

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

Date of Decision: January 08, 2014

Ram Kumar

...Petitioner

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr.Umesh Narang, Advocate,
for the petitioner.

Mr.Sunil Nehra, Sr.DAG, Haryana,
for the State.

AUGUSTINE GEORGE MASIH, J.(ORAL)

The present petition has been filed impugning the order dated 21.09.2007 (Annexure P-5) passed by respondent No.2, vide which the petitioner was granted a limited relief of reinstatement in service with immediate effect and his subsistence allowance was restricted to the extent already granted to him in terms of Rule 7.3 of CSR, Vol-I, Part-I and also the order dated 23.05.2008 (Annexure P-7) again passed by respondent No.2 granting him the benefit of pay and allowances after the date of acquittal but denying him the benefit of full pay and allowances for the intervening period between suspension and acquittal, i.e., 12.05.2003 to 19.11.2005.

It is the contention of the counsel for the petitioner that the petitioner was placed under suspension vide order dated 12.05.2013 on the ground that he was arrested in FIR No.76 dated 09.05.2003 registered under

Sections 302/342 read with Section 34 IPC, Police Station Garhi, District Jind. He was acquitted by the learned Additional Sessions Judge, Jind vide judgment dated 19.11.2005 (Annexure P-2) finding no evidence against the petitioner connecting him with the commission of the crime. He further states that thereafter leave to appeal preferred by the State of Haryana through Criminal Misc.No.122-MA of 2006 (State of Haryana Versus Ram Kumar & others) was dismissed on 23.11.2006 (Annexure P-3). The Division Bench of this Court gave a clear finding that the trial Court has held that the prosecution weaved a cock and bull story with no head or tail and the accused were falsely implicated on mere suspicion, which has led to the acquittal of the accused of the charges framed against them, although by granting them the benefit of doubt. He, on this basis, contends that the petitioner, who was serving as a Social Studies Master, having been falsely implicated in the case is entitled to full pay and allowances in the light of Rule 7.5 of the Civil Services Rules Vol.-I, Part-II. He places reliance upon the judgment of the Division Bench of this Court in Civil Writ Petition No.12502 of 2006 (Poonam Rani Versus Uttar Haryana Bijli Vitran Nigam Limited & others), decided on 21.01.2008 (Annexure P-8) and on that basis contends that the impugned orders cannot sustain and deserve to be set-aside.

Counsel for the respondents, on the other hand, contends that the petitioner is not entitled to the benefit as has been claimed by him under Rule 7.5 of the Civil Services Rules as the petitioner was not inhibited to perform his duties by any act or omission on the part of the respondent-State and, therefore, the State should not be burdened with the liability for

an act which was relatable to the petitioner himself and, therefore, the orders impugned being in accordance with law do not call for any interference by this Court. He has placed reliance upon the Division Bench judgment of this Court in the case of Mahabir Singh Versus State of Haryana and others, 2011 (2) SLR 638 to contend that the benefit as claimed by the petitioner is not grantable to him. The only benefit which the petitioner was entitled to under Rule 7.2 of the Civil Services Rules was the subsistence allowance for the period he had remained under suspension till his reinstatement or at the most acquittal, which benefit has already been granted to him. He has further placed reliance on the judgment of the Hon'ble Supreme Court in the case of Ranchhodji Chaturji Thakore v. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar (Gujarat) and another, (1996) 11 SCC 603, reliance on which has been placed by the Division Bench as also the judgment of the Supreme Court in the case of Union of India and others v. Jaipal Singh, (2004) 1 SCC 121. Prayer has, thus, been made for dismissal of the writ petition.

I have considered the submissions made by the counsel for the parties and with their assistance have gone through the records of the case.

The facts are not in dispute that the petitioner was placed under suspension on 12.05.2003 on the basis of a criminal case registered against him. He was acquitted by the trial Court vide judgment dated 19.11.2005. During the period of the trial, petitioner was in custody. Petitioner, on acquittal, submitted a representation to the respondents for granting him the benefit of reinstatement in service along with full pay and allowances, which representation was considered by respondent No.2 and granted him

the benefit of reinstatement in service but without full allowances except the subsistence allowance which was granted to him vide order dated 21.09.2007 (Annexure P-5). The representation was preferred by the petitioner against the said order, which when was not decided, petitioner filed Civil Writ Petition No.2762 of 2007 in this Court, which was disposed of by order dated 02.04.2007 (Annexure P-4) directing respondent No.2 to consider the same and pass a speaking order. The said representation was decided vide order dated 23.05.2008 (Annexure P-7) by the Commissioner and Director General School Education, Haryana-respondent No.2 granting him the benefit of full pay and allowances from the date of his acquittal. However, for the period of his suspension till acquittal, he was not granted any benefit except the already granted subsistence allowance.

