

Neutral Citation No. 2024:PHHC:046957-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
(114) **LPA-1144-2023 (O&M)**
Decided on : 08.04.2024

Sandeep SandhiAppellant(s)
Versus
State of Punjab & othersRespondent(s)

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA,
ACTING CHIEF JUSTICE
HON'BLE MS.JUSTICE LAPITA BANERJI

Present: Mr.Deepanshu Mehta, Advocate for the appellant (s).

G.S. Sandhawalia, Acting Chief Justice (Oral)

1. Consideration in the present appeal is to the judgment dated 03.07.2023 passed by the Learned Single Judge in CWP-8638-2023 whereby the writ petition had been dismissed while upholding the order dated 27.03.2023 (Annexure P-12) whereby the claim of the writ petitioner to consider his suspension period from 02.02.2021 to 27.07.2022 as spent on duty, was rejected by the Chief Engineer.
2. Counsel has vehemently argued that after the appellant had been released on bail on 01.03.2021, he had reported for duty on 05.03.2021 and thereafter made a request for reinstatement on 30.07.2021 (Annexure P-5) and therefore, the reinstatement at a belated stage on 27.07.2022 would entitle him for financial benefits from the State.
3. To appreciate the issue raised, it is necessary to notice that it is not the case of suspension during the period of trial but the fact that the appellant's conviction had been upheld in appeal on 01.02.2021 in a matrimonial dispute by the Sessions Judge, Hoshiarpur. Resultantly, he had been taken into custody and was suspended on the very next day on 02.02.2021. His sentence was suspended in CRR-213-2021 by this Court on 01.03.2021. It is thus apparent that he was a convict for all purposes till the same was set aside.

4. The appellant then filed CRM-M-6854-2022 whereby he sought to compromise in the matrimonial dispute and the Learned Single Judge of this Court passed an order dated 18.02.2022 directing the parties to appear before the Illaqa Matistrate/Trial Court for recording the statements. Resultantly, report dated 30.03.2022 was submitted to this Court whereby the compromise was held to be genuine and voluntary. It was in such circumstances, CRM-M-6854-2022 which was filed for quashing on the basis of the compromise was accepted only on 24.05.2022 (Annexure P-7). It was only after the said affirmative action that the criminal proceedings were rendered void as the appellant was reinstated immediately after a period of 2 months on 27.07.2022.

5. It is in such circumstances, the Learned Single Judge came to the conclusion that there was no unreasonable delay on the basis of which he could seek financial benefits for the delay. The authorities have examined his case diligently in as much as while passing the order dated 25.07.2022, it was held that keeping in view the principle of 'No Work, No Pay', he would not be entitled for any financial benefits and it was at that time he was reinstated.

6. The appellant had approached this Court seeking financial benefits in CWP-28989-2022 whereby directions were issued to decide his representation dated 26.08.2022 (Annexure P-9). Resultantly, the impugned order was passed by the authorities taking into consideration Rule 7.3(b)(1) of the Punjab Civil Services Rules, Vol-1 Part-1 and the claim was rejected. The law on this issue stands settled by the judgment of the three-Judge Bench of the Apex Court in ***Civil Appeal No. 4114 of 2006, Uttri Haryana Bijli Vitran Nigam and another vs. Shashi Kumar***, that the said exercise is to be done by

the authorities and the applicability of the said Rules and the amount payable is to be seen by them in the manner in which payment is to be made for the said period. The relevant portion reads thus:-

“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.

Unfortunately, in these cases the competent authority did not pass the required order in terms of Rule 7.3 of the Rules and when Shashi Kumar made representation for his reinstatement, the Chief Engineer arbitrarily rejected the same by assuming that even though he had been acquitted, the charge of illegal gratification could be treated as proved. In other cases, no order was passed by the concerned authority. Therefore, in the peculiar facts of these cases, the High Court was justified in ordering reinstatement of the respondents.

Insofar back wages are concerned, we are prima facie satisfied that the High Court was not justified in directing payment of full salary and allowances because the respondents had not been fully exonerated.

Each one of them was given benefit of doubt by the High Court or the trial Court. Therefore, the High Court should have directed the competent authority to pass appropriate order in terms of the rules reproduced above. We may have adopted that course and directed the concerned authority to pass necessary order within a specified time frame, but, keeping in view the long lapse of time, we do not consider it proper to exercise the power of this Court under Article 136 of the Constitution and interfere with the order for payment of full back wages.

With the above observations the appeals are dismissed.

However, the question of law is left open to be decided in appropriate case. We also make it clear that the impugned orders shall not be treated as precedent for other cases and the High Court shall decide the pending matters or which may be filed hereinafter without being influenced by the order passed in Shashi Kumar’s case.”

7. In such circumstances, having not worked for that period and on account of being a convict, the appellant could not have been reinstated at an earlier point of time. Resultantly, finding no fault in the procedure which had been followed by the authorities and since the judgment passed by the Learned Single Judge does not suffer from any infirmity which would warrant interference by this Court, we are not inclined to entertain the present appeal. The same is hereby dismissed in limine. All pending application(s) also stand disposed of.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

08.04.2024
Sailesh

(LAPITA BANERJI)
JUDGE

Whether speaking/reasoned :	Yes	
Whether Reportable :		No