Before Rajiv Narain Raina, J.

MAGHAR SINGH—*Petitioner*

versus

THE STATE OF PUNJAB AND ANOTHER—*Respondents*

CWP No. 15771 of 1999

September 26, 2016

Punjab Civil Service Rules, 1970—Volume 1, Part 1—Employee removed on conviction—On acquittal, entitled to all pay and allowances.

Held that, after considerable thought I am unable to persuade myself to decide in favour of the respondents even by a long shot. The respondents brought the charge against the petitioner and the conviction recorded by the Judicial Magistrate, 1st Class was set aside in appeal. It is not that guilt of the petitioner was not established, but his innocence was proven and I have no doubt in my mind that the impugned order dated August 03, 1998 is not sustainable in the eyes of law and has deservedly to be set aside. The preliminary objection of the respondent to the effect that the petitioner has relinquished his rights to past consequential benefits by pressing procedural rule of estoppel is overruled as the law does not countenance a barter system in service law domain and exchange of past rights to money in lieu of reinstatement, in the facts and circumstances of this case.

(Para 35)

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

A.P.S. Mann, A.A.G., Punjab.

RAJIV NARAIN RAINA, J.

(1) The petitioner is presently represented by his heirs and legal representatives. He was a Nazir in the Court of Sub Judge Ist Class, Sunam when a case FIR No.228 dated December 11, 1985 was registered against him in Police Station Sunam under sections 409, 466 and 471-A IPC. He was placed under suspension. During criminal trial his suspension was continued. Conviction was recorded by the Judicial Magistrate, Ist Class, Sunam by judgment dated September 01, 1989. He was convicted under sections 409 and 477-A IPC to undergo sentence of rigorous imprisonment for two years under each charge but with sentences to run concurrently. He was released on bail. The

District & Sessions Judge, Sangrur was the appointing authority of the petitioner. His services were dispensed with by an order of dismissal dated September 26, 1989 based on conviction on a criminal charge. In appeal, the Sessions Court set aside the lower court judgment and acquitted the petitioner of the charges framed against him. The judgment was delivered on January 03, 1998. The State did not file an appeal against acquittal and the judgment of acquittal has attained finality. The petitioner is declared innocent of the crime.

(2) As nothing stood against him with the obstacles removed, the petitioner approached the authorities with an application praying for reinstatement to service and for grant of incidental and consequential benefits including pay, increments, promotion, and difference of pay for the period he remained under suspension and for withdrawal of the suspension and dismissal orders passed against the petitioner. The petitioner was reinstated on August 03, 1998 when his plea was accepted by the department. The period of absence from duty due to dismissal from service was regularized by leave of the kind due. However, he was denied pay and allowances for the period he remained out of the job. The petitioner was also denied difference of pay and suspension allowance for the period spent under suspension, nor was any pay from the date of acquittal to the date of re-joining allowed. Hence, the petitioner had approached this Court under Article 226 of the Constitution of India praying for directions to bring him compensatory relief for the period he remained out of service as claimed in the petition.

(3) The principal argument advanced by the petitioner is based on the construction of Rule 7.3 of the Punjab Civil Service Rules, Volume 1, Part 1. It is contended that no separate show cause notice was issued to the petitioner before making the impugned order denying pay and allowances to him. The rule required adherence to the principles of natural justice and of maintaining fair play and impartiality by affording a reasonable opportunity to show cause why an order affecting his rights adversely to his prejudice should not be issued *ex parte*. This procedural safeguard was an independent and valuable right to notice and pre-decisional hearing. The petitioner admits that he was paid suspension allowance from December 1985 till his dismissal from service on September 26, 1989. After conviction he was paid nothing. He asserts loss of means of livelihood and non-payment of suspension allowance during the pendency of the appeal which made his right to appeal virtually meaningless. Counsel cites

State of Maharashtra *versus* ***Chanderbhan***[1] in this regard. He says his client was dismissed in undue haste without awaiting the outcome of the appeal which finally went in his favour and, therefore, the dismissal order needs to be recalled and set aside. He cites the Government instructions of Punjab dated December 23, 1976 (P-5) in his favour, which entitles the petitioner to full pay and allowances from the date of acquittal i.e. January 03, 1998 to the date of reinstatement on August 03, 1998. These instructions lay down guiding principles to be followed regarding action to be taken in cases where government employee is convicted by a court on a criminal charge. The department did not proceed against the petitioner in a domestic proceeding for establishing the misconducts imputed against him. Therefore, even in the eyes of the disciplinary authority, the petitioner would be deemed to be fully exonerated of the charge of criminal breach of trust, forgery of court record and falsification of accounts which were the grave charges imputed against him and for which he faced prolonged trial. The petitioner cites Rule 7.3 (2) which provision prescribes the following:-

