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Present: Vs. State of Punjab and Others

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Court : Punjab and Haryana

Decided On : Sep-12-2013

Appellant : Present:

Respondent : State of Punjab and Others

Judgement :

CIVIL WRIT PETITION NO.6131 o

1. IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH CIVIL WRIT PETITION NO.6131 of 2012

JUDGMENT
RESERVED ON: AUGUST 30 2013 DATE OF DECISION: SEPTEMBER 12 h, 2013 Sucha Singh .....Petitioner Versus State of Punjab and others .....Respondents CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA Present: Present Mr.Sandeep Arora, Advocate for the petitioner. Ms.Sudeepti Sharma, Deputy Advocate General,Punjab. <><><> TEJINDER SINGH DHINDSA, J.The petitioner while serving as Assistant Sub Inspector in the Punjab Police was convicted under Sections 7 and 13 (2) of the Prevention of Corruption Act vide judgment dated 17.8.2000 passed by Special Judge, Jalandhar. Based upon such conviction, order dated 6.11.2000 was passed by the Senior Superintendent of Police, Jalandhar dismissing him from service. Vide order dated 31.1.2001 passed by the Deputy Inspector General of Police, Jalandhar Range the petitioner was re-instated in service without prejudice to the

outcome of Criminal Appeal No.756-SB of Malik Sushama Rani 2013.09.13 10:53 I attest to the accuracy and integrity of this document CIVIL WRIT PETITION NO.6131 o

2. 2000 that the petitioner had filed in this Court against the order of conviction. However, in terms of order dated 16.7.2010 passed by the Inspector General of Police, Zone-II, Jalandhar, the order of re-instatement dated 31.1.2001 was revoked and the earlier order of dismissal dated 6.11.2000 passed by the Senior Superintendent of Police, Jalandhar dismissing the petitioner from service was upheld.

2. Criminal Appeal No.756-SB of 2000 was allowed by this Court vide judgment dated 16.11.2010 at Annexure P1 and as such, the order of conviction dated 17.8.2000 against the petitioner was set aside. In the light of the judgment of conviction having been set aside by this Court, the Director General of Police, Punjab passed orders dated 4.7.2011, Annexure P5, re- instating the petitioner in service. The petitioner, however, was held not entitled to the salary/allowances for the period he remained out of service. Consequently, the Commissioner of Police, Jalandhar issued orders dated 15.7.2011 re-instating the petitioner with immediate effect, yet denying him salary/allowances for the period he had remained out of service.

3. The challenge in the instant writ petition to the orders dated 4.7.2011, Annexure P5, and dated 15.7.2011, Annexure P6, is confined to the extent the petitioner had been denied the arrears of salary/allowances for the period that he had remained out of service.

4. Learned counsel for the petitioner has vehemently argued that the petitioner was implicated in a false case and it was on account of his conviction that he had been dismissed from Malik Sushama Rani 2013.09.13 10:53 I attest to the accuracy and integrity of this document CIVIL WRIT PETITION NO.6131 o

3. service. It has been argued that the order of conviction having been set aside by this Court and the petitioner having been re- instated, there would be no justifiable basis to deny to him the full pay and allowances for the entire period that he had

remained out of service. Even though the averments in such regard are lacking, yet during the course of arguments, learned counsel has placed reliance upon Rule 7.3 of the Punjab Civil Services Rules, Vol.I, Part I, Chapter VII towards furtherance of the prayer and claim raised in the instant writ petition.

5. Per contra, learned State counsel would contend that the petitioner had been re-instated upon his order of conviction having been set aside, but the Department was in no way concerned with the criminal case and, therefore, cannot be saddled for the back wages for the period when he was out of service. The principle of 'No work No pay' has been invoked. Reliance has been placed by the learned counsel towards such submission upon two judgments of the Hon'ble Supreme Court i.e. Ranchhodji Chaturji Thakore v. Superintending Engineer, Gujarat Electricity Board, Himmatnagar (Gujarat), (Gujarat) 1997(1) SCT 82.and Union of India and others v. Jaipal Singh, 2004(1) SCT 108.

6. Learned counsel for the parties have been heard at length.

7. The factum of the petitioner having been dismissed from service based solely upon conviction, no separate departmental proceedings having been initiated by the respondent-Department and the petitioner having been re- instated in service upon order of conviction having been set aside Malik Sushama Rani 2013.09.13 10:53 I attest to the accuracy and integrity of this document CIVIL WRIT PETITION NO.6131 o

4. stands admitted.

