

Nazar, etc. *v.* Additional Director, Consolidation, Punjab, etc. (Narula, J.)

with the only other contention of counsel to the effect that if the Settlement Officer could be justified in making any changes in the consolidation scheme for the first time, he was bound to award compensation for trees and *Khurlis*, etc., of the petitioners which were on the land of which they were being deprived.

This writ petition is accordingly allowed and the orders of the Settlement Officer (Annexure 'A') and all subsequent proceedings in this case, are set aside and quashed. The learned counsel for the petitioners does not want his appeal to the Settlement Officer being reheard and presses that the same may be deemed to have been dismissed. No further proceedings by the authorities would, therefore, be necessary and the petitioners' appeal against the order of the Consolidation Officer under section 21(2) of the Act, would be deemed to have been withdrawn and dismissed. In the circumstances of the case, the parties are left to bear their own costs.

R.S.

CIVIL MISCELLANEOUS

*Before J. N. Kaushal, J.*

JAGMOHAN LAL,—*Petitioner*

*versus*

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 383 of 1963

August 18, 1966

*Punjab Civil Services Rules, Volume I, Part I—Rule 7.5—Interpretation of—Government servant given benefit of doubt and acquitted—Whether entitled to full pay and allowances for the period of his suspension.*

*Held*, that a Government servant who has been acquitted of the criminal charge by the Court on giving him the benefit of doubt is entitled to full pay and allowances for the period of his suspension. In criminal law the Courts are called upon to decide whether the prosecution has succeeded in bringing home the guilt to the accused. The moment the Court is not satisfied regarding

the guilt of the accused, he is acquitted. Whether a person is acquitted after being given a benefit of doubt or for other reasons, the result is that his guilt is not proved. The Code of Criminal Procedure does not contemplate honourable acquittal. The only words known to the Code are 'discharged' or 'acquitted'. The effect of a person being discharged or acquitted is the same in the eyes of law. Since, according to the accepted notions of imparting criminal justice, the Court has to be satisfied regarding the guilt of the accused beyond a reasonable doubt, it is generally held that there being a doubt in the mind of the Court, the accused is acquitted.

*Held*, that the intention underlying Rule 7.5 of the Punjab Civil Services Rules, Volume I, Part I, can be no other except this : the moment the criminal charge on account of which an officer was suspended fails in a Court of law, he should be deemed to be acquitted of the blame. Any other interpretation would defeat the very purpose of the rule. It is futile to expect a finding of either honourable acquittal or complete innocence in a judgment of acquittal. The reason is obvious, the criminal Courts are not concerned to find the innocence of the accused. They are only concerned to find whether the prosecution has succeeded in proving beyond a reasonable doubt the guilt of the accused.

*Petition under Articles 226 and 227 of the Constitution of India, praying that a writ of mandamus, certiorari, or any other appropriate writ, order or direction be issued quashing the orders No. 7590-Irr-E II(2)-60, dated 8th September, 1960 and 689/Irr. est-II(2)-62/4624, dated 9th February, 1962, treating the period of suspension as period not spent on duty and of disallowing the full pay and allowances for such period.*

NARINDER SINGH, WITH R. S. MONGIA AND J. S. CHAWLA, ADVOCATES, for the Petitioner.

H. L. SONI, ADVOCATE FOR THE ADVOCATE-GENERAL, for the Respondents.

#### ORDER

Kaushal, J.—The petitioner, Jogmohan Lal, was an overseer in the Irrigation Branch of the Punjab Public Works Department. He was placed under suspension on 19th March, 1953 since he was arrested in a criminal case. He remained under suspension from 19th March, 1953 till 20th April, 1960. The allegation against the petitioner was that he had accepted illegal gratification from the various firms and contractors engaged in the excavation works on the Nangal Hydel Channel as a motive or reward for doing their official act. The case was tried by Shri Pitam Singh Jain, Special Judge, Ambala, who on 6th September, 1957 acquitted the petitioner. The order of acquittal was maintained by the High Court

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vide its judgment dated 20th January, 1960. After the order of the High Court, the petitioner was reinstated by the Government, but his period of suspension was not treated as the period spent on duty. A number of representations were made by him but to no effect. The claim of the petitioner for full pay and allowances for the period of suspension was turned down and, according to the allegations of the petitioner, it created an impediment in his future promotion also. The present writ petition under Articles 226 and 227 of the Constitution has been failed for quashing the orders of the Government contained in annexures 'C' and 'D' to the petition by which it was held that the petitioner was not entitled to his full pay and allowances for the period of his suspension.

