

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS. 811-812 OF 2022

SUKHDARSHAN SINGH

APPELLANT (S)

VERSUS

THE STATE OF PUNJAB & ORS.

RESPONDENT (S)

J U D G M E N T

K.M. JOSEPH, J.

1. The appellant was appointed as a Clerk on 27.12.1979 by the State Transport Department. A criminal case (FIR) came to be registered on 02.09.1986. The allegations against him apparently pertained to alleged acts of embezzlement. It was followed by a chargesheet on 06.10.1988. In connection with the said case, the appellant came to be suspended w.e.f. 02.09.1986. While he was undergoing suspension, yet another occurrence took place which led to FIR No. 51/1995 being registered under Sections 307 and 506 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC'). The appellant came to be convicted by the trial court with regard to FIR No. 51/1995 by judgment dated 17.09.1996. The appellant filed

Criminal Appeal No. 703-SB/1996 against the conviction. The appellant was convicted under Section 324 read with Section 506 of the IPC by the trial court.

2. After a period of six years, the appellant came to be served with show cause notice dated 24.07.2002 under the Punjab Civil Services (Punishment and Appeal) Rules, 1970 (hereinafter referred to as '1970 Rules' for brevity). Rule 13 (i) of the '1970 Rules' reads as follows:

"Special procedure in certain cases-Notwithstanding anything contained in rules 8,9, 10, 11 and 12.

(i) Where any penalty is imposed on a Government employee on the ground of conduct which has led to his conviction on a criminal charge; or

Provided that the Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this rule."

The appellant responded to the notice. However, by order dated 13.03.2003, it was decided to remove the appellant. To continue with the narrative, as regards the first FIR relating to embezzlement, the Judicial Magistrate acquitted the appellant by order dated 22.12.2006. The fate of the criminal appeal against the judgment emanating from FIR No.51/1995 was as follows:

The High Court sustained the conviction of the appellant under Section 324 and Section 506 of the IPC. However, it reduced the sentence under Section 324 to the

period undergone and ordered a sentence of one month for offence under Section 506. This judgment was dated 09.04.2008.

3. The appeal preferred by the appellant against the order dated 13.03.2003 came to be disposed of by order dated 29.01.2009. By the said order, the appellate authority found *inter alia* and ordered as follows:

"Section 307 IPC is not fallen under the definition of "Mortal Turpitude. But the sections i.e., 324 and 506 of the case are very small and the simple imprisonment. Therefore, it is abundantly and nor this offence is fallen under the category of "Moral Turpitude" and nor this case is belongs to government proceedings. This personal dispute with the appellant and on causing some simple injuries to the other person by the appellant. The Hon'ble Punjab and Haryana High Court, by reducing his imprisonment, has dispensed with remaining imprisonment, only after undergoing 39 days imprisonment. The Hon'ble High Court has taken this matter as sympathetically, therefore in view of the above I, also by giving sympathy, is hereby set asides the termination order and is hereby punishment for the appellant that he will be not given nothing for the suspension period and this period will be declared as Dies-Non period. But this order, this appeal is disposed off."

4. Being aggrieved by the order of the appellate authority noting that the appellant will not be given anything for the period of suspension and this period will be declared as dies-non, a civil suit came to be instituted on 09.12.2010 by the appellant. He sought a declaration to the effect that the order dated 13.03.2003 and the

appellate authority's order dated 29.01.2009 to the extent that the pay of the appellant was denied was illegal and arbitrary and against the Rules and that he was entitled to full pay for the period that he had been denied, the salary and benefits. He sought mandatory injunction to release the pay denied to him with 12 per cent interest. Upon contest, the suit came to be decreed as follows:

"As per my sequel of discussion on Issue No. 1 to 4 discussed above, the suit of the plaintiff is decreed to the effect that order dated 13.03.2003 and order dated 29.01.2009/17.02.2009 to the extent whereby pay of the plaintiff has been denied are illegal, arbitrary and against the rules. However, it is made clear that the plaintiff is entitled to get salary which is denied by alleged orders but not of the period during which the plaintiff and undergo imprisonment. Decree sheet be prepared. File be consigned to record room after due compliance."

