
(2013) 09 P&H CK 0355

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 4287 of 2007 (O and M)

Krishan Kumar Nain

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 18-09-2013

Acts Referred:

Citation : (2014) 1 SCT 557

Hon'ble Judges : Rajiv Narain Raina, J

Bench : Single Bench

Advocate : J.S. Maanipur, for the Appellant; Sunil Nehra, D.A.G., Haryana, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Narain Raina, J.

C.M. No. 2739 of 2012

1. C.M. is allowed without receiving reply since Mr. Nehra, learned Sr. DAG, Haryana appearing for the State submits that there is no necessity to file reply to the CM as was requested before this Court on 22.3.2013 by the State counsel.

MAIN CASE

By consent, the main case is taken on Board for final disposal.

The facts briefly stated are as follows: The petitioner was working as a Junior Engineer in Water Services Division, Gohana. While working in that circle, an FIR No. 8 dated 16.6.1993 was registered in Police Station, Vigilance Bureau, Kamal u/s 406 and 409 IPC against him. He was arrested on 6.7.1994 by the police and remained in custody up till 12.7.1994. As a result of arrest, he was placed under deemed suspension on 6.7.1994. The order of suspension was passed on 14.3.1996 endorsed to the petitioner on 23.3.1996.

2. The charge against him was that a physical verification of stores was carried

out in the Mechanical Drainage Sub Division, Gohana by a Committee of Officers, as a result of which, materials worth Rs. 1,79,746.50 were found short against him. He was also charged of making irregular purchases worth Rs. 61,685/- without proper sanction from the competent authority. Another amount of Rs. 4128/- was found against him during reconciliation of the Bin Cards with price stores ledger. There were found other shortages as well. For these acts of omission and commission, the petitioner was charge sheeted on 8.10.1993 under Rl. 7 of the Haryana Civil Services (Punishment & Appeal) Rules, 1987. His explanation in reply to the charge sheet was considered and a 2nd show cause notice was issued to him on 5.5.1999. His reply to the 2nd show cause notice was not found satisfactory and vide order dated 6.10.1999, a recovery of Rs. 3,01,158.50 was ordered against him and the punishment of stoppage of three increments were imposed but without future effect.

3. After the trial concluded, the Judicial Magistrate, 1st Class, Sonapat, found the prosecution case of pilferage and embezzlement doubtful. There was failure of the prosecution to connect the accused with the crimes charged. The charges could not be proved beyond reasonable shadow of doubt. The petitioner was acquitted of the charges leveled against him by extending him and his co-accused Dilbagh Singh, the benefit of doubt. As a result of the departmental proceedings and the criminal trial, the petitioner was kept under suspension till 15.41.2006 when the suspension was revoked and the petitioner was reinstated to service with immediate effect. However, vide impugned order dated 15.11.2006, the period of suspension was restricted to the subsistence allowance already drawn. As a result of all this, the petitioner remained under continuous suspension from 15.3.1996 to 15.11.2006.

4. The prayer in this writ petition is for the grant of salary for the suspension period minus the subsistence allowance already drawn. The impugned order dated 15.11.2006 (P-4) does not cite rule, on which, salary during the suspension period was restricted to subsistence allowance already paid but in the written statement filed upon notice of motion having been issued, the power to do so has been traced to Rule 7.5 of the Punjab Civil Services Rules. Volume I - Part I as applicable to the State of Haryana. Rule 7.5 reads as follows:-

7.5 - An employee of Government against whom proceeding have been taken either for his arrest for debt or on a criminal charge or who is detained under any law providing for preventive detention should be considered as under suspension for any periods during which he is detained in custody or is undergoing imprisonment, and not allowed to draw any pay and allowances (other than any subsistence allowance that may be granted in accordance with the principles laid down in rule 7.2) for such periods until the final termination of the proceedings taken against him or until he is released from detention and allowed to rejoin duty, as the case may be. An adjustment of his allowances for such periods should thereafter be made according to the circumstances of the case, the full amount being given only in the event of the officer being acquitted of blame or

(if the proceedings taken against him were for his arrest for debt), of its being proved that the officer's liability arose from circumstances beyond his control or the detention being held by the competent authority to be unjustified.