> "Where the authority competent to order re-instatement is of the opinion that the Government employee, who has 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 compulsorily retirement, as the case may be "

(4) It is urged arguendo that even if it is accepted that the petitioner has not been "fully exonerated" by the competent authority, even then as per sub-rule (4) of Rule 7.3 of the P.C.S. Rules, the petitioner is entitled to 'such amount (not being the whole)' of full pay and allowances as the competent authority may determine. But again this 'such amount' cannot be less than the suspension allowance to which the petitioner was entitled to as per sub rules (6) and (7) of Rule 7.3.

(5) Then sub-rule (4) is reproduced below:-

> "In cases other than those covered by sub-rule (2) including cases where the order of dismissal, removal or compulsorily retirement from service is set aside by the authority

[1] AIR 1983 SC 803

exercising powers or appeal, revision or review solely on the ground of non-compliance with the requirements of Clause(2) of Article 311 of the Constitution and no further inquiry is proposed to be held, the Government employee shall, subject to the provisions of sub rule (6) and (7), be paid such amount (not being the whole) of 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 compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the Government employee of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period as may be specified in the notice."

(6) Sub-rule (6) is reproduced below"-

"The payment of allowances under sub rule (2) and sub rule (4) shall be subject to all other conditions under which such allowance admissible."

(7) Sub-rule (7) is reproduced below:-

"The amount determined under the proviso to sub rule (2) or under sub rule (4) shall not be less than the subsistence allowance and other allowances admissible under rule 7.2"

(8) Hence the petitioner argues that he has illegally been denied the suspension allowance from the date of dismissal i.e. 1.9.1989 to the date of acquittal i.e. 3.1.1998.

(9) The petitioner has claimed the following reliefs:-

"(i) Full pay from date of acquittal (3.1.1998) to date of rejoining duty (3.8.1998)

(ii) Difference in full pay and suspension allowance from date of suspension (Dec. 1985) to date of dismissal (1.9.1989) during which period the petitioner was paid suspension allowance.

(iii)Suspension allowance from the date of dismissal (1.9.1989) to the date of acquittal (3.1.1998)."

(10) He contends that remedy of appeal or revision is not available for the reliefs and, therefore, he has knocked the doors of this Court for grant of relief with 18% interest on the amounts due as well

towards costs and compensation for being put to a false trial.

(11) It is a very important fact that the criminal case was registered against the petitioner on the basis of letter No.1510 dated November 17, 1986 sent by the Senior Sub Judge to the Senior Superintendent of Police, Sangrur to launch a criminal prosecution against the petitioner for maintaining false accounts while serving in the process serving agency of the subordinate court. On facts, the charge was that while posted as Nazir during the period 1979 to 1982 he was responsible for maintaining the accounts. During checking it came to light that the petitioner made payment of Rs. 10 each to one Surjit Singh an Office Qanungo in three cases against payment entries at Sr. Nos.179-A, 180 and 181 dated May 29, 1982 at page 19 of the Payment Register and the said digits of Rs. 10 were tampered with and converted to Rs. 50 each against all three entries and thereby debited Rs.120. He was thus accused of embezzling an amount of Rs. 120/- by tampering with the record of the court and has consequently committed offences under section 409, 466 and 477-A of the IPC.

(12) The learned Additional Sessions Judge in his judgment of acquittal appreciated the evidence on record and found that the payment vouchers of which the petitioner was accused were signed by the Presiding Officer himself and payment was duly made in the presence of the Presiding Officer. In the presence of the sole testimony of a Judicial Officer posted at the relevant time in Sunam admitting to payment and having attested the disputed cuttings by his own signatures the trial had miserably failed to bring home the charge. The learned Additional Sessions Judge, Sangrur held that the prosecution could not prove embezzlement by the petitioner and accordingly the judgment of conviction and order of sentence passed by the trial court was set aside and the petitioner acquitted of the charges framed against him. There was no room in the case even for giving the benefit of doubt.

