

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(106)

LPA-1903-2023 (O&M)

Decided on : 07.02.2024

Rajbir

.....Appellant(s)

Versus

State of Haryana & others

.....Respondent(s)

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

Present:- Mr.Sarvesh Malik, Advocate for the appellant.

Mr.Deepak Balyan, Addl.A.G., Haryana.

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

1. The present appeal seeks consideration of the order dated 02.04.2019 passed by the Learned Single Judge in CWP-7366-2018.
2. The Learned Single Judge had not interfered with the order dated 03.12.2015/18.12.2015 (Annexure P-6) wherein the period from 07.10.2013 to 17.09.2014 was treated as 'leave of kind due'. The reason for doing so was that an FIR No.664 dated 04.10.2013 was registered under Sections 354, 323, 506 IPC at Police Station Jhajjar against the appellant who was working as Technician. The appellant had misbehaved with a lady Doctor by showing indecent gestures, had slapped her and also threatened to eliminate her. Apparently, the appellant was also arrested and thereafter placed under suspension from 07.10.2013 and reinstated on 16.09.2014 subject to the decision of the criminal proceedings and the departmental enquiry under Rule 7 of the Punjab Civil Service Rule, Vol-I, Part-I (for short, the 'PCS Rule').

3. On account of having entered into a compromise he was successful in getting the FIR quashed by filing CRM-M-23005-2014 which was decided on 25.11.2014 (Annexure P-3). Resultantly, the criminal proceedings were discharged on 06.12.2014 (Annexure P-4) by the Chief Judicial Magistrate, Jhajjar. Keeping in view the compromise effected, the departmental proceedings were also dropped on 10.07.2015 (Annexure P-5). On passing of the said order, the appellant filed a representation dated 02.02.2018 (Annexure P-7) pleading that he was not given any show cause notice when the said order was passed which also showed that he had been treated to be on duty for the said period.

4. In the reply filed by the State, it has been averred that it had been inadvertently mentioned that the employee was treated to be on duty for all purposes whereas from the language of the impugned order it was clear that the intent had been that the suspension period from 07.10.2013 to 17.09.2014 was to be treated as 'leave of kind due'. Reliance has been placed upon Rule 7.5 of the PCS Rules which provides that the full amount would only be given if the officer is acquitted of the blame and the officer's liability arose from circumstances beyond his control or the suspension being held by the competent authority to be unjustified. Reliance has also been placed upon the provisions of Rule 7.3(2) that if the employee has been fully exonerated or in the case of suspension, if it was wholly unjustified, then he shall be entitled for full pay and allowances. But in the present case, absence from duty was on account of involvement in the case of moral turpitude under Sections 354 & 506 IPC and it was not that the State Government was responsible to keep

him away from his normal duty and he was, thus, entitled for salary for the time he remained under suspension.

5. Learned Single Judge has relied upon the judgment of the Division Bench in LPA-930-2012 titled *Sat Pal Dhawan Vs. State Bank of Patiala & others*, decided on 01.04.2013 principally on the ground that if the employer is not responsible for the absence on account of involvement of an employee in criminal proceedings, then the employee is not entitled for salary or continuity in service. A perusal of the said judgment would go on to show that reliance had also been placed upon the judgment of the Supreme Court in **Union of India & others Vs. Jaipal Singh, 2004 (1) SCT 108, Ranchhodji Chaturji Thakore Vs. The Suptd. Engineer, Gujarat Electricity Board, 1997 (1) SCT 824** and **Baldev Singh Vs. Union of India & others, 2005 (10) JT 213** regarding this aspect.

6. Merely because there is an error in the order would not help him in any manner by insisting the appellant to be treated “on duty”. The rule is crystal clear that only where it is wholly unjustified, the State would give the full pay and allowances on account of the fact that the suspension was without any basis. In the present case, as noticed, it is the act and conduct of the appellant himself which has led to the said situation whereby he was arrested while misbehaving with the lady Doctor at his work place. Having been arrested and also being in detention at that point of time, the financial benefit cannot thus accrue to him. In such circumstances, we are of the considered opinion that there is no error apparent in the order of the Learned Single Judge or that the action of the respondents in treating the said period not on duty. Resultantly, we are of

the considered opinion that there is no merit in the present appeal which is also time-barred by inordinate delay of 590 days. The request for filing a better affidavit on 01.12.2023 to explain the condonation of delay has also not been complied with even after a period of 2 months having gone by.

7. Resultantly, in view of the above discussion, the present appeal along with the application for condonation of delay are hereby dismissed.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

February 7th, 2024
Sailesh

(LAPITA BANERJI)
JUDGE

Whether speaking/reasoned :	Yes	
Whether Reportable :		No