

(2011) 09 P&H CK 0063
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 2818 of 2010

Ajmer Lal Pundeer

APPELLANT

Vs

Oriental Insurance Co. Ltd. and others

RESPONDENT

Date of Decision : 09-09-2011

Acts Referred:

Constitution of India, 1950 — Article 309
General Insurance (Conduct, Discipline and Appeal) Rules, 1975 — Rule 20, 20(2), 21, 21(3), 22
Penal Code, 1860 (IPC) — Section 304B, 34
Punjab Civil Services Rules — Rule 7.3, 7.5

Citation : (2011) 164 PLR 819

Hon'ble Judges : Nirmaljit Kaur, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Nirmaljit Kaur, J.—The short prayer in the present case is for direction to the respondents to release the back wages of the petitioner from the date of his dismissal dated 21.07.2006 to the date of his reinstatement dated 01.12.2009 as he has been acquitted and exonerated of all criminal charges against him and has been reinstated by the respondents with a further prayer to grant of all consequential benefits as also to release of the subsistence allowance due to him.

2. The facts, in short, are that the petitioner was a victim of unfortunate circumstances. He and his three family members were implicated in the death of his daughter-in-law and an FIR No.267 dated 28.10.2002 was registered against them under Sections 304-B and 34 of the IPC at Police Station Dera Bassi. Consequently, the petitioner was placed under suspension from service w.e.f. 06.11.2002 vide order dated 22.04.2003 by respondent No.1 under Rule 20(2) of the General Insurance (Conduct, Discipline and Appeal) Rules, 1975 pending investigation. In the order dated 22.04.2003, it was specifically clarified that the petitioner would be paid subsistence allowance as per Rule 21 of the said CDA Rules. The petitioner was released on bail by this Court vide order dated

05.05.2003. Thereafter, he sent a letter of request to the respondent No.3 for rejoining of his duties. Consequently, the petitioner's suspension was rightly revoked vide order dated 08.07.2003 and he was entitled to salary from the date of his joining. It was further conveyed that the treatment of period of petitioner's suspension would be decided after knowing the outcome of the criminal case pending against him. The petitioner, thereafter, resumed his duties on 23.07.2003. Meanwhile i.e. during the period when the petitioner was under judicial custody from 06.11.2002 to 05.05.2003, he was not paid any subsistence allowance as promised under Rule 21 of the CDA Rules. Meanwhile, the Additional Sessions Judge vide his order dated 06.02.2006 convicted the petitioner and he was sentenced to undergo rigorous imprisonment for ten years and a fine of Rs, 5000/-. Respondent no.1 vide order dated 21.06.2006 dismissed the petitioner from service on account of his conviction by the trial Court. The petitioner filed Crl. Appeal No.165-DB of 2006 against the order and judgment dated 06.02.2006 convicting the petitioner. The said appeal was allowed by this Court vide order and judgment dated 31.01.2009. On being acquitted of all the charges against him, the petitioner requested the respondents for revocation of his dismissal order and for rejoining of duty vide his letter dated 13.02.2009. After a lengthy communication, the petitioner finally received an order dated 19.11.2009, vide which, the penalty of dismissal imposed upon the petitioner vide order dated 21.07.2006 was set aside with a further stipulation that the said order would be effective from the date of joining of the petitioner at Divisional Office at Chandigarh. The operative part of the said order reads as under:-

that the period from the date of suspension/dismissal and his date of joining shall not be treated as spent on duty and no wages shall be paid for that period. However, the same shall not constitute break in service.

3. In view of the above, the learned counsel for the petitioner contended that in spite of the order dated 01.12.2009 (Annexure P-18) stating that the period of suspension will not constitute break in service, the respondents have not released his back wages and had also refused to promote the petitioner on the post of Assistant Manager and that even the pay scale of the petitioner was fixed at Rs. 16,510/- and the additional benefits of increment from 2006-2009 have also not been given. Even the subsistence allowance for the period of 06.10.2002 to 05.05.2003 have not been released.