8. The question that arises for consideration is as to whether the petitioner could be denied his full pay and allowances for the period that he has remained out of service?.

9. In this regard, it would be necessary to advert to Rule 7.3 of the Punjab Civil Services Rules, Vol.I, Part I, Chapter VII, which reads as under: 7.3. (1) When a Government employee, who has been dismissed, removed or compulsorily retired, is reinstated as a result of appeal, revision or review, or would have been so reinstated but for his retirement on superannuation while under suspension or not,

the authority competent to order the reinstatement 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, including the period of suspension, preceding his dismissal, removal or compulsory retirement, as the case may be, and (b) whether or not the said period shall be treated as a period spent on duty. (2) Whether the authority competent to order re- instatement is of opinion that the Government employee, who had been dismissed, removed or compulsorily retired, has been fully exonerated, the Government employee shall, subject to the provisions of sub-rule (6), be paid his full pay and allowances to Malik Sushama Rani 2013.09.13 10:53 I attest to the accuracy and integrity of this document CIVIL WRIT PETITION NO.6131 o

5. which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended, prior to such dismissal, removal or compulsory retirement, as the case may be: Provided that where such authority is of opinion that the termination of the proceedings instituted against the Government employee had been delayed due to reasons directly attributable to the Government employee it may, after giving him an opportunity to make representation and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government employee shall, subject to the provisions of sub-rule (7), be paid for the period of such delay only such amount (not being the whole) of pay and allowances as it may determine.

10. A bare reading of the provision would make it clear that a Government employee who has been dismissed, removed, compulsorily retired or suspended, is re-instated upon having been fully exonerated, then he shall be given full pay and allowances to which he would have been entitled to had he not been dismissed, removed, compulsorily retired or suspended as the case may be.

11. In the facts of the present case, the order of conviction of the petitioner under the provisions of the Prevention of Corruption Act has been set aside and the petitioner stands completely exonerated. This Court would have no hesitation in Malik Sushama Rani 2013.09.13 10:53 I attest to the accuracy and integrity of this document CIVIL WRIT PETITION NO.6131 o

6. holding that in terms of Rule 7.3, the petitioner upon being acquitted would be entitled to the full salary and allowances for the period in question.

12. The judicial precedents cited by the learned State counsel would have no applicability in the facts of the present case as the petitioner is being held entitled to full pay and allowances for the period in question in the light of the statutory provisions applicable i.e. Rule 7.3 of the Punjab Civil Services Rules, Vol.I, Part I, Chapter VII.

13. Learned counsel for the petitioner has even raised a plea of discrimination. The instance of ASI Surjit Singh No.927/Jalandhar has been cited who was also convicted under Sections 7 and 13 (2) of the Prevention of Corruption Act, 1988 and who had been dismissed solely upon conviction and thereafter upon his acquittal in appeal by this Court had been ordered to be re-instated in service with full pay and allowances for the period that he had remained out of service. In support of such assertion, reference has been made to the order dated 25.2.2010 at Annexure P7 passed by the Commissioner Police, Jalandhar in the case of Surjit Singh. The specific averments in such regard in paras 9 and 10 of the writ petition stand specifically admitted in the written statement filed on behalf of the respondents. The action of the respondent-authorities in denying to the present petitioner the full pay and allowances for the period in question while granting the same very benefit to his colleague, namely, Surjit Singh who was identically situated, is held to be arbitrary and violative of Articles 14 and 16 of the Malik Sushama Rani 2013.09.13 10:53 I attest to the accuracy and integrity of this document CIVIL WRIT PETITION NO.6131 o

7. Constitution of India.

14. For the reasons recorded above, the writ petition is allowed. The orders dated 4.7.2011, Annexure P5, and dated 15.7.2011, Annexure P6, are modified to the extent that the petitioner is held entitled to full pay and allowances for the period that he had remained out of service on account of his conviction. Let such benefit be calculated and released to the petitioner within a period of two months from the date of receipt of a certified copy of this order.

15. Petition allowed in the aforesaid terms. (TEJINDER SINGH DHINDSA) th September 12 , 2013 JUDGE SRM Note: Whether to be referred to Reporter?. (Yes/not Malik Sushama Rani 2013.09.13 10:53 I attest to the accuracy and integrity of this document

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