation. The underlying factor in the said judgments is

of the involvement in a criminal case which has no relation to the duty of the person employed. In Ranchhodji Chaturji Thakore (supra), the conviction was under Section 302 read with Section 34 IPC and it was in such circumstances, held that the payment of back-wages was not liable to be granted and the conduct of the appellant involving himself in the crime had been taken into account and not being in service of the employer. It was held that each case has to be considered in its own backdrop and it was in such circumstances the burden of payment of back-wages was reduced.

7. In the case of Jaipal Singh (supra) also, the conviction was again under Section 302 read with Section 34 IPC and the Apex Court again held that the acquittal which had happened of the person and the prosecution was not at the behest or by the Department itself. Therefore, it was observed that different considerations may arise and the Department cannot be found at fault for having kept the employee out of service since the law obliges a person convicted of an offence to be so kept out and thus, back-wages were only granted from the date of acquittal.

8. In Mohammed Abdul Rahim (supra), the involvement was under Section 498A IPC and thus, the earlier judgments had also been relied upon. Resultantly, back-wages were again restricted from the date the employee lodged the demand following acquittal.

9. A perusal of the acquittal order dated 10.12.2013 (Annexure P-2) passed by this Court in CRA-1612-SB-2004 would go on to show that apparently the involvement was on account of the duties the employee was rendering when he was involved and trapped in the case under the Prevention of Corruption Act, 1988. This Court had accepted the

statement in his case including the evidence under Section 313 CPC and it was a case of conspiracy and being apprehended by the Vigilance officials as he was working as a Revenue Accountant at the relevant time and had never demanded or accepted and he was not allowing other staff members to meet their nefarious designs. The Learned Single Judge had found that the amount which had been recovered was rather deposited in the account of Bhagwant Singh, the complainant and an entry had also been made and thereafter, several other entries had been made and therefore, the recovery of Rs.1000/- was part of the amounts which were being received as part payment of the electricity bill. It was in such circumstances the benefit of acquittal was given while interfering in the order of conviction dated 03.08.2004. The same reads as under:

“A perusal of Exhibit DA reveals that Rs.1000/- were deposited in the account of Bhagwant Singh on 28.4.1998. Entry in this regard has been made at serial number 8. Thereafter, more entries have been made up to serial number 16, qua payments made by other account holders. From this, it is evident that entry, qua payment made by Bhagwant Singh, cannot be said to have been interpolated, at a later stage, as after entry No. 8, there were eight other entries made on 28.4.1998 upto serial number 16.

Exhibit DB is a receipt qua payment of Rs.1000/- by complainant- Bhagwant Singh.

Complainant, in his cross-examination, has categorically deposed that apart from the tainted currency notes to the tune of Rs.1000/-, he had not paid any other amount to the appellant or any official of the Board.

Thus a combined reading of the cross-examination of the complainant and statement of DW1 leads to the inference that the amount of Rs.1000/-, allegedly, paid by the complainant to the appellant was, in fact, towards the part-payment of his electricity bill in his account. The amount deposited in the account of the complainant on 28.4.1998, alleged date of raid, was adjusted

towards the electricity bill of the complainant by the Consumer Court. In these circumstances, the plea taken by the appellant, when examined under Section 313 Cr.P.C., appears to be probable.

It is a settled proposition of law that the prosecution is required to prove its case beyond the shadow of reasonable doubt. Whenever there is doubt in the prosecution case, the benefit of the same has to be extended to the accused.

In the present case, the prosecution has failed to prove its case beyond the shadow of reasonable doubt. Hence, the appellant is liable to be acquitted of the charges framed against him by giving him benefit of doubt.

Accordingly, this appeal is allowed. The impugned judgement/order dated 3.8.2004 are set aside. Appellant is acquitted of the charge framed against him by giving him benefit of doubt.”

10. A perusal of the impugned order dated 23.01.2015 (Annexure P-3) would go on to show that though the entitlement was clubbed in two different compartments, benefit being granted after the acquittal whereas being withheld between dismissal and acquittal and the said period being treated as ‘non duty period’ for all intents and purposes except for pensionary benefits.

11. The Apex Court in Civil Appeal No.4114 of 2006 titled *Uttri Haryana Bijli Vitran Nigam & another Vs. Shashi Kumar*, decided on 26.09.2013, held that it was for the authorities to come to the conclusion that the employee had been fully exonerated or that the suspension was wholly unjustified and then pass an order for payment of full pay and allowances. Apparently, this exercise was never conducted while passing the impugned order. Relevant observations read as under:

“On a plain reading of the above-reproduced rule, it becomes clear that when a Government employee who has been dismissed, removed, compulsorily retired or suspended is reinstated or would have been reinstated but for his retirement on

superannuation, the authority competent to order reinstatement has to consider and make a specific order regarding 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 and also whether or not the said period shall be treated as spent on duty. If the authority comes to the conclusion that the employee has been fully exonerated or his suspension was wholly unjustified, then it has to pass an order for payment of full pay and allowances. In other case, an order for payment of proportionate pay and allowances has to be passed. In the first case, the period of absence has to be treated as a period spent on duty. In the second case, the competent authority has to pass appropriate order whether the intervening period should be treated as a period spent on duty for any specified purpose. To put it differently, except in the cases of complete exoneration the competent authority has the discretion to pass appropriate order for payment of pay and allowances to the employee during the period of his absence and also the treatment to be meted out to that period.

Unfortunately, in these cases the competent authority did not pass the required order in terms of Rule 7.3 of the Rules and when Shashi Kumar made representation for his reinstatement, the Chief Engineer arbitrarily rejected the same by assuming that even though he had been acquitted, the charge of illegal gratification could be treated as proved. In other cases, no order was passed by the concerned authority. Therefore, in the peculiar facts of these cases, the High Court was justified in ordering reinstatement of the respondents.

Insofar back wages are concerned, we are prima facie satisfied that the High Court was not justified in directing payment of full salary and allowances because the respondents had not been fully exonerated. Each one of them was given benefit of doubt by the High Court or the trial Court. Therefore, the High Court should have directed the competent authority to pass appropriate order in terms of the rules reproduced above. We may have adopted that course and directed the concerned authority to pass necessary order within a specified time frame, but, keeping in view the long lapse of time, we do not consider it proper to exercise the power of

this Court under Article 136 of the Constitution and interfere with the order for payment of full back wages.

With the above observations the appeals are dismissed.

However, the question of law is left open to be decided in appropriate case. We also make it clear that the impugned orders shall not be treated as precedent for other cases and the High Court shall decide the pending matters or which may be filed hereinafter without being influenced by the order passed in Shashi Kumar’s case.”

12. It was in such circumstances, the Learned Single Judge chose to interfere in the order dated 23.01.2015 (Annexure P-3). It is apparent that even the said authority did not look into the judgment of acquittal and never applied its mind as to what prevailed upon the Court to grant the benefit of acquittal for the purpose of depriving the person benefits for the period concerned. Having not done so, the onus fell upon the Writ Court which had rightly come to the conclusion and granted the benefits.

13. Resultantly, in view of the above discussion, we find no reason to take a different view than that of the Learned Single Judge. Consequently, the present appeal is hereby dismissed. All pending application(s) also stand disposed of.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

02.05.2024
Sailesh

(LAPITA BANERJI)
JUDGE

Whether speaking/reasoned :	Yes	
Whether Reportable :	Yes	