

IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA

LPA No.700 of 2011
Decided on: 31.08.2023

Kartar Singh (Deceased) through LRs.Appellant
Versus	
State of Himachal Pradesh & Others	...Respondents

Coram:

Hon'ble Mr. Justice M.S. Ramachandra Rao, Chief Justice.
Hon'ble Mr. Justice Ajay Mohan Goel, Judge.

Whether approved for reporting?

For the appellant	:	Mr. Karan Singh Parmar, Advocate.
For the respondents	:	Mr. Pranay Pratap Singh, Additional Advocate General and Mr. Arsh Rattan & Mr. Sidharth Jalta, Deputy Advocate Generals.

M.S. Ramachandra Rao, Chief Justice.

This Letters Patent Appeal is preferred challenging the order dt. 01.11.2011 of the learned Single Judge granting to the appellant salary only for the period of his suspension from 02.08.1995 to 26.11.1997, but not for the period from 26.11.1997 upto 04.05.2000, on which date he was reinstated after he was acquitted by the High Court on 14.05.1999.

2. During the pendency of appeal, the appellant/ writ petitioner had died and his legal representatives have been impleaded.

3. The appellant was involved in a criminal case, and on 02.08.1995, consequent upon registration of F.I.R. against him under Sections 302/392, 120-B of Indian Penal Code read with Sections 25/54/59 of the Arms Act, he was immediately placed under suspension.
4. In the Sessions Court he was initially convicted.
5. On the basis of the said conviction, he was dismissed from service on 26.11.1997.
6. He challenged this conviction in the High Court, which acquitted him on 14.05.1999.
7. Thereafter, he was reinstated into service on 04.05.2000. The disciplinary proceedings were also dropped.
8. The learned Single Judge has granted him full salary for the period 02.08.1995, when he was placed under suspension, till 26.11.1997, when he was dismissed from service, but denied him full salary for the period from 26.11.1997 to 04.05.2000, i.e. the date of his dismissal from the date of his reinstatement, probably on the view that since he had not worked, he is not entitled to the same.
9. Though the Three Judge Bench judgment of the Supreme Court in ***Brahma Chandra Gupta vs. Union of India***¹ was cited and referred

¹(1984) 2 SCC 433

to by the learned Single Judge, in which it was held that on acquittal an employee is entitled to be reinstated and he ought to get full salary, still the learned Single Judge did not grant the same.

10. Counsel for the appellant seeks to contend that apart from the said judgment, the Supreme Court in *State of Punjab and Others vs. Shambhu Nath Singla and Others*,² has also granted full salary and allowances for the period during which the employee was kept under suspension.
11. Counsel for the respondents, however, placed reliance on the judgment of the Supreme Court in *Ranchhodji Chaturji Thakore vs. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar (Gujarat) and Another*³, to contend that the appellant is not entitled to back wages for the entire period from 26.11.1997 up to 04.05.2005.
12. No doubt, in the said judgment back wages were denied, but it was observed that each case requires to be considered in its own backdrop, and the judgment in *Brahma Chandra Gupta's case (supra-1)*, was not taken note of though the said judgment is rendered by Three Judge Bench.

² (1996) 1 SCC 296,

³ (1996) 11 SCC 603

13. The fact remains that the dismissal of the petitioner was only on the ground of his conviction by the Criminal Court, and once the said conviction was set-aside by the judgment of the High Court rendered on 14.05.1999, the judgment of the trial Court convicting him would merge in the judgment of the High Court and the appellant has to be taken as innocent all through. Once the Department had itself dropped the disciplinary proceedings post his acquittal, he cannot be denied salary and allowances for the period 26.11.1997 to 04.05.2000.
14. Therefore, even if the appellant had not worked for the period 26.11.1997 to 04.05.2000, it has to be taken that he was innocent and he was prevented from working for this period and, therefore, he would be entitled to full salary and allowances for the said period as well.
15. Our view is fortified by not only the judgment of the Supreme Court in *Brahma Chandra Gupta's case* (1 *supra*) wherein, the Supreme Court held that full amount of salary should be paid to the employee who had been dismissed from service on the ground that he was convicted by the trial Court, when he is subsequently reinstated when he was acquitted by the appellate Court in the criminal court.

16. Similar view is also taken in ***Shambhu Nath Singla and Others*** (2 Supra).

17. In ***Raj Narain v. Union of India and others***⁴, the Supreme Court held:-

“7. The point that remains to be considered is whether the Appellant is entitled to payment of full wages between 1979 and 1987. The Appellant was placed under suspension on 23.10.1979 and his suspension was revoked on 21.10.1987. An interesting development took place during the interregnum by which the disciplinary proceedings were dropped on 21.03.1983. It is clear from the record that the Appellant was the one who was seeking postponement of the departmental inquiry in view of the pendency of criminal case. The order of suspension was in contemplation of disciplinary proceedings. By virtue of the disciplinary proceedings being dropped, the Appellant becomes entitled to claim full salary for the period from the date of his suspension till the date of closure of the departmental inquiry. Thereafter, the Respondents took four years to reinstate him by revoking his suspension. The order of suspension dated 23.10.1979 came to an end on 21.03.1983 which is the date on which disciplinary proceedings were dropped. The Appellant ought to have been reinstated immediately thereafter unless a fresh

⁴ (2019) 5 SCC 809

order was passed, placing him under suspension during the pendency of the criminal trial which did not happen. Ultimately, the Appellant was reinstated by an order dated 21.10.1987 by revocation of the order of suspension. Though, technically, the learned Additional Solicitor General is right in submitting that the impugned judgment does not even refer to the I.A., we are not inclined to remit the matter to the High Court at this stage for fresh consideration of this point. We hold that the Appellant is entitled for full wages from 23.10.1979 to 21.10.1987 after adjustment of the amounts already paid towards subsistence allowance.”

18. No doubt, in the decision of the Supreme Court in ***Union of India and others v. Jaipal Singh***⁵ and in ***Ranchhodji Chaturji Thakore (3 Supra)*** cited by the Additional Advocate General, back wages were denied, but from the said decisions, it is clear that the earlier judgments in ***Brahma Chandra Gupta’s case (1 supra)*** and ***Shambhu Nath Singla and Others(2 supra)***, were not noticed.

19. In this view of the matter, the appeal is allowed following the decisions in ***Brahma Chandra Gupta’s case (1 supra)*** and ***Shambhu Nath Singla and Others(2 supra)*** and ***Raj Narain (4 Supra)***; the order of the learned Single Judge in so far as he denied

⁵ (2004) 1 SCC 121

full salary and allowances to the petitioner for the period 26.11.1997 to 04.05.2000, is set aside; and it is held that the appellant is entitled to full salary and allowances for the said period as well, which shall be paid to him within three months. If not, the appellant shall be paid interest @ 9% per annum.

20. Pending miscellaneous application(s), if any, shall also stand disposed of.

(M.S. Ramachandra Rao)
Chief Justice

(Ajay Mohan Goel)
Judge

August 31, 2023
(Yashwant)