

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

WRIT PETITION (CIVIL) NO(s). 200 OF 2006

GURPAL SINGH

Petitioner(s)

VERSUS

HIGH COURT OF JUDICATURE FOR RAJASTHAN

Respondent(s)

(With appln(s) for stay,modification of Court's Order,correction of typographical error.,permission to file rejoinder affidavit, PERMISSION TO FILE ADDL. DOCUMENTS and office report)
(FOR FINAL DISPOSAL)

Date: 05/04/2011 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.M. PANCHAL
HON'BLE MR. JUSTICE H.L. GOKHALE

For Petitioner(s) Mr. M. R. Calla, Sr. Adv.
 Mr. Rishi Matoliya, Adv.
 Ms. Pratiksha Sharma, Adv.
 Mr. P.D. Sharma,Adv.

For Respondent(s) Mr. Pallav Shishodia, Sr. Adv.
 Mr. Sunil Kumar Jain,Adv.
 Mr. Aneesh Mittal, Adv.

UPON hearing counsel the Court made the following
O R D E R

Having regard to the facts of the case, this Court is of the opinion that interest of justice would be served if the High Court is given an opportunity to pass appropriate orders under Rule 54 of the Rules. Therefore, the matter is remitted to the High Court on its administrative side to pass appropriate orders under Rule 54. The High Court shall issue notice to the petitioner and afford him an opportunity of hearing by calling upon him to

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file reply to the notice. The High Court shall thereafter consider the reply and pass a reasoned order under Rule 54 of the Rules of 1951. This exercise shall be completed as early as possible and without any avoidable delay but in any case not later than six weeks from today. The High court to file the order which may be passed by it in the present proceedings.

List the matter on 12.7.2011.

(Neetu Sachdeva)
Sr. P. A.

(Sneh Bala Mehra)
Court Master

(signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. 200 OF 2006

GURPAL SINGH

Petitioner(s)

VERSUS

HIGH COURT OF JUDICATURE FOR RAJASTHAN

Respondent(s)

O R D E R

By filing this petition under Article 32 of the Constitution of India, the petitioner has prayed to issue appropriate writ or order to declare that the order of suspension dated 22.12.1985 passed against him is void ab-initio. Another prayer made is that in any case the continuance of suspension order after acquittal of the petitioner in criminal case be declared illegal and the respondents be directed to reinstate the petitioner with all consequential benefits including full pay, seniority, promotion etc.

This Court has heard the learned counsel for the parties.

From the record, it is evident that the petitioner was prosecuted for an offence punishable under Section 302 of the Indian Penal Code. He was arrested on 20.12.1985 on account of criminal offence registered against him. Therefore, the Rajasthan High Court, Jodhpur had passed an order suspending the petitioner

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from service on 22.12.1985. The said order reads as under -

"WHEREAS a case against Shri Guru Pal Singh, Munsif-cum-Judicial Magistrate, Vallabhnagar in respect of a criminal offence is under investigation/trial.

AND WHEREAS Shri Gurupal Singh, Munsif-cum-Judicial Magistrate, Vallabhnagar has been detained in Police custody since 20th December, 1985 (A.N.) on account of a criminal offence.

NOW, THEREFORE Hon'ble the Chief Justice in exercise of the powers conferred by Rule 13 of the Rajasthan Civil Services (Classification, Control &

Appeal) Rules, 1958 read with Full Court Resolution dated October 30, 1971, hereby places the said Shri Gurupal Singh under suspension with effect from the afternoon of 20th December, 1985.

During the period of suspension, he will get subsistence allowance at an amount equal to the leave salary which he would have drawn if he had been on leave on half pay and in addition dearness allowance based on such leave salary."

The petitioner was acquitted by the Trial court vide judgment dated 1.5.2002. The prosecuting agency had thereupon filed Acquittal Appeal before the High Court. The Acquittal Appeal was also dismissed by judgment dated 27.9.2005. Thereafter, it was decided to initiate departmental inquiry against the petitioner under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 and it was decided to continue his suspension. In the departmental inquiry, the petitioner was exonerated by an order dated

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26.3.2008. Thereupon the petitioner was reinstated in service with immediate effect by an order dated 26.3.2008. The High Court considered the question whether the period of suspension should be treated as period spent on duty and whether he would be entitled to all the benefits under the law. The Rajasthan High Court, Jodhpur passed an order dated 24.1.2009 which reads as under -

"WHEREAS SHRI GURPAL SINGH, RJS presently retired was placed under suspension vide this office Order No. Estt. (RJS) 199/85 dated 22.12.1985.