The appeal by the respondent-State was unsuccessful. This led to the second appeal from which the present appeals arise. The second appeal came to be allowed by the High Court. In the original judgment, the High Court has proceeded to find that the appellate authority has rightly found that respondent is not entitled to monetary benefit during the intervening period from the date of termination till re-instatement having regard to the conviction, there being modification only in sentence. It was found that only a lenient view was taken by the appellate authority. It was in these circumstances, relying on Rule 7.3 of Punjab Civil Service Rules, hereinafter referred to as the 'Rules', the

court found that the trial court and the appellate court erred in not appreciating that the appellant was not acquitted in the criminal case and also that Rule 7.3 empowered the competent authority to pass appropriate order. Therefore, the second appeal was allowed setting aside the judgments of the two courts.

In the review filed by the appellant from the judgment, complaint of the appellant was that the court erred in interpreting Rule 7.3 of the Rules. The appellant's case was that Punjab Roadways under which the appellant was employed had adopted the 1970 Rules. The appellant was placed under suspension in the FIR of the year 1986 wherein he stood acquitted whereas the aforesaid FIR was different from the later FIR pursuant to which he has been convicted and therefore the question of treating the suspension period as dies non, in the said case did not arise. Appellant relied upon Rules 5, 13 and 15 of the 1970 Rules. The learned Single Judge found that the appellant continued under suspension till 13.3.2003. It is further found that the appellate authority was entitled to regulate the suspension period under rule 15(f) of the 1970 Rules. It was further found that in view of Rule 15(f) of the 1970 Rules and the order of suspension of 1988 not having been challenged and it remained intact as on the date of removal (13.3.2003), the review petition was allowed, to the extent

of finding that a wrong provision, (Rule 7.3) was quoted in the judgment which was sought to be reviewed. The contention that dies non was impermissible because the appellant was not placed under suspension with reference to the later FIR, was not accepted as the respondent continued to be under suspension.

It is feeling aggrieved by the original judgment passed by the High Court allowing the second appeal and also the order passed in review that the plaintiff is before us by way of these appeals.

5. We have heard Shri Gurminder Singh, learned Senior counsel appearing on behalf of the appellant and Shri D.S. Patwalia, learned Advocate General appearing on behalf of the respondent-State.

6. Learned senior counsel for the appellant would point that once the High Court found that it was in error in drawing support from Rule 7.3, it was in error in not noticing that it overturned the premise for the judgment allowing the second appeal. The judgment would have no legs to stand on and therefore, the appeal filed by the State ought to have been dismissed.

He would point out that Rule 7.3 indeed does not apply as found by the High Court. As regards Rule 15(v)(f) of the 1970 Rules relied upon by the High Court, it is pointed out

that it only provides for an order passed thereunder which can lead to an appeal under the 1970 Rules. In this case, learned senior counsel would reiterate the position which has been accepted by the trial Court and the first appellant Court that once the removal of the employee has been found illegal and reversed, the employee is entitled to get the wages or the salary for the entire period and it is only this that has been done by the trial Court as also the first appellate Court and there is no occasion for the High Court to interfere thereunder.

Per contra, Shri D. S. Patwalia, learned Advocate General for the respondent-State, would fairly submit that no reliance could be placed on Rule 15(v)(f) of the '1970 Rules' in the manner done by the High Court. He did submit that Rule 7.3 of the Rules was originally rightly applied. He sought to draw support from Rule 7.3-B. He would highlight the fact that this is a case where the guilt of the appellant was established before the trial Court (conviction under Section 324 and Section 506 of the IPC) and what is more, the appellate Court viz., the High Court has confirmed the verdict. All that the High Court did was it reduced the period of imprisonment as already noticed. He would, therefore, point out that it is a case where the appellant did not deserve to get anything more than what was actually done by the appellate authority and it was for

this reason that the respondents were prepared to accept the order of the appellate authority as it is. He further contended that the appellant would continue under suspension based on the earlier order of suspension.

