

(2016) 07 P&H CK 0240

High Court Of Punjab And Haryana At Chandigarh**Case No:** CWP No. 22658 of 2014

Ram Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: July 29, 2016**Acts Referred:**

- Constitution of India, 1950 - Article 14, 311(2)
- Punjab Civil Services Rules - Rule 7.3

Citation: (2016) 4 SCT 426**Hon'ble Judges:** Daya Chaudhary, J.**Bench:** Single Bench**Advocate:** Ashok Aggarwal, Advocate, for the Petitioner; Avinit Avasthi, AAG, Punjab, for the Respondents/State**Final Decision:** Allowed

Judgement

Daya Chaudhary, J. (Oral)—Prayer in the present writ petition is for issuance of a writ in the nature of mandamus directing the respondents to reinstate the petitioner in service and to fix his pay of the period during which, he remained out of service and also to treat the period under suspension to be on duty and to pay all consequential benefits by modifying order dated 10.05.2013 (Annexure P-1) and setting aside order dated 13.03.2014 (Annexure P-2).

2. Briefly, the facts of the case as made out in the present writ petition are that, the petitioner was appointed as Constable in the Punjab Police on 22.07.1975. He was confirmed after three years of service. On 02.11.1988, FIR No.123 was registered under Sections 336, 506 read with Section 34 of the Indian Penal Code against him and one Nirmal Singh Constable. Both of them were convicted by the Chief Judicial Magistrate, Ropar under Sections 336, 448 and 506 IPC vide judgment dated 12.06.1991 and were sentenced to undergo RI for a maximum period of six months. As a result thereof, the services of the petitioner as well as said Nirmal Singh were

terminated by a composite order dated 19.06.1991 (Annexure P-3).

3. Aggrieved by the judgment of conviction and order of sentence passed by the trial Court, the petitioner as well as said Nirmal Singh filed separate appeals before Additional Sessions Judge, Rupnagar. The appeal filed by Nirmal Singh was allowed and he was acquitted of the charge. However, the appeal filed by the petitioner was dismissed. Said Nirmal Singh was reinstated in service from the date of dismissal i.e., 12.06.1991 and was given all consequential benefits including the period he remained out of service.

4. The petitioner filed Criminal Revision No.616 of 1993 before this Court, which was allowed and impugned judgments passed by both the Courts below were set-aside. The petitioner was ordered to be acquitted of all the charges framed against him. The petitioner made representation to the concerned authorities for his reinstatement in service and for grant of all benefits like Nirmal Singh but neither he was reinstated in service nor any benefit was granted to him. When no action was taken, he served a legal notice on 27.07.2012 upon Senior Superintendent of Police, Ropar stating therein that a false case was registered against him as well as Nirmal Singh and both of them were acquitted. Nirmal Singh was reinstated with all consequential benefits but the petitioner was not reinstated whereas he was entitled to be reinstated with retrospective effect against the post, he was working at the time of his termination. It was also the request of the petitioner that he was entitled to all the benefits including promotion, arrears of salary etc. for the period, he remained out of service but no action was taken also on the legal notice. Subsequently, the petitioner sought information under Right to Information Act, 2005 as to what action was taken on the legal notice. Reply to the information sought by the petitioner was received but the same was not satisfactory and thereafter, another application was moved by the petitioner. Ultimately, the petitioner was informed that his case was under active consideration and he would be informed on completion of process. The petitioner was reinstated in service but the period w.e.f. 04.11.1988 to 12.06.1991, during which, he remained under suspension was merged into his suspension and the period from 12.06.1991 to 16.05.2012, during which, he remained out of service, was considered without duty and without pay. He was found entitled to pay allowances from 16.05.2012 i.e., date of acquittal to the date of joining duty.

5. Being aggrieved with the aforesaid action of the respondents, the petitioner has approached this Court for the relief, to which he is entitled.

6. Learned counsel for the petitioner submits that as per Rule 7.3 of the Punjab Civil Service Rules Vol. I Part I Chapter VII, in case of removal, dismissal or compulsorily retirement or suspension or on registration of criminal case, when a Government employee is reinstated upon having been acquitted, he shall be entitled to full pay and allowances to which, he would have been entitled to, had he not been dismissed, removed or compulsorily retired or suspended as the case may be.

