

(2018) 03 P&H CK 0150

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 14000 Of 2016

Savita Hooda

APPELLANT

Vs

Pandit Bhagwat Dayal Sharma & Anr

RESPONDENT

Date of Decision : 20-03-2018

Acts Referred:

Indian Penal Code, 1860 — Section 148, 149, 302, 307, 452

Arms Act, 1959 — Section 27

Punjab civil services (general) rule 1970 — Rule 5(4), 7(3), 7(3)(4), 7(3)(2), 7(6), 7(3)(1)(a), 54 (A)(3)

Citation : (2018) 03 P&H CK 0150

Hon'ble Judges : Amol Rattan Singh, J

Bench : Single Bench

Advocate : N. K. Malhotra, Anurag Goyal

Final Decision : Partly Allowed

Judgement

1. By this petition, the petitioner, Savita Hooda, who was working as a Staff Nurse at the Post Graduate Institute of Medical Sciences, Rohtak, seeks

the issuance of a writ in the nature of mandamus from this Court, directing the respondent University and the aforesaid institute, to reinstate her in

service and also grant her benefits that she claims are due to her from the date that her services were suspended, i.e. 21.05.2012; and further, that the

period that she remained out of service be treated as period on duty. Thus, other than reinstatement in service she also seeks release of full pay and

allowances from the date that her services were suspended, till the date that she is actually reinstated in service.

2. The background of the matter is that while she was in working as a Staff Nurse, FIR no.191 was registered on 21.05.2012 at Police Station Urban

Estate, Rohtak, arraigning her and others as accused, for the alleged commission

of offences punishable under Sections 302/307/452/148/149 IPC, as also under Section 27 of the Arms Act, the allegation against the petitioner being (as per the copy of the judgment of the trial Court which was sought to be placed on record), that she had given blows on the back of the head of the deceased with an iron pipe, with a similar role attributed to another accused, with various blows with a sharp edged weapon attributed to another accused and a gun shot wound attributed to yet another accused. The dispute was stated to be on account of alleged occupation of a house by the complainant party.

3. The aforesaid FIR having been registered, and the petitioner having been arrested alongwith her co-accused, she was admitted to bail on

15.01.2013, before which her services had been suspended by the respondents on 21.05.2012 itself, i.e. on the date of the registration of the FIR.

Eventually, vide a judgment dated 04.07.2015, the petitioner and her co-accused were all acquitted of the charges framed against them by the trial

Court, upon which she filed an application with the respondents on 17.07.2015, seeking to be reinstated on duty and for release of her entire salary and

allowances etc. for the intervening period, i.e. from 21.05.2012 till the date of her reinstatement.

The respondents not having responded to the aforesaid representation (Annexure P-2), she again filed applications on 21.08.2015 and 07.01.2016

(copies Annexures P-3 and P4), after which the respondents sought legal opinion from the Assistant District Attorney, who opined that the petitioner

may be allowed to join duty, subject to the outcome of the decision of the High Court in the appeal filed by the State against the acquittal of the

petitioner and her co-accused.

Despite the above, she was not reinstated in service, leading to her filing yet another representation on 10.05.2016, with her in the meanwhile having

acquired a Degree of Bachelor in Nursing Science from the Indira Gandhi National Open University, on 25.02.2014.

4. In the meanwhile on 21.11.2012 she was granted 50% subsistence allowance, though she claimed that she was entitled to 75% of her salary as

such allowance.

Consequently, she filed CWP no.17625 of 2013 before this Court, which was allowed and she was ordered to be paid 75% allowance vide an order of

this Court dated 23.10.2013 (copy Annexure P-1), a perusal of which shows that such allowance was granted to her with effect from 6 months from the date of her suspension.

5. In the aforesaid background, it is prayed in the present petition that the petitioner be treated to have been on duty since the date of her suspension, with all consequential monetary benefits to be granted to her in view of her acquittal in the criminal case.

6. A short reply to the aforesaid petition has been filed by Shri Rakesh Gupta, Director of the PGIMS, Rohtak, on behalf of all the respondents, admitting the factual position and further stating that after obtaining a copy of the judgment of the trial Court (Additional Sessions Judge, Delhi), the Director, Prosecution Government of NCT, Delhi, had been written to as to whether any appeal had been filed against the said judgment, with eventually a letter written on 08.11.2016, to the standing counsel of the Delhi Government, to opine whether or not the petitioner should be reinstated in service pending her appeal.

Eventually, it has been non-committally stated in the reply that the matter of letting the petitioner re-join was under consideration of the authority and that as and when the Delhi High Court decides the appeal, the respondents could take action accordingly.

7. Before this Court, Mr. N.K. Malhotra, learned counsel for the petitioner, first briefly referred to the judgment of the learned trial Court in the criminal proceedings, showing that the petitioner and all her co-accused had been acquitted of all charges framed against them, giving them the benefit of doubt.

