

(2016) 04 P&H CK 0241
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 19262 of 1997

Ram Pal Gupta

APPELLANT

Vs

Punjab Poultry Dev. Corporation Limited and others

RESPONDENT

Date of Decision : 27-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 2 CLR 1090

Hon'ble Judges : Mr. Rajiv Narain Raina, J.

Bench : Single Bench

Advocate : Mr. Rajesh Punj, Advocate, for the Appellant; Mr. H.S. Dandi, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Rajiv Narain Raina, J.—This order will dispose of CWP No. 19262 of 1997 titled Ram Pal Gupta v. Punjab Poultry Dev. Corporation Limited and others & CWP No. 16331 of 1999 titled Rampal Gupta v. State of Punjab and others.

CWP No. 19262 of 1997

2. The period of deemed suspension pending trial in the criminal case has been treated as duty period by the employer Corporation, vide order dated February 14, 1997. The petitioner was acquitted by the Additional Sessions Judge, Ambala in criminal case No. 53 on May 29, 1995. His request for reinstatement was accepted by the Corporation by the same order which has treated the period as duty period. By an interim order passed by the Division Bench on September 21, 1998 an ad interim direction was issued to the respondents to pay full salary to the petitioner for the period he remained under suspension. However, the petitioner was required to furnish security that in case the petition is dismissed the amount shall be returned to the respondent.

3. The question which arises for consideration is whether the petitioner has any right to suspension allowance or full salary for the period of deemed suspension

i.e. for the period July 31, 1994 to December 31, 1996.

4. The petitioner was subjected to Sessions trial charged under section 304-B IPC. The acquittal was compromised based and, therefore, in service law it cannot be said to be an honourable acquittal but for the community and the world at large it may be. The suspension was automatic following arrest on the petitioner on registration of a criminal case. The employer did not suspend the petitioner for any reason in their employment relationship. The petitioner deprived the employer of his labour for own acts and conduct which led to arrest while remaining in police remand and judicial custody. If the petitioner deprived the employer of his labour for which it pays salary then employer is under no obligation to compensate the petitioner for his absence from work for the period of suspension for no fault of the employer and, therefore, the Corporation cannot be saddled with liability to pay to the petitioner full salary for the period of suspension. The issue has been dealt with specifically by the Supreme Court in Depot Manager, A.P. State Road Transport Corporation, Hanumakonda v. V. Venkateswarulu and another etc., 1994 (2) RSJ 681 (SC). The Supreme Court held that it is open to the competent authority to withhold payment of full salary for the suspension period on justifiable grounds. See also on the point the Supreme Court in Ranchhodji Chaturji Thakore v. Superintending Engineer, Gujarat Electricity Board, and another, (1996) 11 SCC 603 and Baldev Singh v. Union of India, 2006 Suppl (L & S) 35.

5. In Union of India & Others v. Jaipal Singh, (2004) 1 SCC 121, the Supreme Court referred to Ranchhodji and held thus:-

"If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest of or by the department itself, perhaps different considerations may arise. On the other hand, if as a citizen the employee or a public servant got involved in a criminal case and if after initial conviction by the trial Court, he gets acquittal on appeal subsequently, the department cannot in any manner be found fault with for having kept him out of service, since the obliges a persons convicted of an offence to be so kept out and not to be retained in service. Consequently, the reasons given in the decision relied upon, for the appellants are not only convincing but are in consonance with reasonableness as well. Though exception taken to that part of the order directing reinstatement cannot be sustained and the respondent has to be reinstated in service, for the reasons that the earlier discharge was on account of those criminal proceedings and conviction only, the appellants are well within their rights to deny back wages to the respondent for the period he was not in service. The appellants cannot be made liable to pay for the period for which they could not avail of the services of the respondent. The High Court, in our view, committed a grave error, in allowing back wages also, without adverting to all such relevant aspects and considerations. Consequently, the order of the High Court in so far as it directed payment of back wages is liable to be and is hereby set aside."

The petitioner is therefore held not entitled to salary for the period of suspension

and that prayer is rejected.

Accordingly, the writ petition stands dismissed.

CWP No. 16331 of 1999

6. With the dismissal of CWP No. 19262 of 1997 this petition does not necessarily have to be dismissed.

Heard.

The issue in the present case is somewhat different where the question arises after the Corporation treated the suspension period as period spent on duty then for all intents and purposes as far as non-pecuniary benefits are concerned, other than the monetary kind, would be treated as service for the purposes of retention of seniority and other benefits such as benefits of ACP scheme, gratuity and leave encashment etc. for the reason that the period has been regularised by the Corporation itself. The petitioner is a retired person. This petition, therefore, succeeds and is hereby allowed. He is held entitled to count the period of suspension towards qualifying service for gratuity and leave encashment etc. but the amounts of gratuity and leave encashment would have to suffer cut in view of the position explained above for the reason that in the above case, which stands dismissed today, there is an interim order that the petitioner would have to refund the amount in view but there is no such order in this case. Therefore, in this petition, the monetary value of gratuity and leave encashment is available to the petitioner which will be calculated by counting the suspension period towards payment but the amount of salary received by the petitioner for the period of suspension on pain of contempt proceedings would have to be adjusted against the amounts due on account of gratuity and leave encashment.

7. At this stage, learned counsel appearing for the Corporation states that gratuity and leave encashment already stand paid to the petitioner. If this is true then the petitioner would have to refund the salary for the suspension period to the Corporation failing which the amount shall be recoverable as arrears of land revenue. However, in case during the period of suspension, the Corporation paid subsistence allowance to the petitioner that would not be recoverable as that benefit was admissible as per rules of service.