

Before Kuldip Singh, J.

VINOD KUMAR—*Petitioner*

versus

STATE OF PUNJAB—*Respondents*

CWP No. 7674 of 2014

August 05, 2016

Constitution of India, 1950, Article 311(2)—Punjab Civil Service Rules, Volume I Part I, Chapter 7, Rule 7.3(2)—Prevention of Corruption Act, 1988, Sections 7 and 13 (2)—Acquittal from criminal case—Grant of salary and other pensionary benefits—Held, once petitioner is acquitted of all charges and reinstated, it would mean that he was to be placed at same situation as if he was never dismissed from service—Period during which petitioner remained out of service on account of dismissal order be treated as duty period and shall be counted for all intents and purposes—Petitioner who is not at fault for his dismissal therefore, entitled to salary, promotions and increments and other benefits as if he was in service during such service.

Held that, once the petitioner is acquitted of all the charges and is re-instated, it would mean that he was to be placed at the same situation as if he was never dismissed from service. The result shall be that the period during which the petitioner remained out of service on account of dismissal order, be treated as duty period and shall be counted for all intents and purposes. Consequently, the petitioner who is not at fault for his dismissal shall be entitled to salary, promotions and increments and other benefits as if he was in service during the said period. Consequently, order dated 16.01.2004 (Annexure P-11) is not sustainable in the eyes of law and is hereby quashed.

(Para 14)

Sanjay Kaushal, Senior Advocate, with A.P.S. Sethi, Advocate,
for the petitioner.

Rajat Bansal, AAG, Punjab.

P.K.S Gill, Advocate, for the respondents No. 2 and 4.

(1) Brief facts of this case are that Vinod Kumar-petitioner was working as Secretary, Market Committee, Dakala, Patiala and his retirement was due on attaining the age of superannuation on

30.04.2012. During the service of the petitioner, an FIR No. 76 dated 28.10.2002 under Sections 7 and 13 (2) of the Prevention of Corruption Act, 1988 was registered against him by the Vigilance Bureau of Punjab, Patiala. Consequently, the petitioner was arrested on 28.10.2002 and remained in custody till 06.04.2003. In the meantime, the petitioner was suspended from service. Vide judgement dated 07.12.2004 passed by the Special Judge, Patiala, the petitioner was convicted under Sections 7 and 13 (2) of the Prevention of Corruption Act, 1988 and was accordingly sentenced. As a matter of consequence, vide office order No. 1339 dated 24.10.2005, the petitioner was dismissed from service on account of conviction in the criminal case, exercising the powers under Article 311 (2) of the Constitution of India.

(2) Thereafter, the petitioner preferred an appeal bearing Criminal Appeal No. 2482-SB of 2004, before this Court and vide judgement dated 21.12.2012, the judgment passed by the Special Judge, Patiala was reversed and the petitioner was acquitted of all the charges. Thereafter, vide office order No. 474 (2013) dated 16.01.2014 in view of the order of this Court dated 21.12.2012 the petitioner retired from service w.e.f. 30.04.2012 on attaining the age of 58 years. Thereafter, the petitioner approached the respondents for grant of salary and other pensionary benefits but the same was declined vide order dated 16.01.2004 (*Annexure P-11*). The concluding part of the same is reproduced as under: -

“Keeping in view the above facts as well as the above decisions of the Hon’ble Courts, I am of the conclusion that the employee, who in connivance, is involved in any criminal case, which is not being initiated by the employer, and resultantly he is absent from duty, the employer is not legally bound to pay him the salary of that period. Thus it is clear that Sh. Vinod Kumar, who remained absent from duty, on account of a criminal case registered against him, which was not initiated by the Board and this office has nothing to do with that, in that case Punjab Mandi Board is not liable to pay the salary and other allowances of the period of his absence, because during that period, this officer did not do any official work of the Board.

Thus, the period of suspension of Sh. Vinod Kumar, Secretary, Market Committee from 28.10.2002 to 06.04.2003 is being considered only to the extent of suspension allowance and for the period from 24.10.2005 to

30.04.2012, during which period, Sh. Vinod Kumar, Secretary, Market Committee remained out of service, it has been decided not to release any payment of any kind.”

(3) Consequently, the pension was released on the basis of last pay drawn by the petitioner as on 08.10.2005 when he was dismissed from service.

