

(2016) 08 P&H CK 0069
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 18414 of 2010 (O/M)

Lachhman Dass Bansal

APPELLANT

Vs

Punjab State Power Corporation Limited

RESPONDENT

Date of Decision : 17-08-2016

Acts Referred:

Citation : (2017) 1 PLR 580

Hon'ble Judges : Mr. Kuldeep Singh, J.

Bench : Single Bench

Advocate : Mr. Harinder Sharma, Advocate, for the Petitioner; Mr. Rajesh Kumar Sharma, Advocate, for the Respondents

Final Decision : Allowed

Judgement

Kuldeep Singh, J.(Oral) - The petitioner, who is a retired Junior Engineer from Punjab State Electricity Board (now Punjab State Power Corporation Limited), has invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India for issuance of a writ of certiorari for quashing the impugned order dated 24.9.2007 (Annexure-P-4), passed by respondent No. 3, vide which the period during which the petitioner remained dismissed from service on account of his conviction in a criminal case for offence punishable under the provisions of Prevention of Corruption Act, 1988, from 12.2.1996 to 23.3.2004, the dismissal period was ordered to be treated as leave of kind due. Further, writ of mandamus is sought, directing the respondents to consider the said period as a period on duty and grant all the consequential benefits including the retiral benefits.

2. The petitioner was working as a Junior Engineer with the Punjab State Electricity Board, now taken over by the Punjab State Power Corporation Limited (in short "PSPCL"), at Rural Sub Division, Gidderbaha. On 24.6.1992, FIR No. 42 dated 24.6.1992 was registered at Police Station Gidderbaha, under Section 7 read with Section 13 of the Prevention of Corruption Act, 1988. The petitioner was accordingly arrested. He was placed under suspension retrospectively with

effect from 24.6.1992, vide order dated 26.6.1992, passed by the Executive Engineer, Gidderbaha. Subsequently, on 24.12.1992, his suspension was revoked and thereafter he continued to work in the department. On 4.5.1994, the petitioner was convicted under Section 7 read with Section 13 of the Prevention of Corruption Act, 1988 by the learned Special Judge, Faridkot, and was sentenced to undergo rigorous imprisonment for one year and to pay fine of Rs. 1,000/-, in default thereof, to further undergo rigorous imprisonment for three months. The petitioner preferred a criminal appeal before this Court bearing CRA-272-SB-1994. On 31.1.1996, the respondents, on the basis of conviction of the petitioner in the said corruption case, dismissed him from service and he was relieved from service with the effect from 11.2.1996. The said criminal appeal filed by the petitioner before this Court was allowed and, vide order dated 6.8.2003 (Annexure-P-1), the petitioner was acquitted of the charges framed against him. Consequently, vide order dated 19.3.2004 (Annexure-P-2), the petitioner was reinstated in service. However, regarding the fate of the period during which the petitioner remained dismissed from service was kept open to be decided later on. Thereafter, vide order dated 31.5.2006 (Annexure-P-3), the period of suspension of the petitioner from 24.6.1992 to 14.1.1993 was treated as duty period. Subsequently, the respondents passed the impugned order dated 24.9.2007 (Annexure-P-4), vide which the period from 12.2.1993 to 23.3.2004, during which the petitioner remained under dismissal, was treated as leave of the kind due. In the meanwhile, the petitioner had retired from service on 30.6.2007.

3. The plea of the petitioner is that he was not at fault. Therefore, the said period could not be treated as leave of the kind due.

4. The respondents, on the other hand, have maintained in the written statement that as per Regulation 7.3 of the Main Services Regulations, 1972 (in short "the Regulations of 1972") (Annexure-R-1), the period from the date of dismissal from service till the date of reinstatement has been regularized without pay, allowances and arrears, but with continuity of service. Therefore, the stand of the respondents is that, as per Regulation 7.3 of Regulations of 1972, referred above, the impugned order is justified.

5. I have heard the learned counsels for the parties and have also carefully gone through the file.

6. The question arising for consideration before this Court is as to when a person is convicted for the offence punishable under the provisions of Prevention of Corruption Act, 1988, relating to work done by him in allegedly discharge of his official duties and is dismissed from service on the basis of his conviction in a criminal case and later on his conviction is set aside and the department does not hold any separate departmental inquiry into the allegations, whether in such circumstances the employee, who is so reinstated, on account of his reinstatement, is entitled to full pay with consequential benefits or not ?

7. The learned counsel for respondents has relied upon two authorities of the Hon'ble Supreme Court of India titled as Ranchhodji Chaturji Thakore v. The Superintendent Engineer, Gujarat Electricity Board, 1997 AIR (SC) 1802 and Union of India and others v. Jaipal Singh, 2004 AIR (SC) 1005. The perusal of the said authorities show that in both the cases, the employee was involved in a murder case and it was held that the department was not at fault nor the department has moved any such complaint.

8. The learned counsel for respondents has further relied upon the Single Bench judgment of this Court in Anup Singh @ Anoop Singh v. State of Punjab and others, (arising out of CWP No. 3216 of 2016, decided on 17.2.2016), wherein the case pertains to the dismissal of a police employee, who was convicted under Section 7 read with Section 13 (2) of the Prevention of Corruption Act, 1988, and was later on acquitted. In another Single Bench judgment of this Court in case Ramesh Kumar v. Punjab School Education Board, (arising out of CWP No. 26185 of 2014, decided on 4.3.2016), the employee was involved in a murder case. The Court refused to treat such period as duty period as department was neither complainant nor at fault.

