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**(2010) 07 P&H CK 0224**

**In the Punjab And Haryana At Chandigarh**

**Case No : LPA No. 867 of 2010 in CWP No. 21224 of 2008**

Haryana Financial Corporation and Another

APPELLANT

Vs

Balraj Goyal

RESPONDENT

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**Date of Decision : 27-07-2010**

**Acts Referred:**

Haryana Financial Corporation (Staff) Regulations, 1961 — Regulation 40, 40(1),  
40(2), 41(1), 41(4)  
Penal Code, 1860 (IPC) — Section 302, 34

**Citation : (2010) 2 ILR (P&H) 1030 : (2010) 4 RCR(Civil) 575**

**Hon'ble Judges : M.M. Kumar, J;A.N Jindal, J**

**Bench : Division Bench**

**Final Decision : Dismissed**

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## **Judgement**

M.M. Kumar, J.—The instant appeal by Haryana Financial Corporation (HFC) filed under Clause X of the Letters Patent is directed against judgment dated 18th May, 2010 passed by the learned Single Judge while disposing of CWP No. 21224 of 2008. The only question raised in this appeal is. "whether the writ petitioner-respondent is entitled to claim salary in respect of the suspension period after he had been acquitted by the Criminal Court and has also been exonerated in the departmental enquiry initiated by the appellant after his acquittal ?"

2. The facts are not in dispute. The petitioner was placed under suspension on 11th January. 2001 and after trial he was acquitted on 7th January. 2005. It is conceded as a fact that the writ petitioner-respondent was granted bail after about two months but he was not allowed to join his duties for pendency of criminal proceedings. After his acquittal, a charge sheet was issued by the HFC and after a regular departmental enquiry he was exonerated. Accordingly he was reinstated in service on 3rd May. 2007. The question with regard to his reinstatement and manner of treating his suspension period arose before the Managing Director and he passed an order treating his suspension period as leave of the kind due. It is pertinent to mention that the petitioner-respondent

has not even been afforded an opportunity of hearing before treating his suspension period as leave of the kind due. The aforesaid order passed by the Managing Director while reinstating him was challenged by the writ petitioner-respondent by filing C.W.P. No. 21224 of 2008 and the learned Single Judge has taken the view that in cases where criminal proceedings have terminated in acquittal and the departmental enquiry proceedings have also resulted in exoneration of a delinquent employee, then the period of suspension cannot be treated as leave of the kind due. The basic rationale governing the aforesaid principle is that once the criminal proceedings have terminated in acquittal of an employee and the departmental proceedings have resulted into his exoneration, then there was no justification with the department to place the employee under suspension. It is only in cases, where the delinquent employee is found guilty of misconduct attracting imposition of punishment, that suspension period can be treated in any other manner than making full payment of the salary during the period of suspension.

3. Mr. Sehgal learned counsel for the appellant has placed reliance on two judgments of Hon'ble the Supreme Court rendered in the cases of Ranchhodji Chaturji Thakore Vs. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar, (Gujarat) and another, and Union of India (UOI) and Others Vs. Jaipal Singh, . In the case of Jaipal Singh, the Supreme Court has taken the view that the prosecution which has not been initiated at the behest of the department itself, different result would follow because if an employee is involved in a criminal case and after his conviction by the trial court, he gets acquittal on appeal subsequently, then the department cannot in any manner be found at fault 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. The aforesaid reasoning indicate that a convict has to serve sentence which in Jaipal Singh's case has to be served because the employee was convicted u/s 302 read with Section 34 IPC along with his brother. The facts of the aforesaid case and the principle of law laid down therein has no bearing on the issue raised in the instant appeal. In the case in hand, the petitioner-respondent was accused of various charges under the Prevention of Corruption Act. He was granted bail but he was not allowed to join duties on account of pending criminal prosecution which failed. He was not convicted and was not serving sentence. Therefore, no principle of law of universal application would emerge to the effect that in case a criminal trial is pending at the instance of the State then departmental authorities are not at fault in treating the petitioner under suspension. Every case has to be examined on its own facts.

4. Moreover, the petitioner-respondent was never granted an opportunity of hearing before treating his period of suspension as leave of the kind due. For the aforesaid, we seek support from the judgment of Hon'ble the Supreme Court in the case of B.D. Gupta versus State of Haryana (1973) 3 S.C.C. 140, where their Lordships have considered a similar rule from Punjab Civil Service Rules Vol. 1 (as applicable to Haryana). It has thus been held that salary for suspension

period has to be determined after grant of effective opportunity to an employee. For the view taken, their Lordships placed firm reliance on the judgment rendered in the case of *M. Gopala Krishna Naidu versus State of Madhya Pradesh*, AIR 1068 S.C. 240 and observed as under:--