FINDINGS

7. Admittedly, the appellant stood removed on 13.03.2003. This was on the basis of a conviction by the Criminal Court for offences under Sections 324 and 506 of the IPC. Again undisputedly, in connection with another FIR, the appellant was placed under suspension on 02.09.1986. His services was terminated by removal by order dated 13.03.2003. It is this order of removal which came to be interfered with by the appellate authority on 29.01.2009. As noticed, the appellate authority, however, directed that the appellant will not be entitled to any salary for the period in question and that it will be treated as *dies non*. It is this which triggered the litigation in the civil Court and we have noticed the decree which has been granted. The civil Court has proceeded on the basis that once a termination has been set aside, the employee must get full salary without anything more. It is on this premise that the trial Court and the first appellate Court have proceeded to allow the suit filed by the appellant by directing that subject to the exception, that for the period of imprisonment he would not get the salary and

other benefits, he would get the salary for the rest of the period.

8. In this regard, Shri Gurminder Singh would point out that there was no error committed by the Court for two reasons. He would submit that once the appellate authority found the termination flawed and appellant was to be reinstated, clearly the appellate authority (in disciplinary proceedings) exceeded the limits of its authority in proceeding as if it could by the order deny him the salary treating it as punishment. It is equally so when the appellate authority ordered *dies non*. In this regard, he drew our attention to the penalties with which an employee can be visited under the Rules viz., Rule 5 of the '1970 Rules'. He would, therefore, point out that the appellate authority was clearly acting illegally in contemplating and providing for a punishment which is not within the four walls of the '1970 Rules'. Secondly, he would support the order by pointing out that it is settled law that once the termination is set aside, the employee must get all the benefits.

9. We have perused the Rules which have been placed before us. Rule 5 provides for the penalties with which the employee can be visited with. The scheme of the Rules further is that an appeal can be carried against certain

orders which are mentioned in Rule 15. The manner in which the appellate authority must exercise its appellate jurisdiction is delineated in Rule 19.

10. The punishment as it is so described by the appellate authority viz., depriving the salary and placing the employee under *dies non*, do not appear to be penalties provided in Rule 5. It was open to the appellate authority to enhance the punishment. The order, in other words, dated 29.01.2009 to the extent it became the subject matter of the civil suit would appear to be beyond the power of the appellate authority. To that extent, the appellant may be justified in calling into question the direction to deny him the salary by the appellate authority and treating it as *dies non* as a punishment. It is not a penalty contemplated in law. This, however, is not to be the end of our enquiry.

11. The question would arise as to what is to be done with regard to the period when the appellant was kept out of service as a result of the proceedings against him. This, in turn, must be broadly divided into two periods. An employee may be kept out of service initially by way of an order of suspension. The disciplinary proceedings may culminate in an order of removal or dismissal or compulsory retirement. The order of suspension would then come to an end and it would merge in the order of removal *inter alia*.

After the order of removal inter alia till the order of reinstatement based on relief granted to the employee, the appellant would be out of service. According to Mr. Gurminder Singh what Rule 7.3 contemplates is power with the authority to provide for pay and allowances for the period the employee is kept out of service but limited to the period prior to the dismissal. The relevant part of the Rule 7.3 reads as follows:

"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 re-instatement 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) Where 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 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.

(3) In a case falling under sub-rule (2), the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, shall be treated as a period spent on duty for all purposes.

(4) In cases other than those covered by sub-rule (2) including cases where the order of dismissal, removal or compulsory retirement from service is set aside by the authority exercising powers of appeal, revision or review solely on the ground of noncompliance 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-rules (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 106 [7.3] THE PUNJAB CIVIL SERVICES RULES VOLUME I (PART I) [Chap. VII] 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:

Provided that any payment under this sub-rule to a Government employee other than a Government employee who is governed by the provisions of the payment of Wages Act, 1936 (Act 4 of 1936) shall be restricted to a period of three years immediately preceding the date on which order for re-instatement of such Government employee are passed by the authority exercising the powers of appeal, revision or review, or immediately preceding the date of retirement on superannuation of such Government employee, as the case may be.

