

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-18225-2007 (O&M)
Decided on: 04.10.2024

Dr. Prem Prakash Allawadi

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

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

Mr. Tapan Kumar, DAG, Haryana

AMAN CHAUDHARY, J.

1. The first claim made for quashing order dated 29.11.2007, whereby the petitioner was compulsorily retired has been rendered infructuous as under the interim orders of this Court he continued to serve till his age of superannuation.

2. However, insofar as the second prayer is concerned, the petitioner, appointed as Veterinary Surgeon, remained suspended from 25.03.2003 till 06.01.2004, the date he was reinstated, pending outcome of the criminal case, wherein he finally came to be acquitted vide judgment dated 09.08.2006, by the trial Court granting him benefit of doubt. However, the said period was treated as leave of kind due, vide order dated 03/10.05.2007, without affording him a

hearing and granting only subsistence allowance already drawn by him.

3. To proceed further in the matter, it would be apposite to refer 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 suspension, 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."

4. The justification sought to be given to not treat the period as on duty and pay full salary for the period spent under suspension, stems out of the acquittal being based on benefit of doubt, which is unfounded in wake of **Jagmohan Lal vs. State of Punjab**¹, which was not taken up in appeal and the

petitioner arrested in criminal case relating to acceptance of illegal gratification, was granted full pay and allowances for the period of suspension on acquittal, while observing that, “The moment he is acquitted of the charge he is acquitted of the blame”. It was further held that, “I am, therefore, quite clear in my mind that the intention underlying rule 7.5 can be no other except this : the moment the criminal charge on account of which an officer was suspended fails in a Court of law, he should be deemed to be acquitted of the blame. Any other interpretation would defeat the very purpose of the rule. It is futile to expect a finding of either honourable acquittal or complete innocence in a judgment of acquittal. The reason is obvious; the criminal Courts are not concerned to find the innocence of the accused. They are only concerned to find whether the prosecution has succeeded in proving beyond a reasonable doubt the guilt of the accused.” Relying on said dictum, the Division Bench in **Bhag Singh vs. Punjab & Sind Bank**², against which no challenge has been made, directed the respondents to release the full pay and allowances for the suspension period, treating it as spent on duty. The petitioner therein was placed under suspension on his arrest in criminal case, wherein by giving benefit of doubt, he was acquitted and subsequently reinstated, following which, departmental proceedings were initiated against him, whereby he was exonerated. It was observed that, “In both the cases, inspite of the clear observations that there was no evidence against the petitioner, the trial Court observed that the accused are given benefit of doubt and acquitted of the charges framed against them. Relying on the aforesaid observation, the respondents have denied the benefit of full pay and allowances to the petitioner. In our opinion, the mere use of the

expression "benefit of doubt" or "not proved beyond reasonable doubt" by the trial Court or the appellate Court, cannot be permitted to convert an acquittal on the ground of no evidence, to something less than that. The concepts of "Honourable Acquittal", "fully exonerated" or "acquitted of blame" are all unknown to the Criminal Procedure Code, 1973. Therefore, the term "benefit of doubt" cannot detract from the impact of the acquittal."

5. The Division Bench in the case of **Shiv Kumar Goel vs. State of Haryana**³, wherein no challenge has been made, observed that in case it is found that there was no evidence to prove the charge of corruption under the Prevention of Corruption Act, 1988 against the employee, notwithstanding observations as to acquittal by benefit of doubt, it will be considered honorable. Further, while treating the period of suspension as spent on duty, he was held entitled to full salary and all consequential benefits.

6. This Court in **Maha Singh vs. State of Haryana and another**⁴, against which no appeal has been filed, held the Government servant, suspended after being arrested in a criminal case under Sections 307/506/148/149 Indian Penal Code, then dismissed from service due to pendency of criminal proceedings and subsequently reinstated after being acquitted giving him benefit of doubt, qualified for full remuneration for the same duration. Furthermore, it was elucidated that Rule 7.3 is a general rule, specifically dealing with reinstatement after departmental enquiries, whereas Rule 7.5 applies to reinstatement following suspension on account of criminal proceedings.

³ 2007 (1) SCT 739.

⁴ 1994 (1) SCT 154.

7. The petitioner in **Satish Kumar Goel vs. State of Haryana and another**⁵, the LPA⁶ and SLP⁷, against which stand dismissed, was initially convicted, but later acquitted, against Sections 7/13/49/88 of the Prevention of Corruption Act by this Court on benefit of doubt. Directions were passed by this Court for payment of the entire pay and allowances for the duration out of service as also suspension period, while also granting him pension and all other pensionary benefits.

8. In **Anil Kumar Tyagi vs. Dakshin Haryana Bijli Vitran Nigam Ltd. and another**⁸, which has attained finality upto Hon'ble the Supreme Court, consequent to conviction for offences under Sections 7 and 13 of the Prevention of Corruption Act, 1988, the petitioner therein was terminated, however was later acquitted. This Court while relying on Rules 7.3 and 7.5, *ibid*, held him entitled to monetary benefits for the period of suspension once exonerated and acquitted.

9. The trial Court while acquitting the petitioner had observed that, "In order to substantiate the aforesaid charge, the prosecution has examined as many as eleven witnesses as detailed above. If the evidence coming on record is scrutinized minutely, it transpires that the prosecution has not been able to bring home the guilt against the accused beyond the shadow of reasonable doubt. ..."

10. The mere use of the expression 'benefit of doubt' in the concluding para, by itself, more particularly keeping in view the aforesaid and considering the **Jagmohan Lal and Bhag Singh** (supra), would entitle the

⁵ 2018 (1) SCT 801.

⁶ LPA-757-2017, decided on 30.04.2018.

⁷ SLP(C)-26475-2018, decided on 22.10.2018.

⁸ CWP-13988-2015, decided on 24.01.2017 .

petitioner, in terms of Rules 7.3 and 7.5 *ibid*, to receive the entire salary for the duration spent under suspension.

11. On the anvil of the aforesaid and as a fall out thereof, the impugned order dated 03/10.05.2007 is hereby set aside. The respondents are directed to release the full salary and allowance to the petitioner for the period of suspension, within a period of three months.

12. Disposed of accordingly.

(AMAN CHAUDHARY)
JUDGE

04.10.2024
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Whether speaking : Yes/No
Whether reportable : Yes/No