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THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH.

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Reserved on: 28.02.2025.
Date of Decision: 25.03.2025.

(1) CWP-6913-2006 (O&M).

BALWANT SINGH

... Petitioner

Versus

STATE OF HARYANA AND OTHERS

... Respondent(s)

(2) CWP-6914-2006 (O&M).

SUCHA SINGH

... Petitioner

Versus

STATE OF HARYANA AND OTHERS

... Respondent(s)

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CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. R.K. Malik, Sr. Advocate, with
Mr. Kartikey Chaudhary, Advocate,
for the petitioner(s) in both the petitions.

Mr. K.K. Chahal, Addl. A.G. Haryana.

VINOD S. BHARDWAJ, J. (ORAL)

Involving a question as to whether an employee is entitled to all service benefits consequent upon his acquittal in criminal proceedings that had no connect to any official duties, both these petitions have been filed by the petitioners who were employees with the same Department and were co-accused in the FIR but stand acquitted. The facts, for ready reference are being culled out from CWP-6913-2006 titled as 'Balwant Singh Vs. State of Haryana and others.'

2 The said petition has been filed seeking quashing of the condition imposed vide order dated 28.04.2006 to the extent the petitioner has been deprived backwages for the period during which he remained out of service. A prayer has also been made that the respondents be directed to pay full salary and allowances for the period he remained out of job.

FACTS

3 The petitioner was appointed as a Conductor in the respondent department in 1985. He was convicted for offences under Sections 498-A and 304-B IPC vide judgment dated 29.04.1991 and was subsequently dismissed from service on 22.08.1991 on the basis of this conviction.

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4 The petitioner challenged his dismissal in CWP No. 3119 of 1992 on the ground that the General Manager was not the competent authority to pass such an order. The writ petition was allowed on 03.11.1992, leading to the petitioner's reinstatement in compliance with the court's order.

5 However, he was again suspended on 05.01.1993, and eventually the Transport Commissioner dismissed him from service on 15.02.1993, reiterating that the dismissal was based solely on his conviction.

6 The petitioner preferred a criminal appeal against his conviction which was allowed by the Hon'ble High Court vide judgment dated 17.11.2005, acquitting him of all charges.

7 Following his acquittal, the petitioner submitted a representation on 13.02.2006, seeking reinstatement with continuity of service and full back wages but no action was taken. A final demand notice was hence served, indicating that failure to reinstate him by 31.03.2006 would compel him to seek legal recourse.

8 Consequently, the petitioner filed CWP No. 5396 of 2006 titled as 'Balwant Singh v. State of Haryana' in which a notice of motion was issued for 01.05.2006. The respondents however reinstated him on 28.04.2006 but imposed a condition denying back wages for the period he remained out of service. Hence, the present petition.

ARGUMENTS OF THE PETITIONER

9 The counsel for the petitioner contends that the petitioner's dismissal from service was premised solely on his conviction under Sections

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498-A and 304-B of the Indian Penal Code. However, upon his acquittal by the Hon'ble High Court, the conviction order passed by the Learned Sessions Judge stood set aside. Once the foundation of the dismissal ceased to exist, the petitioner was legally entitled to reinstatement with all consequential benefits. Any action to the contrary would be unsustainable in law, as it would amount to penalizing an individual despite the judicial annulment of the very basis of the dismissal.

10 Further, the counsel for the petitioner places reliance on Rule 7.5, Volume I, Part I of the Punjab Civil Service Rules, which explicitly provides that an employee placed under suspension due to criminal proceedings is entitled to full pay and allowances upon acquittal. He contends that the said provision embodies the principle that an employee should not suffer financial prejudice due to a criminal charge that ultimately does not stand judicial scrutiny. It is argued that the respondents' decision to deny the petitioner back wages despite the clear mandate of Rule 7.5 is legally untenable and contrary to established service jurisprudence.