(13) A written statement has been put on record filed by the learned D&SJ, Sangrur contesting the case. It is objected therein that the petitioner can have no relief in terms of the undertaking given by him on May 26, 1998 agreeing that he will not claim the pay/salary for the period he remained dismissed. The petitioner had also given an undertaking that for counting his service, leave of the kind due may be sanctioned. His letter dated May 26, 1998 is placed on record as Annex R-1/L and its true translation alongside.

(14) The respondent pleads that the petitioner is estopped by

conduct in filing the present petition having signed the undertaking. Therefore, the words in the undertaking become significant and hence deserve to be reproduced verbatim:-

"Sir,

I was acquitted on 3.1.1998 in a criminal case and I had filed an application dated 21.4.1998 for reinstatement into service. I do not claim the wages for the dismissal period. To continue my service leave of the kind due be sanctioned and I may be reinstated in service. I shall be thankful to you.

Dated:- 26.5.1998.

Yours sincerely,
Maghar Singh son of Gujjar Singh
resident of Dhri."

(15) A few dates become material to be visited in view of ostensible relinquishment of existing rights. To wit, the petitioner was acquitted on January 03, 1998. He applied for reinstatement on April 21, 1998. He was not reinstated in service as there was resistance. He gave an undertaking on May 26, 1998 in the hope of reinstatement by treating his period of absence as leave of the kind due and on sanctioning of leave he may be reinstated in service. He was reinstated on August 03, 1998.

(16) The question that falls for consideration is as to what the legal value of the undertaking is and whether it forecloses absolutely the rights accruing on acquittal to claim the main reliefs prayed. Reminder is that he had after all spent 13 long years before the trial court and in appeal before he secured acquittal from the blame on the criminal charges framed against him. He had remained during this period either under suspension or as a dismissed government employee.

(17) Before I come to the moot point in search of its answer it would be appropriate to mention that the petitioner had filed a replication by way of an affidavit to the written statement filed by the respondents. The petitioner explains therein that it was under compelling and forced circumstances that he gave in writing the document sought to be used against him to foreclose his claims. It is his case that he was a creature of circumstances and the undertaking given by him was under duress and in the fond hope that he would be reinstated and it was his legal right and a corresponding duty of the

respondent not to act against public policy and the disclaimer is bad in law and not legally binding on his rights and acceptance of the writing is hit by Section 23 of the Indian Contract Act, 1872 as a product of barter system to obtain the larger relief by giving up the claims on the incidentals.

(18) The petitioner urges in counterpoint that an admission in a misapplication of the legal position and would not bind the maker of the same to divest him him of accrued rights. He cites the Supreme Court dicta in ***Shri Krishan*** *versus* ***The Kurukshetra University***[2], the Calcutta High Court single bench in ***Shri S.S.Garga*** *versus* ***The Coal Controller, Government of India, Ministry of Petroleum, Chemicals and Non-Ferrous Metals (Department of Mines and Metals) Calcutta and Ors***[3] that an admission which is self-inflicting cannot bind the signatory. Hence the petitioner could always retrieve himself of the bind he got himself in by his own writing which was not signed by free will and consent, but under pressure of force of circumstances to obtain the relief of reinstatement to service. The concealment, if any, I believe, has thus got no material bearing on his rights gained after acquittal of the criminal charge especially when the complainant was none other than a Judicial Officer and hence the petitioner becomes entitled to full pay and allowances from the date of suspension till the date of acquittal and reinstatement.

(19) The undertaking dated May 26, 1998 given under duress and misappreciation of the law is not binding on the unwitting maker when he was confronted with the dilemma of securing his job on a bargain, whatever the cost. This Court cannot divorce itself from the stark reality of the predicament. After all, there were government instructions prevailing at the relevant time placed at Annex P-5 issued by the Chief Secretary, Punjab which afforded full pay and allowances to employees similarly-placed as the petitioner. Then again, under Rule 7.3 the period has been treated as on duty and the respondents did no favour to the petitioner in reinstating him to service in the natural order of things. In any case, the period cannot be treated as leave of the kind due because leave is nothing but permission to be absent. In law, he cannot be treated as having forfeited his legal rights to score an advantage which law gave to him. The petitioner was forced out of service from 1989 to 1998 and suffered deprivation of right to livelihood by the evil of loss

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[2] AIR 1976 SC 376
[3] 1974 (1) SLR 241

of salary and remainder subsistence allowance. He cites law in ***Shashi Kumar*** *versus* ***Uttar Haryana Bijli Vitran Nigam & another***[4] to assert such right which is a case of acquittal from charges framed under the provisions of the Prevention of Corruption Act, 1988 which can be of help to the petitioner and is hardly distinguishable. In any case, no forfeiture can take place without service of notice and hearing which valuable procedural safeguard was bypassed by the learned District & Sessions Judge, Sangrur by a summary dismissal even though antecedent rights had matured on acquittal by the criminal court in appeal. After all, the petitioner was honorably acquitted of the charge when blame was wrongly fastened on him by none other than the Judge he worked under.

