

been filed only in the years 2010 and 2011. That may be so. However, once these very orders are set-aside by the learned Single Judge in the writ petitions which were filed earlier and allowing the writ petitions by the impugned order holding that such employees are to be paid gratuity as per the Common Cadre Rules, normally, the benefit of that judgment should have been extended to these petitioners as well who are similarly situated. Normally, even this delay would not have been arisen to dislodge the petitioners as the matter was pending consideration in these Letters Patent Appeals. However, what is important is that these petitioners retired long ago and even accepted the payment of gratuity under the Payment of Gratuity Act, 1972. They did not challenge that action at that time. It is only after the judgment of the learned Single Judge that these petitioners woke up and filed these writ petitions. As these petitioners have approached the Court belatedly, the order extending the benefit of the judgment of the learned Single Judge to these petitioners as well, namely, the payment of gratuity under the Common Cadre Rules, the difference payable would be given to these petitioners without any interest within two months from the date of receipt of copy of this judgment. However, if the payment is not made within two months, then after expiry of two months, these petitioners shall also be entitled to interest on differential at the rate of 8% per annum. Writ petitions are allowed and disposed of in the aforesaid terms.

S. Gupta

Before Tejinder Singh Dhindsa, J

SUSHILA JAIN —Petitioner

versus

STATE OF HARYANA AND OTHERS—Respondents

CWP No.12269 of 2011

May 23, 2013

Constitution of India, 1950 - Art. 226 - Service law - Prevention of Corruption Act, 1988 - S. 7/13 - Claim for arrears of pay - Petitioner, a Sub Divisional Education Officer - FIR under Prevention of Corruption Act registered against her, and she was placed under suspension - In the meantime DPC considered cases

of eligible employees for promotion to HES Class-I - Petitioner ignored because of pendency of criminal proceedings - Subsequently, the petitioner acquitted - On her representation the petitioner was promoted and given benefit of pay fixation and seniority but denied salary of higher post on the principal of "no work, no pay" - Above action challenged in writ petition - Held that since criminal prosecution not initiated by the department, it could not be saddled with the liability of payment of arrears - Writ Petition dismissed.

Held, that the short question that would require determination in the light of the facts of the present case would be as to whether the employer/ Department can be saddled with the liability of payments of arrears of salary pertaining to the promotional post for a period the employee was not promoted on account of pendency of criminal proceedings wherein such proceedings had not been initiated at the behest of the Department itself?
(Para 6)

Further held, that the admitted position is that a complaint had been filed against the petitioner under the provisions of Prevention of Corruption Act. It is not the case that the criminal prosecution had been initiated against her in pursuance to any complaint having been lodged by the respondent- Department. Even though the case of the petitioner had been considered by the duly constituted Departmental Promotion Committee in the year 2003 itself, yet she could not be promoted on account of the pendency of the criminal proceedings. Subsequently, upon acquittal, the petitioner has been promoted to HES Class-I retrospectively from the year 2003 and has also been granted the benefit of pay fixation and seniority. Even the suspension period has been ordered to be treated as the period spent on duty for all intents and purposes. In such factual backdrop, the petitioner would not be entitled to the payment of arrears of salary for a period that she has not discharged her duties and responsibilities against the promotional post.
(Para 7)

Further held, that a question as regards payment of salary to an employee whose services had been terminated on account of conviction in criminal proceedings and having thereafter been reinstated upon acquittal and wherein the prosecution leading to the conviction was not at the behest of the employer/Department came up for consideration before the Hon'ble

Apex Court in the case of Union of India and others Vs. Jaipal Singh reported as 2004(1) S.C.T 108 and it was held in the following terms:-

"If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest or by department itself, perhaps different considerations may arise. On the other hand, if 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 law obliges, a person 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 re-instatement cannot be sustained and the respondent has to be re-instated, in service, for the reason 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 are liable to be and is hereby set aside."

(Para 8)

Further held that this Court is of the considered view that the same principle would apply even to the facts of the present case.

(Para 9)

S.K. Bhardwaj, Advocate *for the petitioner*.

Harish Rathee, Senior Deputy Advocate General, Haryana.

TEJINDER SINGH DHINDSA, J.

The petitioner was appointed as a Primary Education Officer with the Haryana State Education Department on 14.11.1974. Her services were regularized on 1.1.1980. The petitioner earned promotions to the post

of Head Mistress on 11.1.1988 and as Principal on 31.1.1991. While the petitioner was posted as Sub Divisional Education Officer, Panipat, a complaint was filed against her on the basis of which FIR No.17 dated 5.4.2002, under Sections 7/13 of the Prevention of Corruption Act, 1988 was registered against her at Police Station SVB(H), Rohtak. The petitioner was placed under suspension on 12.9.2002, but was re-instated with effect from 12.12.2002.

