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Present: Vs. State of Punjab and Others

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Court : Punjab and Haryana

Decided On : Sep-11-2013

Appellant : Present:

Respondent : State of Punjab and Others

Judgement :

CIVIL WRIT PETITION NO.22023 of 2012 1 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH CIVIL WRIT PETITION NO.22023 of 2012

JUDGMENT
RESERVED ON: AUGUST29 2013 DATE OF DECISION: SEPTEMBER11h, 2013 Sucha Singh .....Petitioner Versus State of Punjab and others .....Respondents CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA Present: Present Mr.SS Swaich, Advocate for the petitioner. Ms.Sudeepti Sharma, Deputy Advocate General,Punjab. <><><> TEJINDER SINGH DHINDSA, J.

FIR No.7 dated 16.1.2003, under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988 was registered against the petitioner at Police Station Vigilance Bureau, Patiala while he was serving as Head Constable in the Punjab Police. Petitioner was convicted, vide judgment dated 24.1.2005 passed by Special Judge, Patiala for offences under Sections 7 and 13(1)(d) and 13 (2) of the Prevention of Corruption Act, 1988. The petitioner preferred Criminal Appeal No.249 of 2005 before this Court. Vide judgment dated 16.2.2010, the Appeal was allowed and the Malik Sushama Rani 2013.09.12 10:15 I attest to the accuracy

and integrity of this document CIVIL WRIT PETITION NO.22023 of 2012 2 judgment of conviction against the petitioner was set aside. However, during the pendency of the afore-noticed Criminal Appeal, the petitioner was dismissed from service vide order dated 26.12.2007 passed by the Punishing Authority i.e. the Senior Superintendent of Police, Patiala. Upon having earned acquittal from this Court, the Deputy Inspector General of Police, Patiala Range, Patiala has passed the order dated 10.9.2010 at Annexure P4 directing the re-instatement of the petitioner with immediate effect but has held the period of absence from the date of dismissal i.e. 26.12.2007 till the date of re-instatement to be treated as 'No work No pay'. As a sequel to such order, the Senior Superintendent of Police has passed the order dated 8.12.2010 at Annexure P5 re-iterating such view i.e. upon re- instatement, the period from 26.12.2007 to 14.9.2010 has been ordered to be treated as non-duty period (No work No pay).

2. The instant writ petition has been filed impugning the orders dated 10.9.2010, Annexure P4 and dated 8.11.2010 at Annexure P5, only to the extent that the petitioner has been denied the arrears of pay for the period 26.12.2007 to 14.9.2010 i.e. from the date of dismissal to the date of re-instatement.

3. Learned counsel for the petitioner has strenuously argued that the petitioner was implicated in a totally false case by the Vigilance Department and it was on account of his conviction that the petitioner had been dismissed from service. Learned counsel argues 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 Malik Sushama Rani 2013.09.12 10:15 I attest to the accuracy and integrity of this document CIVIL WRIT PETITION NO.22023 of 2012 3 allowances for the entire period i.e. from the date of dismissal from service till the date of his re-instatement. Towards such gain, reliance has been placed upon Rule 7.3 of the Punjab Civil Services Rules, Vol.I, Part I, Chapter VII.

4. 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) SCT824and Union of India and others v. Jaipal Singh, 2004(1) SCT108 5. Learned counsel for the parties have been heard at length.

6. It is not in dispute before this Court that the petitioner was dismissed from service vide order dated 26.12.2007 based solely upon conviction. No separate departmental proceedings had been initiated by the respondent-Department. Upon the order of conviction having been set aside by this Court in Criminal Appeal No.249 of 2005 decided on 16.2.2010, the petitioner was directed to be re-instated in service.

7. The short question that arises for consideration is as to whether the petitioner could be denied his full pay and allowances for the period in question i.e. from the date of dismissal till the Malik Sushama Rani 2013.09.12 10:15 I attest to the accuracy and integrity of this document CIVIL WRIT PETITION NO.22023 of 2012 4 date of his re-instatement in service?.

8. 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 which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended, prior to such dismissal, removal or Malik Sushama Rani 2013.09.12 10:15 I attest to the accuracy and integrity of this document CIVIL WRIT PETITION NO.22023 of 2012 5 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.. 9. 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.

10. 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 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 i.e. the date of dismissal till date of re-instatement. Malik Sushama Rani 2013.09.12 10:15 I attest to the accuracy and integrity of this document CIVIL WRIT PETITION NO.22023 of 2012 6 11. 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.

12. There is yet another aspect of the matter. In para 14 of the petition, it has been specifically pleaded that in the case of Head Constable Aroor Singh and Head

Constable Mohan Singh who had also been convicted under the provisions of Prevention of Corruption Act, 1988, had been dismissed upon conviction and later on having been acquitted by this Court, were re-instated in service by granting them full pay and allowances for the period in question. In this regard, order dated 19.10.2009, Annexure P7, passed by the Deputy Inspector General of Police, Patiala Range, Patiala in the case of Head Constable Aroor Singh and order dated 8.9.2011, Annexure P8, in the case of Head Constable Mohan Singh have been adverted to. In the reply filed on behalf of the respondents, such factual position stands admitted. However, a baffling stand has been taken to justify such adoption of a different yardstick by stating that in the case of Head Constable Aroor Singh and Head Constable Mohan Singh, the orders had been passed by two different Deputy Inspector Generals of Police at different times.

13. Such stand at the hands of a welfare State/employer is difficult to fathom. The present petitioner has clearly been discriminated against and the action of the respondent-authorities Malik Sushama Rani 2013.09.12 10:15 I attest to the accuracy and integrity of this document CIVIL WRIT PETITION NO.22023 of 2012 7 in having denied to him the full pay and allowances for the period in question while granting the same very benefit to his other two colleagues who were identically placed is held to be arbitrary and violative of Articles 14 and 16 of the Constitution of India.

14. For the reasons recorded above, the writ petition is allowed. The orders dated 10.9.2010, Annexure P4, and dated 8.12.2010, Annexure P5, are modified to the extent that the petitioner is held entitled to full pay and emoluments from the date of his dismissal to the date of re-instatement i.e. From 26.12.2007 to 14.9.2010. 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) September 11th, 2013 JUDGE SRM Note: Whether to be referred to Reporter?. (Yes/No) Malik Sushama Rani 2013.09.12 10:15 I attest to the accuracy and integrity of this document

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