In annexure 'D', the Government has relied for its view on rules 7.5 and 7.6 of the Punjab Civil Services Rules, Volume I, Part I. It has been specifically stated that rule 7.3 does not apply to the petitioner. In the return filed on behalf of the State, the stand taken by them is that as the petitioner was acquitted after being given benefit of doubt, his suspension could not be deemed to be wholly unjustified and accordingly he was not entitled to full pay and allowances for the period of his suspension. At another place it is also mentioned that the petitioner was not acquitted honourably and was given the benefit of doubt. Mr. H. L. Soni, who appears for the State, places reliance on rule 7.5 read with rule 7.3 of the said rules. According to him, it was rule 7.3 which, in fact, was applicable. This stand is, obviously, opposed to the stand which was taken on behalf of the State in annexure 'D'. There the reliance was placed only on rules 7.5 and 7.6.

In my opinion, the relevant rule is 7.5. The heading under which this rule has been framed is 'Suspension During Pendency of Criminal Proceedings etc.' The rule reads like this:—

"7.5. A servant of Government against whom proceedings have been taken either for his arrest for debt or on a Criminal charge or who is detained under any law providing for preventive detention should be considered as under suspension for any periods during which he is detained in custody or is undergoing imprisonment, and not allowed to draw any pay and allowances (other than any subsistence allowance that may be granted in accordance with the principles laid down in rule 7.2) for such

periods until the final termination of the proceedings taken against him or until he is released from detention and allowed to rejoin duty, as the case may be. An adjustment of his allowances for such periods should thereafter be made according to the circumstances of the case, the full amount being given only in the event of the officer being acquitted of blame or (if the proceedings taken against him were for arrest for debt), of its being proved that the officer's liability arose from circumstances beyond his control or the detention being held by the competent authority to be unjustified."

There is no doubt that the rule contemplates the payment of the full amount only in the event of the officer being acquitted of blame. The stand of the Government indicated in annexure 'D' was in these words—

"...According to rule 7.5 *ibid* full amount has to be given only if the official is acquitted of the blame. The words 'of blame' are not redundant. As the petitioner was given benefit of doubt it cannot be said that he was acquitted of 'blame'. In the circumstances the petitioner is not entitled to his full pay and allowances for the period of suspension....."

The interpretation which has been put by the Government on the rule is incorrect. The blame which attached to the petitioner was that there was a criminal charge against him for which he was standing his trial. The moment he is acquitted of the charge, he is acquitted of the blame. In criminal law, the Courts are called upon to decide whether the prosecution has succeeded in bringing home the guilt to the accused. The moment the Court is not satisfied regarding the guilt of the accused, he is acquitted. Whether a person is acquitted after being given a benefit of doubt or for other reasons, the result is that his guilt is not proved. The Code of Criminal Procedure does not contemplate honourable acquitted. The only words known to the Code are 'discharged' or 'acquitted'. The effect of a person being discharged or acquitted is the same in the eyes of law. Since, according to the accepted notions of imparting criminal justice, the Court has to be satisfied regarding the guilt of the accused beyond a reasonable doubt, it is generally held that there being a doubt in the mind of the Court, the accused is acquitted. I am, therefore, quite clear in my mind that the intention underlying rule 7.5 can be no other except

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this: the moment the criminal charge on account of which an officer was suspended fails in a Court of law, he should be deemed to be acquitted of the blame. Any other interpretation would defeat the very purpose of the rule. It is futile to expect a finding of either honourable acquittal or complete innocence in a judgement of acquittal. The reason is obvious; the criminal Courts are not concerned to find the innocence of the accused. They are only concerned to find whether the prosecution has succeeded in proving beyond a reasonable doubt the guilt of the accused.

My view finds support from *Ghulam Nabi Baba v. State of Jammu and Kashmir* (1), where while interpreting a similar rule it was held that "the effect of the order of discharge, therefore, clearly is that the petitioner was acquitted or exonerated of the blame or of the allegations, which were made against him by the prosecution. Such a discharge, therefore, in my opinion, is clearly covered by the words 'acquitted of blame' as used in rule 109 of the said rules. Once this interpretation is placed on the words 'acquitted of blame', there can be no room for doubt that the Government was not entitled to withhold the salary of the petitioner during the period of his suspension."