(20) There is a salutary principle of law in protection of rights of aggrieved persons that an opportunity to show cause against adverse action proposed to be taken against a man in the dock, to object to the proceeding in defence of innocence. But the result cannot be left entirely dependent on the subjective satisfaction of the managers of reinstatement in the wake of an honourable acquittal of a criminal charge where the employer is the initiator of the criminal action and the prosecution fails to establish guilt beyond a reasonable doubt. While saying so, this Court is alive to the observations of the Supreme Court in ***Union of India*** *versus* ***Bihari lal Sidhana***[5] that acquittal does not automatically give a right to be reinstated into the service. In the same strain are the judgments in ***Ajit Kumar Nag*** *versus* ***Indian Oil Corporation Ltd***.[6] and ***T.N.C.S. Corpn. Ltd.,*** *versus* ***K.Meerabai***[7]. A pre-reinstatement case does not stand on the same footing as a case where reinstatement has taken place in a non-litiguous situation i.e. without court intervention, to apply the law in *Sidhana, Nag and Meerabai* cases.

(21) Mr. Sharma would then rely on the authority ***M. Gopalkrishna Naidu*** *versus* ***The State of M.P.***[8] . He relies on this decision of the Supreme Court as it is rendered in the context of Rule 7.3 of the Punjab Civil Service Rules, 1953, Volume 1, Part 1 [prior to amendment and repeal by the 1970 rules] holding that if an order

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[4] 2005 (1) SCT 576 (DB)
[5] (1997) 4 SCC 385
[6] (2005) 7 SCC 764
[7] (2006) 2 SCC 255
[8] AIR 1968 SC 240

affects an employee financially it must be passed after objective consideration and assessment of all the relevant facts and after giving full opportunity to the employee to make out his case. The right to a show cause notice is substantial right. Accordingly, the judgment of this Court was set aside. This is also the law stated in ***Shri B.D. Gupta*** *versus* ***State of Haryana***[9].

(22) Mr. Sharma taking his arguments further depends strongly for his support, the Division Bench judgment of this Court in ***Hukam Singh*** *versus* ***State of Haryana and another***[10]applying Rule 7.3 and 7.5 as applicable to Haryana to reinforce his contention that where the view expressed is that on acquittal and reinstatement an employee would be automatically entitled to full salary and allowances for the period of suspension and dismissal. In similar strain he relies on case law in ***Ishwar Singh*** *versus* ***State of Haryana and others***[11], Single Bench in ***Narender Kumar*** *versus* ***DHBVN Ltd. and others***[12], ***Ranbir Singh*** *versus* ***DHBVNL and others***[13], and a judgment rendered by me in Krishan Kumar Nain versus State of Haryana and another[14] holding in the last case that on acquittal by the trial Court and only minor penalty imposed on Krishan Kumar Nain in departmental proceedings upon a charge-sheet issued for major penalty, then the claimant would be entitled to consequential benefits, and therefore, the impugned order restricting subsistence allowance to the amount already drawn was liable to be quashed. The court found on facts that the employee [Nain] was kept under suspension for over 10 years to await result of a criminal trial and this was bad enough and an ex facie abuse of authority and the action taken was contrary to public interest since the services of *Nain* could have been utilized effectively when not in jail in some other manner consistent with State interest to enable him to earn his salary by assigning any innocuous duty in the department. As a matter of fact, the law on the point is covered by a plethora of judgments of the Supreme Court, including in ***Ranchhodji Chaturji Thakore*** *versus* ***The Superintendent Engineer, Gujrat Electricity Board***[15] and ***Union of India*** *versus* ***Jaipal Singh***[16] which I am bound to

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[9] AIR 1972 SC 2472
[10] 2001 (2) SCT 696
[11] 2012 (2) SCT 209
[12] 2016 (3) SCT 738
[13] 2016 (3) SCT 511
[14] 2014 (1) SCT 557: 2014 (13) RCR (Civil) 295
[15] AIR 1997 SC 1802: (1996) 11 SCC 603

follow.