11 Further, the counsel submits that it is a well-settled principle of law that before determining the manner in which the period of suspension and dismissal is to be treated, an employee must be given an opportunity of hearing. This requirement stems from the fundamental principles of natural justice, which mandate that no adverse decision affecting the rights of an individual should be taken without affording them an opportunity to present their case. In the present case, the respondents failed to issue a show-cause

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notice or provide the petitioner with any opportunity to be heard before passing the impugned order. Such procedural impropriety vitiates the order, rendering it arbitrary and liable to be set aside.

12 He also submits that the record reflects that despite the petitioner's acquittal on 17.11.2005, his reinstatement was unduly delayed until 28.04.2006. This delay, being unexplained and arbitrary, has resulted in the wrongful deprivation of the petitioner's salary for the intervening period. The respondents, having failed to justify such delay, cannot be permitted to deny the petitioner his lawful entitlement for the period during which he was wrongfully kept out of service.

13 The counsel places reliance on a Division Bench judgment of this Court in **Shashi Kumar v. UHBVN & Another reported as 2005 (1) RSJ 718** and contends that in light of the precedent set by the Hon'ble Division bench, it is evident that an employee who has been acquitted by a criminal court is entitled to reinstatement with all consequential benefits. The petitioner, being similarly situated, is entitled to the same relief. Accordingly, the principles laid down in the said judgment must be applied to the present case, ensuring that the petitioner is granted reinstatement along with all attendant benefits.

ARGUMENTS OF THE RESPONDENTS

14 The learned counsel for the respondents submits that the petitioner was implicated in a criminal case registered under Sections 498-A and 304-B of the Indian Penal Code (IPC) on the basis of a complaint filed

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by Baj Singh, the brother of the deceased Baljit Kaur. The said FIR, bearing No. 34 dated 18.05.1990, was lodged at Police Station G.R.P., Kurukshetra. At the time of registration of the case, the petitioner was employed as a Conductor with Haryana Roadways, Kurukshetra.

15 The petitioner, along with his co-accused Suchha Singh, was tried before the Learned Additional Sessions Judge, Kurukshetra. Upon conclusion of the trial, the petitioner was convicted vide order dated 29.04.1991 and sentenced to rigorous imprisonment of two years with a fine of Rs. 1,000 under Section 498-A IPC and rigorous imprisonment of seven years under Section 304-B IPC. In light of the conviction, the petitioner's services were terminated by order No. 2914/ECC dated 22.08.1991, passed by Respondent No. 3. The other factual aspects about the first round of litigation and the subsequent acquittal by the High Court in criminal proceedings is not disputed.

16 Following his acquittal, he was reinstated into service with immediate effect. However, the reinstatement order dated 28.04.2006 (Annexure P-3) specifically stated that the petitioner would not be entitled to back wages for the period he remained out of service due to his conviction.

17 The counsel for the respondents contends that the Transport Department had no role in the initiation of criminal proceedings against the petitioner, as the case arose out of a private complaint. The conviction of the petitioner was the sole reason for his dismissal, and as a result, the department was unable to avail his services during the intervening period. In such

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circumstances, the respondents cannot be held liable for the payment of back wages on the principle of ‘no work no pay.’

18 The respondents place strong reliance on the judgment of the Hon’ble Supreme Court in *Union of India & Others v. Jai Pal Singh, Civil Appeal No. 8565 of 2003, reported as 2004 (2) S.L.R. (SC) 251*, wherein it was held that back wages are not an automatic entitlement upon acquittal. It is argued that unless an acquittal is based on a finding of false implication or malicious prosecution, the employer is not obligated to compensate an employee for the period during which they were lawfully dismissed. The respondents emphasize that the petitioner’s acquittal does not, in itself, entitle him to back wages, particularly since his dismissal was the direct result of a judicially pronounced conviction.

19 The respondents further contend that the principles of financial accountability dictate that salary must be paid only for work performed. Since the petitioner did not render service to the department for the period he remained dismissed, granting him back wages would amount to an unjustified burden on the public exchequer. It is thus submitted that the petitioner’s claim for back wages is devoid of merit and should be rejected.

20 Further, the counsel contends that the petitioner is also not entitled to back wages or any other benefits for the period he remained out of service even in view of the applicable service rules. The claim is devoid of merits and the petition deserves to be dismissed.

