

225

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-10686-2020(O&M)

Date of Decision: 28.02.2024

Banarsi Dass

....Petitioner(s)

Versus

Uttar Haryana Bijli Vitran Nigam and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Dharam Bir Bhargav, Advocate, for the petitioner.

Mr. Sanjeev Majra, Advocate, for the respondents.

JASGURPREET SINGH PURI, J. (Oral)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing the order dated 11.03.2019 (Annexure P-11), order dated 02.04.2019 (Annexure P-12), order dated 09.04.2019 (Annexure P-13), order dated 04.08.2015 (Annexure P-5) and order dated 28.11.2005 (Annexure P-4).

2. Learned counsel appearing on behalf of the petitioner submitted that it is a case where FIR No. 5 dated 23.01.2003 was lodged under Sections 7 and 13 (1) (d) of the Prevention of Corruption Act, 1988 against the petitioner while he was in service and he was convicted by the learned trial Court but later on the judgment of conviction was set aside by this Court in CRA-S-2071-SB-2005 and he was acquitted on 13.08.2014 vide

Annexure P-1. He submitted that the petitioner was working as a Lineman and in the meantime, he had attained the age of superannuation on 30.06.2008 on attaining the age of 58 years. He submitted that after his acquittal the respondent-Nigam has passed Annexure P-5 whereby he was deemed to be re-instated w.e.f. 30.06.2008 on attaining the age of superannuation and it was also directed that the charge-sheet which was served upon the petitioner stands withdrawn since he has been acquitted and by way of the aforesaid order Annexure P-5, the charge-sheet against the petitioner was withdrawn and suspension period from 23.01.2003 to 30.06.2008 till the age of superannuation was regularised only for the purpose of continuity of service. He submitted that the petitioner has been denied his salary, allowances and arrears etc. during the suspension period on the ground of principle of no pay for no work. He submitted that thereafter he submitted a representation to the respondents and since the representation was not decided, the petitioner filed a writ petition No.28943 of 2018 and a Co-ordinate Bench of this Court vide Annexure P-10 on 16.11.2018 directed the respondents to pass a speaking order on the aforesaid representation but no speaking order has been passed. He while referring to Annexure P-13 submitted that it was so directed that post facto sanction is accorded to grant 396 days earned leave for the period from 23.01.2003 to 22.02.2004 and 1590 days w.e.f. 23.02.2004 to 30.06.2008. It was also directed that the period will count towards his annual increments. He further submitted that although the period has been counted for service but there is no consideration of the claim made by the petitioner with regard to the release of all the benefits of salary and arrears etc. for the time when he was out of service. He remained out of service not because of his own

fault but because of the fact that he was prosecuted and criminal case was pending against him and thereafter the charge-sheet which was issued to the petitioner pertaining to the same allegations has been withdrawn by the respondents themselves and once the charges have been dropped and there is no punishment order against the petitioner and he has already been acquitted, he is entitled for all the monetary benefits including the arrears of salary as well. He also submitted that a Co-ordinate Bench of this Court in the year 2018 had specifically directed the respondents to pass a speaking order on the representation but the respondents have failed to pass any speaking order and only the aforesaid sanction order Annexure P-13 has been passed and therefore, the action of the respondents was not only illegal and arbitrary but it was also contemptuous in nature. He also referred to a judgment of a Co-ordinate Bench of this Court Annexure P-8 to contend that the petitioner is entitled for all the monetary benefits for the time he remained out of service which are the consequential benefits i.e. promotion, regularization of the period and the salary and all the retiral benefits from the date of his superannuation after counting the same and submitted that the necessary directions may be issued in this regard. He also referred to a judgment of Hon'ble Supreme Court in ***Ram Lal Versus State of Rajasthan and others, Civil Appeal No.7935 of 2023, decided on 04.12.2023*** and a judgment of this Court in ***Ashu Kumar Versus State Bank of India, CWP No.28296 of 2018, decided on 18.01.2024*** in this regard.

3. On the other hand, Mr. Sanjeev Majra, learned counsel appearing on behalf of the respondents submitted that the petitioner has been denied the benefits of arrears of salary etc. on the principle of no

work no pay and it is a case where the petitioner was earlier convicted, although the conviction order was set aside by this Court on appeal and he stands acquitted. He further submitted that the petitioner can be denied the benefits of arrears of salary unless it was so held by the Court which had acquitted the employee that there was malice on the part of the prosecution.

