

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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CWP-16484-2016 (O&M)
Date of decision: 02.04.2024

Dilbagh Singh

....Petitioner

Versus

State of Punjab and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. R.K. Arora, Advocate for the petitioner

Mr. Arun Gupta, DAG Punjab

AMAN CHAUDHARY, J.

1. The present petition has been filed for directing the respondent to treat the period of leave of kind due as duty period and to that extent quash the impugned order dated 27.01.2016, Annexure P-2, with a further prayer to treat the suspension/ dismissal period as duty period for all intents and purposes i.e. grant of salary, increments and other service benefits.

2. Learned counsel submits that the petitioner, appointed on 09.11.1992 as a Multi Health Worker (Male) on regular basis, was suspended and consequently dismissed from service, on the basis of his conviction by the learned Additional Session Judge, Gurdaspur vide judgment dated 15.11.2002 in an FIR registered under Sections 302/148/149 IPC and Section 25/57 of Arms Act, but was subsequently acquitted by this Court in CRA-950-DB-2022 vide judgment dated 10.03.2015 and as a result thereof, reinstated in service vide order dated 27.01.2016, Annexure P-2. However, the period when he remained out of service on account of suspension and dismissal, was treated as leave of kind due instead of duty period; as opposed to the case of a similarly situated

employee namely Balraj Singh, working on the same post, who was convicted under the Prevention of Corruption Act but later, on acquittal in appeal, was reinstated vide order dated 17.06.2015, Annexure P-10, whereby the period he stayed out of service, was regarded as duty period. Reliance is placed on the judgment passed by this Court in the case of **Constable Sukhchain Singh and Others vs. State of Punjab and Others**, CWP-5228-2011, decided on 25.03.2013; **Sh. Malkiat Singh vs. State of Punjab and Others**, CWP-8755-2011, decided on 18.03.2013; **Sucha Singh vs. State of Punjab and Others**, CWP-22023-2013, decided on 11.09.2013; **Balbir Kumar vs. State of Punjab and Another**, CWP-22633-2012, decided on 22.09.2015 and **Shiv Kumar Goyal vs. State of Haryana**, 2007 (1) SCT 739.

3. Contrarily, learned State counsel submits that since the petitioner was acquitted of charges on the basis of benefit of doubt, as such, is not entitled to pay and allowances for the period he remained out of service.

4. Heard learned counsel on either side.

5. Notably, in the appeal filed by the petitioner, he was acquitted by the Division Bench of this Court with the observations that, "...In the absence of any tangible convincing evidence against appellants Harbhajan Singh and Dilbagh Singh, we deem it appropriate to extend benefit of doubt to both of them. In view of the above discussion, while dismissing the appeal qua appellants Rachhpal Singh and Manjinder Kaur @ Bholi, we acquit appellants Harbhajan Singh and Dilbagh Singh of the charges against them by granting benefit of doubt. They shall be set at liberty forthwith, if not required in any other case."

6. It is vital to point out that the criteria for deciding if and when the absence is to be treated as a period of duty is contained in Rule 7.3 of Punjab

Civil Services Rules, Vol. I, Part I, which bears major monetary outcomes especially with regard to grant of full salary during suspension period, apropos which it would be apposite to refer to the said Rule, relevant paras of which reads thus:

“7.3. (1) When a Government employee, who has been dismissed, removed or compulsorily retired, is reinstated as a result of appeal, revision or review, or would have been so reinstated but for his retirement on superannuation while under suspension or not, the authority competent to order re-instatement 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 including the period of suspension, preceding his dismissal, removal or compulsory retirement, 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 competent to order re-instatement is of opinion that the Government employee, who had been dismissed, removed or compulsorily retired, has been fully exonerated, the Government employee shall, subject to the provisions of sub-rule (6), be paid his full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended, prior to such dismissal, removal or compulsory retirement, as the case may be:

Provided that where such authority is of opinion that the termination of the proceedings instituted against the Government employee had been delayed due to reasons directly attributable to the Government employee it may, after giving him an opportunity to make representation and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government employee shall, subject to the provisions of sub-rule (7), be paid for the period of such delay only such amount (not being the whole) of pay and allowances, as it may determine.

(3) In a case falling under sub-rule (2), the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, shall be treated as a period spent on duty for all purposes.”