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21 He further submits that as per **Rule 7.3(5) of the Punjab Civil Services Rules, Volume-I, Part-I**, the period of absence from duty cannot be treated as a period spent on duty unless specifically directed by the competent authority. The said rule further provides that, at the discretion of the authority, such absence may be converted into leave of any kind that is due and admissible. In the present case, no such direction was issued by the competent authority to treat the petitioner's absence as duty, thereby disentitling him from claiming any salary or allowances for the relevant period.

22 It is stated that **Note 8 of Rule 7.3(5)** explicitly states that if no order is passed treating the period of absence as duty, it shall be treated as "non-duty." This further reinforces the position that the petitioner cannot claim back wages for the period during which he was out of service following his conviction.

23 He emphatically submits that **Rule 4.9 of the Punjab Civil Services Rules, Volume-I, Part-I**, stipulates that while all duty in a time-scale post counts towards increments, periods that do not qualify for increment shall be added to the normal date of the next increment. Since the petitioner's absence has not been recognized as duty, he cannot claim any increments or salary benefits for the said period. The respondent thus submits that the petitioner has no legal right to claim back wages or other service-related benefits for the period he remained out of employment. Accordingly, the present writ petition is devoid of merit and liable to be dismissed.

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24 No other arguments have been raised nor any other judgment has been cited on behalf of the counsel appearing for the parties.

25 I have heard the arguments of the parties and have also gone through the documents appended with the present petition with their able assistance.

CONSIDERATION

26 While it may be true that the prolonged pendency of the trial or the criminal appeal cannot be attributed to the petitioner's actions or omissions, the fact remains that he did not render any service during the period from 22.08.1991 to 13.12.1992 (date he rejoined duty, order of reinstatement was passed on 07.12.1992) and again from 05.01.1993 to 28.04.2006 (date of order of reinstatement). His suspension was imposed lawfully and has not been challenged in the present petition. Furthermore, the validity of his dismissal based on the conviction and sentence dated 29.04.1991 has not been challenged. It is undisputed that his termination was a consequence of his conviction in a criminal case involving serious misconduct. Upon his subsequent acquittal, he became entitled to reinstatement, and he has been granted pensionary benefits. The period of suspension has also been accounted for in the calculation of his pension, and continuity of service has not been denied. The only remaining issue for determination, as previously noted, is whether he should be awarded back wages for the period in question.

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27 Before adverting to the rival contentions and the ratio decidendi culled out in the aforementioned judgments, it would be apt to extract relevant Rules, *ibid*, as under: -

“Rule 4.9 of Punjab Civil Services Rules vol. 1, Part-I provides as under:-

"The following provisions prescribe the conditions on which service counts for increments in a time-scale-

(a) All duty in a post on a time-scale counts for increment in that time-scale:

Provided that, for the purpose of arriving at the date of the next increment in that time-scale, the total of all such periods as do not count for increment in that time scale shall be added to the normal date of increment".

xxx xxx xxx

Rule 7.3 (5) of Punjab C.S.R. Vol.-1, Part-1. Provides as under:

"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."

xxx xxx xxx

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Note 8 provides as under

If no order is passed under sub rule 5 of this rule directing that the period of absence be treated as duty for any specified purpose, the period of absence should be treated as "non duty". In such events the past service (i.e. service rendered being dismissed removal, compulsory retirement or suspension) will not be forfeited.

xxx xxx xxx

Rule 7.5 : An employee of Government against whom proceedings have been taken either for his arrest for debt or on a criminal charge or who is detained under any law providing for preventive detention should be considered as under suspension for any periods during which he is detained in custody or is undergoing imprisonment, and not allowed to draw any pay and allowances (other than any subsistence allowance that may be granted in accordance with the principles laid down in rule 7.2) for such periods until the final termination of the proceedings taken against him or until he is released from detention and allowed to rejoin duty, as the case may be. An adjustment of his allowances for such periods should thereafter be made according to the circumstances of the case, the full amount being given only in the event of the officer being acquitted of blame or (if the proceedings taken against him were for his arrest for debt), of its being proved that the officer's liability arose from circumstances beyond his control or the detention being held by the competent authority to be unjustified."

