

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-11173-2020 (O&M)

Rajbir Singh ... Petitioner

VS.

National Fertilizer Ltd. & Ors. ... Respondents

1.	Judgment reserved on	23.01.2026
2.	Judgment pronounced on	27.03.2026
3.	Judgment uploaded on	30..2026
4.	Whether operative or full judgment	Full
5.	Delay in pronouncement of full judgment and reasons, if any	NA

CORAM: HON’BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Sandeep S Majithia, Advocate for the petitioner

Mr. Ashwani Talwar, Sr.Advocate with
Ms. Pratiksha Sharma, Advocate,
Mr. Nikhil Sherawat, Advocate,
Mr. Siddeshwar Hans, Advocate and
Mr. Deepak Goyat, Advocate for the respondents

Sandeep Moudgil, J.

Prayer

(1). The jurisdiction of this Court has been invoked under Article 226 of the Constitution of India, inter alia, for issuing a writ of certiorari quashing the order dated 07.03.2020 (Annexure P34) whereby for the period from 15.03.2016 to 18.12.2019 has been treated as dies non and the benefit of payment of backwages/arrears, other perks and allowances, promotional benefits etc. have been denied to him. A further direction is sought to the respondents to release the payment to the petitioner as claimed vide representation dated 27.01.2020 (Annexure P33) beside payment of compensation of Rs.2 crores to the petitioner towards emotional trauma meted out to him by the respondents.

Facts.

(2). The petitioner joined the respondent as Accounts Clerk on 14.09.1990 and earned promotion as Accounts Officer on 01.07.2015. An FIR No.266/2011 under Sections 302/201/452/323 IPC was registered at Police Station Indri, Distt. Karnal wherein it was alleged that the petitioner being member of the Panchayat, on the next day of the murder i.e. on 23.07.2011, tried to get effect a compromise between the complainant party and his co-accused. The petitioner was ultimately convicted vide judgment dated 15.03.2016 passed by Addl. Sessions Judge, Karnal wherein he was sentenced to undergo RI for life with fine of Rs.7000/-. The CRA-D-309-DB-2016 preferred by the petitioner before this Court has been admitted and the sentence has been suspended by this Court vide order dated 31.05.2016 (Annexure P1). After the judgment of conviction, the respondents placed the petitioner in suspension vide order dated 05/06.04.2016 (Annexure P2), however, without payment of any subsistence allowance, to which he was held entitled subsequently on 07.07.2016. Eventually, the petitioner was acquitted by a Division Bench of this Court vide judgment dated 24.09.2016 (Annexure P19) and pursuant to the filing of the representation dated 22.10.2019 (Annexure P20), the petitioner was allowed to join the services of the respondents w.e.f. 15.03.2016. However, the respondents decided that the period from 15.03.2016 to 18.12.2019 be considered as dies non, no work no pay of the petitioner and identically placed persons have been treated partially.

(3). Hence this writ petition.

Contentions.

(4). Learned counsel for the petitioner submits that the reliance placed by the respondents on Regulation 29 read with Rule 37 of the National Fertilizers Ltd. Employees (Conduct, Discipline and Appeal) Rules, to justify dismissal merely on the ground of conviction, is itself constitutionally untenable, as these provisions, to the extent they permit automatic or mechanical dismissal merely because there is a conviction, without any independent consideration of the underlying conduct and surrounding circumstances, are hit by Article 311(2) of the Constitution of India which mandates that a person shall not be dismissed, removed or reduced in rank except after being informed of the charges and given a reasonable opportunity of being heard, subject only to the limited exceptions carved out in the proviso.

(5). He submits that the settled legal position, reflected also in the scheme of Rule 19(1) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, is that even in cases where clause (a) of second proviso to Article 311(2) is invoked, the disciplinary authority must apply its mind to the nature of the conduct which led to conviction and decide whether the extreme penalty is warranted and conviction per se does not automatically entail dismissal.

