

(2015) 07 P&H CK 0145
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 26076 of 2013

Jaswinder Kaur

APPELLANT

Vs

Punjab State Power Corporation Limited and Others

RESPONDENT

Date of Decision : 24-07-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Penal Code, 1860 (IPC) — Section 120-B, 468, 471
Prevention of Corruption Act, 1988 — Section 13(1)(d)

Citation : (2015) 07 P&H CK 0145

Hon'ble Judges : Deepak Sibal, J

Bench : Single Bench

Advocate : O.P. Gabba, for the Appellant; Meena Bansal, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Deepak Sibal, J—On being convicted by the Sessions Judge, Ferozepur under Sections 468, 471 read with Section 120-B of the Indian Penal Code and Section 13(1)(d) of Prevention of Corruption Act, 1988, vide order dated 2.3.2007, the respondent-Punjab State Power Corporation Limited (hereinafter referred to as "the respondent-Corporation") dismissed the petitioner from service. The petitioner appealed against his conviction before this Court through Criminal Appeal No. 1514-SB of 2006 which was allowed on 23.2.2010.

2. On being acquitted by this Court, the respondent-Corporation vide its order dated 14.7.2010 took the petitioner back in service. After joining back in service, the petitioner for personal reasons applied for and was granted voluntarily retirement. In the meantime, the petitioner made a representation to the respondent-Corporation seeking arrears for the period from 2.3.2007 to 15.7.2010 that is the period when the petitioner had been kept out of service on account of his conviction which was set aside by this Court on appeal.

3. After considering his representation, vide order dated 31.12.2010, the

petitioner's claim for arrears was denied and period of his absence was ordered to be treated as leave of the kind due. It is this order which is challenged by the petitioner before this Court through the present writ petition. The petitioner further seeks the time bound promotional scale after 23 years of his service which has been denied to the petitioner on the ground that he has not passed the requisite departmental examination.

4. I have heard learned counsel for the parties and have also gone through the record of the case with their able assistance.

5. It is not disputed that the petitioner was dismissed from service only on account of his conviction by the Sessions Judge, Ferozepur. It is further the admitted position that on appeal the order of his conviction passed by the Sessions Judge was set aside by this Court and on such acquittal, the petitioner was taken back in service.

6. The question for consideration before this Court is whether the petitioner could be denied arrears with regard to his salary and other consequential benefits for the period he remained out of service on account of his conviction by the Sessions Judge, Ferozepur.

7. It is not disputed by the respondent-Corporation that the provisions of Punjab Civil Services Rules have been adopted by the respondent-Corporation. This fact has specifically been raised by the petitioner in para-3 of the writ petition which has not been denied. That being so, it would be useful to refer to relevant part of Rule 7.3 of the Punjab Civil Services Rules, Vol. I, Part I, Chapter VII (hereinafter referred to as "the Rule") which is 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 the reinstatement 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."

8. The above quoted rule clearly specifies that a dismissed employee when reinstated upon exoneration is entitled to be granted full pay and allowances to which he would have been otherwise entitled to had he not been dismissed from service.

9. In this regard, the following observations of Apex Court in case of Brahma Chandra Gupta Vs. Union of India (UOI), AIR 1984 SC 380 : (1984) 48 FLR 387 : (1984) LabIC 177 : (1983) 2 SCALE 910 : (1984) 2 SCC 433 : (1984) 1 SLJ 566 can usefully be referred to:

"Keeping in view the facts of the case that the appellant was never hauled up for departmental enquiry, that he was prosecuted and has been ultimately acquitted, and on being acquitted he was reinstated and was paid full salary for the period commencing from his acquittal, and further that even for the period in question the concerned authority has not held that the suspension was wholly justified because 3/4th of the salary is ordered to be paid, we are of the opinion that the approach of the trial Court was correct and unassailable. The learned trial Judge on appreciation of facts found that this is a case in which full amount of salary should have been paid to the appellant on his reinstatement for the entire period. We accept that as the correct approach. We accordingly allow this appeal, set aside the judgment of first appellate Court as well of the High Court and restore the one of trial Court with this modification that the amount decreed shall be paid with 9% interest p.a. from the date of suit till realisation with costs throughout."

