

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

109

CWP-478-2017
Date of decision: 04.04.2024

DHARMPAL MALIK
Vs.
LIC OF INDIA AND OTHERS
....PETITIONER
...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. N.K. Malhotra, Advocate
for the petitioner.

Mr. Akshay Jain, Advocate
for the respondents.

JAGMOHAN BANSAL, J (ORAL)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 13.02.2016 (Annexure P-5) whereby respondent has treated period from 21.05.2012 to 31.12.2013 as ‘not spent on duty’ and rejected his claim of full salary for the said period.
2. The petitioner during January’ 1972 to December’ 1984 worked with Indian Army and thereafter joined respondent-Corporation. He along with his relatives came to be embroiled in FIR No. 191 under Sections 148, 149, 452, 307, 302 IPC and Section 27 of the Arms Act, 1959. He was arrested. On account of his arrest, the respondent in terms of Life Insurance Corporation of India (Staff) Regulations, 1960 (for short ‘1960 Regulations’) put the petitioner under suspension. The Investigating Officer after completing investigation filed his report under Section 173 Cr.P.C. The petitioner faced trial and came to be acquitted vide judgment dated 04.07.2015 (Annexure P-6) passed by trial Court.

The date of superannuation of the petitioner was 31.12.2013. The respondent did not initiate departmental proceedings against the petitioner and he was put under suspension because of deeming provision. He was in judicial custody on the date of his retirement i.e. 31.12.2013.

3. Mr. N.K. Malhotra, Advocate submits that petitioner is entitled to full wages during his period of suspension, despite the fact that during the said period he was in judicial custody.

In support of his contention, he relies upon judgment of this Court in “*Bhag Singh Vs. Punjab & Sind Bank reported as 2005(6) SLR 464; Ajmer Singh Pundeer Vs. Oriental Insurance Co. Ltd. New Delhi and others bearing CWP-2818-2010 decided on 09.09.2011; Ram Anjore Vs. Uttari Haryana Bijli Vitran Nigam Limited through its Managning Director, Panchkula and others reported as 2017(4) SLR 755 and Shashi Kumar Vs. Uttri Haryana Bijli Vitran Nigam bearing CWP-14375-2003 decided on 07.12.2004.*

As per judgment of this Court in **Shashi Kumar** (Supra), there is no difference between acquittal and honourable acquittal. The petitioner was acquitted in the aforesaid FIR, thus, he was entitled to full salary for the aforesaid period. In any case, he was entitled to subsistence allowance to the extent of 50% of his salary for the first 180 days and 75% thereafter.

4. Per contra, Mr. Akshay Jain, Advocate submits that FIR was not registered at the behest of respondent. The petitioner and his family members were implicated in a case which was un-connected with the affairs of respondent. The petitioner during the alleged period was in judicial custody and he cannot be paid full salary for the said period. He was entitled to 50% of

salary for first 180 days and 1/4th thereafter because delay was not attributable to respondent-Corporation.

5. I have heard the arguments of learned counsel for the parties and perused the record.

6. The conceded position emerging from record is that petitioner came to be arrested on 21.05.2012 in FIR No. 191. The said FIR had no concern with the affairs of respondent. The date of superannuation of petitioner was 31.12.2013 and he was in judicial custody on the said date. Meaning thereby, the petitioner remained under suspension from 21.05.2012 to 31.12.2013 and during the entire period, he was in judicial custody. The petitioner is claiming full salary for the period from 21.05.2012 to 31.12.2013 i.e. date of suspension to date of superannuation. The respondent has declared aforesaid period as 'non duty period', however, counted for the purpose of length of service. He has been extended all retiral dues except full salary for the aforesaid period.

7. The petitioner was suspended in terms of Regulation 36 of 1960 Regulations. The relevant extracts of said Regulation is reproduced as below:-

Suspension:

36. (1) The appointing authority or any authority to which it is subordinate or any other authority empowered in that behalf (vide Schedule IV) may place an employee under suspension-

(a) where a disciplinary proceeding against him is contemplated or is pending; or

(b) where a case against him in respect of any criminal offence is under investigation or trial.

(2) An employee who is detained in custody, whether on a criminal charge or otherwise, for a period exceeding 48 hours shall be deemed to have been suspended with effect from the date of

detention, by an order of the appointing authority, and shall remain under suspension until further orders.

