

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

224

CWP-9047-2016

Date of decision :13.03.2024

Jaswinder Singh @ Mika

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Ms. Jasneet Kaur and
Ms. Himani Makkar, Advocates for the petitioner.

Mr. Swapan Shorey, D.A.G. Punjab

AMAN CHAUDHARY, J.

1. The prayer in the present Civil Writ Petition filed under Articles 226/227 of the Constitution of India in the nature of certiorari, is for setting aside order dated 29.12.2014, Annexure P-7 and order dated 21.05.2015, Annexure P-8 passed by respondent No. 2, vide which order dated 29.12.2014 was upheld.

2. Learned counsel would submit that the petitioner has been, in violation of Rule 7.3 of Punjab Civil Services Rules, Vol. I, Part I, denied salary for the period he remained under suspension w.e.f 14.05.1999 to 19.05.2014, on account of FIR No.13, dated 03.05.1995 having been registered against him, wherefrom, subsequently, he was acquitted, vide judgment dated 02.07.2012, however the said period was counted for seniority and pensionary benefits. In the criminal case, no overt act was attributed to the petitioner, while the allegations of inflicting injuries on the nephew of the complainant were leveled against his father. During the pendency of the said case, petitioner was granted compassionate appointment as a Clerk on 02.09.1998, as his father, who was working as School

Teacher with the respondent-Department, had passed away. Neither any

departmental enquiry was initiated against him nor were his services terminated.

To buttress her submissions, reliance is placed on the judgment of a Bench of three Judges of Hon'ble the Supreme Court in **Brahma Chandra Gupta vs. Union of India**, 1984 (2) SCC 433.

3. Conversely, the learned State counsel contends that the petitioner was not entitled to the salary, as he remained suspended on account of a criminal case having been registered against him. Thus, the impugned orders are well reasoned. He relies on **Ranchhodji Chaturji Thakore vs. Gujarat Electricity Board**, (1996) 11 SCC 603 and **Dilpreet Singh vs. State of Punjab and others**, passed in CWP-15095-2008, decided on 27.08.2008.

4. Heard learned counsel on either side.

5. Apropos the prayer for grant of full salary during suspension period, it would be apposite to refer to Rule 7.3 *ibid*, which 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, 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.”

6. It would be worthwhile to make a reference to the judgment rendered by 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.”

7. In CWP-16192-2010, titled as **Sukhchain Singh vs. State of Punjab**, vide order dated 18.03.2013, wherein the petitioner, was dismissed from service on the ground of conviction under Section 406 and 498-A IPC and after he was acquitted in revision and no departmental enquiry was initiated, was held entitled by this Court to grant of pay and allowances by referring to Rule 7.3(2) *ibid*, for the period he had remained out of service especially when the same was treated as period spent on duty for all purposes.

8. In the case of **Ex-Sub Inspector Ram Kishore vs. State of Haryana and another**, 2020 (1) SCT 828, the petitioner, who was charged for offences under Sections 119/213/342/368/370/120B IPC and 7/8/49/88 of the PC Act, was dismissed from service on account thereof, however was acquitted by the trial Court and no departmental enquiry had been conducted. He was held entitled by this Court to the salary for the period he remained out of service, by relying on Sub Rule 2 of Rule 7.3 of the Punjab Civil Services Rules, while observing that the decision of the competent authority was nothing but a contradiction, as on the one hand, he was reinstated and on the other, he was deprived of his salary.

9. In **Brahma Chandra Gupta** (supra), it was ordered that salary for the suspension period of the appellant, who was acquitted of the criminal charges

against him under Sections 19(F) of the Indian Arms Act and 5 of the Indian Explosives Substances Act, be released to him at an interest of 9% per annum and held that, "...The appellant was a permanent UDC who has already retired on superannuation and must receive a measure of socio-economic justice. Keeping in view the facts of the case that the appellant was never hauled up for departmental enquiry, that he was prosecuted and has been ultimately acquitted, and on being acquitted he was reinstated and was paid full salary for the period commencing from his acquittal, and further that even for the period in question the concerned authority has not held that the suspension was wholly justified because three-fourth of the salary is ordered to be paid, we are of the opinion that the approach of the trial court was correct and unassailable. The learned Trial Judge on appreciation of facts found that this is a case in which full amount of salary should have been paid to the appellant on his reinstatement for the entire period. We accept that as the correct approach. We accordingly allow this appeal, set aside the judgment of first appellate court as well of the High Court and restore the one of trial court with this modification that the amount decreed shall be paid with 9 per cent interest p.a. from the date of suit till realisation with costs throughout."

10. Facts that emerge herein, are that the Department placed the petitioner under suspension and upon he having received acquittal, the intervening period was treated for all intents and purposes, including seniority and pensionary benefits, but for salary, even though, it is evincible from Rule 7.3(2) *ibid*, that upon reinstatement after acquittal, an employee, who had been dismissed, removed, compulsorily retired, or suspended from services due to a conviction, would be entitled to pay and allowances. The impugned order however offers no reason, much less sufficient, to deny the said benefit to the petitioner, thus, making

it unsustainable in light of the law as enunciated above.

11. The judgments cited by the learned State counsel, being distinguishable on facts, are not applicable to the instant case.

12. On a cumulative consideration and as a fall out thereof, the present writ petition is allowed. Sequentially, the orders dated 29.12.2014 and 21.05.2015 are hereby set aside. The petitioner is held entitled to salary and consequential benefits for the period he remained under suspension, along with interest @ 6% per annum. Needful be done within a period of two months, from the date when a webprint of this judgment is received.

(AMAN CHAUDHARY)
JUDGE

13.03.2024
G Arora

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