He thereafter referred to Rule 7.3 of the Punjab Civil Services Rules, Vol. I (as applicable to the State of Haryana), which reads as follows:-

â??7.3 (1) When a Government employee, who has been dismissed, removed, compulsory retired, or suspended, is reinstated, 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) Where the authority mentioned in sub-rule (1) is of opinion that the Government employee has been fully exonerated or, in the 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, had 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 failing 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 failing 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. â??

8. As already noticed by this Court vide the order by which judgment was reserved in this case, the aforesaid rule would seem to say that if an

employee has been fully exonerated (after her/his dismissal) or in the case of suspension, that such suspension was wholly unjustified, the Government

would be bound to give full allowances to which such employee would have been entitled but for such dismissal/suspension from service. (Though the

discretion to decide whether he/she has been fully exonerated or not, has been left with the competent authority, as per sub-rule (2)).

9. Learned counsel for the petitioner had relied upon a judgment of a co-ordinate Bench of this Court in Ram Anjore v. Uttari Haryana Bijli Vitran

Nigam Limited 2016 (2) SCT 716, to submit that in fact that was the correct position, and the petitioner therefore having been acquitted in criminal proceedings, she was entitled to reinstatement and payment of full salary allowances for the intervening period.

10. However, Mr. Anurag Goyal, learned counsel appearing for the respondents, on the other hand had relied upon two judgments of another coordinate Bench of this Court, in Raj Kumar v. State of Punjab and others 2017 (1) SCT 479 and Darshan Singh v. The Punjab State Warehousing Corporation and another 2017 (2) SCT 444, to submit to the contrary, to the effect that even upon acquittal in criminal proceedings, arrears of salary during the period that the employee remained out of service, or during which the employees' services remained suspended, would not be payable to the employee, on the principle of "no work no pay".

Mr. Goyal had further submitted that in fact the judgment in Ram Anjores' case had been appealed against by way of LPA no.1136 of 2016, and the Division Bench had observed that the writ petition had been allowed by the learned Single Judge on the ground of discrimination, as a similarly situated employee had already been granted arrears of pay. During the pendency of the Letter Patents Appeal, the Corporation which had been the employer of the petitioner in that case, was stated to have withdrawn the order of the similarly situated employee, with the writ petition therefore remitted to the learned Single Judge for re-consideration in the light of that fact (as has been contended before this Court now by learned counsel for the present respondents).

11. In rebuttal, Mr. Malhotra, learned counsel for the petitioner, relied upon a judgment of the Supreme Court in Yellinedi Sagaraswara Rao v. S.K. Jawahar Reddy 2014 (4) SCT 639 to reiterate that once the employee was acquitted in criminal proceedings, he was entitled to all consequential benefits by treating the period that he was out of service to be duty period.

12. Having considered the aforesaid arguments as also having gone through the judgments relied upon by learned counsel on both sides, it is seen that in Ram Anjores' case the petitioner had been charged under the Prevention of Corruption Act with him having been found guilty by the trial Court but was acquitted of all charges by this Court, in appeal.

Thus, relying upon a Division Bench judgment of this Court in Surjit Singh v.

State of Haryana and another (CWP no.1326 of 2013), the co-ordinate

Bench had allowed Ram Anjores' petition, holding that once the petitioner had been acquitted of all charges, he would be entitled to be treated on duty

during the period that he remained out of service, and under suspension before his dismissal, and therefore to full salary for the intervening period.

13. In Yellinedis' case (supra), it is seen that again that petitioner was also prosecuted for the commission of an offence punishable under the

Prevention of Corruption Act, due to which his services were suspended, with him having reached the age of superannuation in the meanwhile, after

which he was convicted by the trial Court but acquitted by the Andhra Pradesh High Court on appeal.

As a matter of fact, though in that petitioners' case the period of suspension from 07.05.2001 to 30.11.2003 was ordered to be regularised by the

Government itself, however, such regularisation was treated to be "not on duty", by citing Fundamental Rule 54 (A) (3) and the proviso to FR 54

(B)(7).

That provision was in fact invoked on the ground that there were some other disciplinary proceedings also pending against the said petitioner at the

time of his superannuation. However, those proceedings were also quashed by the Administrative Tribunal.

14. On him being treated to not being on duty despite regularisation of the period of suspension, the employee had approached the Lokayukta, Andhra

Pradesh, who directed that the said period be treated as duty period, with benefits to be paid to the employee accordingly, which order was challenged

by the Government before the Andhra Pradesh High Court, on the ground that the Lokayukta had no jurisdiction to issue such directions. The

employee filed an SLP before the Supreme Court which was disposed of by the Apex Court, directing the Government to release the pension of the

employee, with interest running from 01.07.2011.