5. Mr. J.S. Maanipur in his challenge to the impugned order to the extent indicated above submits that rule 7.5 prescribes that salary for the period of suspension has to be paid according to the circumstances of the case, the full amount being given in the event of the officer being acquitted of blame.

6. His next contention is that notwithstanding the above, the impugned part of order (P-4) has been illegally imposed since it has been passed without notice or effective show cause and no opportunity of hearing was afforded to the petitioner before depriving him of the benefit of full salary for the period of suspension.

7. Learned counsel for the petitioner relies on the judgment rendered by the division bench of this Court in Shiv Kumar Goel v. State of Haryana and another; 2007 (91) SCT 739. M.M. Kumar, J. (as His Lordship then adorned this Court) speaking for the division bench held as follows:-

There is another aspect of the matter. In the Punjab Civil Services Rules Volume-I (as applicable to Haryana) Chapter VII has been incorporated which deals with amongst other things the subject of suspension. Rule 7.3 lays down a comprehensive procedure for coming to a conclusion as to how the period of suspension is to be treated. The aforementioned Rule was subject matter of consideration by Hon"ble the Supreme Court in the case of B.D. Gupta Vs. State of Haryana, It was held that if an order adversely affects financially then even minor penalty has to be passed after objective assessment of all relevant facts and circumstances. The aggrieved employee is required to be granted a full opportunity of hearing by issuing show cause notice. In the present case, there is no show cause notice issued to the petitioner on the subject of treatment of his period of suspension. Even on that account, the order dated 20.11.2002 (Annexure P1) is liable to be set-aside.

8. Mr. Maanipur also relies on another judgment of the division bench of this Court in 2008 (1) S.C.T. 819 : CWP No. 12502 of 2006; Poonam Rani v. Uttar Haryana Bijli Vitran Nigam Limited decided on 21.1.2008, in which, it is held as follows:-

Learned Additional Chief Judicial Magistrate, Jind, has ordered acquittal of the petitioner after threadbare examination of the evidence. It has been noticed that the prosecution has miserably failed to connect the accused with the commission of offences for which they have been chargesheeted. It has further been noticed that no guilt can be attributed to the accused and due to lack of evidence charges are not sustainable against them. In such circumstances, it can hardly be said that the acquittal of the petitioner is not honourable. As such, contention of the learned counsel for the Nigam, to the contrary, cannot be accepted. The petitioner was suspended because of criminal prosecution against her. Once she is acquitted therein and reinstated into service, she is entitled to full pay during

the period of her suspension. Similar view was taken by a Division Bench of this Court in the case reported as Shashi Kumar v. Uttri Haryana Bijli Vitran Nigam and another, 2005 (1) S.C.T. 576 : 2005 (1) SCT 577.

In the case of Shiv Kumar Goel v. State of Haryana and another, 2007 (1) Service Cases Today 739, also a Division Bench of this Court observed as under:-

If the Criminal Court recorded finding that there was no evidence to prove the charge of corruption against the charged employee, notwithstanding observations as to acquittal by benefit of doubt, it will be considered honourable acquittal. His benefits of pay and allowance over and above subsistence allowance cannot be forfeited still observing him guilty of the same charges.

9. It is well settled that once departmental proceedings for imposition of major penalty are initiated against a delinquent employee, then even for imposing a minor penalty, regular departmental proceedings are required to be initiated. This is the view taken by the full bench of this Court in K.G. Tiwari v. State of Haryana and others, 2002 (2) SCT 915 : 2002 (4) SLR 329.

10. It is the further contention of Mr. Maanipur that since the disciplinary proceedings and the criminal trial were launched on the same set of allegations, then, the former ended in minor punishment of stoppage of three increments without permanent effect and recovery of an amount of Rs. 3 lacs and odd, then the misconduct was not viewed as a serious one by the disciplinary authority inviting major punishment. Therefore, there is no legal justification for denying the benefit of full salary for the suspension period, the trial having ended in acquittal and the civil misconduct in minor punishment. Rule 4 of the HCS (P & A) Rules, 1987 prescribes the range of minor penalties and recovery from pay of the whole or part of any pecuniary loss caused by negligence or breach of orders and withholding increments of pay are both minor in character. The charges of criminal breach of trust punishable u/s 409 and cheating u/s 420 IPC by a public servant which were laid by the Vigilance Bureau, Karnal ended in acquittal. As a matter of fact, it was only after the conclusion of departmental enquiry against the petitioner, where he was found liable making good losses incurred by the State for pilferage of goods that the criminal case was registered.