(5) In a case falling under sub-rule (4), the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specified purpose:

Provided that if the Government employee so desires such authority may direct that the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall be converted into leave of any kind due and admissible to the Government employee.

Note. -The order of the competent authority under the preceding proviso shall be absolute and no sanction of the higher authority shall be necessary for the grant of-

- (a) extraordinary leave in excess of three months in the case of a temporary Government employee; and
- (b) leave of any kind due in excess of five years in the case of a permanent and quasi permanent Government employee.

(6) The payment of allowances under sub-rule (2) or sub-rule (4) shall be subject to all other conditions under which such allowances are admissible.

(7) 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) Any payment made under this rule to a Government employee on his reinstatement, shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of removal, dismissal or compulsory retirement, as the case may be, and the date of reinstatement. Where the emoluments admissible under this rule are equal to or less than the amounts earned during the employment elsewhere nothing shall be paid to the Government employee.

Note 1.-This rule is absolute and unconditional and so the question of lien does not arise in the case of a Government employee who is dismissed from service and is reinstated on appeal, revision or review when the period of unemployment between the date of dismissal and reinstatement is declared by the authority exercising the powers of appeal, revision or review as the period spent on duty.

Note 2.-Clause (b) of sub-rule (1) of this rule does not forbid the period spent under suspension being treated as leave, and it is open to the authority exercising the powers of appeal, revision or review to specify the proportion of pay and allowances to be paid as the leave salary which would be permissible, if the

Government employee were on leave.

Administrative Instruction. -A permanent post vacated by the reason of dismissal, removal or compulsory retirement of a Government employee should not be filled substantively until the expiry of a period of one year from the date of such dismissal, removal or compulsory retirement. Where, on the expiry of the period of one year, the permanent post is filled and the original incumbent of the post is reinstated thereafter, he should be accommodated against any post which may be substantively vacant in the grade to which his previous substantive post belonged. If there is no such vacant post, he should be accommodated against a supernumerary post which should be created in that grade with proper sanction and with the stipulation that it would terminate on the occurrence of the first substantive vacancy in that grade.

Note 3.-If no order is passed under sub-rule (5), directing that the period of absence be treated as duty for any specified purpose, the period of absence should be treated as 'non-duty'. In such event, the past service (i.e., service rendered before dismissal, removal, compulsory retirement) will not be forfeited.

Note 4. -There is no bar to the conversion of any portion of a period of suspension into extraordinary leave. In the case of persons who are not fully exonerated, the conversion of the period of suspension into leave with or without allowances has the effect of removing the stigma of suspension and all the adverse consequences flowing therefrom. The moment the period of suspension is converted into leave, it has the effect of vacating the order of suspension, and it will be deemed not to have been passed at all. Therefore, if it is found that the total amount of subsistence and compensatory allowances that an officer received during the period of suspension exceeds the amount of leave salary and allowances, the excess will have to be refunded and there is no escape from this conclusion."

12. Rule 7.3A deals with pay and allowances where the dismissal, removal or compulsory retirement is set aside by a court of law and such employee is reinstated without

holding any further inquiry.

The relevant part of Rules 7.3 (B) reads as follows:-

"7.3-B. (1) When a Government employee who has been suspended is reinstated or would have been so reinstated but for his retirement on superannuation while under suspension the authority competent to order re-instatement shall consider and make a specific order -

(a) regarding the pay and allowance to be paid to the Government employee for the period of suspension ending with re-instatement or the date of his retirement on superannuation, as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Notwithstanding anything contained in rule 7.3 or rule 7.3-A, where a Government employee under suspension dies before the disciplinary or court proceedings instituted against him, are concluded, the period between the date of suspension and the date of death shall be treated as spent on duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled, had he not been suspended, subject to adjustment in respect of subsistence allowance already paid.