15. The Government thereafter sanctioned the pensionary benefits but as regards the period of suspension, it continued to be treated as period not on

duty, leading to a contempt petition being filed before the Supreme Court, in which their Lordships held as follows:-

"9. Coming to the issue of treating the suspension from 7.5.2001 to 30.11.2003 as "not on duty", we find from reading of the orders dated

10.7.2014 and 27.9.2014, that no reasons are given as to why the said period is treated as 'not on duty'. As pointed out above, the petitioner was

fully exonerated by the High court insofar as case under Prevention of Corruption Act, is concerned. After the said acquittal, the punishment order

passed withholding the pension and gratuity were also withdrawn by the Government of its own. However, at this stage, this period was treated as

'not on duty' period only because of the reason that second departmental inquiry was pending against him. That reason also evaporated when the

Tribunal quashed the disciplinary proceedings in the second case. Therefore, there is no reason not to treat the aforesaid period from 7.5.2001 to

30.11.2003 as on duty.

10. Accordingly, we direct the respondents to treat the aforesaid period on duty for all purposes including for the purpose of pay and allowance. The

arrears of salary for this period shall be worked out and released to the petitioner within four weeks.

16. Thus, essentially in that case, what was found to be unsustainable was that despite the period during which the employee remained under

suspension having been otherwise regularised by the Government (reference paragraph 4 of Yellinedis' case before the Supreme Court), the period

was treated as one not on duty, (with even the other disciplinary proceedings having been quashed by the Administrative Tribunal).

In the present case, of course, there is no such situation existing.

17. Coming then to what has been held by a co-ordinate Bench of this Court Raj Kumar and Darshan Singhs' cases (supra).

In Darshan Singhs' case also, the petitioner had been charged with the commission of an offence punishable under the Prevention of Corruption Act,

but with him having been acquitted by this court in appeal after his conviction by the trial Court, he was reinstated in service, he having earlier been

dismissed after his conviction.

While holding that it was not the fault of the respondent Corporation in that case that the petitioner had been convicted and consequently dismissed,

but reinstated after his acquittal in appeal, this Court held that he would therefore not be entitled to pay and allowances for the intervening period.

While holding so, two judgments of the Supreme Court, in

Union of India v. Jaipal Singh 2004 (1) SCT 108 and State Bank of India and

another v. Mohammed Abdul Rahim 2013 (4) SCT 133, were relied upon.

18. In Jaipal Singhs' case, the employee had been initially convicted for the commission of an offence punishable under Section 302 IPC by the trial Court, but had been acquitted by the High Court and had therefore been reinstated by the Government, but without back wages.

The employee having approached this Court for grant of such back wages, his writ petition was allowed, with the Union of India having appealed against that judgment.

While allowing the appeal of the Government, the Supreme Court held as follows:-

“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 insofar as it directed payment of back wages are liable to be and is hereby set aside.”

Similarly, in Abdul Rahims' case (supra), it was held by their Lordships as follows:-

“During the aforesaid period there was, therefore, a prohibition in law on the appellant-bank from employing him. If the respondent could not have remained employed with the appellant-bank during the said period on account of the provisions of the Act, it is difficult to visualise as to how he would be entitled to payment of salary during that period. His subsequent acquittal though obliterates his conviction, does not operate to retrospectively wipe out the legal consequences of the conviction under the Act. The entitlement of the respondent to back wages has to be judged on the aforesaid basis. His reinstatement, undoubtedly, became due following his acquittal and the same have been granted by the appellant bank.”

(Emphasis applied by this Court)

However, as the employee in that case had sought reinstatement on 22.04.2002 (he having been acquitted on 22.02.2002), it was held by the Supreme Court that he would be entitled to wages from the date that he lodged the demand for reinstatement, until the date of his reinstatement.

19. The same principle was therefore followed by this Court in Darshan Singhs'

as also in Raj Kumars' cases, the petitioner therein also having been initially convicted by the trial Court for the commission of offences punishable under Section 302 etc. of the IPC but thereafter having been acquitted by this Court in appeal.

20. Thus having seen the aforesaid legal position, it is to be noticed that, contrary to what this Court had prima-facie opined in its previous order

passed in this petition, the factual position is that though Rule 7.3 (4) of the Civil Services Rules (reproduced hereinabove), postulates that in a case

falling under sub-rule 2, (i.e. where the competent authority is of the opinion that the Government employee has been fully exonerated or that his

suspension was fully unjustified), the period of suspension would be treated to be a period on duty; however, actually, whether the suspension from

service of an employee was justified or unjustified is an opinion to be formed by the competent authority, who would accordingly pass a reasoned

order in that respect in terms of Rule 7.3 (2) of the Civil Services Rules, Vol.-1.