(23) Mr. Sharma cites again to his advantage the objection as to admission by the disputed undertaking relinquishing rights aimed to non- suit the petitioner for relief in view of the dicta in ***Charan Dass*** *versus* ***Punjab State Electricity Board Patiala and another***[17] holding that any admission made in ignorance of legal rights cannot bind the maker of the admission.

(24) In ***Shri Krishan*** *versus* ***The Kurukshetra University, Kurukshetra***[18] the Supreme Court held in para.9 as follows:-

> "9. Mr. Nandy counsel for the respondent placed great reliance on the letter written by the appellant to the respondent wherein he undertook to file the requisite permission or to abide by any other order that may be passed by the University authorities. This letter was obviously written because the appellant was very anxious to appear in Part II Examination & the letter was written in terrorem and in complete ignorance of his legal rights. The appellant did not know that there was any provision in the University Statute which required that he should obtain the permission of his superior officers. But as the respondent was bent on prohibiting him from taking the examination he had no alternative but to write a letter per force. It is well settled that any admitsion made in ignorance of legal rights or under duress cannot bind the maker of the admission. In these circumstances we are clearly of the opinion that the letter written by the appellant does not put him out of court. If only the University authorities would have exercised proper diligence and care by scrutinising the admission form when it was sent by the Head of the Department to the University as far back as December 1971 they could have detected the defects or infirmities from which the form suffered according to the University Statute. The Head of the Department of Law was also guilty of dereliction of duty in not scrutinising the admission form of the appellant before he forwarded the same to the University."

(25) Then, Mr. Sharma cites ruling of Late Hon'ble D.V. Sehgal,

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[16] AIR 2004 SC 1005
[17] 2005 (4) Law Herald (P&H) (DB) 637
[18] AIR 1976 SC 376

J. in ***Indian Oil Corporation*** *versus* ***The Municipality Thanesar***[19]. This was a case arising out of the Haryana Municipal Act, 1973 regarding framing of a town planning scheme which had lapsed. The dealer had himself admitted that respondent is owner of 25% of the area and could take possession in implementation of the scheme, as and when required. Therefore, he was estopped from raising the plea that he is the owner of the said property and could not be compelled to part with the same. It appeared to the Court that the statement made by the dealer in Court of the Sub Judge, Ist Class, Kurukshetra on May 28, 1980 whereby he admitted the respondent Municipality to be the owner of the disputed land, was made in ignorance of the legal position. The Court relied on the decision of the Supreme Court in ***Shri Krishan*** case (Supra) to re-affirm the legal position that any admission made by a citizen in ignorance of his legal rights cannot bind the maker of the admission. Thus, the statement of the dealer had no legal consequence and did not divest him of his rights in the site in dispute nor did it vest ownership in the respondent of the suit property. Waiver of rights or relinquishment of rights must be by an act of a person voluntarily incurred without seeking favours from the employer.

(26) The true worth of undertakings given by litigants to secure for themselves a right of hearing in a superior court as are remedies available under Article 136 before the Supreme Court in rent matters is by analogy applicable to the present case. And towards this end the law laid down in the case decided by the Supreme Court on reference to a larger bench answered in rent laws which is found in ***P.R. Deshpande*** *versus* ***Maruti Balaram Hiabatti***[20]. Their Lordships held on maintainability of a special leave petition in the face of an undertaking given by an unsuccessful tenant before the High Court to vacate tenanted premises by a fixed date on an affidavit sought to secure breathing time to restore possession to the Landlord and right to seek remedy on merits thereafter has been has held to operate as under:-

> "**8.** The doctrine of election is based on the rule of estoppel
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> — the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppel in pais (or equitable estoppel) which is a rule in equity. By that rule, a person may be precluded by his actions or conduct or silence when it is his duty to

[19] 1989 SLJ 49
[20] (1998) 6 SCC 507

speak, from asserting a right which he otherwise would have had. (vide Black's Law Dictionary, 5th Edn.)