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28 Rule 7.5 contemplates situations where an employee is subjected to proceedings that may result in suspension and loss of pay, pending final determination. While the rule explicitly mentions arrest for debt, criminal charges, or preventive detention, the term proceedings must be interpreted broadly to mean departmental proceedings. Departmental proceedings are quasi-judicial in nature and can lead to penalties, including dismissal or suspension, akin to criminal charges affecting employment status. The underlying rationale of Rule 7.5 is to regulate the financial entitlements of an employee facing disciplinary scrutiny. Therefore, if departmental proceedings culminate in exoneration or a finding that the suspension was unjustified, the employee should be entitled to full salary and allowances for the period of suspension, just as in cases of acquittal in criminal proceedings.

29 There is no hard and fast rule governing the grant of back wages; each case must be assessed based on its specific facts and circumstances. It is well-established in law that an acquittal in a criminal case does not automatically absolve an individual of the charges for service-related purposes. The employer retains the authority to initiate departmental proceedings independently.

30 In the case at hand, departmental proceedings were never initiated against the petitioner. The petitioner faced a Sessions trial and was subsequently acquitted. While this acquittal may be considered honorable in a broader societal context, it does not necessarily qualify as an honorable acquittal under service law. The petitioner's suspension was an automatic

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consequence of his arrest following the registration of a criminal case, rather than a decision taken by the employer subsequent to any departmental proceedings initiated on account of any misconduct in the course of employment.

31 Hon'ble Supreme Court in the case of **Ranchhodji Chaturji Thakore v. Gujarat Electricity Board reported as (1996) 11 SCC 603**, has examined the issue regarding the entitlement of back wages for an employee kept out of service due to pending criminal proceedings. In that case, the petitioner, who was accused under Section 302 IPC, contended that he was entitled to full back wages upon his acquittal by the criminal court. However, this Court rejected the claim, clarifying that back wages are typically granted in cases where termination follows a departmental inquiry, and the dismissal is subsequently set aside by a court of law. The rationale behind this distinction lies in the nature of the proceedings: while departmental inquiries are employer-driven and concern misconduct in service, criminal proceedings arise from an individual's alleged violation of penal laws, which may result in incarceration. The Court emphasized that an employee facing criminal charges, particularly one undergoing imprisonment, effectively renders himself incapable of performing his duties, thereby preventing the employer from utilizing his services. In such circumstances, the employer cannot be held liable for non-payment of salary for the period of absence. Furthermore, even if the employee is later acquitted by an appellate court, such acquittal does not automatically entitle him to back wages, as his

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inability to work was not due to any wrongful act on the part of the employer. This distinction underscores the principle that acquittal in a criminal case does not necessarily translate to an automatic right to reinstatement with full benefits, unless a wrongful termination pursuant to a departmental proceeding is also established. The operative part of the said judgment is extracted as follows: -

“3. The reinstatement of the petitioner into the service has already been ordered by the High Court. The only question is whether he is entitled to back wages. It was his conduct of involving himself in the crime that was taken into account for his not being in service of the respondent. Consequent upon his acquittal, he is entitled to reinstatement for the reason that his service was terminated on the basis of the conviction by operation of proviso to the statutory rules applicable to the situation. The question of back wages would be considered only if the respondents have taken action by way of disciplinary proceedings and the action was found to be unsustainable in law and he was unlawfully prevented from discharging the duties. In that context, his conduct becomes relevant. Each case requires to be considered in its own backdrop. In this case, since the petitioner had involved himself in a crime, though he was later acquitted, he had disabled himself from rendering the service on account of conviction and incarceration in jail. Under these circumstances, the petitioner is not entitled to payment of back wages. The learned Single Judge and the Division Bench have not committed any error of law warranting interference.”

(Emphasis supplied)

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32 The petitioner's inability to render service during his period of police remand and judicial custody resulted from his own actions and not from any act or decision of the employer. Since the employer was deprived of the petitioner's services during this period while still being responsible for salary payments, there exists no legal obligation on the employer to compensate him for his absence. Consequently, the Corporation cannot be held liable to pay the petitioner full salary for the period of his suspension.