(4) The claim of the petitioner is that he is entitled for grant of full back wages, annual increments, promotions etc. and his pay is to be accordingly fixed as if he was never dismissed.

(5) The respondents No. 2 to 4, in the reply has taken the stand that the dues, which were legally admissible to the petitioner, have already been released. The passing of the dismissal order and the order retiring the petitioner w.e.f. 30.04.2012 are not denied. It is stated that the petitioner cannot claim the benefit of backwages, annual increments, promotions and other service benefits for the period he did not work with the respondent department as the department has no role in the Criminal case, therefore, the impugned order dated 16.01.2004 (*Annexure P-11*) was justified.

(6) I have heard learned counsel for the parties and carefully gone through the facts available on record.

(7) The legal question involved in the present case is that as to whether an employee who has been dismissed from service under Article 311 (2) (a) of the Constitution of India on account of conviction in a criminal case and is reinstated/retired after his acquittal by the superior Court, is he entitled to all the benefits of the service during the period in which he remained under dismissal. Rule 7.3 sub-clause 2 of the Punjab Civil Service Rules, Volume I, Part I, Chapter 7 deals with the same which is reproduced as under: -

“7.3 (1) When a Government employee, who has been dismissed, removed or compulsory retired, is reinstated as a result of appeal, revision or review, or would have been so reinstated but for his retirement on superannuation while under suspension or not, the authority competent to order re-instatement 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 including the period of suspension, preceding his dismissal removal or compulsory retirement, 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 competent to order re-instatement is of opinion that the Government employee, who had been dismissed, removed or compulsorily retired, has been fully exonerated, the Government employee shall, subject to the provisions of sub-rule (6), be paid his full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended, prior to such dismissal, removal or compulsory retirement, as the case may be :

Provided that where such authority is of opinion that the termination at the proceedings instituted against the Government employee had been delayed due to reasons directly attributable to the Government employee it may, after giving him an opportunity to make representation and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government employee shall, subject to the provisions of sub-rule (7), be paid for the period of such delay only such amount (not being the whole) of pay and allowances, as it may determine.”

(8) The perusal of the rule shows that in such an eventuality, the competent authority is to order the reinstatement and also pass specific order regarding pay and allowances to be paid to the government employee for the period of his absence from duty including suspension period, preceding his removal/dismissal/compulsory retirement, as the case may be and whether the said period shall be treated as a period spent on duty.

(9) The Sub-clause 2 of the above Rule shows that when the competent authority is of the opinion that a Government employee who had been dismissed, removed, or compulsorily retired, has been fully exonerated, the Government employee, in view of the provision sub Rule (6), shall be paid full pay and allowances for which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended, prior to such dismissal, removal, or compulsory retirement, as the case may be.

(10) The similar matter was considered by the Division Bench of

this Court in CWP No. 12502 of 2006 titled as *Poonam Rani versus Uttar Haryana Bijli Vitran Nigam Limited* wherein a government employee was convicted under section 392 read with 120-B of the Indian Penal Act and was dismissed from service. The departmental enquiry was also held against him. Later on, he was acquitted of all the charges in the criminal case and was reinstated. The relevant extract from the judgment of the Division Bench is reproduced as under: -

“In the case of *Shiv Kumar Goel Vs. 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.”

(11) The similar matter was also considered by the Supreme Court of India in Civil Appeal No. 2992 of 1995, (arising out of SLP (c) No. 684 of 1995) titled as *Deputy Director of Collegiate Education (Administration), Madras versus S. Nagoor Meera* decided on 24.02.1995. The relevant extract of the same is reproduced as under: -

“9. The Tribunal seems to be of the opinion that until the appeal against the conviction is disposed of action under Clause (a) of the second proviso to Article 311 (2) is not permissible. We see no basis or justification for the said view. The more appropriate course in all such cases is to take action under clause (a) of the second proviso to Article 311 (2) once a government servant is convicted of a criminal charge and not to wait for the appeal or revision, as the case may be, if, however, the government servant-accused is acquitted on appeal or other proceedings, the order can always be revised and if the government-servant is reinstated, he will be entitled to all the benefits to which he would have been entitled to had he continued in service. The other course suggested, vis., to wait till the appeal, revision and other remedies are over, would not be advisable since it would mean continuing in service a person who has been convicted of a serious offence by a criminal court. It should be remembered that the action under clause (a) of the second

proviso to Article 311 (2) will be taken only where the conduct which has led to his conviction is such that it deserves any of the three major punishments mentioned in Article 311(2). As held by this Court in *Shankardass Vs. Union of India* (1985) 2 SCR 358.