Learned counsel further submits that the petitioner was falsely implicated and there was no fault on his part and even the departmental proceedings were not initiated against him. It is also the argument of learned counsel for the petitioner that the action of respondents is malafide and discriminatory as co-accused Nirmal Singh was reinstated with retrospective effect and granted all consequential benefits whereas the petitioner was reinstated from the date of acquittal. At the end, learned counsel for the petitioner submits that the petitioner is entitled to be reinstated from the date he was suspended till the period, he remained out of job as on duty along with all consequential benefits including the arrears of pay. To support his arguments, learned counsel for the petitioner has also relied upon judgments of this Court rendered in *Sucha Singh v. State of Punjab and others*, CWP No.6131 of 2012 decided on 12.09.2013, **Piara Singh v. State of Punjab and others, 2013(4) SCT 675**, **Bikkar Singh v. Punjab Water Supply and Sewerage Board and another, 2013(3) SCT 515**, **Shashi Kumar v. Uttri Haryana Bijli Vitran Nigam and another, 2005(1) SCT 576**, **Shiv Kumar Goel v. State of Haryana and another, 2007(1) SCT 739** and *Constable Piara Singh and others v. State of Punjab and others*, CWP No.9460 of 1999 decided on 02.09.2013.

7. Learned State counsel opposes the submissions made by learned counsel for the petitioner. However, the facts with regard to lodging of FIR, conviction and his acquittal subsequently are not disputed. It has also not been disputed that co-accused, namely, Nirmal Singh has been reinstated in service with all benefits. Learned State counsel also submits that the petitioner did not perform duty during the period of suspension and thereafter, from the date of dismissal to the date of reinstatement and as such, the period was ordered to be treated as non-duty period. He was allowed all due financial and service benefits from the date of acquittal i.e., 16.05.2012 till the date of joining service.

8. Heard arguments of learned counsel for the petitioner as well as learned State counsel and have also perused the documents available on the file.

Rule 7.3 of the Punjab Civil Service Rules Vol. I Part I Chapter VII, is reproduced as under:-

"7.3. (1) When a Government employee, who has been dismissed, removed or compulsorily retired, is reinstated as a result of appeal, revision or review, or would have been so reinstated but for his retirement on superannuation while under suspension or not, the authority competent to order re-instatement shall consider and make a specific order-

(a) regarding the pay and allowances to be paid to the Government employee for the period of his absence from duty including the period of suspension, preceding his dismissal, removal or compulsory retirement, as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Where the authority competent to order reinstatement is of opinion that the Government employee, who had been dismissed, removed or compulsorily retired, has been fully exonerated, the Government employee shall, subject to the provisions of sub-rule (6), be paid his full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended, prior to such dismissal, removal or compulsory retirement, as the case may be:

Provided that where such authority is of opinion that the termination of the proceedings instituted against the Government employee had been delayed due to reasons directly attributable to the Government employee it may, after giving him an opportunity to make representation and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government employee shall, subject to the provisions of sub-rule (7), be paid for the period of such delay only such amount (not being the whole) of pay and allowances, as it may determine."

From the bare perusal of provisions of aforesaid rule, it is clear that a Government employee, who has been dismissed, removed, compulsorily retired or suspended, is reinstated on having been fully exonerated, then he shall be given full pay and allowances to which he would have been entitled to had he not been dismissed, removed, compulsorily retired or suspended as the case may be.

9. In the present case also, the petitioner was acquitted of the charge in revision petition filed before this Court and the judgments passed by the trial Court as well as of the appellate Court were set-aside. It is also not disputed that co-accused Nirmal Singh was reinstated as he was acquitted of the charge by the appellate Court and was granted all the benefits. The case of the petitioner is also supported by the judgment rendered by this Court in CWP No.16192 of 2010 titled as Sukhchain Singh v. State of Punjab and another decided on 18.03.2013 wherein in a similar matter, this Court granted the consequential benefits including arrears for the period, the petitioner remained out of service.

10. A Division Bench of this Court in **Bhag Singh v. Punjab and Sind Bank, 2006(1) SCT 175** examined the said issue wherein an employee was acquitted by giving benefit of doubt. It was held that the concept of honourable acquittal, fully exonerated or acquitted of blame are all unknown to the Criminal Procedure Code, 1973. The petitioner employee was held entitled to all consequential benefits.

Same view was taken by the Division Bench of Madras High Court in **Union of India v. Jayaram, AIR 1960 Madras 325**.

11. In another judgment of Hon"ble the Supreme Court in **Gurpal Singh v. High Court of Judicature for Rajasthan, 2013(1) SCT 683**, the petitioner was acquitted from criminal charge as he was exonerated in departmental inquiry and was reinstated in service. He was held entitled to full pay and allowances from the date

of judgment rendered by the Delhi High Court onwards. He was also held entitled to be considered for promotion notionally from the date his junior was promoted along with consequential benefits.

12. In another judgment of Hon"ble the Supreme Court in **Jaipur Vidyut Vitran Nigam Ltd. and others v. Nathu Ram, 2009(6) SLR 653**, the employee was found to be entitled to full pay and allowances for the period from the date of his acquittal to the date of reinstatement. He was also held entitled to pay and allowances for the period he remained under suspension.