11. A careful reading of the judgment of the trial court placed on record of this case at (P-3) reveals that the trial court in its judgment examined the merits of the case on appreciating the evidence adduced by the parties and opined on the statements made in cross-examination of witnesses where nothing incriminating was revealed against the accused persons in support of the case of the prosecution. The prosecution witnesses also could not establish the loss of store items or of what was found in the physical verification of the articles carried out earlier and at the relevant time. If the charge was of pilferage and embezzlement of store items, that has been discredited by the trial court after appreciating evidence on record and, therefore, I am unable to read in this a case of technical acquittal on overemphasis of the principle merely on the trial court's broad use

of the expression, while acquitting the accused, - "by extending them the benefit of doubt". Very often the Courts use this expression as a safeguarding reflex while passing judgments of acquittal to voice reaffirmation of the jurisprudential foundation of our criminal law justice system which requires the highest standard of proof on the prosecution to bring home the criminal charge "beyond reasonable shadow of doubt". This is also not the case where the prosecution witnesses have resiled or have changed their versions recorded earlier during investigation. This is a case where the substance of the criminal charge would not hold as the deposition of prosecution witnesses in the criminal trial would govern charge of civil misconduct in the same set of facts on the same evidence. In view of absence of these essential ingredients, the ratio of the decision cited by the learned State counsel rendered in Commissioner of Police, New Delhi and Another Vs. Mehar Singh, would not impact the present case. That was a case involving criminal antecedents of aspirants to police service and maintenance of purity to avoid entry of undesirable persons of doubtful background in the police force because public interest is involved. The Supreme Court observed in para. 25 of the report as under:-

The expression "honourable acquittal" was considered by this Court in S. Samuthiram. In that case this Court was concerned with a situation where disciplinary proceedings were initiated against a police officer. Criminal case was pending against him u/s 509 of the IPC and u/s 4 of the Eve-teasing Act. He was acquitted in that case because of the non-examination of key witnesses. There was a serious flaw in the conduct of the criminal case. Two material witnesses turned hostile. Referring to the judgment of this Court in Management of Reserve Bank of India, New Delhi v. Bhopal Singh Panchal, where in somewhat similar fact situation, this Court upheld a bank's action of refusing to reinstate an employee in service on the ground that in the criminal case he was acquitted by giving him benefit of doubt and, therefore, it was not an honourable acquittal, this Court held that the High Court was not justified in setting aside the punishment imposed in departmental proceedings. This Court observed that the expressions "honourable acquittal", "acquitted of blame" and "fully exonerated" are unknown to the Criminal Procedure Code or the Penal Code. They are coined by judicial pronouncements. It is difficult to define what is meant by the expression "honourably acquitted". This Court expressed that when the accused is acquitted after full consideration of prosecution case and the prosecution miserably fails to prove the charges leveled against the accused, it can possibly be said that the accused was honourably acquitted.

12. That apart and for the variety of reasons aforesaid, Mr. Maanipur persuades this Court to quash the last line of the impugned order dated 15.11.2006 (P-4) which denies full salary for the period of suspension less subsistence allowance drawn without assigning any reason in support thereof.

13. Mr. Sunil Nehra, learned Sr. DAG, on the other hand, submits that in the present case, the petitioner cannot be said to be completely acquitted of blame.

He relies on the division bench decision of this Court in Mahabir Singh and Others Vs. State of Haryana In this intra-court appeal, the bench considered the order of the learned Single Judge in appeal who had held that the appellant therein was not entitled to full pay and allowances for the period of suspension as he was arrested in a criminal case involving Ss. 304B/498A/34 IPC registered on 28.7.2006 at Police Station Bawani Khera. The order was upheld with the modification that the appellant would be entitled to subsistence allowance @ 50% for the first 6 months and @ 75% for the later period of suspension. The learned Single Judge had relied on the judgment of the Supreme Court in Ranchhodji Chaturji Thakore Vs. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar, (Gujarat) and another, , to uphold denial of full pay and allowances for the period of suspension. The Apex Court held that once a decision is taken on the ground that the responsibility for getting himself involved in a criminal case was that of the petitioner, the authorities would be justified in not releasing full pay and allowances for the period, for which, he remained under suspension.

