

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CWP-1406-2019 (O&M)

Decided on :01.02.2024

ASHOK KUMAR

. .Petitioner

Versus

STATE OF HARYANA AND OTHERS

. . . Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

PRESENT: Mr. Rohit Mittal, Advocate for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

HARSIMRAN SINGH SETHI , J. (Oral)s

In the present petition, prayer of the petitioner is that though the petitioner has been suspended vide order dated 09.11.2015 on the basis of criminal proceedings pending against the petitioner but thereafter, the petitioner was acquitted from all charges by the Competent Court of law on 18.10.2018, hence, the respondents are under an obligation to reinstate the petitioner in service forthwith with all consequential benefits.

Certain facts needs to be mentioned for correct appreciation of the issue in hand.

The petitioner was appointed as Accounts Clerk with the Department of Development and Panchayat. The petitioner was posted in the office of Block Development and Panchayat Officer, Sihma at Narnaul, Haryana. The petitioner is a regular employee keeping in view the fact that in the year 2001 his services were regularized by the respondents, copy of appointment letter dated 15.05.2001 has been appended as Annexure P-1.

On 26.10.2015, an FIR was registered against the petitioner under Sections 409, 420, 467, 468, 471 and 511 of the Indian Penal Code, 1860 at Police Station City Narnaul, District Mahendergarh.

Keeping in view the said FIR, the petitioner was suspended on 09.11.2015, copy of which has been appended as Annexure P-3. Thereafter

on 13.10.2018, the petitioner was acquitted from all the charges levelled against him in the FIR, by the Competent Court of Law.

On being acquitted, the petitioner submitted a joining report dated 05.11.2018 that he should be reinstated in service as the basis of suspension no longer exist but the said joining report was not accepted by the respondent. As the petitioner was not being reinstated in service by the respondents, the petitioner has filed the present petition that he should be reinstated in service w.e.f the date he has been acquitted from the competent Court of Law with all consequential benefits.

After notice of motion, the respondents have filed the reply wherein they stated that keeping in view the fact that an FIR was registered against the petitioner, the petitioner was suspended on 09.11.2015 by the respondents and after he had submitted a joining report dated 05.11.2018 upon being acquitted from the competent Court of law in the criminal proceedings, a committee was formed to advise as to whether the petitioner is entitled for the joining the post or not. The report of the committee also stated that as there is no disciplinary proceedings initiated against the petitioner and the petitioner was suspended only on the ground of the registration of an FIR and he has already been acquitted from the Competent Court of law, the orders are to be passed by the Director Development and Panchayat Officer and till any such order is passed, the petitioner cannot be reinstated in service.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

From the above facts, it transpires that upon the registration of an FIR on 26.10.2015, the petitioner was suspended from service on 09.11.2015. The petitioner continued under suspension during the pendency

of the criminal proceedings and after he was acquitted by the competent Court of law on 13.10.2018, the petitioner demanded his reinstatement as, the basis for suspension no longer exist. The petitioner is running from pillar to post to get himself reinstated in service but respondents are adamant not to reinstate the petitioner in service after being acquitted from all charges in the FIR concerned.

An employee can only kept under suspension, in case, there are disciplinary proceedings pending against him or the employee is involved in any other criminal proceedings.

In the present case, keeping in view the FIR registered against the petitioner, the petitioner was suspended on 09.11.2015 but now he has already been acquitted from all charges levelled against him by the Competent Court of Law as far back as 13.10.2018 hence, there is no basis to keep the petitioner under suspension especially when the department had chosen not to initiate any disciplinary proceedings against the petitioner.

No rule has been cited by the learned counsel for the respondents that the suspension of the petitioner is valid even after his acquittal from all charges levelled against him. Once, the petitioner has also given the joining report on 05.11.2018 to reinstate, the respondents are under obligation to reinstate the petitioner forthwith without putting the queries about the reinstatement or to constitute any committee to advise whether, the petitioner is entitled for reinstatement or not. The suspension can only be ordered or continue under the rules governing in the service and no rule has been cited by the respondents that in the absence of any disciplinary proceedings pending or the criminal proceedings pending against the petitioner, the petitioner cannot be kept under suspension.

After 13.10.2018, there is no proceedings pending against the

petitioner so as to authorize or give jurisdiction to the respondents to keep the petitioner under suspension. For the last more than five years, the petitioner is being made to run from pillar to post and the respondents are not performing their duties.

Keeping in view the above, as nothing has been informed to this Court that there existing any material or justification after the acquittal of the petitioner on 13.10.2018 by the Competent Court of law, to keep the petitioner under suspension, **the present petition is allowed and the respondents are directed to reinstate the petitioner w.e.f 13.10.2018 with all consequential benefits.** The petitioner will be entitled for the salary for the period in question and even with regard to the period of suspension from 09.11.2015 till 13.10.2018, the petitioner will also be granted the benefit of duty period for all intents and purposes as, the petitioner was acquitted from all the charges levelled against him in the FIR. Hence, the total period from 09.11.2015 onwards, till the reinstatement, will be treated as the duty period for all intents and purposes and petitioner will be entitled for the full salary for the said period alongwith all consequential benefits. Whatever the subsistence allowance has been paid to the petitioner for the said period be deducted by the respondents while granting him the arrears of the full salary.

It may be noticed that the petitioner has been made to litigate since long so as to entitle him to get the benefit of reinstatement in service w.e.f. 13.10.2018 with all consequential benefits. As per the judgment of a Coordinate Bench of this Court in of **J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355**, wherein it has been held that where an amount belonging to an employee, has been retained and used by the respondents, upon the release of the said amount, on a later date, the interest has to be

given. The relevant paragraph of J.S. Cheema's case (supra) is as under: -

“The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is lying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it.”

Keeping in view the facts and circumstances noticed herein before, the petitioner is also entitled for the interest @ 6% per annum on the arrears for which the petitioner is found entitled herein above, from the date the amount became due till the actual payments have been released to him.

Let the present order be complied within the period two months from date of receipt of copy of this order.

The present petition is allowed in above terms.

Pending civil miscellaneous application, if any, shall also stand disposed of.

01.02.2024

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Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No

(HARSIMRAN SINGH SETHI)
JUDGE