

Before M.M. Kumar & Rajiv Narain Raina, JJ.

**GENERAL MANAGER OPERATION CIRCLE, DAKSHIN
HARYANA BIJLI VITRAN NIGAM, NARNAUL
AND OTHERS—Appellant**

versus

MATHURA DASS GUPTA—Respondents

LPA No. 1580 of 2011

February 10, 2012

Letters Patent Appeal, 1919, - Cl. X - Principle of 'no work no pay' distinguished - Grant of benefits to an employee after acquittal in appeal in a criminal case - Employee suspended on registration of case under Prevention of Corruption Act, 1988 - Subsequently suspension revoked - Employee convicted by trial Court - Service terminated from the date of his conviction by the trial Court - On appeal to High Court, employee acquitted - Employee requested for reinstatement in service - No action taken by employer - Employee approached the writ Court, which held that since employee had been acquitted, he is entitled to be reinstated in service with all consequential benefits - Writ disposed of with a direction to pass appropriate orders on the representations of the employee - Competent Authority applied the principle of 'No work No pay' to deny back wages - Employee challenged the said order by another writ petition - Writ petition allowed with costs - Employee held entitled to pay and allowances for the period he remained out of service and for duration of his suspension period as well - LPA preferred by employer claiming that they could not be burdened with the liability of paying back wages as they did not initiate prosecution and it was at the instance of the State Government - LPA dismissed as the Division Bench has already taken the view that on acquittal the writ petitioner would be entitled to re-instatement in service with all consequential benefits as are admissible to him.

Held, that it is true that in the case of Jaipal Singh (supra), Hon'ble the Supreme Court has taken the view that if the Electricity Board did not

initiate prosecution and it was at the instance of the State Government then they would not be burdened with the liability of paying back wages as the employec did not work during the period of trial and conviction etc. However, the judgment would not apply to the facts of the present case because the Division Bench of this Court has already taken the view in its order dated 8.4.2008 that on acquittal the writ pctitioner-respondent would be entitled to re-instatement in service with all consequential benefits as are admissible to him (P-4). Therefore, the judgment of Hon'ble the Supreme Court in Jaipal Singh's case (supra) would not apply. Moreover, the judgment in Jaipal Singh's case (supra) has been distinguished by their Lordships' in the case of Jaipur Vidyut Vitran Nigam Limited v. Nathu Ram, (2010) 1 SCC 428.

(Para 6)

Sandeep Singh, Advocate, for Partap Singh, Advocate, *for the appellants.*

Jai Vir Yadav, Advocate, *for the respondent.*

M.M. KUMAR, J.

(1) The issue in the instant appeal filed under Clause X of the Letters Patent is whether an employee after acquittal in appeal in a criminal case would become entitled to grant of all benefits or limited benefits. The aforesaid question is required to be examined in the light of the facts that the writ petitioner-respondent after promotion was working as Lineman in the Dakshin Haryana Bijli Vitran Nigam (for brevity, 'the appellant-Nigam'). A case FIR No. 497, dated 27.12.1993, under Section 7 of the Prevention of Corruption Act, 1988, was registered against him and he was placed under suspension. However, his suspension was revoked on 8.1.1994. On 9.12.1995, he was convicted by the trial Court and on 16.12.1996 he was again placed under suspension. On 20.12.1996 (R-3/1), an order was passed terminating his services from the date of conviction by the trial Court, which is extracted below:-

"He was tried of the offence by Special Judge, Narnaul in case titled as State V/s Mathura Dass Gupta s/o Shri Kanshi Ram of (OP) Divn. HSEB, Mohindergarh resident of village

Chulikana Police Station Samalkha Mandi FIR No. 497 dt. 27.12.93 under section 7 of PC Act-1988. Vide judgment dated 9.12.1995, Special Judge held him guilty of offence and ordered the accused to undergo rigorous imprisonment for one and a half year for the offence under Section-7 PC Act-1988.

Undersigned being the competent authority in the case of L/Man has gone through the facts of the case. Since Sh. Mathura Dass Gupta, Lineman has been convicted by the Special Judge for an offence involving moral turpitude, so keeping in view the conduct which led to conviction for an offence involving moral turpitude he cannot be retained in Boards service. Accordingly the service of Sh. Mathura Dass Gupta, L/Man is hereby terminated from the date of conviction.”

(2) The writ petitioner-respondent was acquitted by this Court in Criminal Appeal No. 4-SB of 1996, vide judgment dated 9.11.2005. He filed an application dated 19.12.2005 along with a copy of the judgment dated 9.11.2005 and requested for reinstatement in service. Subsequently, he filed CWP No. 16605 of 2006, which was disposed of by a Division Bench of this Court on 8.4.2008 (P-4) with a direction to the appellant-Nigam to decide his representation seeking re-instatement and consequential benefits by observing as under:-

“The petitioner claims that since the services of the petitioner were terminated only on account of his conviction and the said conviction has since been set aside, therefore, the petitioner is entitled to be reinstated in service and also entitled to all the consequential benefits.

Admittedly, the respondents have not considered the case of the petitioner after his acquittal from the charges levelled against him, presumably on the ground that he has attained the age of superannuation. Once the petitioner has been acquitted of the charges levelled against him, he is entitled to be reinstated in service with all consequential benefits as are admissible in law. May be due to efflux of time, he can not be physically reinstated in service for the reason that he has attained the age of

superannuation, but his claim for retiral benefits after regularizing the period of termination etc., is required to be considered by the respondents.