4. Written statement on behalf of the respondents has been filed. As per the written statement, the petitioner could challenge the action of the competent authority by way of filing appeal before the Appellate Authority as provided under Rule 31 of the General Insurance (Conduct, Discipline and Appeal Rules), 1975. He also had a right to file a memorial, in case, the Appellate Authority has rejected his order. Secondly, as per Rule 21(3) of the General Insurance (Conduct, Discipline and Appeal Rules), 1975, if an employee is arrested by the police in a criminal charge and the bail is granted to him, no subsistence

allowance is payable. Reliance was placed on Rule 22(b) of the General Insurance (Conduct, Discipline and Appeal Rules), 1975 to state that the period of absence shall not be treated as period spent on duty if the employee is not honorably acquitted. Since the petitioner has not been honorably acquitted but has been acquitted by the Criminal Court by giving him the benefit of doubt, he is not entitled to full wages for the period of his absence/suspension/conviction.

5. Heard.

6. Taking up the first argument that the petitioner has an alternative remedy, suffice it to say that the existence of alternative remedy is no bar to the filing of the writ petition. Moreover, the order with respect to the period of suspension was passed under Rule 22 of the General Insurance (Conduct, Discipline and Appeal) Rules, 1975. Right of Appeal is granted under Rule 31 of the General Insurance (Conduct, Discipline and Appeal) Rules, 1975. The same reads as under:-

31. Right of Appeal: Every employee shall have a right to appeal to the appellate authority against an order imposing upon him any of the penalties specified in Rule 23. An appeal against an order of suspension passed under Rule 20 shall be on the authority to which the authority which made or is deemed to have made the order of suspension is immediately subordinate. Notwithstanding anything contained in this rule and subject to the provisions of the act and the Rules framed thereunder, no appeal shall lie against an order made by the Corporation/ Subsidiary under Rule 20 or Rule 23.

7. A perusal of the above Rule 31 of the General Insurance (Conduct, Discipline and Appeal) Rules, 1975 shows that the right of appeal to the appellate authority is only if an order is passed under Rule 20 or Rule 23. Thus, there is no merit in the argument raised by learned counsel for the respondents that the petitioner could have filed an appeal before the Appellate Authority as provided under Rule 31 of the General Insurance (Conduct, Discipline and Appeal) Rules, 1975.

8. Secondly, it is a well settled proposition of law that normal subsistence allowance must be paid irrespective of whether he has already undergone actual imprisonment or is on bail. Hon'ble the Supreme Court in the case of State of Maharashtra Vs. Chandrabhan Tale, settled the said issue in para 23 which reads as under:

.....Just as it would be impossible for a civil servant under suspension who has no other means of subsistence to defend himself effectively in the trial court without the normal subsistence allowance - there is nothing on record in these cases to show that the civil servants concerned in these cases have any other means of subsistence - it would be impossible for such civil servant under suspension to prosecute his appeal against his conviction fruitfully without payment of the normal subsistence allowance pending his appeal. Therefore, Baban's contention in the writ petition that the subsistence allowance is required to support the civil servant and his family not only during the trial of the criminal

case started against him but also during the pendency of the appeal filed in the High Court or this court against his conviction is correct. If any provision in any rule framed under Article 309 of the Constitution is illusory or unreasonable, it is certainly open to the civil servant concerned to seek the aid of the court for declaring that provision to be void. In these circumstances, I hold that the second proviso is unreasonable and void and that a civil servant under suspension is entitled to the normal subsistence allowance even after his conviction by the trial court pending consideration of his appeal filed against his conviction until the appeal is disposed of finally one way or the other, whether he is on bail or lodged in prison on conviction by the trial Court. In this view, I dismiss the civil appeal and allow the writ petition. The parties will bear their respective costs in the civil appeal. The respondent shall pay the petitioner's costs in the writ petition.

9. The argument that the petitioner was acquitted by granting the benefit of doubt and since the same did not amount to honorable acquittal, his suspension period cannot be treated as that of spent on duty, too has no merit in the facts of the present case. In the judgment and order dated 31.01.2009, vide which, the petitioner was acquitted, the Division Bench of this Court observed as under:-

Similarly, no role has been attributed to Ajmer Lal and Amar Kaur father-in-law and mother-in-law, respectively of the deceased. In fact, appellant Ajmer Lal suffered 30% burn injuries. It seems at the time when Kiran Bala has been set on fire by appellant Sanjiv Kumar, it is Ajmer Lal who came forward to save her and in the process, he suffered burn injuries. If Ajmer Lal had set Kiran Bala on fire along with appellant Sanjiv Kumar, then there was no need for him to try to extinguish the fire.