14. Mr. Nehra proceeds with his submissions to urge that mere acquittal of an employee concerned in a criminal case would not automatically entitle him to full salary because he has not worked for the relevant period. Learned State counsel also relies on the decision of this Court in intra-court appeal Bala Ram v. Uttar Haryana Bijli Vitan Nigam Ltd. and others, LPA No. 478 of 2013 (O & M) decided on 2.5.2013. In this case, a Junior Engineer was proceeded against criminally u/s 7 read with Section 13 of the Prevention of Corruption Act, 1988 registered by the State Vigilance Bureau. The appellant was convicted by the Special Judge, Jagadhari and sentenced to one year imprisonment. As a result of conviction, the appellant was removed from service on the basis of his conduct which led to his conviction on the criminal charge. In appeal, the appellant was acquitted by giving the benefit of doubt. On reinstatement, the arrears of salary for the period when he remained out of service due to conviction were declined by the learned Single Judge. Such denial has been held justified. In the present case, the petitioner has not been convicted. He was suspended following detention. The order of suspension was passed on 15.3.1996 on the basis of detention for the period from 6.4.1994 to 12.7.1994 after about 2 = years of the registration of the FIR, the petitioner was kept under suspension till 4 months after acquittal by the trial court. The total period of suspension was a startling 10 = years the length of which prima facie appears unjustified especially after diluted punishment resulting from R. 7 proceedings. The petitioner was not only acquitted of the criminal charge but for his alleged civil misconduct, he was imposed only minor punishment. Mr. Nehra's reliance on Mahabir Singh's case (supra) is not quite apposite. That case involved dowry death, a private offence against the State. In the present case, the charge of criminal breach of trust by a public servant and cheating launched by the Vigilance Bureau, Karnal were on the same set of allegations as were found in the departmental proceedings. The very fact that the petitioner was kept under suspension for 10 = years to await

the result of trial is bad enough and ex facie in abuse of authority and contrary to public interest. The services of the petitioner could have been utilized effectively in some other manner consistent with State interest to make him earn his salary by taking work out of him by assigning innocuous duty. Once minor penalty was imposed on 31.10.1998 by the disciplinary authority, there was no reason to keep the petitioner paralyzed under suspension for another 7 years thereafter. Mr. Nehra has not shown any cogent reason, for which, the suspension could be justified which was originally based on detention and deemed suspension. No further order was passed on the suspension to justify continuation. I have, therefore, little hesitation in allowing the instant petition and quashing the impugned part of the office order dated 15.11.2006 endorsed on 16.11.2006 (P-4) which restricts subsistence allowance to the amount already drawn. R. 7.5 would not be destructive of the claim for full salary in this case. There is another reason why I am persuaded to declare the impugned part of the order bad. It was passed without notice or hearing and was, therefore, in breach of rules of natural justice.

15. The petitioner is thus held entitled to full salary after deducting subsistence allowance already drawn during the suspension period from 6.7.1994 to 16.11.2006. Mr. Maanipur's prayer for the award of interest on the aforesaid amount may also not be unjustified since the petitioner was deprived of use of full salary by keeping him under wrongful suspension for an extraordinarily unreasonable period of 10 = years and, therefore, he should be entitled to interest as well to balance out the equities. I, therefore, direct that for the difference of salary for the period in question the interest thereon would carry @ 6% per annum but from the date of filing of the writ petition. The first stamped date of presentation of the petition by the registry is 19.3.2007 for purposes of computing interest payable under this order. I may have remanded the matter back for reconsideration of the impugned part of the order but hesitate to do so as not to prolong the agony of the petitioner any further as he may have suffered much already.

Accordingly, this writ petition is allowed in the terms stated hereinabove.