(12) The matter was further examined in Single Bench judgement of this Court in *CWP No. 22633 of 2012* titled as ***Balbir Kumar versus State of Punjab and another*** decided on 22.09.2015. The relevant extract of the same is reproduced as under: -

“The matter is no longer res integra. The issue has been decided by this Court in CWP No.5228 of 2011 titled *Const. Sukhchain Singh Vs. The State of Punjab & others*, decided on 25.03.2013 and CWP No.22023 of 2012 titled *Sucha Singh Vs. State of Punjab & others*, decided on 11.09.2013. In the later case also, no separate departmental proceedings had been initiated and the question was whether the petitioner could be denied the full pay and allowances from the date of dismissal till the date of reinstatement. Reference was made to Rule 7.3 of the Punjab Civil Services Rules, Vol. I, Part I, Chapter VII, to hold that a Government employee is to be given full pay and allowances upon his reinstatement, having been fully exonerated. Rule 7.3(1) reads as under:

“7.3. (1) When a Government employee, who has been dismissed, removed or compulsorily retired, is reinstated as a result of appeal, revision or review, or would have been so reinstated but for his retirement on superannuation while under suspension or not, 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, including the period of suspension, preceding his dismissal, removal or compulsory retirement, 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 competent to order reinstatement is of opinion that the Government employee, who had been dismissed, removed or compulsorily retired, has been fully exonerated, the Government employee shall, subject to the provisions of sub-rule (6), be paid his full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended,

prior to such dismissal, removal or compulsory retirement, as the case may be:

Provided that where such authority is of opinion that the termination of the proceedings instituted against the Government employee had been delayed due to reasons directly attributable to the Government employee it may, after giving him an opportunity to make representation and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government employee shall, subject to the provisions of sub-rule (7), be paid for the period of such delay only such amount (not being the whole) of pay and allowances as it may determine.

Counsel for the State has relied upon the judgment of the Apex Court in *Union of India & others Vs. Jaipal Singh* 2004(1) SCC 121 to submit that the person who had been convicted and on his own account, had been kept out of job, backwages could not be granted.

A perusal of the said judgment would go on to show that the attention of the Apex Court was not drawn to Rule 7.3 and the requirement of the respondents to pass the appropriate orders and take a decision for the period the petitioner remained out of job and the wording of the said section.

(13) On the other hand learned counsel for the respondents as relied upon a Single Bench judgement of this Court passed in ***CWP No. 3930 of 2011 (O&M)*** titled as ***Sardara Singh versus State of Punjab and Others***¹ vide which it was held in the case where the trial was initiated in pursuant of any complaint having been lodged by the respondent-department, the petitioner would not be entitled to the payment of salary from the date of passing of termination order till the date he was entitled to rejoin his service.

(14) After considering the facts of the case, I am of the view that in view of the authoritative pronouncements by the Supreme Court of India and the Division Bench of this Court, once the petitioner is acquitted of all the charges and is re-instated, it would mean that he was to be placed at the same situation as if he was never dismissed from service. The result shall be that the period during which the petitioner

¹ 2013 (1) RSJ 539

remained out of service on account of dismissal order, be treated as duty period and shall be counted for all intents and purposes. Consequently, the petitioner who is not at fault for his dismissal shall be entitled to salary, promotions and increments and other benefits as if he was in service during the said period. Consequently, order dated 16.01.2004 (*Annexure P-11*) is not sustainable in the eyes of law and is hereby quashed.

(15) Needless to say that the pension of the petitioner will also be re-calculated as if the petitioner was in service till the date of his superannuation and the pension/arrears so re-fixed, shall be released to him within three months from the date of the receipt of the copy of the order of this judgment of this Court alongwith interest @ 9% per annum starting three months from the order of re-instatement i.e. order dated 28.05.2013 (*Annexure P-3*).

(16) The petition is accordingly allowed.

Ritambhra Rishi