

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

C.W.P. No.21224 of 2008

Date of Decision:18.05.2010

Balraj Goyal

.....Petitioner

Versus

Haryana Financial Corporation, Bays No.17, 18 &19, Sector 17-A,
Chandigarh through its Managing Director and another

....Respondents

Present: Mr. R.K. Malik, Senior Advocate with
Mr. Yashdeep, Advocate
for the petitioner.

Mr. Kamal Sehgal, Advocate
for the respondents.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ? **Yes**
2. To be referred to the Reporters or not ? **Yes**
3. Whether the judgment should be reported in the Digest? **Yes**

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K. KANNAN J.(ORAL)

1. The petitioner challenges the decision taken by the respondents treating the period of suspension as not on duty but for all intents and purposes, treated as the leave of the kind due as contrary to the rules and justice.

2. The petitioner was an accused in a criminal case on a complaint by a person, who was alleged to have been forced to make illegal gratification to the petitioner. Immediately after the FIR was lodged and the petitioner was arrested, he was suspended on 11.01.2001. After a full-fledged criminal trial, he was acquitted of the charges where the judgment of the Criminal Court reveals that none of the prosecution witnesses supported the prosecution theory

and even the self-serving statement of the Investigating Officer (PW10) before the Criminal Court, 'who was over zealous in making his laid success is not worthy of giving credence.' He was already given the benefit of doubt and he was acquitted of the charges and set at liberty.

3. After the judgment of the Criminal Court was pronounced on 07.01.2005, the department took independent action against the petitioner on the same incident as constituting the charge for action. After an enquiry, it was found that the charges had not been established and he was directed to be reinstated in the service on 03.05.2007. When he was reinstated, the period of suspension was treated by the office order of the Managing Director in the following words:

“Sh. B.R. Goyal, General Manager (under suspension) is hereby reinstated in the services of the Corporation with immediate effect.

His period of suspension has been treated as leave of the kind due and he is posted at Investment Promoted Centre (IPC), Chandigarh.....”

4. Learned counsel appearing for the petitioner would refer to the relevant Rules governing the employment namely Punjab Financial Corporation (Staff Regulation Rules), 1961, which contemplate both the situations of what should happen and how the period of suspension should be treated in cases of institution of criminal proceedings and departmental proceedings. Clause 40(1) addresses the issue of institution of criminal proceedings and an automatic suspension that it entails:

“40(1) An employee who is arrested for debt or on a criminal charge shall be considered as under suspension from the date of his arrest, and shall be allowed the payments admissible to an employee under suspension under sub-regulation (4) of Regulation 41 until the termination of the proceedings against him, when an adjustment of his pay and allowances shall be made according to the circumstances of his case and in the light of the decision as to whether his absence is to be counted for as a period of duty or leave, the full pay and allowances being given only in the event of the employee being acquitted of all blames and treated as on duty during the period of his absence. An employee who is committed to prison for debt or is convicted of any offence involving moral turpitude shall be liable for dismissal.”

The Clause 40(4) deals with the power of the Managing Director to place an employee under suspension and it also deals with the entitlement of the workman as regards the claim during the suspension period:-

“4. An employee may be placed under suspension by the Managing Director. During such suspension, he shall receive subsistence allowance equal to his substantive pay, provided that if no penalty under clauses (b), (c), (d) or (e) of sub-regulation (1) is imposed the employee shall be refunded the difference between his substantive pay and the emoluments which he would have received but for such

suspension, for the period he was under suspension and that if a penalty is imposed on him under the said clauses, no order shall be passed which shall have the effect of compelling him to refund such subsistence allowance. The period during which an employee is under suspension shall, if he is not dismissed from the service, be treated as period spent on duty or leave as the Managing Director may direct.”

A penalty provided under Clauses (b), (c) , (d) or (e) of sub-regulation 1 read as follows:-

- “(b) reprimand;
- (c) delay or stoppage of increment or promotion;
- (d) degradation to a lower post or grade or to a lower stage in his incremental scale;
- (e) removal or dismissal.

5. Admittedly, the criminal case had ended in acquittal and from the reading of the judgment, it can be noticed that he was acquitted of all blame. Even the prison did not lead to any of the punishments detailed under sub clauses (b) to (e). If the contention of the learned Senior Counsel appearing for the petitioner is, therefore, by reference to Rule 40 and 41, the petitioner could not have been denied full wages during the period of suspension for he was never convicted in the criminal case nor found guilty in the departmental proceedings.

6. Learned counsel appearing for the respondent would support the decision on the ground that the criminal case had not been registered at the instance of the Corporation but on a

complaint by a private individual against the petitioner. It is also urged by him that the nature of treatment of the suspension period shall depend on the direction of the Managing Director and if the Managing Director had taken a decision not to provide for full salary during that period and treated as a leave of kind due, it was in exercise of such power and the petitioner cannot have any grievance against the same.

7. Learned counsel also relies on the manner of disposal of the appeal, which had been made by the Board against the decision of the Managing Director, when the Board reasoned that the petitioner admittedly did not work with the Corporation from January 2001 to May 2007 and he remained under suspension during the said period. The Board, therefore, was of the view that the period of suspension could not be treated as the period on duty for the reason that he was first involved in a criminal case due to which alone he was suspended and secondly, on the principle of no work no pay and thirdly that he was not acquitted honourably.