9. It is further stated by the learned counsel for the respondents that in this case, the department has decided not to hold departmental inquiry regarding the said allegations to hold whether there was any fault on the part of the employee or not.

10. The learned counsel for the petitioner, on the other hand, has relied upon the judgment of the Hon'ble Supreme Court of India in Jaipur Vidyut Vitran Nigam Limited and others v. Nathu Ram, 2010 LIC 767, wherein an employee of the Jaipur Vidyut Vitran Nigam Limited was involved in a case under the provisions of the Prevention of Corruption Act, 1988. He was convicted and consequently was dismissed from service, but his conviction was set aside and he was later on reinstated. The Apex Court, while considering the Regulation 41 of the said Vidyut Vitran Nigam Limited, held that in view of Circular dated 3.9.1975, particularly the last paragraph of the said circular, it cannot be said that the petitioner is not entitled to pay, back wages, as directed by the Division Bench of the High Court in the writ petition. The authority of the Apex Court in Union of India and others v. Jaipal Singh, [2004 (1) SCC 121] was considered in the said case. It is necessary to reproduce Regulation 41 of the Jaipur Vidyut Vitran Nigam Limited, which is reproduced as under :-

"Regulation 41 :-

Re-instatement after suspension, removal or dismissal :

When an employee who has been dismissed, removed or suspended is reinstated, the authority competent to order the reinstatement shall consider and make a specified order :-

1. (a) Regarding the pay and allowance to be paid to the employee for the period

of his absence from duty, and

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

(c) Whether or not the suspension, removal or dismissal was wholly unjustifiable.

2. Where such competent authority holds that the employee has been fully exonerated or in the case of suspension that it was wholly unjustified, the employee shall be given the full pay and dearness allowance to which he would have been entitled had he not been dismissed, removed or suspended, as the case may be."

The Regulation 7.3 of the Manual of Service Regulations, 1976, as applicable to the case of the petitioner, is reproduced as under :-

"7.3 (1) When an employee of the Board has been dismissed, removed or compulsory retired, would have been so reinstated or is reinstated but for his retirement on superannuation while under suspension then the authority competent to order the reinstatement shall make a specific order to the following effect :-

(a) Regarding the pay and allowances to be paid to the Government employee for the period of his absence from duty preceding the period of suspension.

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

(2) If the authority competent mentioned above in sub-regulation (1) is of the opinion that the employee of the board is fully exonerated or placing him under suspension was totally unjustified, the employee of the board shall be paid such pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsory retired or suspended, as the case may be.

(3) In other cases the employee of the board shall be paid such proportion of salary and allowances which the board shall decide.

Provided that the payment of allowances under clause (2) or (3) shall be on such conditions under which these allowances are payable.

Provided further that such proportion of pay and allowances payable under 7.2 shall not be less than the suspension and other allowances."

11. A comparison of Regulation 41 in Jaipur Vidyut Vitran Nigam Limited and the present Regulation 7.3 shows that in the said regulation in the second clause, it was laid down that the employee shall be given "full pay and dearness allowance, to which he would have been entitled, had he not been dismissed, removed or suspended, as the case may be". In the present case, the words used are "that the employee of the board shall be paid such pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsory retired or suspended, as the case may be". It goes to show that if an employee, who has been dismissed or removed from service and subsequently, the said order is set aside and the board is of the opinion that the employee has been

fully exonerated, then under sub-rule (2) of Regulation 7.3, he is to be paid such pay and allowances, as if he had not been dismissed, which would mean that he will be entitled to full pay and wages as if he was in service during said dismissal or removal, as the case may be. The authority of the Apex Court in Jaipur Vidyut Vitran Nigam Limited (supra) applies with full force to the facts of the present case. The Punjab Police Rules are different and involvement of employee in a murder case is altogether stand on the different footing. The matter is already considered by this Court in Vinod Kumar v. State of Punjab and others, (arising out of CWP No. 7674 of 2014, decided on 5.8.2016, wherein in case of application of Punjab Civil Services Rules, Rule 7.3 of the Punjab Civil Services Rules, Volume-I, Part- 1, Chapter-VII was considered. The sub-clause of the said rule is similar to sub-clause (2) of the Manual of Service Regulations, 1976, applicable to the case of the petitioner. This Court came to the conclusion that in the given circumstances, the petitioner was not at fault for his dismissal from service and he is entitled to salary, promotion, increments and other benefits as if he was in service during the said period. Consequently, I am of the view that the impugned order dated 24.9.2007 (Annexure-P-4) is not sustainable in the eyes of law and is accordingly quashed. The period from 12.2.1996 to 23.3.2004, during which the petitioner remained dismissed from service before his reinstatement, shall be treated as duty period and the petitioner shall be entitled to full salary, increments and other allowances as if he was in service during the said period. Needless to say that the retiral benefits will also be accordingly revised and the arrears of salary and retiral benefits shall be paid to the petitioner within three months from the date of receipt of copy of this order. The petitioner shall also be entitled to interest at the rate of 9% per annum from the date of his reinstatement in service i.e. 23.3.2004 till the payment.

The present writ petition is allowed.