(3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon an employee under suspension is set aside on appeal or on review under these rules and the case is remitted for further enquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon an employee is set aside or declared or rendered void in consequence of or by a decision of a court of law and the disciplinary authority, on consideration of the circumstances of the case, decides to hold a further enquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the employee shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

Provided that no such further enquiry shall be held unless it is intended to meet a situation where the Court has passed an order purely on technical grounds without going into the merits of the case.

(5) An order of suspension made or deemed to have been made under this rule may at any time be revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate.

From the perusal of above quoted Regulation, it is evident that an employee who is detained in custody whether on a criminal charge or otherwise, for a period exceeding 48 hours shall be deemed to have been suspended with

effect from the date of detention. The petitioner was suspended on account of his detention and he is not challenging his suspension.

8. Regulation 37 provides for subsistence allowance during the period of suspension. The said Regulation is reproduced as below:

Subsistence Allowance:

37. An employee under suspension shall be entitled to subsistence allowance as specified hereunder:-

(a) Where the enquiry is domestic, for the first 90 days of suspension, 50% of the salary which the employee would have drawn had he been on privilege leave; 75% of the salary thereafter.

Provided that where such enquiry is prolonged beyond a period of 90 days for reasons directly attributable to the employee, the subsistence allowance shall, for the period exceeding 90 days, be reduced to 1/4th of such salary.

(b) Where the enquiry is conducted by an outside agency, for the first 180 days of suspension, 50% of the salary he would have drawn had he been on privilege leave; 75% of the salary thereafter.

Provided that where such enquiry is prolonged beyond a period of 180 days for reasons directly attributable to the employee, the subsistence allowance shall, for the period exceeding 180 days, be reduced to 1/4th of such salary.”

9. From the perusal of above-quoted Regulation, it comes out that there are two clauses i.e. Clause (a) and (b) which contemplate two situations i.e. arising on account of enquiry initiated by Corporation and enquiry initiated by outside agency. There was no enquiry against the petitioner by Corporation, thus, his case at the most was covered by Clause (b).

As per said clause, an employee is entitled to 50% of salary for first 180 days and 75% thereafter. In case, enquiry is prolonged beyond a period of

180 days, for the reasons directly attributed to the employees, the subsistence allowance shall be reduced to 1/4th of such salary.

10. From the perusal of impugned order, it is evident that there is no allegation against the petitioner that enquiry travelled beyond 180 days on account of fault of the petitioner. The matter was investigated by police and trial was conducted by Judicial Officer. The petitioner during the entire period was in custody. Firstly, there is no allegation or finding on the part of respondent that enquiry prolonged beyond 180 days for reasons directly attributable to employee and secondly from the record it does not come out that petitioner was, at any point of time, at fault for conclusion of enquiry after 180 days.

It is apt to mention here that petitioner was facing criminal trial and the expression used in the aforesaid regulation is 'enquiry' and if it is read with Clause (a), it indicates that it does not compass criminal proceedings. Accordingly it is held that petitioner was entitled to 50% of last drawn salary for first 180 days as subsistence allowance and 75% of salary thereafter. If he has not been paid aforesaid amount, it would be released to him within 3 months along with interest @ 6% per annum.

11. The petitioner is claiming full wages for the aforesaid period on the ground that there is no difference between acquittal and honourable acquittal. The period spent in custody cannot be treated as 'non-duty' period. His acquittal establishes that he was not at fault, thus, he should be paid full wages.

The reliance placed by the petitioner on the afore-cited judgments is misplaced. There is no judgment which holds that employer would be liable to pay full wages, despite employee being in custody which was because of some private dispute. The FIR was not lodged by respondent. The petitioner was

arrested in a private dispute and during the aforesaid period, he was in custody. The respondent did not dismiss or removed him from service. The respondent paid him subsistence allowance. The respondent was not at fault for his custody. He has not worked during the said period. Despite being absent from duty, the respondent, in terms of its regulations, has paid subsistence allowance. Asking the respondent to pay 100% salary when there was no fault on the part of the respondent would be highly unjustified and unreasonable. Accordingly, claim of 100% salary of the petitioner for the aforesaid period is hereby rejected.

12. The petition stands dismissed of in above terms.

04.04.2024
manoj

[JAGMOHAN BANSAL]
JUDGE

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