8. All the reasonings, which we find expressed in the order of the Board are not reflected in the order of the Managing Director himself. The Board was merely affirming the order of the Managing Director and it is first order namely the decision of the Managing Director, who was competent to take a decision on how the suspension period was to be treated and that should be looked at first. Any impugned decision must stand on its own reasoning and cannot obtain props through subsequent orders or meaningful pleadings in Court to fill up the lacuna. The decision of the Board in the appeal is really in the nature of providing fresh reasons which

are not found in the order passed by the Managing Director. I have reproduced the decision of the Managing Director in the above paragraph and it is laconic that supports no reasoning nor does it express any application of mind before such a decision was taken. Even a discretion which is granted to a Managing Director shall be read in the context of how such a discretion shall be exercised from the language employed in Rule 40 and the first portion of Rule 41(4). If the employee had been acquitted of the charges and freed from blame, an employee would be normally entitled to full pay and allowances. In this case, I have gone through the judgment of the Criminal Court and there is nothing to support the view that the petitioner was not acquitted honorably though the expression that he was being given the benefit of doubt is made towards the end of the judgment. From the reading of the judgment it seems clear that no prosecution witness supported the theory of illegal gratification. The whole case hinged on the investigating officer's version which the Criminal Court held as unworthy of acceptance or credence. If the case was to be merely considered on the suspension that followed immediately after the launching of the criminal case and the reinstatement on the acquittal from the criminal case, probably there would be some meaning in supporting the decision of the respondents. On the other hand, the department persisted with independent departmental proceedings notwithstanding the order of acquittal. That they were surely entitled to do, for the departmental proceedings and criminal cases operate in different fields. The departmental proceedings also led to a finding of no guilt and there was no occasion therefore for visiting the petitioner

with any of the penalties which are delineated under clause 41 (1) (b) to (e). If penalty under Clause (b) to (e) under sub-regulation (1) was not imposed, the sub clause (4) clearly reveals that the employee should be refunded the difference between his substantive pay and the emoluments which he would have received but for such suspension, for the period he was under suspension. There the Managing Director's discretion ought to follow what the first part of Clause (4) states. The petitioner could not have been denied his wages only on the basis of no work, no pay basis, for if there was no work it was not due to any fault committed by the petitioner. At least by the way the proceedings in the Court and the departmental enquiry led to, the petitioner is just well entitled to contend that for no fault of his, he had to go through the situation of no work.

9. Learned Senior Counsel appearing for the petitioner refers to a decision of Division Bench of this Hon'ble Court in **Shashi Kumar Vs. Uttri Haryana Bijli Vitran Nitam and another 2005(1) RSJ 718** to support the plea that the moment the criminal charge fails in a court of law, where a case followed the institution of a criminal case, the person should be deemed to be acquitted of the blame and any other interpretation would defeat the very purpose of rule. The Division Bench was dealing with the provisions of the regulations under the Punjab Civil Service Rules particularly with reference to Rule 7.5. The Court ruled that it would be futile to expect a finding of either honourable acquittal or complete innocence in a judgment of acquittal. I have already explained the instance of how although the judgment states that he was given the benefit of doubt, it was clearly a case where the Court had no evidence to support the

prosecution theory and he was wholly treated as free from blame. This answers the situation of a square applicability of Rule 40 of the aforesaid Rules. The learned counsel appearing for the respondents refers to two judgments of the Hon'ble Supreme Court. In *Ranchhodjit Chaturji Thakore Vs. The Superintendent Engineer, Gujarat Electricity Board 1997(1 SCT 824* the Hon'ble Court held that when the petitioner was involved in a criminal offence under Section 302/34 IPC, but was later acquitted, the petitioner disabled himself from rendering service on account of conviction and incarceration in jail and hence, shall be denied the benefit of back wages. Learned counsel also refers to another judgment of the Hon'ble Supreme Court in *Baldev Singh Vs. Union of India and others JT 2005 (10) SC 213* that held that in a case where on a repeated advice to rejoin duty the employee failed, the Court found that ultimately when he was directed to be reinstated he should not be entitled to any salary during that period. The latter judgment has absolutely no application in the case where there was, apart from the institution of criminal case, a deliberate unwillingness on the part of the workman to rejoin duty. In the former case the issue was dealt, with in the context of a criminal case, which was instituted against a person and the resultant suspension. The Hon'ble Supreme Court while denying the back wages was particularly making a reference about the conduct and observed that each case would require to be considered at its own backdrop and in that case the petitioner had involved himself in a crime though he was later acquitted. He had disabled himself from rendering the service on account of conviction and incarceration in jail. The

suspension was only seen in the context of a criminal case. In this case, the aggravating situation for the petitioner is notwithstanding the acquittal by the Criminal Court, the department proceeded independently after the judgment and came to the same conclusion that the charges made against the workman could not stick. That in my view would make a difference for a petitioner to complain that he could not attend to his service for no fault of his and the denial of wages in such a situation cannot always be automatic. There is nothing erroneous or objectionable about the conduct of the petitioner in the manner the Hon'ble Supreme Court dealt with in the Thakore's case referred to above.

10. The denial of wages during such a period of forced suspension cannot be attributed wholly to the petitioner. The claim for pay during such period is, under the circumstances perfectly justified and the writ petition is allowed quashing the impugned proceeding. The petitioner shall be paid the full salary after deducting the subsistence allowance which he had drawn and it shall be done within a period of six weeks from the date of receipt of copy of the order. The writ petition is allowed on the above terms.

(K. KANNAN)
JUDGE

May 18, 2010
Pankaj*