

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

CWP No.5187 of 2012

Date of Decision: 30.05.2014

Prabhu Dayal Madan

....Petitioner

Versus

State of Haryana and another

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. K.K. Gupta, Advocate
for the petitioner.

Mr. Amit Kumar, D.A.G., Haryana
for the respondent-State.

Mr. Ramesh Hooda, Advocate
for respondent No.2.

DAYA CHAUDHARY, J.

The prayer in the present petition is for quashing of order dated 27.06.2011 passed by respondent No.2, whereby, the petitioner has been denied pay/arrears from the date of his suspension till the date of retirement consequent upon his acquittal in the criminal case.

Briefly, the facts of the case, as mentioned in the petition, are that the petitioner joined his service in the Medical College, Rohtak, on 10.09.1971. The respondent-College was under the control of State of Haryana, Department of Medical Education. Subsequently, in the year 2008, the Medical College, Rohtak was converted into Medical Science University in the name and style of "Pandit B.D.Sharma University of Health Science" and all the employees working in the Medical College, Rohtak, were transferred to the University. The petitioner was working as

an Accountant in the Medical College, Rohtak and thereafter, he was transferred to respondent No.2-University. An FIR No.79 dated 22.03.1995 was registered against the petitioner under Sections 7 and 13 of the Prevention of Corruption Act, 1988 and he was placed under suspension vide order dated 23.03.1995. On facing trial, the petitioner was convicted by the trial court and thereafter, he filed an appeal. However, on conviction, he was dismissed from service vide order dated 10.07.1998. During pendency of the appeal, the petitioner attained the age of superannuation on 31.07.2005. The appeal filed by the petitioner against the judgment of conviction was allowed and he was acquitted of the charge by the Appellate Court. He made various representations for releasing of his retiral benefits on his acquittal by the Appellate Court but nothing was paid to him. Ultimately, the retiral benefits were released to the petitioner but the period from the date of his suspension till the retirement, i.e. 23.03.1995 to 31.07.2005 was considered as non-duty period and no pay/arrears of non-duty period were given to him. A show cause notice was issued to the petitioner to which he submitted his reply. The denial of non-payment of salary for that period and to treat it as non-duty period is a subject matter of challenge in the present writ petition.

Learned counsel for the petitioner has challenged the impugned order dated 27.06.2011 by raising various grounds that the petitioner was not found to be involved as charges levelled against him were not proved and the judgment of conviction was set-aside by the Appellate Court. It was found by the Appellate Court that the prosecution story was false and the witnesses produced by the prosecution were found to be interested witnesses. Learned counsel also submits that the order of suspension dated 23.03.1995 as well as the order of dismissal dated 10.07.1998 were withdrawn on acquittal of the petitioner. All benefits have

been released to the petitioner but the period from the date of his suspension till the retirement i.e. 23.03.1995 to 31.07.2005 was considered as non-duty period.

Learned counsel for the petitioner has relied upon Rules 7.3 of the Punjab Civil Services Rules, Vol. I Part-I. As per said rule, the petitioner is entitled for full pay and allowances and that period cannot be treated as absence from duty and the same is to be treated as period spent on duty.

Learned counsel for the petitioner has relied upon the judgments of this Court in case ***Sukh Devi versus Haryana Vidyut Parsaran Nigam Limited and others*** bearing **CWP No.184 of 2013** decided on 19.11.2013 as well as ***Mathura Dass versus General Manager, Operation and others*** bearing **CWP No.4269 of 2010**, decided on 18.04.2011, in support of his contentions.

Written statement on behalf of respondent No.2 has been filed, which is on record.

Learned counsel for respondent No.2 submits that the petitioner was suspended and terminated because of his conviction in a criminal case. He is not entitled for any salary during the period of suspension till the passing of order of dismissal as it was a non-duty period.

Learned counsel for respondent No.2 has relied upon the judgment of Hon'ble the Apex Court in case ***Ranchhodji Chaturji Thakore vs. Superintending Engineer, Gujrat Electricity Board, Himmatnagar, 1996(11) SCC 603*** in support of his contentions.

Heard the arguments of learned counsel for the parties and have also perused the impugned order as well as other documents on the file.