(6). It is argued that the Division Bench of this Court, vide judgment dated 24.09.2019 (Annexure P19), had acquitted the petitioner and all the other co-accused of the charges, thereby completely wiping out the foundation on which the respondent-Department had sought to proceed against him and once the criminal court has honourably acquitted the petitioner, the respondents are under a legal and moral obligation to restore him to service with full

consequential benefits as if he had never been kept out of employment, particularly when he had been continuously asserting his innocence and seeking reinstatement from the very beginning. He then urged that the action of the respondents in branding the entire period from 15.03.2016 to 18.12.2019 as “dies non” by applying the principle of “no work, no pay” is completely misconceived, inasmuch as the doctrine of “dies non” cannot be invoked against an employee who has all along been willing to work and has repeatedly requested the authorities to allow him to join, but has been forcibly kept out of service by the employer.

(7). Reliance has been placed on *Mangilal Kajodia v. Union of India, (2020) 2 SCC 723* to contend that even where the period of absence is treated as “dies non”, the employee is at least entitled to notional increments so that his pay and pensionary benefits are not destroyed, thereby recognizing that “dies non” is not to be used as a weapon of economic death against an employee. He further relies on *Devi Charan Chaturvedi v. Union of India, 2000 (7) SLT 758 (SC)* wherein the Apex Court emphasized that the concept of “dies non” is an exception and cannot be applied in a sweeping and punitive manner, especially where the circumstances do not justify blaming the employee for the period of non-working and as such, he contends that the petitioner’s case stands on a much stronger footing, as he never chose to abstain from duty rather he was kept out by the respondents themselves.

(8). Lastly, learned counsel for the petitioner exhorted that the respondent-authorities have acted in a mala fide and discriminatory manner as the petitioner, who belongs to a Scheduled Caste category, has been singled out for the harshest possible penalty of dismissal, whereas similarly situated

employees, belonging to the general category, who were also convicted in criminal cases, have been retained in service and have not been visited with the same drastic consequence. He referred to the letter dated 18.08.2017 (Annexure P36) issued by NFL itself, wherein names of other convicted incumbents, namely, B.Panda and Adesh Bharti, who were earlier allowed to continue have been mentioned and the respondents have even acknowledged their action.

Contention on behalf of the respondents

(9). Written statement has been filed by the respondents wherein it has been averred that the petitioner stood convicted and sentenced to life imprisonment by the criminal court, in proceedings initiated by third parties, in which respondent–NFL had no role whatsoever and the order of dismissal was passed only because of such conviction, and not on account of any independent or mala fide action by the management. He submits that once the criminal proceedings have ended in acquittal, the respondents have already extended the maximum possible benefit by reinstating the petitioner and restoring all consequential service benefits prospectively, but this does not create an automatic right to the petitioner to claim wages for the entire period during which he did not actually discharge any duty. The principle of “no work no pay” has been consistently applied by courts in similar situations, and employers have been permitted to decline back wages for the period of absence even after acquittal, particularly where the employer was not responsible for the initial incarceration or conviction.

(10). It is further pointed out that the allegations of vindictiveness, bias or discrimination on the basis of caste are wholly baseless and denied in toto as in the case of the petitioner, every decision of suspension, dismissal, and

subsequent reinstatement has flowed from orders and developments in the criminal case, and the respondents have scrupulously followed the applicable CCS (CCA) Rules, while also giving due weight to the later acquittal. It is settled that questions of back wages after acquittal are to be decided on the facts of each case, balancing equities and financial implications, and there is no universal rule that full wages for the entire intervening period must always be granted.

(11). Learned senior counsel vehemently contended that the plea of hostile discrimination by comparing the petitioner with other employees is misconceived as every disciplinary case is examined on its own facts, the nature of the offence, the role of the employee, and the stage and manner in which the criminal proceedings culminated and as such, there can, therefore, be no straight-jacket parity merely because some other employee convicted in a different case has been treated differently in the matter of penalty or back wages, and in any event, the respondents never consider caste, category or creed as a criterion while taking disciplinary decisions.

(12). Heard learned counsel for the parties and the judgment was kept reserved on 23.01.2026.

Analysis

(13). In my considered opinion, this writ petition ought to fail. I say so firstly for the reason that, the law is now well-settled that reinstatement and continuity of service do not, by themselves, confer an automatic right to back wages. Grant of back wages is a matter of discretion, to be exercised on the facts of each case, and that the principle of “no work no pay” can validly be

applied where the employee has not rendered service during the relevant period and the employer is not at fault.

