

*Before Mehtab S.Gill & Rakesh Kumar Jain, JJ.*

**EX-CONSTABLE KULWANT SINGH,—Petitioner**

**versus**

**STATE OF PUNJAB AND OTHERS,—Respondents**

C.W.P. No. 12000 of 2007

4th August, 2008

*Constitution of India, 1950-Art.226—Punjab Civil Services Rules, Vol. I Part I—Rule 7.3-A(3)—Petitioner exonerated from charges in departmental inquiry—Absence period treated as leave of kind due—Claim for pay & allowances—Rejection of, applying principles of ‘No work No pay’—Challenge thereto—Civil Court ordering Punishing Authority to decide whether petitioner is not entitled to any pay as per rules for the period he did not serve—No rule taken into consideration while passing order declining relief—Rule 7.3-A(3) provides that in case of setting aside dismissal by Court on merits, period intervening date of dismissal and date of reinstatement be treated as spent on duty for all intents and purposes—Employee entitled to full pay and allowances for said period—Petition allowed.*

*Held*, that the petitioner was dismissed from service on 6th July, 1993 on the basis of an *ex parte* departmental enquiry and his appeal and revision were also dismissed on 6th August, 1994 and 7th November, 1997 respectively. The petitioner had challenged all the three orders by way of a Civil Suit which was decreed on 14th June, 2001 wherein all the said three orders were declared as illegal, null and void. However, it was ordered that with regard to the entitlement of the petitioner to all the rights and other privileges it is up to the Punishing Authority to decide whether he is entitled to any pay as per rules for the period he did not serve and the Punishing Authority shall also be at liberty to re-start departmental proceedings as per provisions of law and service rules. The judgment and decree of the trial Court, dated 14th June, 2001 was upheld by the Addl. District Judge, Patiala and by this Court. No further appeal muchless SLP was preferred by the

respondents before the Hon'ble Supreme Court and thus the order of the Civil Court had attained finality.

(Paras 18)

*Further held*, that pursuant to the decree, dated 14th June, 2001 where a direction was granted to the respondents to restart departmental proceedings, fresh/second enquiry was conducted in which the petitioner was exonerated from the charges,—*vide* order, dated 18th July, 2005 and no punishment was awarded rather the period between 14th February, 1992 to 6th July, 1993 was treated as 'leave of the kind due'. Since the petitioner was dismissed from service on 6th July, 1993 and had been reinstated on 18th November, 2003, he had claimed salary and allowances of this period which had been declined on the ground that he had not discharged his duty in the department during this period. The Civil Court while decreeing the suit of the petitioner had ordered that the Punishing Authority has to decide whether the petitioner is not entitled to any pay as per rules for the period he did not serve, whereas no rule has been taken into consideration while passing the impugned order for declining this relief, although as per rule 7.3-A(3) of P.C.S. Rules Vol I Part I, it is categorically provided that in case of dismissal which is set aside by the Court on merits of the case, the period intervening the date of dismissal and the date of reinstatement shall be treated as spent on duty for all intents and purposes and the employee shall be paid full pay and allowances for the period to which he would have been entitled, had he not been dismissed.

(Para 19)

S.K. Sharma, Advocate, *for the petitioner*

B.S. Chahal, D.A.G. Punjab, *for the respondents*

**RAKESH KUMAR JAIN, J.**

(1) The petitioner has filed this writ petition under Articles 226 and 227 of the Constitution of India, for the issuance of a writ in the nature of *Certiorari*, for quashing the order dated 18th July, 2005 (Annexure P-9),—*vide* which the period from 1st July, 1993 to 1st December, 2003, was treated as 'no duty' and consequently, pay and

allowances were denied to the petitioner by applying the principles of 'No work-No pay'. However, the petitioner has claimed himself to be entitled to full pay and allowances from 1st July, 1993 to 1st December, 2003, treating him on duty having been exonerated from charges, his absence from duty was treated as 'leave of the kind due' and had not suffered any punishment in the second enquiry.