9. It is now trite that the principle of estoppel has no application when statutory rights and liabilities are involved. It cannot impede right of appeal and particularly the constitutional remedy. The House of Lords has considered the same question in Evans v. Bartlam[6]. The House was dealing with an order of the court of appeal whereby Scott, L.J. approved the contention of a party to put the matter on the rule of election on the premise that the defendant knew or must be presumed to know that he had the right to apply to set the judgment aside and by asking for and obtaining time he irrevocably elected to abide by the judgment. Lord Atkin, reversing the above view, has observed thus:

"My Lords, I do not find myself convinced by these judgments. I find nothing in the facts analogous to cases where a party, having obtained and enjoyed material benefit from a judgment, has been held precluded from attacking it while he still is in enjoyment of the benefit. I cannot bring myself to think that a judgment-debtor, who asks for and receives a stay of execution, approbates the judgment, so as to preclude him thereafter from seeking to set it aside, whether by appeal or otherwise. Nor do I find it possible to apply the doctrine of election."

10. Lord Russell of Killowen while concurring with the aforesaid observations has stated thus:

"My Lords, I confess to a feeling of some bewilderment at the theory that a man (who, so long as it stands, must perforce acknowledge and bow to a judgment of the court regularly obtained), by seeking and obtaining a temporary suspension of its execution, thereby binds himself never to dispute its validity or its correctness, and never to seek to have it set aside or reversed. If this were right, no defeated litigant could safely ask his adversary for a stay of execution pending an appeal, for the grant of the request would end the right of appeal. The doctrine of election applies only to a man who elects with full knowledge of the facts."

11. A party to a lis can be asked to give an undertaking to

> the court if he requires stay of operation of the judgment. It is done on the supposition that the order would remain unchanged. By directing the party to give such an undertaking, no court can scuttle or foreclose a statutory remedy of appeal or revision, much less a constitutional remedy. If the order is reversed or modified by the superior court or even the same court on a review, the undertaking given by the party will automatically cease to operate. Merely because a party has complied with the directions to give an undertaking as a condition for obtaining stay, he cannot be presumed to communicate to the other party that he is thereby giving up his statutory remedies to challenge the order. No doubt he is bound to comply with his undertaking so long as the order remains alive and operative. However, it is open to such superior court to consider whether the operation of the order or judgment challenged before it need be stayed or suspended having regard to the fact that the party concerned has given undertaking in the lower court to abide by the decree or order within the time fixed by that court.
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> 12. We are, therefore, in agreement with the view of Sahai and Venkatachala, JJ., that the appeal filed under Article 136 of the Constitution by special leave cannot be dismissed as not maintainable on the mere ground that the appellant has given an undertaking to the High Court on being so directed, in order to keep the High Court's order in abeyance for some time."

(27) On these premises, it is my sincere belief that when the issue of reinstatement arose for consideration after acquittal, a reasonable and law faring Judicial Officer holding the high post of District & Sessions Judge, Sangrur should not have readily accepted the undertaking without batting an eyelid as it was against public policy of India to misuse the law of estopple and was an action taken a rather unfair thing to do to a subordinate official who could never be in a position to retaliate with the strong arm of reason and send it home to his success. If the judge terrifies a subordinate there can be no greater harm inflicted on a defenseless person. There ought not to be a whit of a difference between the judge acting on his judicial and administrative side where justice is involved when justice should not only be done but appear to be done. There is no place in this constitutional scheme for playing Dr.

Jekyll and Mr. Hyde.

(28) The petitioner apparently seems to have been browbeaten to submission in a court setting and any resistance offered by him might have caused him an injury worse than an open wound. The petitioner would have been well been within his rights to remonstrate and pray for an order in writing against him which he could get tested in a court of law. The Court can take judicial notice of this circumstantial evidence from the sequence of events arising after acquittal claiming reinstatement since it can be easily imagined that the petitioner was buckled down on his knees to believe that if he wanted to seek reinstatement in service he must surrender some of his valuable monetary rights to obtain the predominant relief of reinstatement so dear to him, succumbing on the altar of an admission by way of an undertaking given to waive claim for money in exchange for an expeditious reinstatement to service. This is the throbbing area where the principles of far reaching consequences fell for consideration of the Supreme Court in ***Central Inland Water*** *versus* ***Brojo Nath Ganguly and another,***[21] in an outstanding case where for the first time the Supreme Court introduced the principles in Section 23 of the Indian Contract Act, 1872 to do justice in a matter of unfair contracts and compelling employees to sign on the dotted line of an unconscionable term in the contract-form infringing equality principles in Article 14 of the Constitution. A parallel can verily easily be drawn from that judgment and applied to this case to achieve a fair and proper end.