33 As far as the prayer of the petitioner regarding payment of full salary and allowances for the period he remained out of job is concerned, Hon'ble Supreme Court in **J.K. Synthetics Ltd. v. K.P. Agrawal reported as (2007) 2 SCC 433** examined whether a delinquent employee is entitled to claim continuity of service and all consequential benefits in every instance of reinstatement. The Court provided clarity on the conditions under which such benefits may be granted, distinguishing between different scenarios of reinstatement based on the nature of the termination and the circumstances leading to it. The operative part are extracted hereinunder: -

"17. There is also a misconception that whenever reinstatement is directed, "continuity of service" and "consequential benefits" should follow, as a matter of course. The disastrous effect of granting several promotions as a "consequential benefit" to a person who has not worked for 10 to 15 years and who does not have the benefit of necessary experience for discharging the higher duties and functions of promotional posts, is seldom visualised while granting consequential benefits automatically. Whenever courts or tribunals direct reinstatement, they should

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apply their judicial mind to the facts and circumstances to decide whether “continuity of service” and/or “consequential benefits” should also be directed. We may in this behalf refer to the decisions of this Court in A.P. SRTC v. S. Narsagoud [A.P. SRTC v. S. Narsagoud, (2003) 2 SCC 212 : 2003] , A.P. SRTC v. Abdul Kareem [A.P. SRTC v. Abdul Kareem, (2005) 6 SCC 36] and Rajasthan SRTC v. Shyam Bihari Lal Gupta [Rajasthan SRTC v. Shyam Bihari Lal Gupta, (2005) 7 SCC 406] .”

34 Upon a thorough examination of the matter, along with the materials on record, including the judgments and orders cited before this court, I am of the considered opinion that well-established legal principles govern the issue at hand. If the prosecution, which ultimately culminated in the acquittal of the concerned individual, was initiated at the behest of or directly by the department, a different legal and equitable consideration might apply. However, when a public servant or an employee, in their capacity as a private citizen, becomes embroiled in a criminal case—wherein they face an initial conviction by the trial court but later secure an acquittal on appeal—the department cannot be held responsible for keeping such an individual out of service. This is because, as per established legal norms, a person convicted of an offense is mandated to be removed from service and cannot continue in employment.

35 In **Krishnakant Raghunath Bibhavnekar v. State of Maharashtra reported as (1997) 3 SCC 636**, the Supreme Court explained

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the right of an employee to claim backwages, after reinstatement, upon being acquitted, in the following manner:

“If the conduct alleged is the foundation for prosecution, though it may end an acquittal on appreciation or lack of sufficient evidence, the question emerges whether the government servant prosecuted for commission of defalcation of public funds and fabrication of the records, though culminated into acquittal is entitled to be reinstated with consequential benefits. In our considered view this grant of consequential benefits with all back wages etc. cannot be as a matter of course. We think that it would be deleterious to the maintenance of the discipline if a person suspended on valid consideration is given full back wages as a matter of course on his acquittal.”

36 Accordingly, the contentions put forth by the respondents are not only legally sound but also align with the principles of fairness and reasonableness. The respondents are well within their rights to deny back wages for the period during which the employee was not actively serving. The employer cannot be burdened with the financial liability of compensating an individual for a duration in which their services were unavailable due to legal incapacitation. In this regard, I find myself in complete agreement with the position articulated in **Ranchhodji Chaturji Thakore v. Gujarat Electricity Board, (1996) 11 SCC 603.**

37 In view of the aforesaid judicial pronouncements and the reasons mentioned above, the petitioner(s) is held entitled at best for back wages only

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w.e.f. the date he submitted an application for re-instatement after acquittal till the date of his actual reinstatement.

- 38 Both the writ petitions stand disposed of accordingly.
- 39 A photocopy of the order be placed on the connected file(s).

March 25, 2025.	(VINOD S. BHARDWAJ)
raj arora	JUDGE
Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No