(2) Briefly stated the facts of the case are that the petitioner had joined the Punjab Armed Police on 29th November, 1989. As his wife was suffering from fever, he was allowed 8 days' casual leave from 9th December, 1992. When the petitioner had gone to his native village to attend to his wife, he himself suffered from enteric fever. The petitioner had informed the department on 17th December, 1992 by way of telegram of his own illness. Thereafter, he was admitted to General Hospital (Emergency Ward), Gurgaon, from where he sent his medical certificate to the respondents on 12th January, 1993, through registered A.D. Since he remained in the hospital, therefore, he sent another registered letter on 22nd February, 1993, alongwith medical certificate with effect from 15th January, 1993 to 13th February, 1993. The petitioner further remained in General Hospital, Gurgaon for more than two months and since he had not recovered from enteric fever and back pain, he obtained private treatment from nursing Home of Dr. Anil Bansal. The petitioner sent a registered letter dated 09 June, 1993 along with his medical certificate. Having recovered from long illness and after obtaining medical fitness certificate from Dr. Anil Bansal dated 15th October, 1993, the petitioner requested for joining the duty, but he was informed that he has already been dismissed from service by the Commandant, 3rd Battalion, Phase XI, Mohali,—*vide* his letter dated 6th July, 1993. The petitioner challenged the order in appeal, but the same was dismissed by the Deputy Inspector General of Police, Commando Force, Bahadurgarh, Patiala,—*vide* his order dated 6th August, 1994. The petitioner then filed a revision which too, was dismissed by the Inspector General of Police Commando, Punjab, Bahadurgarh, Patiala,—*vide* his order dated 7th November, 1997.

(3) The petitioner then filed Civil Suit No. 156-T dated 4th September, 1998 challenging the order dated 6th July, 1993, 6th August, 1994, 7th November, 1997. The suit was decreed by the Civil Judge

(Junior Division), Patiala, on 14th June, 2001, in which the following order was passed :—

“Keeping in view my observations on the above said issues, the claim of the plaintiff succeeds and a decree for declaration is passed in favour of the plaintiff and against the defendants declaring that the impugned order of dismissal dated 6th July, 1993 passed by defendant No. 4, order in appeal, dated 6th August, 1994 passed by defendant No. 3, order in revision, dated 7th November, 1997 passed by defendant No. 2 are illegal, null and void. With regard to entitlement of plaintiff to all the rights, benefits and other privileges, it is up to the Punishing authority to decide whether it is entitled to any pay as per rules for the period he did not serve. The Punishing Authority is also at liberty to re-start the departmental proceedings as per provisions of law and service rules”.

(4) The State of Punjab filed Civil Appeal No. 198-T dated 3rd August, 2001, assailing the judgment and decree of the trial Court dated June 14, 2001, but the same was dismissed by the learned District Judge, Patiala,—*vide* his order, dated February 11, 2002, by passing the following order :—

“The non-service of the respondent during the departmental proceedings amount to denial of oppourtunity to show cause notice and thus, is prejudicial to the interest of the respondent in departmental proceedings. Further, it is important to note that no illegality is found in the judgment of the learned lower court as the learned lower court has given liberty to the Punishing Authority to restart departmental proceedings against the respondent/plaintiff as per provisions of law and service rules.

In view of the aforesaid discussion, there is no merit in the appeal. Consequently the same is dismissed with costs. Decree sheet be prepared. Lower court record be returned”

(5) The State of Punjab, thereafter, filed R.S.A. No. 1126 of 2003 in this Court, which too, was dismissed by Hon'ble Mr. Justice V. M. Jain,—*vide* his order dated March 13, 2003. Relevant extract of the order is under :—

“After hearing the learned counsel for the appellants and after perusing the record, I find no illegality in the judgments of the courts below, which may require interference by this Court in this regular second appeal. It was found by the courts below that the impugned order of dismissal was passed without issuing notice upon the plaintiff, which was required under the law. Furthermore, the punishing authority was given the liberty to initiate departmental proceedings afresh in accordance with law. In my opinion, both the courts below have rightly decreed the suit of the plaintiff and no case for interference by this Court is made out in the present regular second appeal. Even otherwise, no substantial question of law arises for determination in this appeal”.