The Madras High Court also in the *Union of India v. Javaram Damodar Timiri* (2), has taken the same view. It has been observed, "There is no conception like 'honourable acquittal' in Criminal Procedure Code. The onus of establishing the guilt of accused is on the prosecution, and, if it fails to establish the guilt beyond reasonable doubt, the accused is entitled to be acquitted..... Where the servant was suspended because there was a criminal prosecution against him, and he was acquitted therein, and reinstated, he is entitled, under the general law, to the full pay during the period of his suspension. To such a case article 193 (b) of the Civil Service Regulation does not apply."

While interpreting rule 7.2 of the Punjab Civil Services Rules, Volume I, Part I, a Divisional Bench of this Court has observed in *K. K. Jaggia v. The State of Punjab* (3), that "provisions contained in rule 7.2 of the Punjab Civil Services Rules, Volume I, Part I, applies

(1) A.J.R. 1966 J. & K. 27.

(2) A.I.R. 1960 Mad. 325.

(3) I.L.R. (1966) 1 Punj. 302=1965 P.L.R. 1092.

even to cases of interim suspension pending a departmental enquiry or criminal prosecutions. The rule governs subsistence allowance that is to be paid so long as the interim suspension lasts." With regard to rule 7.3, the Division Bench observed that this rule was not applicable to a Government servant whose dismissal was set aside by the High Court and not by the departmental authorities. It was further observed that "the order of suspension lapses when the order of dismissal is passed and when the dismissal is set aside by the High Court and a formal order of reinstatement is passed by the Government, the suspension is deemed to be wrongful and the employee is entitled to his full pay and allowances for the period of suspension."

Mr. H.L. Soni is not correct when he says that rule 7.3 is applicable in the present case. That is a general rule, which is applicable when a person is reinstated after dismissal, removal, compulsory retirement or suspension. It has nothing to do with a Government servant who is reinstated after suspension because of criminal proceedings. For that, the specific rule is 7.5. The intention under rule 7.3 seems to be that it deals with the officers who are reinstated as a result of departmental enquiries by the departmental officers, as held by the Division Bench of this Court in *K. K. Jaggia's case*. This will further be borne out by reading sub-rule (2) of this rule. It reads.—

"(2) Where the authority mentioned in sub-rule (1) is of opinion that the Government servant has been fully exonerated or, in the case of suspension, that it was wholly unjustified, the Government servant shall be given the full pay and allowances to which he would have been entitled, had he not been dismissed, removed, compulsorily retired or suspended, as the case may be."

Surely, nobody can say that if a Government servant was suspended because of his trial on a criminal charge, his suspension was wholly unjustified even though he was ultimately acquitted by the Court. The suspension in such a case takes place because of his arrest in the criminal proceedings. The suspension in the case of departmental lapses is ordered as prelude to the holding of enquiries. Cases are known where departmental enquiries are held even without suspending Government servants, whereas under rule 7.5 suspension is automatic the moment a Government servant is detained

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in custody or is under going imprisonment. A comparison of the two rules, therefore, clearly shows that the contention raised by Mr. Soni is totally devoid of force. The Government rightly tried to place reliance on rule 7.5 though interpretation of the rule was not justified.

In the present case, the finding recorded by the criminal Court, which tried the petitioner in the first instance, was that the prosecution had failed to bring home the charge to the accused beyond reasonable doubt. He was consequently found not guilty and acquitted. Similarly, the finding recorded by the High Court was that the petitioner was rightly acquitted and the High Court found no reason to interfere. It is not even mentioned in any of the two judgements that benefit of doubt was given to the petitioner, although, as I have already stated, it would not make any difference so far as the interpretation of rule 7.5 is concerned.

As a result, the petition succeeds and the orders passed by the Government against the petitioner, as contained in annexures 'C' and 'D', are hereby quashed. It is held that the petitioner is entitled to his full pay and allowances for the period of his suspension. In the circumstances, there will be no order as to costs.

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B.R.T.

REVISIONAL CRIMINAL

*Before Mehar Singh, C. J., and Daya Krishan Mahajan, J.*

JASWANT SINGH AND ANOTHER,—*Petitioners*

*versus*

PRITAM KAUR AND OTHERS,—*Respondents*

Reported Criminal Revision No. 158-R of 1965

August 23, 1966

*Punjab Separation of Judicial and Executive Functions Act (XXV of 1964)—Ss. 6, 6A and 17B—Code of Criminal Procedure (V of 1898)—Ss. 145 and*