13. In **Union of India and others v. Jaipal Singh, 2004(1) SCT 108**, Hon"ble the Supreme Court dealt with the issue at hand in a case arising from conviction of an employee under Section 302 IPC by the trial Court but he was acquitted by the High Court in appeal and while discussing its effect on back wages upon reinstatement for the period he was out of service due to involvement in a criminal case observed as under: -

"If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest or by department itself, perhaps different considerations may arise. On the other hand, if as a citizen the employee or a public servant got involved in a criminal case and 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 [ins. **Ranchhodji Chaturji Thakore v. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar & Anr., 1997(1) SCT 824 (SC)**], for the appellants are not only convincing but are in consonance with reasonableness as well. Though exception taken to that part of the order directing reinstatement cannot be sustained and the respondent has to be reinstated, in service, for the reasons that the earlier discharge was on account of those criminal proceedings and conviction only, the appellants are well within their rights to deny back wages to the respondent for the period he was not in service. The appellants cannot be made liable to pay for the period for which they could not avail of the services of the respondent. The High Court, in our view, committed a grave error, in allowing back wages also, without advertng to all such relevant aspects and considerations. Consequently, the order of the High Court insofar as it directed payment of back wages are liable to be and is hereby set aside."

14. In cases involving criminal acts leading to police remand and judicial custody and thereafter accused faces trial and is convicted of criminal offences would be in deprivation of employer"s rights of availing the services of such person not by there own actions but by an act of the employee for which it pays salary for work done out of public funds and thus cannot be compelled to pay for no fault of it. Therefore, fault theory becomes relevant. Who was at fault? If the Government initiates action and fails it must pay. If the employee gets into trouble, suffers jail and faces trial

which has nothing to do with the employer, is convicted or acquitted he has only himself to blame. The State exchequer cannot be lightly burdened for acts which do not originate in the employer nor over which it has any control. The employer/State Government in this case can only watch and wait for the end of the criminal trial held.

15. Hon"ble the Supreme Court in **State Bank of India and another v. Mohammad Abdul Rahim 2013(14) JT 120**, while relying upon the judgment of **Baldev Singh v. Union of India, 2006(1) SCT 375**, **Banshi Dhar v. State of Rajasthan, 2006(4) SCT 780**, Ranchhodji Chaturji Thakore's case (supra) and Jaipal Singh's case (supra), held as under: -

"In the present case, the respondent was acquitted by the appellate Court. There can be no manner of doubt that the said acquittal would relate back and the initial order of conviction would stand obliterated. On that basis, there can be no manner of doubt that the substratum of the cause that had led to the respondent's dismissal/discharge in the present case had ceased to exist. The same would entitle him to be reinstated in service, an act that has been duly performed by the appellant-bank."

In the said judgment, the employee was acquitted of the charge on 22.02.2002; he made demand for reinstatement in service on 22.04.2002 and he was reinstated in service by the appellant bank on 07.11.2002. It was observed by Hon"ble the Apex Court that at the highest, what can be said in favour of the respondent-employee was that he was entitled to wages from the date he had lodged the demand for the same following his acquittal w.e.f. 22.04.2002 until the date of his reinstatement, if the same has not already been granted by the appellant bank.

16. In **Corp. Mithilesh Kumar @ Mithilesh Singh v. Union of India & ors., 2010(13) Scale 98**, the employee was working as Combatant Member of Indian Air Force. He was convicted in a criminal case and was awarded sentence of life imprisonment by the trial Court. Consequently, he was removed from service by the Chief of Air Staff. He filed an appeal against his conviction and was acquitted by the High Court. On his representation, he was reinstated in service w.e.f. 09.04.1994 but without back wages. Thereafter he claimed back wages. It was held that merely because there has been an acquittal, does not automatically entitle the employee to get the consequential benefits and appeal filed by him was dismissed.

17. In the present case, co-accused of the petitioner, namely, Nirmal Singh also faced trial and was also convicted by the trial Court. The petitioner and said Nirmal Singh filed separate appeals before the appellate Court and Nirmal Singh was acquitted by the appellate Court but the appeal filed by the petitioner was dismissed. Said Nirmal Singh was reinstated in service and was given all consequential benefits including the period he remained out of service. The petitioner was acquitted in the criminal revision petition filed before this Court but

in spite of making representation, neither he was reinstated in service nor any benefit was granted. Subsequently, the petitioner was reinstated in service but the period w.e.f. 04.11.1988 to 12.06.1991, during which, he remained under suspension was merged into his suspension and the period from 12.06.1991 to 16.05.2012, during period, he remained out of service, was considered without duty and without pay. He was found entitled to pay allowances for the period from 16.05.2012 i.e., date of acquittal to the date of joining duty.

18. In view of the facts as mentioned above, the present writ petition is allowed and the respondents are directed to grant same benefits to the petitioner as has been granted to his co-accused, namely, Nirmal Singh. The necessary exercise be done within a period of three months from the date of receipt of certified copy of this order.

19. In case, any benefit has been granted to said Nirmal Singh from the date of his acquittal then the petitioner is entitled for the benefit from the date of his acquittal by the revisional Court.