4. I have heard the learned counsel for the parties.

5. So far as the submission made by the learned counsel for the petitioner with regard to the fact that on the principle of no work no pay is concerned, the law is now well settled. Here is a case where the petitioner was acquitted by this Court by setting aside the order of conviction made by the trial Court. The department also proceeded against the petitioner by issuance of charge-sheet while he was in service but later on the respondents vide Annexure P-5 themselves have withdrawn the charge-sheet and consequently, there was no order of punishment or speaking order passed against the petitioner. In this way, it is very clear that it was not because of the voluntary act of the petitioner that he did not work on that post but it was because of the FIR which was lodged against the petitioner and the petitioner was suspended and thereafter he has been re-instated but he has been re-instated only with effect from the date when he has been retired and the charge-sheet was also dropped against him and therefore the principle of no work no pay will not apply to the petitioner. The Hon'ble Supreme Court in ***Gowramma C. (Dead) by legal representatives vs. Manager (Personnel), Hindustan Aeronautical Limited and another (2022) 11 Supreme Court Cases 794*** observed that each every case has to be seen on its own facts and circumstances and there can be no straight jacket formula with regard to principle of no work no pay. Para No.10 and 13 of

the aforesaid judgment are reproduced as under:-

“10. It is true that no work no pay is a principle which is apposite in circumstances where the employee does not work but it is not an absolute principle, which does not admit of exceptions. In this regard we may notice that in one of the judgments relied upon by the respondents, namely, State of Kerala v. E.K. Bhaskaran Pillai⁷ which, in fact, dealt with issue as to monetary benefits when retrospective promotion is given, this Court held: (SCC p. 527, para 4).

"4. ... So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered. Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to grant full back wages or 50% of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the matter when the person is superseded and he has challenged the same before Court or tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, in that case the Court may grant sometimes full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors. However, it is very difficult to set down any hard-and-fast rule. The principle "no work no pay" cannot be accepted as a rule of thumb. There are exceptions where courts have granted monetary benefits also."

(emphasis supplied)

13. The most important question is whether the employee is at fault in any manner. If the employee is not at all at fault and she was kept out of work by reasons of the decision taken by the employer, then to deny the fruits of her being vindicated at the end of the day would be unfair to the employee. In such

circumstances, no doubt, the question relating to alternative employment that the employee may have resorted to, becomes relevant. There is also the aspect of discretion which is exercised by the Court keeping in view the facts of each case. As we have already noticed, this is a case where apart from the charge of the employee having produced false caste certificate, there is no other charge. Therefore, we would think that interests of justice, in the facts of this case, would be subserved, if we enhance the back wages from 50% to 75% of the full back wages, which she was otherwise entitled. The appeals are partly allowed. The impugned judgments will stand modified and the respondents shall calculate the amount which would be equivalent to 75% of the back wages and disburse the amount remaining to be paid under this judgment within a period of six weeks from today to the additional appellants.”

6. So far as the argument raised by the learned counsel for the respondent that malice has to be seen as to whether there was malice on the part of the prosecution or not at the time of decision of the criminal case is concerned, here is a case where the respondent-department proceeded against the petitioner and later on the departmental proceedings were dropped qua him and there is no punishment order against the petitioner. It is not a case that any action was taken against the petitioner under Article 311 of the Constitution of India but it was well within the rights for the respondents to have proceeded with the departmental proceedings which they on their own had dropped the proceedings and therefore, the aforesaid argument is not available with the respondents. A perusal of judgment Annexure P-1 whereby petitioner was acquitted would show that prosecution was not able to prove beyond reasonable doubt.

7. In view of the above, the present petition is allowed. The aforesaid orders Annexure P-11, P-12 and P-13 are set aside. The

respondents are directed to calculate the arrears of salary and consequential benefits of the period for which the petitioner remained out of service and to pay the petitioner alongwith interest @ 6% per annum (simple) within a period of three months from receipt of certified copy of this order.

28.02.2024
rakesh

(JASGURPREET SINGH PURI)
JUDGE

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