For disposal of the present case, reference to Rule 7.5 of the Civil Services Rules would be essential which reads as under:-

“7.5 An employee of Government against whom proceedings have been taken either for his arrest for debt or on a criminal charge or, who is detained under any law providing for preventive detention should be considered as under suspension for any periods during which he is detained in custody or is undergoing imprisonment, and not allowed to draw any pay and allowances (other than any subsistence allowance that may be granted in accordance with the principles laid down in rule 7.2) for such periods until the final termination of the proceedings taken against allowed to rejoin duty, as the case may be. An adjustment of his allowances for such periods

should thereafter be made according to the circumstances of the case, the full amount being given only in the event of the officer being acquitted of blame or (if the proceedings taken against him were for his arrest for debt), of its being proved that the officer's liability arose from circumstances beyond his control or the detention being held by the competent authority to be unjustified.”

Counsel for the respondents has placed reliance upon a Division Bench judgment of this Court in Mahabir Singh's case (supra) where after reproducing Rule 7.5 of the above reproduced Rule in Para 5, the Division Bench proceeded to interpret the said Rule in Para 6, which reads as follows:-

“6. A perusal of the aforesaid Rule shows that if a Government employee has been arrested on a criminal charge then he is deemed to be under suspension for the period during which he is detained in custody or is undergoing imprisonment. In such a situation, he is not allowed to draw any pay and allowance other than subsistence allowance that may be granted in accordance with the provision of Rule 7.2 of the Rules for such period until the final termination of the criminal proceedings initiated against him or until he is released from the detention followed by reinstatement. The rule further provides that adjustment of his allowances for the period of suspension in the aforesaid eventuality has to be made according to the circumstances of each case. According to the

illustration of the rule the full amount of pay and allowances could be given only if the Officer is completely acquitted of blame or if it is proved that the officer's liability arose from circumstances beyond his control or the detention was found to be unjustified by the competent authority.” (emphasis applied)

Thereafter, reference has been made to the judgment of the Supreme Court in Ranchhodji Chaturji Thakore's case (supra) where again the Court had proceeded to observe that the question of back wages could be considered where an employee was prevented unlawfully from discharging his duties and for this his conduct becomes relevant and, therefore, the conduct has to be seen with regard to his involvement in the crime, which has ultimately led to his acquittal. In Jaipal Singh's case (supra), it has been observed by the Division Bench that the conduct of the person concerned will have to be taken into consideration and it would not be out of place to mention here that the Court was while observing the liability of the State dealing with a case where the order of conviction had already been passed for an offence on the basis of which the employee was kept out of service. Although the observations have been made that the Government cannot be fastened with liability for an act and conduct of an employee which cannot be directly attributable to the Government, however, in the present case and in the light of the statutory Rule 7.5, referred to above, it is apparent that the case has to be seen in the light of the statutory rules governing the service vis-a-vis the conduct of the employee concerned.

In the present case, as per judgment passed by the trial Court, it

is apparent that no evidence has been produced which would show that the petitioner was involved in the commission of the offence, for which he was charged. The Division Bench of this Court in its judgment dated 23.11.2006 in the leave to appeal preferred by the State of Haryana observed as follows:-

“Thus, the learned trial Court finds that the prosecution weaved a cock and bull story with no head or tail. PW-Punjaba was called from Village Andana after the dead body of Balwan was discovered lying unattended in the Village and accused were implicated on mere suspicion. While dis-believing the prosecution version, the learned trial Court acquitted the accused of the charges framed against them by extending the benefit of doubt.

Learned State counsel was unable to convince us as to how the judgment rendered by the learned Additional Sessions Judge, Jind suffers from any infirmity or the evidence brought on the record has been mis-interpreted by the Court.

In this view of the matter, no case for leave to appeal is made out and the same is hereby dismissed.”

A perusal of the above leaves no manner of doubt that the petitioner had been involved in the case merely on the basis of suspicion and there was no evidence against the petitioner worth its name, which would justify his involvement in the case. The illustrations, which are given in the rule itself, entitle the petitioner to the grant of full amount of pay and allowances as the petitioner ultimately has been acquitted of the blame and

the circumstances which led to his arrest were totally beyond his control and unjustified in the light of the observations of the Division Bench of this Court in the leave to appeal preferred by the State.

The Division Bench of this Court in Mahabir Singh's case (supra) in the given facts and circumstances came to a conclusion that the petitioner was not entitled to full pay and allowances and was only entitled to the subsistence allowance. The principle as laid down by the Division Bench was in Para 6 of the said judgment, which has been reproduced above, and the ratio will be applicable to the present case and on that basis would entitle him for the benefit of pay and allowances under Rule 7.5 of the Civil Services Rules.

In view of the above, the present writ petition is allowed, impugned orders dated 21.09.2007 (Annexure P-5) and 23.05.2008 (Annexure P-7) are set-aside. Petitioner is held entitled to full pay and allowances for the period of his suspension till his acquittal, i.e., 12.05.2003 to 19.11.2005. The consequential benefits be released to the petitioner within a period of two months from the date of receipt of certified copy of the order.

January 08, 2014
ramesh

(AUGUSTINE GEORGE MASIH)
JUDGE