10. Further, the following observations of this Court in CWP No. 6131 of 2012; Sucha Singh v. State of Punjab and others; decided on 12.9.2013 can usefully be referred to:

"9. In this regard, it would be necessary to advert to Rule 7.3 of the Punjab Civil Services Rules, Vol.I, Part I, Chapter VII, which reads 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 the reinstatement 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) Whether 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."

10. A bare reading of the provision would make it clear that a Government employee who has been dismissed, removed, compulsorily retired or suspended, is re-instated upon 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.

11. In the facts of the present case, the order of conviction of the petitioner under the provisions of the Prevention of Corruption Act has been set aside and the petitioner stands completely exonerated. This Court would have no hesitation in holding that in terms of Rule 7.3, the petitioner upon being acquitted would be entitled to the full salary and allowances for the period in question."

(emphasis supplied)

11. The expression "fully exonerated" has been considered and interpreted by a Division Bench of this Court in *Shashi Kumar v. Uttri Haryana Bijli Vitran Nigam and another*; 2005(1) SLR 659 while observing as under:

"7. In any event, the terms "honourable acquittal" or "fully exonerated" are unknown in the Code of Criminal Procedure or in Criminal Jurisprudence. These terms came up for consideration before a Division Bench of the Madras High Court in the case of *The Union of India Vs. Jayaram Damodhar Timiri*, AIR 1960 Mad 325 : (1960) ILR (Mad) 392 : (1960) 2 LLJ 212 : (1960) 73 LW 95 . Rajammannar, C.J. delivering the judgment of the Division Bench observed as under:-

"There is no conception like "honourable acquittal" in Criminal P.C. The onus of establishing the guilt of accused is on the prosecution, and if it fails to establish

the guilt beyond reasonable doubt, the accused is entitled to be acquitted.

Clause (b) of Article 193 of the Civil Service Regulations which says that when a Government servant who was under suspension is honourably acquitted, he may be given the full salary to which he would have been entitled if he had not been suspended applies only to the case of departmental inquiry.

Where the servant was suspended because there was a criminal prosecution against him, and he was acquitted therein, and reinstated he is entitled under the general law, to the full pay during the period of his suspension. To such a case Article 193 (b) does not apply."

8. The aforesaid judgment of the Madras High Court was considered and followed by this Court in the case of Jagmohan Lal Vs. State of Punjab and Others, AIR 1967 P&H 422 : (1967) 1 ILR (P&H) 809 . In that case, on acquittal, the petitioner was reinstated in service, but his period of suspension was not treated as the period spent on duty. He had, therefore, filed writ petition under Articles 226/227 of the Constitution of India claiming that he was entitled to full pay and allowances for the period of his suspension. Considering the impact of Rules 7.3, 7.5 and 7.6 of the Punjab Civil Services Rules Vol. I Part-I, It was observed as follows:-

(2) xxx xxx xxx

The interpretation which has been put by the Government on the rule is incorrect. The blame which attached to the petitioner was that there was a criminal charge against him under which he was standing his trial. The moment he is acquitted of the charge, he is acquitted of the blame. In criminal law, the Courts are called upon to decide whether the prosecution has succeeded in bringing home the guilt to the accused. The moment the Court is not satisfied regarding the guilt of the accused, he is acquitted. Whether a person is acquitted after being given a benefit of doubt or for that reasons, the result is that his guilt is not proved. The Code of Criminal Procedure does not contemplate honourable acquittal. The only words known to the Code are "discharged" or "acquitted". The effect of a person being discharged or acquitted is the same in the eyes of law. Since, according to the accepted notions of imparting criminal justice, the Court has to be satisfied regarding the guilt of the accused beyond a reasonable doubt, it is generally held that there being a doubt in the mind of the court, the accused is acquitted.

I am, therefore, quite clearly in my mind that the intention underlying Rule 7.5 can be no other except this: the moment the criminal charge on account of which an officer was suspended fails in a court of law, he should be deemed to be acquitted of the blame. Any other interpretation would defeat the very purpose of the rule. It is futile to expect a finding of either honourable acquittal or complete innocence in a judgment of acquittal. The reason is obvious; the criminal courts are not concerned to find the innocence of the accused. They are only concerned to find whether the prosecution has succeeded in proving beyond

a reasonable doubt the guilt of the accused."