(2) A Departmental Promotion Committee considered the cases of eligible employees for promotion to HES Class-I in the year 2002 but the petitioner was ignored on account of the pendency of the criminal proceedings initiated on account of filing of FIR No.17 dated 5.4.2002. Vide judgment dated 12.5.2008, passed by the Special Judge, Panipat, the petitioner was acquitted of the charges levelled against her. The petitioner, accordingly, submitted a representation for promotion to HES Class-I with effect from the date her juniors had been so promoted. In such representation, the petitioner took a specific stand that she had been ignored only on account of pendency of the criminal proceedings and she having earned acquittal was entitled for promotion retrospectively. Order dated 19.9.2008, Annexure P2, was passed by respondent No.1 whereby the suspension period of the petitioner i.e. 12.9.2002 to 12.12.2002 was ordered to be treated as duty period for all intents and purposes. Vide order dated 31.12.2008, Annexure P3, passed by respondent No.1, the petitioner has been promoted to HES Class-I in the grade of `10000-325-13900 w.e.f. 25.7.2003. However, in the light of condition No.5 of such order, the petitioner has been held entitled to the benefit of pay fixation and seniority from the date of such retrospective promotion but not the actual arrears for the period in question. The petitioner thereafter raised a claim to be granted actual arrears for the period 25.7.2003 till 31.12.2008 but the same has been rejected vide memo dated 18.8.2009, Annexure P5, citing the principle of 'No Work No Pay'.

(3) It is in the light of such factual backdrop that the present writ petition has been filed impugning the memo dated 18.8.2009, Annexure P5, and raising a claim that the petitioner be released the salary/arrears for such period i.e. 25.7.2003 to the actual date of promotion.

(4) Learned counsel appearing for the petitioner has vehemently argued that the solitary basis for denying the petitioner the benefit of promotion to HES Class-I in the year 2003 was the pendency of the criminal

proceedings and the petitioner having earned acquittal in FIR No.17 dated 5.4.2002 was vested with the right not only to be promoted retrospectively with effect from the date her juniors were promoted but was also entitled to all consequential benefits in the nature of salary for such period. In support of such contention, learned counsel has placed reliance upon the following judicial pronouncements:

1. *Kanwar Lal Sharma* versus *State of Haryana and others*, (1).

2. *Hukam Singh* versus *The State of Haryana and another*, (2).

(5) Mr. Harish Rathee, learned Senior Deputy Advocate General, Haryana would contend that the petitioner has not discharged her duties on the promotional post for the period in question and, accordingly, would argue that she is not entitled to the payment of salary for such period. A further argument has been raised that even though there is a challenge to memo dated 18.8.2009, Annexure P5, yet the arrears of salary had been denied by virtue of condition No.5 contained in the order dated 31.12.2008, Annexure P3, and to which no challenge has been raised in the instant writ petition.

(6) The short question that would require determination in the light of the facts of the present case would be as to whether the employer/ Department can be saddled with the liability of payments of arrears of salary pertaining to the promotional post for a period the employee was not promoted on account of pendency of criminal proceedings wherein such proceedings had not been initiated at the behest of the Department itself?

(7) The admitted position is that a complaint had been filed against the petitioner under the provisions of Prevention of Corruption Act. It is not the case that the criminal prosecution had been initiated against her in pursuance to any complaint having been lodged by the respondent-Department. Even though the case of the petitioner had been considered by the duly constituted Departmental Promotion Committee in the year 2003 itself, yet she could not be promoted on account of the pendency of the criminal proceedings. Subsequently, upon acquittal, the petitioner has been promoted to HES Class-I retrospectively from the year 2003 and has also been granted the benefit of pay fixation and seniority. Even the suspension

(1) 2005 (1) RSJ 575

(2) 2001 (1) RSJ 201

period has been ordered to be treated as the period spent on duty for all intents and purposes. In such factual backdrop, the petitioner would not be entitled to the payment of arrears of salary for a period that she has not discharged her duties and responsibilities against the promotional post.

(8) A question as regards payment of salary to an employee whose services had been terminated on account of conviction in criminal proceedings and having thereafter been reinstated upon acquittal and wherein the prosecution leading to the conviction was not at the behest of the employer/ Department came up for consideration before the Hon'ble Apex Court in the case of **Union of India and others** versus **Jaipal Singh reported (3)** as 2004(1) S.C.T 108 and it was held in the following terms:-

“If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest or by department itself, perhaps different considerations may arise. On the other hand, if 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 law obliges, a person 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 re-instatement cannot be sustained and the respondent has to be re-instated, in service, for the reason 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 are liable to be and is hereby set aside.

(3) 2004 (1) SCT 108

(9) This Court is of the considered view that the same principle would apply even to the facts of the present case.

(10) For the reasons recorded above, I find no infirmity with the decision of the respondent-Department in denying to the petitioner the arrears of salary for the period in question i.e. 25.7.2003 to 7.1.2009.

(11) Writ petition dismissed.

P.S. Bajwa

Before Surya Kant & R.P.Nagrath, JJ.

KRBL LIMITED—Petitioner

versus

THE STATE OF PUNJAB AND OTHERS—Respondents

CWP No. 12965 of 2012

January 25, 2013

Constitution of India, 1950 - Art.13, 14, 226, 227 & 265 read with entry No. 49 contained in Schedule VII of its list-II - Punjab (Institutional and other Buildings) Tax Act, 2011 - S. 3 - Punjab General Clauses Act, 1897- S.22 - Petitioners assailed Constitutional validity of Section 3 being ultra vires - Petitioners sought quashing of Notification dated 02.02.2011 and striking down Public Notice dated 10.06.2011 - Held that Section 3 and/or other provisions of the Punjab (Institutional and other Buildings) Tax Act 2011 upheld as they are intra vires and do not violate any provisions of Constitution of India - Since solitary object of 2011 Act is to levy tax on building located outside Municipal Area in State of Punjab - It is futility exercise to question legislative competence - As long as the delegate namely State exercise power in consonance with legislative policy and determine tax on building intelligible differentia stubbed with principle of reasonable classification.