

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CWP-13889-2019 (O&M)
Date of decision: 29.02.2024

Hans Raj

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Puneet Kumar Bansal, Advocate for the petitioner.

Mr. Satnam Preet Singh, DAG, Punjab.

AMAN CHAUDHARY. J.

1. The present Civil Writ Petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ, in the nature of certiorari for quashing the orders dated 24.04.2019, Annexure P-13, 02.08.2018, Annexure P-7 and 08.02.2017, Annexure P-5, whereby the claims of petitioners for salary, suspension allowance, extending the benefits of revised pay have been declined and in the nature of mandamus, to direct the respondents to pay his salary and allowances.

2. Learned counsel would submit that after the petitioner was acquitted vide judgment dated 05.04.2007 by this Court in the criminal appeal filed by him, he, though after having filed CWP-15573-2007, was decided on 25.10.2016, leaving it to the Department to pass an order regarding period of suspension and when he remained out of service and to decide whether the petitioner is to be reinstated. Consequently, vide order dated 08.02.2017, he was reinstated on duty and made to retire on

31.07.2010 and during the period of suspension he was held to be not entitled to anything except subsistence allowance and the period he remained out of service from 1998 to 2010 as without pay, *albeit* countable only for the purpose of pensionary benefits. On challenge to it before this Court in CWP-31022-2018, the Director, State Transport, Punjab was directed to pass an appropriate order on the legal notice, being the higher authority than General Manager, who vide impugned order dated 24.04.2019, rejected his claim yet again by taking into account Rule 7.3(1) of Punjab Civil Services Rules, Vol. I, Part I, instead of Rule 7.3(2) *ibid*. He relied on **Union of India vs. Jaipal Singh**, 2004 AIR (Supreme Court) 1005, **Raj Narain vs. Union of India** 2019(5) SCC 809 and **Manjit Kumar @ Goldi vs. State of Punjab**, 2017(4) PLR 110.

3. Opposing the above, learned State counsel has contended that the impugned order is well reasoned and thus, the present petition may be dismissed.

4. Heard learned counsel on either side.

5. It may be accentuated that the petitioner was appointed to the post of Chowkidar on 01.06.1978 and was posted as Gunman vide order dated 15.04.1980 in the office of General Manager at Sri Muktsar Sahib, wherein on the intervening night of 21/22.02.1996, a robbery took place and in the said incident, petitioner had received a gunshot injury, however FIR No.12 dated 22.02.1996 under Sections 302, 452 and 397 of IPC and Section 27 of the Arms Act at the instance of the General Manager, was registered against the petitioner. He was suspended vide order dated 02.03.1996, w.e.f. 29.02.1996 and was paid only the subsistence allowance. He came to be

convicted by the learned Sessions Judge, Faridkot vide judgment dated 25.11.1997 and on the basis whereof his services were terminated vide order dated 24.02.1998. Notably, no departmental proceedings were conducted against the petitioner.

6. The Division Bench in CRA-20-DB-1998, while returning a finding of acquittal in favour of the petitioner vide judgment dated 05.04.2007, observed that, “In the instant case, non-disclosure of the occurrence by the alleged eye witnesses to anyone for more than two months and no explanation has been offered for the same and such non-disclosure certainly creates a serious infirmity in the prosecution version, which destroyed the credibility of the testimony of the witnesses and no reliance can be placed on such type of weak evidence. It appears that the prosecution story was conceived and constructed after a good deal of deliberation and delay in a shady setting and is not free from doubts and suspicion. It also appears that after recording the disclosure statement, the prosecution thought of this witness. namely, Paramjit Singh. Conductor (PW-6) to be cited as a witness. In view of the discussions made above, we are of the opinion that the entire picture of the occurrence, as presented by the prosecution and its witnesses is very much suspicion and doubtful.”

7. Rule 7.3 *ibid*, as has been placed reliance on by the petitioner, requires a reference and reads thus:

“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, has 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.”

8. The issue is no longer *res integra*, as Hon’ble the Supreme Court in Civil Appeal No.4114 of 2006 **Uttri Haryana Bijli Vitran Nigam and another vs. Shashi Kumar** decided on 26.09.2013, wherein Rule 7.3 *ibid* was subject matter of consideration, observed and held that, “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.”