(6) It is an admitted position that no further appeal was filed by the State of Punjab before Hon'ble the Supreme Court.

(7) Since while decreeing the suit on June 14, 2001, the trial Court had given liberty to the punishing authority to re-start the departmental proceedings as per provisions of law, the same was restarted and during the pendency of the enquiry the petitioner was reinstated on November 18, 2003. *Vide* his order dated December 12, 2004, the Commandant 3rd Battalion, Bahadurgarh, Patiala, ordered that “his absence period from February, 14, 1992 to July 06, 1993 is treated as ‘leave of kind due’. Since it was also left open by the Civil Court for the punishing authority to decide as to whether the petitioner is entitled to any pay as per rules for the period he did not serve, a show cause notice was issued to him by the Commandant, 5th Battalion, Bahadurgarh, Patiala on July 08, 2005 as to why the period from dismissal to reinstatement be not treated as ‘No work period’.

(8) Pursuant to the show cause notice, the petitioner gave reply which is on record as Annexure P-8 and after that,—*vide* the impugned order Annexure P-9, it was decided that the period from July 06, 1993 to December 01, 2003 be treated as ‘not duty and without pay’.

(9) The petitioner filed the above writ petition in this Court, but before that, he served a notice for ‘demand of justice’ through his Advocate, which is available on record as Annexure P-10.

(10) The petitioner had amended the writ petition which was allowed subject to all just exceptions,—*vide* order dated September, 20, 2007 and thereafter, notice of motion was issued by this Court. On notice, written statement has been filed by way of an affidavit of Shri Karnail Singh, D.S.P./ADJ. 3rd Commando Battalion, Phase XI, on behalf of all the respondents in which it was admitted in para 12(i) that the petitioner was exonerated from charges in the departmental enquiry and his absence period was treated as ‘leave kind due’.

(11) Learned counsel for the petitioner has argued that principle of ‘No work-No pay’ is not applicable when an employe is denied to work by the employer. In this regard, he has relied upon a Division Bench judgment of this Court in the case of **Ved Parkash Gupta versus State of Haryana (1)** a Division Bench judgment of Rajasthan High Court in the case of **Smt. Manju Menaria versus State of Rajasthan and others (2)** a Single Bench judgment of this Court in the case of **Kartar Singh Ex-Driver versus State of Punjab (3)** and also in the case of **Umesh Kumar Trivedi versus State Committee, Rajiv Gandhi Prathmik Shiksha Mission (4)**.

(12) The learned counsel for the petitioner also referred to rule 7.3. (A) of the Punjab Civil Service Rules, Vol. I Part I and submitted that even statutorily petitioner is entitled to pay of the period in question.

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- (1) 1999 (2) S.C.T. 528  
(2) 2005 (4) S.C.T. 104  
(3) 1994 (1) S.C.T. 201  
(4) 2002 (3) S.C.T. 241

(13) Rule 7.3-A(3) of Punjab Civil Services Rule Vol-1 Part 1, is reproduced below :—

(3) If the dismissal, removal or compulsory retirement of a Government employee is set aside by the court on the merits of the case, the period intervening the date of dismissal, removal or compulsory retirement, as the case may be and the date of reinstatement shall be treated as on duty for all purposes and he shall be paid full pay and allowances for that period to 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.

(14) It is further submitted by learned counsel for the petitioner that after exoneration from the charges in the second enquiry, delinquency of charges has been condoned by sanctioning the leave of the kind due for the absence and since the earlier order of dismissal has been held to be illegal, null and void by the Civil Court which has been upheld up to the Hon'ble High Court and has attained finality, the petitioner is entitled to pay and allowances for the period from 6th July, 1993 to 1st December, 2003, which has been declined illegally and arbitrarily by the respondents,—*vide* Annexure P-9 on the ground that the petitioner had not discharged his duty during this period.