10. Thus, it is apparent that the petitioner has been exonerated of all the charges. Reliance is being placed on the concluding paragraph of the abovesaid judgment while ignoring the actual finding as reproduced above, wherein, (the following lines were added:

We are of the considered opinion that appellants Sanjana Rani, Ajmer Lal and Amar Kaur have been unnecessarily roped in. They are given the benefit of doubt and acquitted of all the charges.

11. Attention of this Court has been brought to the judgment rendered by Madhya Pradesh High Court in the case of R.P. Upadhyaya v. State of M.P. & another, 2008(4) S.C.T. 365. Para 12 of the same reads thus:-

12. Broadly speaking, cases of acquittal may be divided in following categories:-

(i) acquittal based on the finding that the charges are disproved.

(ii) all possible evidence is produced but the same is insufficient to uphold the employee guilty of charges.

(iii) certain important evidence is withheld for the reasons best known to

prosecution causing shortage of cogent evidence to uphold the guilt.

(iv) acquittal due technical flaws like limitation or want of necessary sanction etc.

(v) acquittal for want of proper and sufficient evidence due to the acts attributable to the employee himself.

In category (i) & (ii), the accused may be definitely said to have been found totally unblameworthy or not blameworthy in the least and shall be entitled to full back wages & allowances as of right. In case of acquittal under category (v) the employee would not be entitled to back wages. However, in cases of acquittal under category (iii) & (iv), an accused cannot be said to have been found totally unblameworthy and the departmental authority shall have to examine each such case meticulously without entertaining an anti-employee feeling. Apex Court in Janki Raman's case has held that an employee is entitled to full back wages if he is not found blameworthy in the least in criminal proceedings. At times, criminal courts do not give specific finding about unblameworthiness of the accused and acquit the accused by extending benefit of doubt. An employee/accused cannot be blamed in such matter and cannot be made to suffer for such verdicts of criminal courts. Absence of finding about unblameworthiness due to working manner of criminal courts does not necessarily lead to an inference against the employee. In such a situation there would be greater responsibility on departmental authority to examine the case of an employee with greater caution to ascertain that whether accused employee may be said to be blameworthy and if yes, to what extent. Accordingly, back wages may be granted or denied in appropriate proportions.

12. This Court in the case of *Maha Singh v. State of Haryana*, 1994(1) S.C.T. 154 in similar circumstances was pleased to grant full pay and allowances during suspension period by holding as under:-

7. On going through the provisions contained in Rules 7.3 and 7.5 of the Punjab Civil Service Rules, Vol.1 Part-I, I am of the view that there is distinction between the two. Rule 7.3 is a general rule and it specifically deals with reinstatement after departmental enquiries, whereas Rule 7.5 applies to reinstatement after suspension for criminal proceedings. In an identical matter, this Court in *Jagmohan Lal Vs. State of Punjab and Others*, , held as under:-

Whether a person is acquitted with benefit of doubt or for other reasons, the result is that his guilt is not proved. Criminal courts are not concerned to find the innocence of an accused, but only to see whether the guilt of accused has been proved beyond reasonable doubt. The intention of Rule 7.5 therefore is that when a criminal charge against a Government servant fails in a court of law, he should be deemed to be acquitted. Thus a Government servant, acquitted, though with benefit of doubt, is entitled to full pay and allowances during suspension period under Rule 7.5 of the Punjab Civil Service Rules Vol.1 Part-I.

13. Each case has to be decided on its own facts and circumstances. The facts of

the present case are even better. It is an admitted position that as per the judgment dated 31.01.2009 while acquitting the petitioner, it was specifically held that the present petitioner came forward to save his daughter-in-law and also suffered bum injuries in the process. In the present case, the respondents have not done any exercise to determine whether the petitioner in the light of the judgment of the criminal court can be said to have been found blameworthy leading to his trial in the criminal case. Without making such an exercise, the claim of the petitioner could not have been legally declined.

14. In view of the above, the present petition is allowed. The petitioner shall be entitled to full pay and allowances for the period he remained under suspension. The arrears of pay and allowances and all consequential benefits be released to the petitioner within three months from the receipt of a copy of this order.