Admittedly, the petitioner was convicted for an offence under

Sections 7 and 13 of the Prevention of Corruption Act, 1988, by the trial court and subsequently, he was acquitted by the Appellate Court. The petitioner was suspended during pendency of the criminal proceedings and ultimately, dismissed from service. The petitioner attained the age of retirement during pendency of the proceedings and thereafter, on acquittal by the Appellate Court and on moving representation, he was granted retiral benefits, but in between period, i.e., the date of suspension to the date of his dismissal from service was treated as non-duty period and no salary/arrears was paid to him for that period. Now the question for consideration before this Court is as to whether the period from the date of suspension to the date of dismissal of the petitioner was to be considered as duty period or non-duty period or the petitioner is entitled for salary of that period.

The service of the petitioner was governed under the Punjab Service Rules (as applicable to the State of Haryana). Under Rule 7.3 of the Punjab Civil Service Rules, Vol. I Part I, it has been provided that in case, an employee is exonerated by the Court, then he shall be given full pay and allowances to which he would have been entitled, had he not been dismissed. Rule 7.3 of the said Rules is reproduced as under :-

“7.3(1) When a Government employee, who has been dismissed, removed or compulsory retired, or suspended, is reinstated, or would have been reinstated but for his retirement on superannuation 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, occasioned by suspension and/or dismissal, removal or compulsory retirement ending with his reinstatement on or the date of his retirement on superannuation 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 mentioned in sub rule (1) is of opinion that the Government employee has been fully exonerated or, in the case of suspension, that it was wholly unjustified, the Government employee shall be given the full pay and allowances to which he would have been entitled, had he not been dismissed, removed, compulsorily retired or suspended, as the case may be.

(3) In other cases, the Government employee shall be given such proportion of such pay and allowances as such competent authority may prescribe :

Provided that the payment of allowances under sub rule (2) of sub rule (3) shall be subject to all other conditions under which such allowances are admissible.

Provided further that such proportion of such pay and allowances shall not be less than the subsistence and other allowances admissible under rule 7.2.

(4) In a case falling under sub-rule (2) the period of absence from duty shall be treated as a period spent on duty for all purposes.

(5) In a case falling under sub-rule (3) the period of absence from duty shall not be treated as a period spent on duty unless such competent authority specifically directs that it shall be so treated for any specified purpose :

Provided that if the Government employee so desires, such authority may direct that the period of absence from duty shall be converted into leave of any kind due and admissible to the Government employee.

Note. 1 to 8 xxx xxx xxx

Note 9. Where a Government employee under suspension is acquitted by a Court of Law and the order reinstating him is passed some time after the date of acquittal, full pay and allowances have to be

paid from the date of acquittal to the date of re-joining duty and period counted as duty for all purposes whereas for the period from the date of suspension/removal/dismissal to the date of acquittal he is to be allowed pay and allowances as directed by competent authority under sub rule (2) or sub rule (3) of this rule and the period treated as duty or non duty under sub rule (4) or sub rule (5) of this rule, as the case may be.

Note 10 and 11 xxx xxx xxx”

It is clear from the said rules that the petitioner is entitled for full salary and period of absence from duty is to be treated as period spent on duty for all purposes. The issue in the present petition is squarely covered by **Mathura Dass's case (supra)**. The said judgment of this Court has been passed after relying upon the judgment of Hon'ble the Apex Court in case **Union of India vs K.V. Jankiraman etc., AIR 1991 Supreme Court 2010**. It was held in the said judgment that when an employee is completely exonerated in criminal/disciplinary proceedings and he is not visited with the penalty even of censure, he would not be deprived of any benefits including salary on the post he was working upon. Even it has been held in the said judgment that the normal rule of “no work no pay” is not applicable to such cases as the petitioner was willing to work but he was kept away from the work without having any fault on his part.

The observations made by this Court in **Mathura Dass's case (supra)** are reproduced as under :-

“ 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. 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 not in all circumstances be illegal.

This is not a case where the salary is denied due to any of consideration as notice 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.”

In view of the facts as well as law position as explained above, the present petition is allowed and the petitioner is held entitled to pay and

allowances for the period he remained out of service due to suspension and dismissal from service. He is also held entitled to costs of Rs.10,000/-.

30.05.2014
gurpreet

(DAYA CHAUDHARY)
JUDGE