
(2008) 08 P&H CK 0071
In the Punjab And Haryana At Chandigarh

Mai Chand

APPELLANT

Vs

Uttri Haryana Bijli Nigam and Others

RESPONDENT

Date of Decision : 25-08-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 406, 409, 420

Citation : (2009) 153 PLR 39 : (2009) 2 SLR 325

Hon'ble Judges : M.M. Kumar, J;Jora Singh, J

Bench : Division Bench

Judgement

M.M. Kumar, J.—The instant petition is directed against order dated 10.11.2005 (P-7) passed by the Superintending Engineer (Operation) Circile, Ambala, according sanction in respect of 3210 days earned leave with/without substitute w.e.f. 28.11.1980 to 11.9.1989 with permission to prefix and suffix on any subsequent date to the petitioner. The petitioner is a retired employee of the Uttri Haryana Bijli Vitran Nigam-respondent No. 1. When he was working on the post of Meter Reader, a complaint was made to the police for registration of a case against him. He was placed under suspension on 28.11.1980. On the basis of the complaint, an F.I.R. No. 78, dated 2.4.1981, was registered under Sections 406/409/420 IPC at Police Station Mulana, District Ambala, with the allegation that he failed to deposit a sum of Rs. 23,002.50 paise on account of collection from the consumers against their electricity bills with the office. The trial commenced and concluded in the acquittal of the petitioner, as is evident from the perusal of order dated 16.4.2002 (P-2). The learned Magistrate has acquitted the petitioner on the ground that the prosecution had failed to prove the allegation beyond reasonable degree of doubt. On account of absence of sufficient incriminating evidence against the accused, he was acquitted. It is appropriate to mention that in the -meanwhile the petitioner has retired on attaining the age of superannuation on 31.7.2007 from the post of UDC. It is apposite to mention that the petitioner was reinstated in service on 12.9.1989. The question then arose as to how the period of suspension from 28.11.1980 to 11.9.1989 be treated.

2. We have heard learned Counsel for the parties, perused the paper book with their able assistance and are of the considered view that the instant petition deserves to be allowed and the impugned order is liable to be quashed. It is conceded position that Rule 7.3. of the Punjab Civil Services Rules, Volume I (as applicable to Haryana)(for brevity, "the Rules") governs the determination of allowances paid to a suspended employee when he is reinstated in service. Rule 7.3 of the Rules reads as under:

Allowances on Retirement

7.3(1)" When a Government employee, who has been dismissed, removed, compulsorily retired, or suspended, or would have been reinstated but for his retirement on superannuation 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, occasioned by suspension and/or dismissal, removal or compulsory retirement ending with his reinstatement on or the date of his retirement on superannuation 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 mentioned in Sub-rule (1) is of the opinion that the Government employee has been fully exonerated or, in case of suspension, that it was wholly unjustified, the Government employee shall be given the full pay and allowances to which he would have been entitled, has he not been dismissed, removed, compulsorily. retired or suspended, as the case may be.

(3) In other cases, the Government employee shall be given such proportion of such pay and allowances as such competent authority may prescribe:

Provided that the payment of allowances under Sub-rule (2) or Sub-rule (3) shall be subject to all other conditions under which such allowances are admissible. Provided further that such proportion of such pay and allowances shall not be less than the subsistence and other allowances admissible under Rule 7.2.

(4) In a case falling under Sub-rule (2) the period of absence from duty shall be treated as a period spent on duty for all purposes.

(5) In a case falling under Sub-rule (3) the period of absence from duty shall not be treated as a period spent on duty unless such competent authority specifically directs that it shall be so treated for any specified purpose:

Provided that if the Government employee so desires, such authority may direct that the period of absence from duty shall be converted into leave of any kind due and admissible to the Government employee.

3. A perusal of Rule 7.3(1)(2) & (4) of the Rules shows that where the authority concerned comes to the conclusion that the employee has been fully exonerated or in case of suspension that the suspension was wholly unjustified then he has

to be given full pay and allowances to which he would have been entitled had he not been dismissed, removed and compulsorily retired or suspended. It is further evident from the perusal of Sub-rule (4) of Rule 7.3 of the Rules that the period of absence from duty is to be treated as period spent on duty for all intents and purposes. It is further appropriate to make a mention to Rule 7.5 of the Rules, which specifically deals with criminal prosecution, which has led to acquittal and the same reads thus:

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 it 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.

4. The matter is not *res Integra* as the aforementioned Rules have been subject matter of consideration before Hon'ble the Supreme Court as well as this Court. The matter came up for consideration of Hon'ble the Supreme Court in the case of *B.D. Gupta v. State of Haryana* 1972 S.L.R. 845, which has been followed by this Court in the case of *B.D. Singla v. Chief Engineer* 1991 (2) S.C.T. 319.

5. Apart from the fact that the petitioner is entitled to issuance of a show cause notice before passing of the orders in the nature of forfeiting his pay and allowances during suspension period, it has to be concluded that the impugned order suffers from various other legal infirmities. There is nothing on record to show that after his acquittal in the criminal trial, the petitioner has any other order of punishment, which may be used for justifying his suspension for such a long period. The acquittal of the petitioner in criminal case would render his suspension wholly unjustified and no order could have been passed forfeiting his pay during the suspension period. Therefore, the order dated 10.11.2005 (P-7) is declared illegal and violative of Rule 7.3 read with Rule 7.5 of the Rules. The petitioner shall be entitled to salary for the period from 28.11.1980 to 11.9.1989 by adjusting the salary already paid to him i.e. to the extent of 50% and/or 75% during the suspension period. Let the aforementioned dues of the petitioner be calculated and paid to him with all consequential relief which may result in re-fixation of his pension. The needful shall be done within a period of two months from the date of receipt of a certified copy of this order.

6. The writ petition stands disposed of in the above terms.

Sd/- Jora Singh, J.