It was urged on behalf of the appellant that before the authority formed such an opinion, it was incumbent upon it to afford him an opportunity to make suitable representation in this behalf. Reliance was placed upon the judgment of this Court in *M. Gopala Krishna Naidu versus State of Madhya Pradesh*. The appellant in that case had been exonerated of the charges framed against him in a departmental enquiry. Government held, however, that the appellant's suspension and the departmental enquiry instituted against him "were not wholly unjustified". The relevant order, after reinstating the appellant with effect from the date of the order and directing the appellant's retirement from the same date on the ground that he had already attained the age of superannuation contained a further direction that the entire period of appellant's absence from duty should be treated as a period spent on duty under Fundamental Rule 54(5) for the purpose of pension only, but that he should not be allowed any pay beyond that he had actually received or were allowed to him by way of subsistence allowance during the period of his suspension". The appellant in that case contended that his case really came under Fundamental Rule 54(2) and not under Fundamental Rule 54(5) and that the Government should have granted him an opportunity to be heard before deciding as to the rule which applied to his case. It was contended on behalf of the Government that the order regarding allowance was a mere consequential order and in passing such an order it was not necessary to give a hearing to the party affected by the order. This Court, however, held that an order passed under Fundamental Rule 54 is not always a consequential order of a mere continuation of the departmental proceeding taken against the employee. Since consideration under Fundamental Rule 54 depends on facts and circumstances in their entirety and since the order may result in pecuniary loss to the Government servant, consideration under the Rule "must be held to be an objective rather than a subjective function". Shelat, J., who delivered the judgment of the Court went on to observe; "The very nature of the function implies the duty to act judicially. In such a case if an opportunity to show against the action proposed is not afforded, as admittedly it was not done in the present case, the order is liable to be struck-down as invalid on the ground that it is one in breach of the principle of natural justice.

5. It is thus evident from the aforesaid statement of law that whenever a person is likely to suffer financial adverse consequences, then opportunity of hearing is implicit. Furthermore, it is clarified that the exoneration of a delinquent employee in a departmental enquiry and/or acquittal in criminal proceedings would show that there was no justification for placing such an employee under suspension. Accordingly, no fault can be imputed to him.

6. In the present case. Haryana Financial Corporation (Staff) Regulation 1961, as

applicable to Haryana, govern the issue. According to Regulation 41 (4), if an employee placed under suspension is not subjected to any penalty of delay or stoppage of increment, reversion to lower post or grade, recovery from pay from whole or part of the pecuniary loss and removal or dismissal from service as envisaged by clause 1 of Regulation 41 (b) to (e) then, such an employee is entitled to whole salary which he would have received but for suspension. Regulation 41(4) reads as under:

41(1) xx xx xx

(2) xx xx xx

(3) xx xx xx

(4) An employee maybe placed under suspension by the Managing Director. During such suspension, he shall receive subsistence allowance equal to his substantive pay; provided that if no penalty under clause (b), (c), (d) or (e) of sub-regulation (1) is imposed, the employee shall be refunded that difference between his substantive and the emolument which he would have received, but for such suspension, for the period he was under suspension and that if a penalty is imposed on him under the said clauses no order shall be passed, which shall have the effect of compelling him to refund such subsistence allowance. The period during which an employee is under suspension shall, if he is not dismissed from service, be treated as period spent on duty or leave, as the Managing Director may direct.

(5) xx xx xx

7. In case of an employee who has been arrested in a criminal charge, regulation 40(1) and (2) provides as under :--

40(1)An employee, who is arrested for debt or on a criminal charge, shall be considered as under suspension from the date of his arrest and shall be allowed payment admissible to an employee under suspension under sub-regulation (4) of Regulation 41, until termination of the proceedings against him, when an adjustment of his pay and allowances shall be made according to the circumstances of the case and in the light of the decision as to whether his absence is to be accounted for as period of duty or leave, the full pay and allowances being given only in the event of the employee being acquitted of all blame and treated as on duty during the period of his absence. An employee, who is committed to prison for debt, or is convicted of any offence, involving moral turpitude, shall be liable to dismissal.

(2) Where a conviction of an employee is set aside by higher court and the employer is acquitted honorably, he may be reinstated in service.

8. A conjoint reading of aforesaid regulations would show that in case an employee is exonerated in departmental enquiry, then he is entitled to grant of full salary as if he has never been placed under suspension. Even in a case where

he has suffered punishment of reprimand, as per provisions of clause (a) of sub-regulation (1) of Regulation 41, he would be entitled to full salary. The rationale behind these regulations is that suspension on exoneration of such an employee was not justified. Likewise, in a criminal case which is covered by Regulation 40, if the proceedings have been terminated then in the event of his acquittal of all blame, then he must be treated as on duty during the period of his absence. However, if an employee has been initially convicted and the conviction is set aside by the higher court, then such an employee may be reinstated in service. It is evident that the same rationale permeates through Regulations 40 and 4], therefore, the view taken by the learned Single Judge does not suffer from any legal infirmity warranting interference by this Court.

9. As a sequel to the above discussion, this appeal fails and the same is hereby dismissed.