(29) There is yet another window to view this case from i.e. on the objection taken by the respondent on the letter of admission of the petitioner giving up certain rights to access the greater relief which can be supported by the judgment delivered by Lord Denning in ***Lloyds Bank Ltd.*** *versus* ***Bundy***[22]. I would broadly apply the innovative principles laid down in *Bundy* crafted to save Bundy of the Yew Tree Farm from financial ruin when he was unable to repay an educational loan form his son and the Bank fell on him to auction his farm for the recovery of debt. The hapless Bundy was not explained the serious consequences of not paying back the debt on time by the Bank when he took the loan that his only source of livelihood from the farm would be put at stake. Lord Denning save the farm and the man by judicial innovation like a divine redemption. The petitioner, like Bundy was not

[21] AIR 1986 SC 1531: 1986 SCR (2) 278
[22] (1975) QB 326; (1974) 3 All ER 757

made aware of the consequences of his actions when he signed the letter waiving a substantial part of his valuable rights. He signed those papers without taking independent legal advice while entering into the admission in writing, which writing may have been fair for the employer, but was terribly unfair for the petitioner. It was an action born in the labour room of duress and misapprehension of the law brought to bear by the acceptor of the undertaking on the giver by none other than the principal guardian Judge of the law in the Sessions Division, Sangrur at its Sub Division, Sunam in exchange for reinstatement which had by then become a vested, attainable and an actionable right which was not open to surrender or waiver. Any other interpretation would be fallacious and unreasonable.

(30) To my mind, the fair and proper thing to have been done by a Judge-administrator was to have counselled the petitioner and informed him of his rights under the law, the pros and cons of the step being taken by him before accepting the undertaking as a sacrosanct document of divestiture of rights to back salary etc. Besides, the effort should have been in advising him on the basis of judicial precedents on the point which clearly were in favour of upholding the rights claimed, than to deny them arbitrarily and off hand. Money was not going out of the pocket of the learned District & Session's Judge, if the letter was torn and thrown in the dust bin or placed in a dead file. The turret I think should have been turned at the Judge who started the illegal criminal proceedings with a false complaint obviously to protect himself after having signed the vouchers and ratified the payments etc. by his pen.

(31) I have heard Mr. S.K. Sharma, learned counsel appearing for the petitioner and Mr. A.P.S. Mann, learned Additional Advocate General, Punjab for the respondents at length and have perused the record made available on the file and have pondered on the path to take while venturing to do justice in search of appropriate relief or whether it should be denied.

(32) Having regard to the the contentions as noticed in the preceding paragraphs I have no hesitation in holding that the action of acceptance of the relinquishment letter itself was improper and unfair thing to do only to deprive an employee of his just dues following acquittal and reinstatement. I have no doubt that the pecuniary and non-pecuniary benefits arising from reinstatement are very valuable rights in the changed circumstances following acquittal of blame in the criminal trial. The respondent in the present petition is the District &

Sessions Judge, Sunam. He was the guardian of the legal rights of his staff and should have gracefully passed consequential orders without delay other than the period of limitation to prefer revision. After all, the appeal succeeded in home turf and within the jurisdiction where the crime was alleged to be committed. Better suited may have been a domestic enquiry but no one seems to have paid thought to it, while saving face.

(33) It is as against this background that the preliminary objection regarding admission has to be understood and rejected as not binding on the rights of the maker which were clearly denied to him in *terrorem*.

(34) In a somewhat similar situation where a candidate was made to surrender her rights to seniority on affidavit on promise of appointment, which departed from the merit determined by the Punjab Public Service Commission which should have normally been the seniority point, I had occasion to consider the petitioner's right to restoration of seniority after lapse of time but protected by an earlier order in a writ petition in the face of an affidavit taken from her waiving her right to seniority with her batch mates, I allowed the petition holding that the act of demanding an affidavit as unconstitutional, opposed to public policy and, therefore, illegal in ***Veena Kumari*** *versus* ***State of Punjab***[23] observing as under:-

> "4. The petitioner's request for assigning seniority from the dates her batch mates secured appointment as per their merit determined by the Commission was rejected vide order dated January 28, 2005 [Annex P-7]. The immediate grouse of the petitioner is that she is due to retire in June 2016 and she would be injured if the case is not decided before retirement and if it is not, then she could only reap the benefit in a pyrrhic way.
>
> 5. Not to forget, she approached this Court in the year 2005 through the present petition claiming that her merit position determined by the Commission could not be disturbed in any case, which was protected by a direction in the writ petition filed by Saroj Bhalla. Her case has been rejected only on account of the fact that she gave an undertaking that she would give up her seniority prior to joining if she was offered appointment.