9. The judgment in **Ranchhodji Chaturji Thakore vs. Gujarat Electricity Board**, (1996) 11 SCC 603, can be gainfully referred, wherein it was observed that, if the prosecution is launched at the behest of the department and the employee is acquitted, different considerations may arise and held that, “The reinstatement of the petitioner into the service has already been ordered by the High Court. The only question is whether he is

entitled to back wages. It was his conduct of involving himself in the crime that was taken into account for his not being in service of the respondent. Consequent upon his acquittal, he is entitled to reinstatement for the reason that his service was terminated on the basis of the conviction by operation of proviso to the statutory rules applicable to the situation. The question of back wages would be considered only if the respondents have taken action by way of disciplinary proceedings and the action was found to be unsustainable in law and he was unlawfully prevented from discharging the duties. In that context, his conduct becomes relevant. Each case requires to be considered in its own backdrop...”. The above dictum of law was reiterated in **Jaipal Singh** (supra).

10. In **Jaipur Vidyut Vitran Nigam Ltd. vs. Nathu Ram**, (2010) 1 SCC 428, a case wherein the employee was acquitted by the High Court in appeal for offences under Section 161 IPC and 5(1)(d) read with 5(2) of the Prevention of Corruption Act, 1947, Hon’ble the Supreme Court had held that once there is a specific provision under the Rules which provided that on exoneration the employee is entitled to both, the pay and allowances from the period of dismissal to the date of acquittal, the said benefit is to be granted to him, by observing 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.”

11. In **Raj Narain**, (supra) a case where FIR was registered under Section 409, 420 and 467 by the Department against the petitioner, wherein he was convicted, Hon’ble the Supreme Court held him entitled to the benefits of the period he remained out of service till his reinstatement, after analysing the judicial pronouncements in Ranchhodji and Jaipal (supra), by observing that, these have to be understood in a manner in which the Department would become liable for back wages in the event of a finding that the initiation of the criminal proceedings was mala fide or with vexatious intent.

12. The Division Bench in **Hukam Singh vs. State of Haryana**, 2001(1) RSJ 201, wherein services of the petitioner therein were terminated due to his conviction in a case, punishable under Sections 302, 307 and 324 read with Section 34 IPC, upon his acquittal by Hon’ble the Supreme Court, a claim was raised for full salary and allowance for the period of suspension and dismissal, opposing which the State had, as in the case at hand, taken the plea of the petitioner cannot be granted back wages, having not served

during that time. Rule 7.5 of Punjab Civil Services Rules, as applicable to the State of Haryana, was interpreted, it being para materia to Rule 7.3 *ibid*, while holding the petitioner entitled to the relief, as prayed for.

13. In **Manjit Kumar @ Goldi** (supra), wherein the aforesaid provision of Rule 7.3 *ibid* was discussed and benefits as prayed for in the present case granted to the petitioner, a Constable, who was initially convicted in FIR registered under the NDPS Act as also Prevention and Corruption Act, but subsequently, stood acquitted in appeal, by observing that, “A bare reading of the provision would make it clear that a Government employee who has been dismissed, removed, compulsorily retired or suspended, is re-instated upon having been fully exonerated, then he shall be given full pay and allowances to which he would have been entitled to had he not been dismissed, removed, compulsorily retired or suspended as the case may be. In the facts of the present case, once the order of conviction of the petitioner under the provisions of the NDPS Act and Prevention of Corruption Act has been set aside and the petitioner stands completely exonerated, he would be entitled to all benefits as provided for under Rule 7.3 of the Punjab Civil Services Rules. Dismissal from service was only on account of the pendency of the criminal proceedings having been initiated. The said proceeding had been initiated at the behest of the Government itself and were not on the basis of a private complaint. This Court would have no hesitation in holding that in terms of Rule 7.3 of Punjab Civil Services, the petitioner upon being acquitted would be entitled to benefits as provided under the Rules.”

14. In view of the principles culled out in the above exposition of law, the impugned orders dated 08.02.2017, 02.08.2018 and 24.04.2019, having been passed without adverting to Rule 7.3(2) *ibid*, which is applicable to the instant case on all fours, thus, are hereby set aside. As a sequitur, the petitioner is held entitled to the pay and allowances, from the date of his suspension i.e. 02.03.1996 till he was made to superannuate on 31.07.2010, as also the consequential benefits including revised pay scale and the retiral benefits calculated on basis thereof, along with arrears. He shall also be entitled to interest @ 6% per annum.

15. The present petition is allowed accordingly.

(AMAN CHAUDHARY)
JUDGE

29.02.2024
pry

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