

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

LPASW No.34/2005
MP No.24/2005

Date of order: 18.11.2015

1. National Hydroelectric Power Corp. Ltd.
NHPC Office Complex,
Sector 33, Faridabad.
2. Salal Power Station,
(formerly known as Salal Hydroelectric Project)
Jyotipuram.
3. Executive Director,
Region No.1,
National Hydroelectric Power Corp. Ltd.,
Trikuta Nagar, Jammu.
4. General Manager,
Salal Power Station,
Jyotipuram.
5. Manager,
WS&FM Complex,
Salal Power Station,
Jyotipuram.
6. Senior Manager (P&A),
Salal Power Station,
Jyotipuram.
7. Assistant Manager,
Field Mechanical Unit,
Salal Power Station,
Jyotipuram.

Appellants No. 1 to 7 through Deputy Manager (P&A), Salal Power Station, Jyotipuram, Tehsil Reasi, who has been duly authorized by the competent authority of the Corporation to represent the Corporation and its functionaries in this appeal.

Versus

Shri Kishore Kumar S/o Sh. Dhani Ram
R/o Raipur Jagir, Tehsil & District Jammu
C/o Chief Engineer Incharge,
Chutak Hydroelectric Project,
P.O Minji, District Kargil,
J&K-194 103.

Coram:

**Hon'ble Mr. Justice N. Paul Vasanthakumar, Chief Justice
Hon'ble Mr. Justice Dhiraj Singh Thakur, Judge**

Appearing counsel:

For the Appellant(s) : Mrs. Sindhu Sharma, ASGL.

For the respondent(s) : None.

i/ Whether to be reported in Press/Media	:	Yes
ii/ Whether to be reported in Digest/Journal	:	Yes

N. Paul Vasanthakumar-CJ

1. This appeal is filed against the order of learned Single Judge made in SWP No.1361/2000 dated 17.12.2004, allowing the writ petition filed by the respondent seeking to quash the order treating the suspension period as punishment by specifically stating that he will not be allowed to full pay for the said period.

2. The case of the respondent before the Writ Court was that, he was appointed as Helper in the appellants' Corporation on 03.12.1981 in the Plan and Machinery Division of Rockfill Dam Complex. He proceeded on medical leave on 11.04.1985 and continued to be on leave till 14.06.1985. He was placed under suspension on 15.06.1985 on the ground of unauthorized absence from 11.04.1985 to 14.06.1985. When he was placed under suspension, a complaint was filed with the police, based on which an FIR was registered on the file of Police Station Jyotipuram, alleging that he has committed offence under Sections 457, 452 and 453. The crux of the allegation is that respondent entered into the house of one Raj Kumar with an intention to outrage the modesty of his wife. Initially, respondent was convicted by the trial Court under Sections 457/354 RPC by judgment dated 03.03.1987. The said conviction and sentenced was set aside by the learned Sessions Judge Udhampur by judgment dated 06.07.1989 and respondent was acquitted of all the charges.

3. When the criminal proceedings were pending against the respondent, enquiry was also initiated by the appellants for the very same occurrence. The enquiry committee submitted its report on 19.11.1985, holding that no action should be initiated as there was no proper evidence. The suspension order of the respondent was revoked by order dated 08.06.1992 and he was reinstated w.e.f. 20.03.1992 and the period of absence from duty was also regularized.

4. In the writ petition, the claim of the respondent was that he is entitled to get promotion in the year 1986 and further promotions from the years 1991 and 1996 respectively. He was not considered for promotion on completion of five years of service as he was placed under suspension due to pendency of criminal case against him. Even after his reinstatement w.e.f. 20.03.1992, on revocation of suspension, part salary for the suspension period was forfeited. One of his batch mates, namely, Girdhari Lal, who was appointed as Helper was given promotion. Similarly, other persons, namely, Brahm Dutt, Chander Bhadur, Avtar Krishen, Kewal Krishen, Prem Singh and Angrez Singh were also given promotions. Respondent having been paid only 75% of salary as subsistence allowance and forfeiture of the remaining salary having been ordered, he filed appeal before the Executive Director, Region-I and General Manager, Salal and on 22.05.1999 an order was passed stating that there is no merit in his appeal.

5. In so far as the allegation of unauthorized absence was concerned, admittedly from 11.04.1985 to 14.06.1985 leave was sanctioned on 31.03.1998. The learned Single Judge allowed the writ petition holding that during enquiry, the charges have not been proved and in the criminal case, the respondent was acquitted, thus he is entitled to get full salary for the suspension period under the statutory rules, with further direction to accord consideration for his promotion to the next higher rank along with his batch mates, particularly the persons junior to him and allow such benefits as may be permissible under rules.

6. The said order is challenged in this appeal on the ground that respondent got acquittal in the criminal case due to want of sufficient evidence and he having been suspended, the disciplinary authority can take a decision how to treat the period of suspension.

7. It is also relevant to note at this juncture that even though the suspension was passed on the ground of involvement of the respondent in a criminal case, a separate enquiry was conducted by the enquiry committee and no finding of guilt was recorded, thus the charges framed by the enquiry committee were not proved and the respondent having been exonerated from the charges, he is entitled to get full salary for the period of suspension.

8. We have considered the rival submissions. It is true that in the criminal case, acquittal of the respondent was due to want of evidence. Even before the acquittal in the criminal case, the appellants conducted enquiry by constituting an enquiry committee for the very same allegations and there was no finding of guilt recorded by the enquiry committee. It is not the case of the appellants that the findings of the enquiry committee were differed and further proceedings were initiated by issuing a notice regarding the differing view and calling for the objections and thereafter deciding the issue. In absence of such procedure having been followed, it is not open to the appellants to say that subsistence allowance paid for the suspension period is enough and the punishment can be inflicted by not paying remaining salary minus suspension allowance.

9. It is well settled law that if a delinquent official is exonerated from the charge or charges, the period of suspension should be regularized as he was on duty for all purposes and he is entitled to get full salary and if delinquent official is imposed with any punishment based on the enquiry report wherein the charge is proved, then only the discretion is vested with the authority to treat the period of suspension other than the period of duty with all benefits.

10. In such view of the matter, we are unable to find any reason to interfere with the order of learned Single Judge. The appeal is dismissed.

11. No costs.

(Dhiraj Singh Thakur)
Judge

Jammu,
18.11.2015
Anil Raina Secy

(N. Paul Vasanthakumar)
Chief Justice