(3) Where the authority competent to order re-instatement is of opinion that the suspension was wholly unjustified, the Government employee shall, subject to the provisions of sub-rule (8), be paid the full pay and allowances to which he would have been entitled, had he not been suspended:

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 his representation and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government employee shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.

(4) In a case falling under sub-rule (3), the period of suspension shall be treated as a period spent on duty for all purposes."

13. If we take up Rule 7.3-B relied upon by the learned Advocate General, it gives us the impression that its intent is to deal with cases where a person is placed under suspension but thereafter reinstated. 'Conspicuous by its absence' in Rule 7.3B are expressions indicating that apart from suspension, the matter progressed to a stage where the employee came to be visited with any penalties. In other words, there can be cases where a person may be placed under suspension and without the matter progressing further, the authority in its discretion and power decides to revoke the suspension and he is reinstated. Rule 7.3, on the other hand, deals squarely with the situation where the employee whose services are terminated succeeds in an appeal or other remedy and there is an order of reinstatement and a question arises as to how the period prior to his dismissal is to be reckoned. The orders which can be passed are expressly provided for therein. In other words, the scheme of the Rules would appear to be that when an employee who has been proceeded against, succeeds before the higher forum, the question as to what is to be done for the period when he was kept out of service would have to be determined in the manner provided therein.

14. Rule 15(v) (f) has been noticed by the High Court to find that there was power with the authority. Rule 15(v) (f)

reads as follows:

"15. Order against which appeal lies- Subject to the provision of Rule 14 a Government employee may prefer an appeal against all or any of the following orders, namely-

.....
.....

(v) an order-

.....
.....

(f) determining whether or not the period from the date of his suspension or from the date of his dismissal, removal, compulsory retirement or reduction to a lower service, grade, post, time scale of pay or stage in a time scale of pay to the date of his reinstatement or restoration to his service, grade or post shall be treated as a period spent on a duty for any purpose.

15. Rule 15(v) (f) indeed contemplates that when there is a dismissal, removal, compulsory retirement or reduction to a lower service *inter alia* and there is an order of reinstatement, the authority is to pass an order as to whether the period from the date of suspension or from the date of his dismissal, removal or compulsory retirement till the date of his reinstatement, is to be treated as a period spent on duty for any purpose. This gives a clear indication that upon an order being passed by the appellate authority finding the termination of employee to be illegal and leaves it there, it would not *ipso facto* inevitably follow that the employee will become entitled to claim the

salary for the entire period consequent upon his being found to be entitled to reinstatement. This is a matter for the authority to decide.

16. In such circumstances, in our view, the proper order to be passed would be to find as follows:

- (1) The decree of the trial Court as confirmed by the first appellate Court is to be sustained viz., we find that the first appellate authority in proceeding to impose the condition that the appellant will not be entitled to any salary for the period and that it will be treated as *dies non* cannot be sustained.
- (2) However, the further direction by the decree passed by the trial Court and confirmed by the first appellate authority that the appellant will be entitled to the salary for the period he was kept out of service also cannot be sustained.
- (3) Insofar as the High Court has not noticed these aspects while allowing the appeal and dismissing the review petition, we are of the view that the impugned judgment also cannot be sustained.

17. Accordingly, we dispose of the appeals by setting aside the impugned judgment and modifying the judgment passed by the first appellate Court and set aside the

decree passed by the trial Court directing payment of salary to the appellant for the period that he was kept out of service.

There will be a decree directing the second respondent to consider as to how the period till the appellant was reinstated is to be treated and consequential effect thereof. In other words, the question will be as regards the period from 13.03.2003 till 20.03.2009. This exercise will be undertaken and concluded within a period of three months from today.

Parties are directed to bear their respective costs.

The civil appeals are allowed as above.

....., J.
[K.M. JOSEPH]

....., J.
[HRISHIKESH ROY]

New Delhi;
March 03, 2022.