(15) As against this, counsel for the respondents has argued that though the petitioner has been exonerated from the charges in the departmental enquiry and his absence period has been treated as 'leave of the kind due', yet he cannot be allowed pay and allowances of the period in question, because in the order of the Civil Judge, a liberty was given to the respondents to take a decision in this regard if the petitioner had not served.

(16) We have heard learned counsel for the parties and have perused the record with their assistance.

(17) It is undisputed that the petitioner was dismissed from service on 6th July, 1993 on the basis of an *ex-parte* departmental enquiry and his appeal and revision were also dismissed on 6th August, 1994 and 7th November, 1997 respectively. It is further an admitted fact that the petitioner had challenged all the three orders referred to above by way of a Civil Suit which was decreed on 14th June, 2001 wherein all the said three orders were declared as illegal, null and void. However, it was ordered that with regard to the entitlement of the petitioner to all the rights and other privileges, it is up to the Punishing Authority to decide whether he is entitled to any pay as per rules for the period he did not serve and the Punishing Authority shall also be at liberty to re-start departmental proceedings as per provisions of law and service rules. The judgment and decree of the trial Court dated 14th June, 2001 was upheld by the Additional District Judge, Patiala,—*vide* his judgment and decree dated 11th November, 2002 and by this Court in R.S.A. No. 1126 of 2003 decided on 13th March, 2003. It is also an admitted fact that no further appeal much less S.L.P. was preferred by the respondents before the Hon'ble Supreme Court and thus the order of the Civil Court had attained finality.

(18) Pursuant to the decree dated 14th June, 2001, where a direction was granted to the respondents to restart departmental proceedings, fresh/second enquiry was conducted in which the petitioner was exonerated from the charges—*vide* order dated 18th July, 2005 and no punishment was awarded rather the period between 14th February, 1992 to 6th July, 1993 was treated as 'leave of the kind due' Since the petitioner was dismissed from service on 6th July, 1993 and had been reinstated on 18th November, 2003, he had claimed salary and allowances of this period which had been declined,—*vide* order Annexure P-9 on the ground that he had not discharged his duty in the department during this period. The Civil Court while decreeing the suit of the petitioner had ordered that the Punishing Authority has to decide whether the petitioner is not entitled to any pay as per rules for the period he did not serve, whereas no rule has been taken into consideration while passing the impugned order for declining this relief, although as per



rule 7.3-A (3) of the afore-quoted rule, which has been referred to by counsel for the petitioner, it is categorically provided that in case of dismissal which is set aside by the Court on merits of the case, the period intervening the date of dismissal and the date of reinstatement shall be treated as spent on duty for all intents and purposes and the employee shall be paid full pay and allowances for the period to which he would have been entitled, had he not been dismissed. In the case of **Union of India, etc. etc. versus K.V. Jankiraman, etc. etc. (5)**, it has been held that in case an employee is exonerated in criminal/disciplinary proceedings and is not visited with the penalty even of censure, he should not be deprived of any benefits including salary and the promotional post and principle of “no work no pay” is not applicable in such cases. A similar view has been taken by a Division Bench of this Court in the case of **Krishan Kumar versus The State of Haryana Federation of Consumer’s Cooperative Wholesale Stores Limited (6)**. Similarly, in the judgments i.e. **Ved Parkash Gupta versus State of Haryana (supra)**, **Kartar Singh, Ex-Driver versus The State of Punjab (7)**, and **Umesh Kumar Trivedi versus State Committee Rajiv Gandhi Prathmik Shiksha Mission (supra)** it has been held that if the authority of the government deprives the petitioner of his legitimate right to serve, then the principle of “no work no pay” shall not apply and the petitioner shall be entitled to pay and allowances in accordance with law.

(19) In view of the above discussion, the present writ petition is allowed and the impugned order Annexure P-9 being arbitrary is quashed. The respondents are further directed to give pay and allowances to the petitioner treating the period from 6th July, 1993 to 1st December, 2003 on duty with all consequential benefits in accordance with law.

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**R.N.R.**

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(5) AIR 1991 S.C. 2010

(6) 1998 (1) PLR 831

(7) 1994 (1) S.C.T. 201