9. The judgment rendered in the case of Union of India v. Jayaram (supra) has also been followed by a Division Bench of the Gujarat High Court in the case of Ramsinhji Viraji Rathod, Parmanand Society v. The State of Gujarat and another, 1971 SLR 743. In the aforesaid case, it has been observed as follows:

"7...Clause (b) of Article 193 of the Civil Service Regulations, which was under consideration before the Madras High Court was substantially similar to our Rule 152, with this difference, that instead of the words "fully exonerated" the words were "honourably acquitted". With respect we are in agreement with the reasoning of Rajamannar, C.J. and in our opinion, it is not open to the authorities concerned to bring in the concept of honourable acquittal or full exoneration so far as the judgment of the Criminal court is concerned. In a criminal trial the accused is only called upon to meet the charge levelled against him and he may meet the charge-(a) by showing that the prosecution case against him is not true; or (b) that it is not proved beyond reasonable doubt; or (c) by establishing positively that his defence version is the correct version and the prosecution version is not correct. In any one of these three cases, if the Court comes to the conclusion that the prosecution has failed to establish its case beyond reasonable doubt or that the prosecution case is not true or that the defence version is correct and is to be preferred as against the prosecution version, the Criminal Court is bound to acquit the accused. The accused is not called upon in every case to establish his complete innocence and it is sufficient for the purposes of criminal trial that he satisfied the Court that the prosecution has not established its case beyond reasonable doubt. Since he is not called upon to prove a positive case, the concept of honourable acquittal or full exoneration can have no place in a criminal trial and it is because of this reasoning that we agree with the observations of Rajamannar, C.J. In The Union of India Vs. Jayaram Damodhar Timiri, AIR 1960 Mad 325 : (1960) ILR (Mad) 392 : (1960) 2 LLJ 212 : (1960) 73 LW 95 ."

10. Furthermore a Division Bench of this Court, after examining the relevant rules in the case of Hukam Singh (supra) has held as under:

"It is abundantly clear that Rule 7.3 of the Rules is the general rule, while in case a person is acquitted, it is specific Rule 7.5 of the Rules that would be attracted. The law is well settled that special Rule will always take precedence over the general rule and consequently, it must follow that under Rule 7.5 of the Rules, referred to above, the petitioner was entitled to the full back wages because, as mentioned above, the earlier decisions referred to above have little application in the present case.

In our this view, we are supported by the judgment of this Court in the case of Maha Singh Sinhmar Vs. State of Haryana and Others, (1994) 108 PLR 409 . Same view was expressed by this Court in the case of Lehna Singh v. The State of Haryana and others, 1994(1) SCT 173 (P&H) : 1993(3) Recent Services

Judgments 119. Keeping in view the aforesaid, we have no hesitation in holding that the impugned order cannot be sustained. In terms of Rule 7.5 of the Rules, on petitioner's being acquitted, he would be entitled to full salary and allowances for the period of suspension and dismissal..."

11. We are of the considered opinion that in view of the settled law the petitioner is clearly entitled to be reinstated in service with all consequential benefits. We quash the impugned order dated 27.8.2003 (Annexure P-4). We direct the respondents to reinstate the petitioner into service with full back-wages. Mr. Agnihotri has argued that the respondents be given opportunity to now conduct a departmental enquiry. We are of the considered opinion that in view of the categorical findings recorded by the High Court, there would be hardly any justification in permitting further departmental action. We, therefore, decline the request made by the counsel for the respondents."

12. To the same effect, there is another judgment of this Court in case of Bhupinderjit Singh v. State of Punjab; 2003 (2) SLR 759.

13. No law to the contrary has been cited by the learned counsel for the respondents.

14. In view of the above, I have no hesitation to direct that the petitioner would be entitled to the grant of full salary and allowances from 2.7.2007 to 15.7.2010 i.e. the period when the petitioner was kept out of service on account of his conviction which was ultimately set aside by this Court on appeal.

15. This takes me to the second issue raised in the present writ petition which is whether the petitioner would be entitled to the grant of time bound higher pay scales after 23 years of his service. The Instructions dated 28.7.2000 which in this regard are relevant are reproduced as under:

"PUNJAB STATE ELECTRICITY BOARD FINANCE SECTION

Finance Circular No. 20/2000

Office Order No. 392/Fin/PRC-121

Dated: 28.7.2000

The Punjab State Electricity Board is pleased to decide that the grant of benefit of promotional increment (s) to an employee on completion of 23 years service as envisaged in its P/O No. 384/Fin/PRC-121 dated 9.11.99 will be governed by the following conditions:-

(i) he/she has the avenue of three promotions, but has not earned three regular promotions in his/her regular service from the date of joining on the induction post/or any other post specifically declared as induction post for granting time bound promotional/devised promotional scale.