AND WHEREAS it was decided that regular disciplinary proceedings under rule 16 of the Rajasthan Civil Service (Classification, Control & Appeal) Rules, 1958 be initiated against Shri Gurpal Singh, RJS presently retired.

AND WHEREAS Hon'ble the Chief Justice in exercise of the powers conferred by Rule 13 of the Rajasthan Civil Service (Classification, Control & Appeal) Rules, 1958 read with Full Court Resolution dated October 30, 1971 was pleased to order that on account of initiation of a regular enquiry under rule 16 of Rajasthan Civil Service (Classification, Control & Appeal) Rules, 1958 the suspension of Shri Gurpal Singh shall continue.

AND WHEREAS Departmental Enquiry under rule 16 of the Rajasthan Civil Service (Classification, Control &

Appeal) Rules, 1958 was initiated against said Shri Gурpal Singh vide Memorandum No. Estt. B2(iii)/ / 2006/1544 dated 20.04.2006.

AND WHEREAS in the above departmental enquiry said Shri Gурpal Singh has been exonerated vide order No. Estt. (RJS) 25/2008 dated 26.03.2008.

AND WHEREAS, Shri Gурpal Singh has been reinstated with immediate effect as Civil Judge (Jr. Div.) & Judicial Magistrate in the RJS vide order No. Estt. (RJS) 26/2008 dated 26.03.2008.

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AND WHEREAS the matter regarding regularisation of suspension period of Shri Gурpal Singh was considered by the Hon'ble Full Court in its meeting held on 29.11.2008 and it was resolved as under :-

"Perused office note and relevant record. RESOLVED that period of his suspension shall be treated as a period spent on duty, but without salary except subsistence allowances already paid to him. However, this will not effect his pensionary benefits but he will not be entitled for any promotion."

NOW THEREFORE, the period of his suspension shall be treated as a period spent on duty, but without salary except subsistence allowances already paid to him. However, this will not effect his pensionary benefits but he will not be entitled for any promotion."

A bare reading of the above-quoted order makes it clear that the question whether the suspension of the petitioner from 22.12.1985 till his reinstatement in service on 26.3.2008 was either wholly justified or partly justified or wholly unjustified was not considered at all by the competent authority in terms of Rule 54 (2) of the Rajasthan Service Rules, 1951.

Rule 54 (1) and Rule 54 (2) are clearly applicable to the petitioner who remained under suspension because of trial on a criminal charge and thereafter because of the decision to initiate departmental inquiry against him. The competent authority was bound to examine the case of the petitioner in terms of Rule 54 (1) and Rule 54 (2) and in case it came to the conclusion that the suspension of the petitioner was either wholly justified

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or wholly unjustified or partly justified and that the petitioner was not entitled to any salary and or full salary for the period of suspension then the authority

was expected to pass a reasoned order after affording an opportunity of hearing to the employee concerned. In other words, it was open to the competent authority to withhold payment of full salary for the suspension period on justifiable grounds and not otherwise.

Having regard to the facts of the case, this Court is of the opinion that interest of justice would be served if the High Court is given an opportunity to pass appropriate orders under Rule 54 of the Rules. Therefore, the matter is remitted to the High Court on its administrative side to pass appropriate orders under Rule 54. The High Court shall issue notice to the petitioner and afford him an opportunity of hearing by calling upon him to file reply to the notice. The High Court shall thereafter consider the reply and pass a reasoned order under Rule 54 of the Rules of 1951. This exercise shall be completed as early as possible and without any avoidable delay but in any case not later than six weeks from today. The High court to file

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the order which may be passed by it in the present proceedings.

List the matter on 12.7.2011.

.....J.
(J.M. PANCHAL)

NEW DELHI
APRIL 5, 2011

.....J.
(H.L. GOKHALE)