

(119)
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA-911-2023 (O&M)
Date of decision : 06.02.2024

Kamla SandhuAppellant
Versus
State of Haryana and anotherRespondents

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

Present: Mr. Dharmender Singh Rawat, Advocate, for the appellant.
Mr. Deepak Balyan, Addl. Advocate General, Haryana.

G.S. SANDHAWALIA, ACTING CHIEF JUSTICE (Oral)

1. The consideration in the present appeal is limited to the extent that the learned Single Judge, vide order dated 21.03.2023, while disposing of the writ petition (CWP No. 18954 of 2015) titled as “Kamla Sandhu Vs. State of Haryana and another”, came to the conclusion that the appellant was not entitled to salary from the day she was placed under suspension till the date of reinstatement. However, she was held entitled to grant of salary, though on notional basis, from the day of acquittal till actual reinstatement. It was clarified that service of the appellant from the date of acquittal shall be counted for all intents and purposes except for payment of actual salary.
2. Learned counsel for the appellant has, thus, submitted that once the appellant has been acquitted of the charges in FIR No. 1214 dated 04.12.2009 under Sections 498-A, 306, 34 IPC, registered at Police Station City, Panipat, the limitation of salary on notional basis from the day of acquittal is not justified and it should be from the date of her suspension i.e. 04.12.2009.

3. It is brought to our notice that the appellant was initially convicted on 24.02.2012 by the Trial Court. Thereafter, she was acquitted vide judgment dated 28.11.2013 (Annexure P-3) and immediately thereafter, on 20.01.2014, she submitted representation (Annexure P-4) with a prayer that on account of her acquittal in the aforesaid FIR, she be reinstated with all consequential benefits from the date of her suspension, i.e. 04.12.2009, which was the date of lodging of the FIR itself. The respondents apparently, however, chose not to act upon the said representation for almost two years and it is only on 02.12.2015, just before her retirement, that the appellant was reinstated against the vacant post. It is not disputed that she retired thereafter on 31.12.2015. In such circumstances, reliance has been placed upon the law laid down by the Apex Court in ***Union of India and others Vs. Jaipal Singh, 2004 (1) SCC 121***, wherein the earlier judgment in ***Ranchhodji Chaturji Thakore Vs. The Superintendent Engineer, Gujarat Electricity Board and another, 1996 (11) SCC 603***, which had also been referred to by the learned Single Judge, but the aspect, as such, of the grant of salary notionally from the date of suspension had escaped notice of the learned Single Judge.

4. In ***Jaipal Singh's case*** (supra), the respondent along with his brother was convicted in a criminal case under Section 302 read with Section 34 IPC. It is only in appeal that he had got verdict of acquittal. The Division Bench of this Court had allowed the writ petition and granted relief, directing his reinstatement with full back wages and consequential benefits, which was modified by the Apex Court, while holding as under :-

“5. The respondent will be entitled to back wages from the date of acquittal and except for the purpose of denying the respondent actual payment of back wages, that period also will be counted as period of service, without any break. The re-instatement, if not already done, in terms of the order of the High Court will be done within thirty days from today.”

5. In the earlier judgment in ***Ranchhodji Chaturji Thakore’s case*** (supra) also, the petitioner was dismissed from service on account of his conviction under Section 302 read with Section 34 IPC. Subsequently, he was acquitted of the offence and he was ordered to be re-instated in service with continuity of service, but without back wages.

6. In ***Raj Narain Vs. Union of India and others, 2019 (2) S.C.T. 582***, the Tribunal had allowed the request of the appellant for re-instatement but did not grant any back wages for the period during which he was not in service. The prayer for full pay and allowances for the period of suspension was rejected by the competent authority. The writ petition filed against the order of the Tribunal was partly allowed and the appellant was held to be entitled to full back wages from the date of his acquittal till the date of re-instatement, which was subject-matter of challenge. Ultimately, the Apex Court approved the judgment of the High Court by holding that the appellant shall be entitled for back wages from the date of acquittal till the date of his reinstatement and further he was held entitled for full salary from 23.10.1979 to 21.10.1987, as departmental proceedings against him had been dropped in 1983 during the pendency of the criminal case and therefore that case would not be applicable to the facts and circumstances of this case as it does not

pertain to any criminal proceedings launched at the instance of the employer.

7. Thus, the matter in this appeal is covered in favour of the appellant and the learned State counsel also could not controvert the aforesaid position.

8. The second issue would be restriction of the service of the appellant from the date of her acquittal, which is to be counted for all intents and purposes, except for payment of actual salary.

9. Once the appellant has earned acquittal, as such, we are of the considered opinion that service of the appellant has to be counted for all intents and purposes, except for payment of full back wages, without a break.

10. We, accordingly, modify the order dated 21.03.2023 passed by learned Single Judge and allow the appeal partly by directing that grant of salary notionally to the appellant also has to be from date of suspension and directing her service period to be counted without a break for purposes of pension.

11. Necessary benefits be counted and paid to the appellant within a period of two months, after adjusting the Subsistence Allowance, which she has already received during the period of her suspension.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

(LAPITA BANERJI)
JUDGE

February 06, 2024
ndj

Whether speaking/reasoned	Yes
Whether reportable	No