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6. Calling for an affidavit to waive valuable rights at the insistence of the organ of the State is neither a fair nor is the right thing to do as that would be an inappropriate exercise of jurisdiction clearly in abuse of authority to appoint. The petitioner had no option but to sign on the dotted line to accept the appointment or forsake it. Fundamental rights are not open to waiver. Once the petitioner was appointed she was protected by Articles 14, 16 and 311 of the Constitution of India and rules of service governing the conditions of service in the cadre. The action of the respondents in demanding the affidavit is held to be unconstitutional, contrary to public policy, illegal and thus the unlawful demand should not be countenanced coming from the State which is expected to be a model employer. Duress is not a good defence to the action taken. Any person of reasonable intelligence may have signed up for a more beneficial path to be trodden to secure a job, seeing the bargaining power unequal. Calling for the affidavit of waiver of right was not only unlawful but ill conceived when the petitioner was the rightful owner of a merit position sufficient to make the grade. The Government was not doing any favour to the petitioner by curtailing her rights earned in the selection process by dint of merit. The petitioner was rather unfairly dealt with in forcing her to surrender her right to seniority from her batch leaving no reasonable option except to lose the job and then to redress her grievance before this Court."

(35) After considerable thought I am unable to persuade myself to decide in favour of the respondents even by a long shot. The respondents brought the charge against the petitioner and the conviction recorded by the Judicial Magistrate, Ist Class was set aside in appeal. It is not that guilt of the petitioner was not established, but his innocence was proven and I have no doubt in my mind that the impugned order dated August 03, 1998 is not sustainable in the eyes of law and has deservedly to be set aside. The preliminary objection of the respondent to the effect that the petitioner has relinquished his rights to past consequential benefits by pressing procedural rule of estoppel is overruled as the law does not countenance a barter system in service law domain and exchange of past rights to money in lieu of reinstatement, in the facts and circumstances of this case.

(36) It is held that salary to an employee is in the nature of a

property right zealously guarded constitutionally by Article 300A of our Constitution, which right cannot be taken away save by authority of law. An admission made on a mistake of fact or law under pressure without abundant caution thereby causing acute monetary loss to one's own self is not covered by the expression "authority of law" or by the due process of the law. Neither does Rule 7.3 deprive the petitioner of money claimed by a decree issued from this Court, as I propose to do.

(37) It may be recorded that the petitioner sadly died on November 27, 2009 and the suffering family must have faced immeasurable hardships which require financial amends by the aiding hand of this Court.

(38) It may be noticed that the application made by his legal representatives under Order 22 Rule 3 of the CPC was allowed and their names were brought on record vide order dated November 07, 2012 since the cause of action had not abated and the right to sue subsisted in terms of money.

(39) As a result of the preceding discussion, the petition is accepted there being sufficient merit in it. As a result, the impugned orders/decisions are set aside upon certiorari issued to invalidate them. The amounts claimed by the petitioner reproduced in paragraph 9 above have become due and payable under this order and are directed by mandamus to be determined and paid to the LRs of the petitioner within three months from the date of receipt of a certified copy of this order. The letter dated May 12, 1998 is declared *non est* and not binding on the rights of the petitioner and would thus have no legal effect as evidence of relinquishment or surrender of rights forever to the claimed amounts, which the late petitioner has now regained for the benefit of his family by virtue of the present order. The letter is not binding on the rights of the petitioner/LRs and is liable to be ignored.

(40) This is the reparation cost the State has to bear on the false allegation constituting a trumped up criminal charge brought against a man found innocent in appeal and those orders attaining finality. If any non- pecuniary rights accrue to the late petitioner meanwhile those would also be granted within a reasonable period of time and the monetary value of those rights, if any, worked out and paid to the heirs and legal representatives along with the other dues as above, ordered in favour of the estate of the petitioner.

(41) The costs of litigation are assessed reasonably in a sum of Rs.15,000 which would have been spent over the years of litigation, if

not more, to be paid to the heirs and LRs of the late petitioning Maghar Singh. However, these cost are not directed against the State of Punjab for it was not at fault and may instead be appropriated from some other lawful source, including from the accounts of the Punjab State Legal Services Authority for the palpable wrong done to the late petitioner in one of our Session Divisions. It is ordered accordingly. The LRs may approach the authority for payment.

Tejinderbir Singh