In view of the said fact, we dispose of the present writ petition with direction to the respondents to pass appropriate order on the representations of the petitioner, Annexures P-5 to P-7, seeking reinstatement and consequential benefits, within a period of 3 months from today, in accordance with law. It shall be open to the respondents to take disciplinary action, if any permissible, in accordance with law as well.” (emphasis added)

(3) The representation of the writ petitioner-respondent was decided by the competent authority vide order dated 7.7.2008 (P-5). The principle of ‘no work no pay’ was applied to deny him the back wages. The competent authority after due consideration of the pros and cons of the case has decided to withdraw the termination order dated 20.12.1996 subject to the condition that the writ petitioner-respondent would not be entitled to claim arrears of salary and allowances of the suspension as well as termination period except the subsistence allowance already paid to him. The aforesaid order became subject matter of challenge before the learned Single Judge and the same has been set aside by holding as under:-

“The petitioner was available for work but was denied the same. The termination was on the basis which is now not found justified and proper. Can principle of No Work, No Pay strictly apply in this case once the termination on the basis of his conviction, has subsequently been set aside? The petitioner cannot be made to suffer the consequences of his conviction. The principle of No Work No Pay may not appear to apply in this case. Reference in this regard can be made to observations made in the case of Union of India veUnion versus K.V. Jankiraman etc., AIR 1991 Supreme Court 2010 . It is held in this case that when an employee is completely exonerated in criminal/disciplinary proceedings and is not visited with the penalty even of censure indicating thereby that he was not blameworthy in the least, he should not be deprived of any benefits including the salary of the promotional post. The normal

rule of “no work no pay” is not applicable to such cases where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons.

It may have been a different matter, had the petitioner been convicted for an offence not connected with his office and he had got himself involved in something with which the department had no concern or responsibility. As observed in K.V. JankiramaK. Jankiraman’s case (supra), there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on accounts of non-availability of evidence due to the acts attributable to the employee etc. in such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated in disciplinary/criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardize public interests. Therefore to deny the salary to an employee would not in all circumstances be illegal.

This is not a case where the salary is denied due to any of consideration as noticed by the Hon’ble Supreme Court. It is a case where the petitioner has been accused of offence which has a connection with the service. Once the petitioner is acquitted of offence under the Prevention of Corruption Act, denying him salary, and allowances on the ground of No Work No Pay may not be fair. Even in terms of rule position, the denial of pay and allowances for the period under suspension could be

ordered only after following the procedure prescribed under the rules, which apparently has not been done.

The writ petition is, accordingly, allowed. The petitioner is held entitled to pay and allowances for the period he has remained out of service and for the duration of his suspension period as well. The petitioner is also held entitled to costs, which are assessed as Rs.10,000/-."

(4) Feeling aggrieved the appellant-Nigam has filed the instant appeal claiming that the principle of no work no pay would apply. We have heard learned counsel for the parties at some length. Mr. Sandeep Singh, learned counsel for the appellant- Nigam has vehemently argued that the appellant-Nigam has no role in prosecution of the writ petitioner-respondent because it was a State case and once the appellant-Nigam has no role to play then it cannot be burdened with the direction to pay salary and other benefits for the period the petitioner-respondent did not work. In support of his submission, learned counsel has placed reliance on para 3 of the judgment of Hon'ble the Supreme Court rendered in the case of *Union of India versus Jaipal Singh (1)*.

(5) On the contrary, Mr. Jai Vir Yadav, learned counsel for the petitioner-respondent has vehemently argued that once the Division Bench has taken the view, as quoted above in the judgment dated 8.4.2008 rendered in CWP No. 16605 of 2006 (P-4), and that view has attained finality then it is not possible to set aside the aforesaid view by refusing the benefit to the writ petitioner-respondent. It is appropriate to mention that in the quoted para of the Division Bench judgment it has been stated that once the writ petitioner-respondent was acquitted of the charges levelled against him by the Appellate Court then he would become entitled to reinstatement in service with all consequential benefits.

(6) It is in the background of the aforesaid arguments that the issue raised has to be decided. It is true that in the case of *Jaipal Singh (supra)*, Hon'ble the Supreme Court has taken the view that if the Electricity Board did not initiate prosecution and it was at the instance of the State Government then they would not be burdened with the liability of paying back wages

as the employee did not work during the period of trial and conviction etc. However, the judgment would not apply to the facts of the present case because the Division Bench of this Court has already taken the view in its order dated 8.4.2008 that on acquittal the writ petitionerrespondent would be entitled to re-instatement in service with all consequential benefits as are admissible to him (P-4). Therefore, the judgment of Hon'ble the Supreme Court in *Jaipal Singh's case (supra)* would not apply. Moreover, the judgment in Jaipal Singh's case (supra) has been distinguished by their Lordships' in the case of *Jaipur Vidyut Vitran Nigam Limited versus Nathu Ram (2)*.

(7) As a sequel to the above discussion we are of the view that the instant appeal does not merit admission and the opinion expressed by the learned Single Judge does not suffer from any legal infirmity warranting admission of the appeal. The appeal is wholly without merit. Dismissed.