Dependent upon the order to be so passed by the competent authority, the applicability of either sub-rule 4 or sub-rule 5 would necessarily be

determined (to the effect that as to whether the employee is entitled to full pay and allowances for the period of suspension or whether it is not to be

treated as period spent on duty).

21. It is not denied by counsel on either side that the Civil Services Rules and all instructions of the Government of Haryana are applicable to the

petitioner and therefore, the offences that she was charged with prior to her acquittal, come within the definition of "moral turpitude".

In that context, Rule 7.6 of the aforesaid Civil Services Rules,

Vol. I Part I, also needs to be referred to:-

7.6 (1) A Govt. servant against whom a criminal charge is pending may, at the discretion of the competent authority be placed under suspension

by the issue of a specific order to this effect during the periods when he is not actually detained in custody or imprisoned (e.g. while released on bail),

if the charge made against him is connected with his petition as a Govt. servant or is likely to embarrass him in the discharge of his duties as such or

involves moral turpitude. However, as soon as a criminal charge is framed by a court against a Govt. servant in a case involving moral turpitude,

suspension should follow automatically.

(2) xxxxx xxxxx xxxxx

(3) In regard to pay and allowances in the cases referred to in sub-rules (1) and (2) the provisions of rule 7.5 shall apply.â??

22. Thus obviously, as was the case in Abdul Rahims' case, the respondents had no choice but to suspend the services of the petitioner upon a charge

under Section 302 IPC having been framed against her, and though before that it was the discretion of the competent authority to suspend her services

or not, upon registration of the FIR, I see no error on behalf of the competent authority in actually suspending her service upon the FIR being

registered, alleging therein the commission of serious offences.

23. That being so, I find myself in respectful agreement with the judgment of the co-ordinate Bench in Darshan Singh and Raj Kumars' cases (supra),

which is in any case based upon the ratio of the judgments of the Supreme Court in Jaipal Singhs' and Abdul Rahims' cases, holding therein that where

it was not the fault of the employer that the employee remained out of service/ under suspension due to pendency of criminal proceedings, even upon

acquittal of the employee in such proceedings, and therefore she/he would not be necessarily entitled to payment of salary and allowances for the

period that she/he remained under suspension/out of service.

Yet, in the present case, with no order either rejecting or accepting the petitioners' claim having been passed by the competent authority, first an order

in terms of Rule 7.3 would need to be passed by the competent authority as per her/his opinion.

24. Having said that, it is seen that the petitioner, after her acquittal by the learned trial court on 04.07.2015, made a representation to the Medical

Superintendent, PGIMS, Rohtak (respondent no.3 herein), asking him to let her join duty, which is not specifically denied in the short reply filed by the

respondents. However, she has neither been allowed to join duty and nor, consequently, has any order been passed rejecting or accepting her claim for

back wages (upon reinstatement to service).

Hence, it is directed that the petitioner be allowed to immediately join duty, unless of course in the meanwhile her acquittal has been reversed by a

judgment of conviction by the Delhi High Court. If the appeal is still pending before that Court, the petitioner would continue to remain in service

during such pendency.

In terms of the ratio of the judgment in Abdul Rahims' case, she would also be paid full pay and allowances for the period starting one week after her

representation dated 17.07.2015, i.e. w.e.f. 24.07.2015, till the date of actual reinstatement.

25. As regards salary and allowances etc. for the period that she remained under suspension upto the date 24.07.2015, the competent authority who

would be passing the order of reinstatement of the petitioner pursuant to the direction given hereinabove by this Court, would also pass an order

regarding the pay and allowances to be paid to the petitioner during the period of such suspension, in terms of Rule 7.3 (1) (a), with the authority to

form its opinion as per sub-rule (2), as to whether she is entitled to full pay and allowances or not, keeping in mind the judgments referred to

hereinabove.

26. It needs to be stated here that this Court, even having expressed its opinion in terms of the ratio of the judgment of the Supreme Court in Abdul

Rahims' case (supra), is still directing the competent authority to pass an order specifically in those terms, because if this Court passes such order

itself, it would be substituting its own opinion at the first instance itself, for the opinion of such authority (as is stipulated in the aforesaid rule).

Thus, if the authority is of the opinion that the petitioner deserves full pay and allowances for the intervening period, it would pass such an order, but if

the opinion formed is that she is not entitled to such allowances other than those already granted to her while she was under suspension, that order

would be passed, in either case by giving reasons.

27. The petition is thus partly allowed to the extent of directing the respondents to immediately reinstate the petitioner to her regular duty w.e.f.

24.7.2015 with full pay and allowances (unless in the meanwhile she has been convicted in appeal by the Delhi High Court); and as regards the salary

and allowances for the period before that, an order be passed by the competent authority, in terms of Rule 7.3 of the Civil Services Rules supra, within

a period of 3 months from the date of receipt of a certified copy of this order.

In these circumstances, there is no order as to costs.