(14). In **Corp. Mithilesh Kumar @ Mithilesh Singh v. Union of India & Ors., (2010) 12 SCC 423**, the Supreme Court held that a person who was convicted and removed from service cannot claim back wages merely because he was subsequently acquitted as there is no automatic entitlement to back wages or other consequential monetary benefits. The Court explained that where the loss of service flows from the employee's own involvement in a criminal case, the employer cannot be saddled with the financial burden for the intervening period.

“5. The short grievance articulated by the appellant was that along with reinstatement, he should have been given back wages and consequential relief. The appellant failed to place reliance on any judgment of this Court to support his submission.

*6. Ms Indira Jaisingh, learned Additional Solicitor General appearing for the Union of India has submitted that the impugned judgment of the High Court requires no interference and the legal position as focused by the appellant is no longer res integra. She placed reliance on the judgment of this Court in **Ranchhodji Chaturji Thakore v. Gujarat Electricity Board [Ranchhodji Chaturji Thakore v. Gujarat Electricity Board, (1996) 11 SCC 603]**. In this case also the appellant was convicted under Section 302 read with Section 34 IPC and on that basis he was dismissed from the service. The appellant approached the High Court by filing an appeal against the order of conviction and in that appeal he was acquitted of the offence. The respondent had reinstated the appellant in service but denied the back wages. This Court examined this position and observed that: (SCC p. 604, para 3)*

“3. ... 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 had 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.”

*7. The learned Additional Solicitor General has also placed reliance on a judgment of this Court in **Union of India v. Jaipal Singh [Union of India v. Jaipal Singh, (2004) 1 SCC 121 : 2004 SCC (L&S) 12]** . In this case also the initial conviction was converted into acquittal by the trial court. This Court observed that: (SCC p. 123, para 4)*

“4. ... if after initial conviction by the trial court, he gets acquittal on appeal subsequently, the department cannot in any manner be found fault with for having kept him out of service, since the law obliges a person convicted of an offence to be so kept out and not to be retained in service. Consequently, the reasons given in the decision relied upon, for the appellants are not only convincing but are in consonance with reasonableness as well.”

*8. Reliance was also placed on the decision in **Baldev Singh v. Union of India [Baldev Singh v. Union of India, (2005) 8 SCC 747 : 2006 SCC (L&S) 35]**. This Court has reiterated the same principle that merely because there has been an acquittal does not automatically entitle the appellant to get the consequential benefits.*

9. In view of the consistent legal position, we cannot find any fault with the impugned judgment of the High Court. The appeals, being devoid of any merit are, accordingly, dismissed. The parties are directed to bear their respective costs.”

(15). In the present case, the petitioner’s absence from duty between 15.03.2016 and 18.12.2019 was the direct result of his conviction and sentence in a criminal case initiated by third parties. The respondent-NFL was not instrumental either in lodging the FIR or in securing his conviction. The order of dismissal was founded solely on such conviction, in exercise of the employer’s power to act on a criminal conviction, and has not been held to be malafide or illegal in itself. After the petitioner’s acquittal, the respondents have already taken a balanced view by reinstating him and granting continuity

of service, thus restoring his service career. Denial of back wages while confining relief to reinstatement, applying “no work no pay”, particularly where the employee disabled himself from rendering service due to his conviction or incarceration cannot be faulted with as has been articulated by a catena of decisions.

(16). The petitioner’s plea that, after acquittal, he must be placed in the same financial position as if he had never been dismissed, cannot be accepted in the teeth of the above principles. As the Supreme Court and various High Courts have emphasised, back wages are not a matter of course but depend on factors like the nature of charges, duration of non-employment, financial burden on the employer, and whether the employer was responsible for keeping the employee out of work. Here, the respondents did not fabricate charges, did not prolong the criminal process, and did not delay reinstatement after acquittal. They merely acted on a life-sentence conviction and, upon its reversal, restored the petitioner to service. In such circumstances, and guided by the ratio of Corp. Mithilesh Kumar, denial of back wages for 15.03.2016 to 18.12.2019, coupled with continuity of service and reinstatement, cannot be said to be arbitrary or illegal. The challenge to treating this intervening period as “dies non” is, therefore, devoid of merit.

(17). The writ petition is accordingly dismissed.

(18). Pending application(s), if any, stands disposed of.

27.03.2026

V.Vishal

(Sandeep Moudgil)
Judge

1. *Whether speaking/reasoned?* :
2. *Whether reportable?* :

Yes/No
Yes/No