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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-19668-2016 (O&M)
Date of Decision: 16.01.2024

Baldev Singh

. . . . Petitioner

Vs.

State of Punjab and others

. . . . Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr. Satraj Singh Toor, Advocate with
Mr. Manraj Singh Toor, Advocate
Mr. Jasraj Singh Toor, Advocate for the petitioner.

Mr. Charanpreet Singh, AAG, Punjab.

SANJEEV PRAKASH SHARMA, J.(Oral)

1. The petitioner was involved in a criminal case and was suspended w.e.f. 03.11.2004 vide order dated 01.04.2005, as he was arrested on the said date. He was released on bail on 26.02.2005, but remained under suspension till 08.09.2006. The petitioner was reinstated and joined the duty on 08.09.2006.
2. The criminal case registered against the petitioner was decided on 03.01.2014 by the trial court and was acquitted by giving him benefit of doubt. Learned counsel for the petitioner submits that the petitioner has been acquitted and he was therefore entitled to receive the full pay and allowances for the period spent under suspension from 03.11.2004 to 08.09.2006.
3. Learned counsel submits that he was however paid only the subsistence allowance for the said period and the remaining amount has been forfeited. The petitioner challenged the said action before this

Court. Learned counsel submits that in terms of Rule 7.3-B of the Punjab Civil Services Rules, Volume I Part 1, the petitioner is entitled to count the entire suspension period as duty period, while the respondents have vide order dated 29.01.2016 held that he is not entitled to count the suspension period as duty period. It was directed that the employee will not be given any financial benefit except the subsistence allowance, and further the suspension period will be considered for the purpose of seniority and promotion. The appeal preferred by the petitioner has been mainly rejected on the ground that he was not honorably acquitted.

4. Learned counsel for the petitioner submits that there is no distinction in cases relating to acquittal, and once the petitioner has been acquitted in a criminal case which was not related to his official duties in any manner, there was no occasion not to treat the period spent under suspension as on duty, and the petitioner was entitled to receive the benefits.
5. *Per contra*, learned counsel for the State has relied on the language used in Rule 7.3-B to submit that a government employee could not be entitled to the entire salary for the period spent during suspension even if he has been acquitted, as the nature of acquittal will have to be examined.
6. In order to appreciate the aforesaid controversy, it would be appropriate to quote Rule 7.3-B which reads as under:

“7.3-B. (1) When a Government employee who has been suspended is reinstated or would have been so re-instated but for his retirement on superannuation while under suspension the

authority competent to order re-instatement shall consider and make a specific order –

(a) regarding the pay and allowance to be paid to the Government employee for the period of suspension ending with re-instatement 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) Notwithstanding anything contained in rule 7.3 or rule 7.3-A, where a Government employee under suspension dies before the disciplinary or court proceedings instituted against him, are concluded, the period between the date of suspension and the date of death shall be treated as spent on duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled, had he not been suspended, subject to adjustment in respect of subsistence allowance already paid.

(3) Where the authority competent to order re-instatement is of opinion that the suspension was wholly unjustified, the Government employee shall, subject to the provisions of sub-rule (8), be paid the full pay and allowances to which he would have been entitled, had he not been suspended:

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 his representation and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government employee shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.

(4) In a case falling under sub-rule (3), the period of suspension shall be treated as a period spent on duty for all purposes.”

7. As per the aforesaid provisions, it is apparent that the authority competent to order the reinstatement has to give its opinion as to

whether the suspension was wholly justified or unjustified, and once it reaches to the conclusion that the suspension was wholly unjustified, the employee would be entitled to full pay and allowances, as per Rule 7.3-B (3) supra.

8. In the present case, the suspension was solely on the ground of the petitioner having been arrested and a criminal case having been registered against him. The petitioner was not ultimately convicted of the offences. Thus, his arrest cannot be said to be legal. However, these aspects have been left undecided by the respondents and merely because while acquitting the petitioner was given the benefit of doubt, the period spent under suspension has been treated to be not on duty.
9. Such course adopted by the respondents cannot be said to be legal or justified. When the suspension was on account of a criminal case where the petitioner has been ultimately acquitted, it would not be relevant as to how the petitioner has been acquitted. What is important is whether the person was arrested legally and what would be the import of acquittal in relation to his earlier arrest. On acquittal, the bail bonds shall stand discharged and cancelled. In view thereof, the suspension initiated on account of the petitioner being arrested has to therefore be revoked and be treated as illegal.
10. Considering the aforesaid, this writ petition deserves to be allowed. The orders passed by the respondents dated 10.01.2016/29.01.2016, and the appellate order dated 02.04.2016 are quashed and set aside. The petitioner is held entitled for full pay during the period of suspension from 03.11.2004 to 08.09.2006, and would also be entitled to count the said period as spent on duty. The arrears be released now

to the petitioner within a period of three months. However, no interest is required to be paid.

- 11. Writ Petition stands *allowed* as above.
- 12. All pending applications also stand disposed of.
- 13. No costs.

(SANJEEV PRAKASH SHARMA)
JUDGE

January 16, 2024
Mohit goyal

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |