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*Before S.S. Nijjar and J.S. Narang, JJ*

SHASHI KUMAR —*Petitioner*

*versus*

UTTRI HARYANA BIJLI VITRAN NIGAM AND ANOTHER—  
*Respondents*

C.W.P. NO. 14375 OF 2003

7th December, 2004

*Constitution of India, 1950— Art.226— Punjab Civil Services Rules, Vol. I, Part I— Rl . 7.5— Prevention of Corruption Act, 1988— Ss. 7 and 13— Conviction of petitioner under the 1988 Act— Removal from service— On appeal, High Court acquitting the petitioner by giving benefit of doubt— Petitioner claiming reinstatement with all consequential benefits— Rejection of on the plea that the petitioner has not been fully exonerated —Challenge thereto— Terms ‘acquittal by giving benefit of doubt’ and ‘honourable acquittal’— Interpretation— Provisions of the Code of Criminal Procedure do not contemplate honourable acquittal—The only words known to the Code are ‘discharged’ or ‘acquitted’— Order of removal based purely on the conviction of the petitioner— Order does not allude to any circumstances which could be related to the conduct of the petitioner leading to conviction— Petitioner held entitled to be reinstated in service with all consequential benefits— Respondents’ prayer for taking further departmental action against the petitioner also declined in view of the finding recorded by the High Court in Criminal Appeal.*

Held, that a perusal of the order passed by the respondents removing the petitioner from service shows that the respondents had passed the same basing it purely on the conviction of the petitioner. The order states that in view of the conviction, the petitioner is removed from service on account of conduct which led to his conviction. Excepting for the aforesaid sentence, the order does not allude to any circumstances which could be related to the conduct of the petitioner leading to the conviction. Therefore, the impugned order is liable to be quashed on this short ground as it has been passed, without taking into consideration the relevant material. In any event, the petitioner having been acquitted in appeal, the justification of the order of removal no longer existed.

(Para 6)

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Further held, that in any event, the terms “honourable acquittal” or “fully exonerated” are unknown in the Code of Criminal Procedure or in Criminal Jurisprudence. We are of the considered opinion that in view of the settled law, the petitioner is clearly entitled to be reinstated in service with all consequential benefits.

(Paras 7 and 11)

R. K. Malik, Advocate, *for the petitioner.*

Girish Agnihotri, Advocate, *for the respondent*

### JUDGMENT

#### S. S. NIJJAR, J. (ORAL)

(1) With the consent of counsel for the parties, the writ petition is taken up at the motion stage for final disposal.

(2) In this writ petition under Articles 226/227 of the Constitution of India, the petitioner seeks the issuance of a writ in the nature of Certiorari for quashing the order dated 27th August, 2003 (Annexure P-4) and for further directions to the respondents to reinstate the petitioner with all consequential benefits. The petitioner was appointed as Assistant Foreman on workcharge basis on 19 November, 1981. In July, 1986, he was directly appointed as Junior Engineer. According to the petitioner, false criminal case was registered against him on 9th May, 1995. He was convicted by the Special Judge, Karnal under sections 7/13 of the Prevention of Corruption Act. The petitioner was removed from service on 24th April, 2001. The conviction was, however, set aside by this Court in appeal by judgment dated 6th March, 2003 (Annexure P-2). On acquittal, the petitioner made a representation dated 6th March, 2003 (Annexure P-3) that he may be taken on duty and be granted all consequential benefits. The claim of the petitioner has been rejected by respondents by order dated 27th August, 2003 (Annexure P-4). In the order (Annexure P-4), it has been mentioned that the petitioner was placed under suspension w.e.f. 9th May, 1995. He was convicted on 24th November, 1999. He was removed from service on 24th April, 2001 on account of the conduct which led to his conviction, as the misconduct alleged to be committed by him was that of moral turpitude. The Criminal Appeal filed by the petitioner has been accepted by the High Court by giving him benefit

of doubt. In view of the instructions of the State of Haryana issued,— vide No. 11/2/97-2GS-III dated 3rd October, 1997 read with Regulation 7.2(d) provision (ii) of HSEB Employees P&A Regulation, 1990 duly adopted by the Nigam, the punishment of removal from service in this case, which was awarded to him on account of his conduct which led to his conviction, does not warrant review or modification. With the aforesaid explanation, the request of the petitioner for taking him on duty has been rejected.

(3) The petitioner claims that in view of Rule 7.5 of the Punjab Civil Services Rules, Vol. I Part-I, he is entitled to be reinstated with full back-wages, having been exonerated. In support of the submission, the petitioner relies on a Division Bench judgment of this Court in the case of **Hukam Singh, Lecturer in Hindi Govt. Senior Secondary School, Indri versus The State of Haryana and another** (amended writ petition No. 18048 of 1999) decided on 23rd November, 2000. Learned counsel for the petitioner has further submitted that merely because the High Court has used the term “acquittal by giving benefit of doubt” does not render the acquittal nonetheless honourable. In fact, the High Court had quite categorically observed that there is no evidence on the file that the appellant had demanded any amount from PW 8 Puran Singh as illegal gratification and that on demand, he had given any amount. That being so, it was clearly a case of no evidence. Therefore, the petitioner is entitled to be reinstated with full back-wages.

(4) The respondents have filed a written statement. It is stated that since the petitioner has not been fully exonerated, it cannot be said that the period of suspension of the petitioner was wholly unjustified. Since the petitioner had been convicted for an offence of moral turpitude, he cannot be retained in service.

(5) We have heard the learned counsel for the parties and perused the record.

(6) A perusal of the order passed by the respondents removing the petitioner from service shows that the respondents had passed the same basing it purely on the conviction of the petitioner. The order states that in view of the conviction, the petitioner is removed from service on account of conduct which led to his conviction. Excepting for the aforesaid sentence, the order does not allude to any

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circumstances which could be related to the conduct of the petitioner leading to the conviction. Therefore, in our opinion, the impugned order is liable to be quashed on this short ground as it has been passed, without taking into consideration the relevant material. In any event, the petitioner having been acquitted in appeal, the justification of the order of removal no longer existed. The High Court has ordered the acquittal of the petitioner after threadbare examination of the evidence. It has been noticed that the complainant, Puran Singh PW-8 was the owner of 8-1/2 killas of land situated in Village Jundla. He further stated that about two years prior to the recording of the statement in Court on 5th August, 1997, he had gone to the office of Vigilance Department and reported against Haryana State Electricity Board Officer Natha Ram for demanding Rs. 7500. This amount had been demanded for installation of new transformer as old transformer was overloaded and his tubewell meter was not functioning properly. He also stated that he had earlier paid Rs. 3200 to Natha Ram. He further stated that Junior Engineer of his feeder was Sukhbir Singh Malik. He then categorically stated that he did not know Shashi Kumar, the petitioner. It was also stated by him that the petitioner never remained Junior Engineer of his feeder. He never demanded any amount from him nor he paid any amount to him. This witness was declared hostile, but nothing useful emerged from his cross-examination. In fact in the cross-examination, he further admitted that there was a scuffle among HSEB employees and the police employees. He reiterated that he did not pay any amount to the petitioner. Therefore, the High Court concluded that according to the statement of the complainant, the petitioner did not know the complainant nor did the petitioner demand any amount from him. Even the trap witness PW 2 in the cross-examination admitted that he was an employee of the Vigilance Department, Karnal. He had remained posted as a Peon for the last 10 to 15 years at Karnal. He further admitted that he had joined 3-4 raids with the Vigilance Officer. Therefore, the High Court came to the conclusion that PW 2 was not an independent witness as he was under the control of DSP (Vigilance). The High Court relied on a judgment of the Supreme Court in the case of **State of Madhya Pradesh versus J.B. Singh** (1) wherein it has been held that an offence under the Prevention of Corruption Act would not be established unless there is evidence to prove the act of

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(1) 2002 CrI. L.J. 4591

demand of illegal gratification. Relying on the aforesaid ratio of law, the petitioner has been acquitted. In such circumstances, it can hardly be said that the acquittal of the petitioner is not honourable.

(7) In any event, the terms "honourable acquittal" or "fully exonerated" are unknown in the Code of Criminal Procedure or in Criminal Jurisprudence. These terms came up for consideration before a Division Bench of the Madras High Court in the case of **Union of India versus. Jayaram (2)**. Rajamannar, C.J. delivering the judgment of the Division Bench observed as under :—

"There is no conception like "honourable acquittal" in Criminal P.C. The onus of establishing the guilt of accused is on the prosecution, and if it fails to establish the guilt beyond reasonable doubt, the accused is entitled to be acquitted.

Clause (b) of Article 193 of the Civil Service Regulations which says that when a Government servant who was under suspension is honourably acquitted, he may be given the full salary to which he would have been entitled if he had not been suspended applies only to the case of departmental inquiry.

Where the servant was suspended because there was a criminal prosecution against him, and he was acquitted therein, and reinstated he is entitled under the general law, to the full pay during the period of his suspension. To such a case Article 193(b) does not apply."

(8) The aforesaid judgment of the Madras High Court was considered and followed by this Court in the case of **Jagmohan Lal versus. State of Punjab through Secretary to Punjab Govt. Irrigation and others (3)**. In that case, on acquittal, the petitioner was reinstated in service, but his period of suspension was not treated as the period spent on duty. He had, therefore, filed writ petition under Articles 226/227 of the Constitution of India claiming that he was

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(2) AIR 1960 Mad. 325

(3) AIR (54) 1967 Pb. & Hy. 422 (Punjab)

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entitled to full pay and allowances for the period of his suspension. Considering the impact of Rules 7.3, 7.5 and 7.6 of the Punjab Civil Services Rules Vol. I, Part I, it was observed as follows :—

(2)     xxx     xxx     xxx     xxx

The interpretation which has been put by the Government on the rule is incorrect. The blame which attached to the petitioner was that there was a criminal charge against him under which he was standing his trial. The moment he is acquitted of the charge, he is acquitted of the blame. In criminal law, the Courts are called upon to decide whether the prosecution has succeeded in bringing home the guilt to the accused. The moment the Court is not satisfied regarding the guilt of the accused, he is acquitted. Whether a person is acquitted after being given a benefit of doubt or for that reasons, the result is that his guilt is not proved. The Code of Criminal Procedure does not contemplate honourable acquittal. The only words known to the Code are “discharged” or ‘acquitted’. The effect of a person being discharged or acquitted is the same in the eyes of law. Since, according to the accepted notions of imparting criminal justice, the Court has to be satisfied regarding the guilt of the accused beyond a reasonable doubt, it is generally held that there being a doubt in the mind of the court, the accused is acquitted.

I am, therefore, quite clear in my mind that the intention underlying rule 7.5 can be no other except this ; the moment the criminal charge on account of which an officer was suspended fails in a court of law, he should be deemed to be acquitted of the blame. Any other interpretation would defeat the very purpose of the rule. It is futile to expect a finding of either honourable acquittal or complete innocence in a judgment of acquittal. The reason is obvious; the criminal courts are not concerned to find the innocence of the accused. They are only concerned to find whether the prosecution has succeeded in proving beyond a reasonable doubt the guilt of the accused.”

(9) The judgement rendered in the case of **Union of India versus Jayaram (supra)** has also been followed by a Division Bench of the Gujarat High Court in the case of **Ramsinghji Viraji Rathod, Parmanand Society versus. The State of Gujarat and anr. (4)**. In the aforesaid case, it has been observed as follows :—

“7.....Clause (b) of Article 193 of the Civil Service Regulations, which was under consideration before the Madras High Court was substantially similar to our Rule 152, with this difference, that instead of the words “fully exonerated” the words were “honourably acquitted”. With respect we are in agreement with the reasoning of Rajamannar, C.J. and in our opinion, it is not open to the authorities concerned to bring in the concept of honourable acquittal or full exoneration so far as the judgment of the Criminal Court is concerned. In a criminal trial the accused is only called upon to meet the charge levelled against him and he may meet the charge - (a) by showing that the prosecution case against him is not true or (b) that it is not proved beyond reasonable doubt; or (c) by establishing positively that his defence version is the correct version and the prosecution version is not correct. In any one of these three cases, if the Court comes to the conclusion that the prosecution has failed to establish its case beyond reasonable doubt or that the prosecution case is not true or that the defence version is correct and is to be preferred as against the prosecution version, the Criminal Court is bound to acquit the accused. The accused is not called upon in every case to establish his complete innocence and it is sufficient for the purposes of criminal trial that he satisfied the Court that the prosecution has not established its case beyond reasonable doubt. Since he is not called upon to prove a positive case, the concept of honourable acquittal or full exoneration can have no place in a criminal trial and it is because of this reasoning that we agree with the observations of Rajamannar, C.J. in Jayaram’s case, AIR 1960 Mad. 325.”

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(10) Further more a Division Bench of this Court, after examining the relevant rules in the case of Hukam Singh (*supra*) has held as under :—

“It is abundantly clear that Rule 7.3 of the Rules is the general rule, while in case a person is acquitted, it is specific Rule 7.5 of the Rules that would be attracted. The law is well settled that special Rule will always take precedence over the general rule and consequently, it must follow that under Rule 7.5 of the Rules, referred to above, the petitioner was entitled to the full back wages because, as mentioned above, the earlier decisions referred to above have little application in the present case.

In our this view, we are supported by the judgment of this Court in the case of *Maha Singh versus State of Haryana* and another, 1993 (8) Services Law Reporter, 188. Same view was expressed by this Court in the case of *Lehna Singh versus The State of Haryana and others*, 1993 (3) Recent Services Judgments 199. Keeping in view the aforesaid, we have no hesitation in holding that the impugned order cannot be sustained. In terms of Rule 7.5 of the Rules, on petitioner’s being acquitted, he would be entitled to full salary and allowances for the period of suspension and dismissal....”

(11) We are of the considered opinion that in view of the settled law, the petitioner is clearly entitled to be reinstated in service with all consequential benefits. We quash the impugned order dated 27th August, 2003 (Annexure P-4). We direct the respondents to reinstate the petitioner into service with full back-wages. Mr. Agnihotri has argued that the respondents be given opportunity to now conduct a departmental enquiry. We are of the considered opinion that in view of the categoric findings recorded by the High Court, there would be hardly any justification in permitting further departmental action. We, therefore, decline the request made by the counsel for the respondents.

(12) Petition allowed as indicated above. No costs.

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**R.N.R.**