7. Rule 7.3 *ibid* was subject matter of consideration in **Uttri Haryana Bijli Vitran Nigam and another vs. Shashi Kumar**, Civil Appeal No.4114 of 2006 decided on 26.09.2013, heard by Hon'ble the Supreme Court along with three similar appeals, for deciding the claims of appellants who had been acquitted of charges under IPC and Prevention of Corruption Act, as the case may be, wherein it was 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."

8. In **Hukam Singh vs. State of Haryana**, 2001(1) RSJ 201, services of the petitioner were terminated due to his conviction 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. The Division Bench interpreted Rule 7.5 of Punjab Civil Services Rules, as applicable to the State of Haryana, it being *pari materia* to Rule 7.3 *ibid* and held the petitioner entitled to the relief as prayed for.

9. Likewise, the petitioner in **Sukhchain Singh vs. State of Punjab**, CWP-16192-2010, decided on 18.03.2013, who was dismissed from service on the ground of conviction under Sections 406 and 498-A IPC but acquitted in revision and no departmental enquiry was initiated, was held entitled to grant of pay and allowances by referring to Rule 7.3(2) *ibid*, for the period he had remained out of service, relevant paras whereof read thus,

“Claim of the petitioner is supported by this Court in **Shiv Kumar Goel vs State of Haryan and others** 2007 (1) S.C.T. 739 wherein it has been observed that if the Criminal Court records a finding that there is no evidence to prove the charge against the employee, notwithstanding observations as to acquittal by the benefit of doubt, it will be considered honourable acquittal and the employee shall be entitled to pay and allowances.

Perusal of the provisions and the judgment referred to by the counsel for the petitioner, it is clearly established that the petitioner on his reinstatement is also entitled to the grant of pay and allowances for the period he had remained out of service especially when the said period is treated as period spent on duty for all purposes. The writ petition, therefore, stands allowed. Impugned order dated 16.10.2006 (Annexure P-3) which restricts the grant of the benefit of the service to be treated as leave of the kind due shall stand set aside and it shall be treated as a period spent on duty for all intents and purposes. All the consequential benefits be released to the

petitioner within a period of three months from the date of receipt of certified copy of this order.”

10. In **Ex-Sub Inspector Ram Kishore vs. State of Haryana and another**, 2020 (1) SCT 828, the petitioner, charged for offences under Sections 119/213/342/368/370/120B IPC and 7/8/49/88 of the PC Act, had been dismissed from service on account thereof, was acquitted by the trial Court and no departmental enquiry had been conducted. He was held entitled to the salary for the period he remained out of service, by relying on Sub Rule 2 of Rule 7.3 *ibid*, while also pointing out that the decision of the competent authority was contradictory, as on the one hand, he was reinstated and on the other, he was deprived of his salary.

11. A further reference can be made to **Ashok Kumar vs. State of Haryana**, CWP-1406-2019, decided on 01.02.2024, wherein the petitioner, who was acquitted of charges under sections 409/420/467/468/471 and 511 under IPC was ordered to be reinstated with all consequential benefits and granted interest at the rate of 6% per annum on arrears for which he was found entitled

12. This Court in **Sh. Malkiat Singh** (supra), after acquittal of the petitioner in the criminal proceedings instituted against him and the subsequent dropping of the charge sheet issued to him, ordered the period of suspension to be treated as duty period and not as leave of kind due.

13. The submission of learned State counsel with regard benefit of doubt having been granted to the petitioner while acquitting him, due to which his period of remaining out of service cannot be treated on duty, cannot be countenanced, inasmuch as similar plea raised on behalf of the State had not found favour in the case of **Const. Sukhchain Singh vs. State of Punjab and others**, CWP-5228 of 2011, decided on 25.03.2013 and the said period was

directed to be treated as on duty for all intents and purposes.

14. Undeniably, Balraj Singh, who was involved in a corruption, whilst charges against the petitioner were under Section 302 IPC, was on acquittal also reinstated and the period he stayed out of service was treated as duty period whereas as leave of the kind due in case of the petitioner, which besides being discriminatory, more so, is in teeth of the provision of Rule 7.3 ibid as also the judgements afore referred.

15. As a sequel to the above, the present writ petition is allowed and the petitioner is held entitled to salary and other consequential benefits treating the period for which he remained out of service as on duty. Needful be done within a period of two months, from the date when a webprint of this judgment is received.

(AMAN CHAUDHARY)
JUDGE

02.04.2024

M.Kamra

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