(ii) He/she has not earned third promotion in his/her regular service between 16th and 23rd year of service.

(iii) he/she has not been placed in a scale which is higher than the scale of his/her next higher post.

(iv) the increments) are in the nature of advance promotional benefits to be absorbed in the next regular promotion.

(v) those who forego promotion shall not be entitled for this benefit.

2. This order will be effective from 1.1.96 without prejudice to the Assured Career Progression Scheme to be devised consequent upon revision of pay scales.

3. The order conditions as incorporated in office order No. 197/Fin/PRC-1988 dated 23.4.90 and amended from time to time will remain unchanged.

4. The arrears accruing from re-fixation of pay on grant of advance promotional increment(s) will be credited to GPF accounts of the employee in full whatever GPF accounts exist and payable in cash w.e.f. 1.8.2000. For the retired employees the arrears will be paid in cash as per existing policy.

Sd/- Secretary, Punjab State Electricity Board, Patiala"

16. The above reproduced instructions are effective from 1.1.1996 and contain no condition of passing of a departmental examination before an employee becomes eligible for the grant of time bound higher pay scales after 23 years of service.

17. In this regard, the following observations made by this Court in RSA No. 2726 of 2008; Punjab State Electricity Board, Patiala and others v. Jiwan Singh; decided on 9.9.2008 can usefully be referred to:

"As held by this Court in RSA No. 4046 of 2005, the assured progress scheme does not contain a provision that a person, who has not passed the departmental examination, would not be entitled to promotional increment on completion of 23 years service. While dealing with this aspect on the basis of the appeal filed by the appellants, the High Court, as is apparent from the aforementioned judgment, held against the Electricity Board. I find no reason to differ with the aforementioned judgement and, therefore, as no substantial question of law arises for consideration, the present appeal is dismissed, with no order as to costs."

18. To the same effect, there is another judgment of this Court in CWP No. 10808 of 2007; Paul Singh v. Punjab State Electricity Board, Patiala, through its Secretary, and others; decided on 24.01.2012 wherein it has been held as under:

"1. The petitioner's claim is for the grant of benefit of promotional increment in terms of the circular issued by the Government Finance Department on 23.04.1990. The qualifications which are mentioned for an employee on 23 years of regular service are as follows:-

"i) He has not been benefited by the scheme of 9/16 years time bound promotional scale.

ii) He has not earned three regular promotions in his career.

iii) He has not earned third promotion in his regular service between 16th and 23rd years of service.

iv) The increments referred to in para 2 above are in the nature of advance promotional benefit to be absorbed in next regular promotion."

2. The counsel says that the petitioner fulfills all the requisite qualifications for claiming the promotional increments but the same has been still denied by them. In each one of other writ petitions as well the same grounds are urged.

3. The counsel for the respondents admits that the petitioners fulfill the criteria mentioned in the circular but however contests the petitioners' claim on the ground that the reliance which the petitioners have made in the writ petitions, referring to a decision of this Court in a second appeal cannot be applied in a writ proceeding. I will not go into the issue of whether a decision rendered in a regular second appeal should be a matter to draw lesson from but if the case has to be considered from the point of view of the eligibility criteria mentioned in the circular, there is no denying the fact that the petitioners are entitled to consideration for promotional increments. The case has to be allowed in favour of the petitioners on this short ground only. The respondents are directed to apply the appropriate scales to which the respective petitioners are entitled to and the arrears shall be calculated and paid within a period of 6 weeks from the date of receipt of copy of this order. If the same are not paid as stipulated, it will carry interest at 6% from today."

19. In view of the above, the petitioner is held entitled as under:

(i) The petitioner would be entitled to the grant of full salary and allowances from 2.7.2007 to 15.7.2010 i.e. the period when the petitioner has been kept out of service on account of his conviction which was ultimately set aside by this Court on appeal.

(ii) The petitioner would also be entitled for the grant of time bound higher pay scales after 23 years of service. However, while granting the benefit of 23 years of service, the arrears are restricted to 32 months from the date of filing of the present writ petition.

20. The writ petition stands allowed in the above terms.

21. No costs.