

CASE NO.:
Appeal (civil) 3892 of 1999

PETITIONER:
Baldev Singh

RESPONDENT:
Union of India and Ors.

DATE OF JUDGMENT: 28/10/2005

BENCH:
ARIJIT PASAYAT & C.K. THAKKER

JUDGMENT:
J U D G M E N T

ARIJIT PASASYAT, J.

Appellant calls in question legality of the judgment rendered by a Division Bench of the Punjab and Haryana High Court dismissing the writ petition filed by him under Article 226 of the Constitution of India, 1950 (in short the 'Constitution') praying for grant of arrears of pay and pension.

The factual background is as follows:

The appellant was enrolled in the Indian Army on September 13, 1978. On March 30, 1987 he was arrested in a criminal case for offence punishable under Sections 302/34 and 452 of the Indian Penal Code, 1860 (in short 'IPC'). The appellant was convicted by the trial Court. However, his appeal was accepted by the High Court and he was acquitted vide order dated March 26, 1992. The appellant alleges that he was released from the Jail on April 4, 1992 and that he had reported to his Unit along with a copy of the judgment on the next day. He further stated that he was reinstated on the strength of such acquittal and continued in service, but his pay and allowances were not fixed or released. On September 30, 1993 he was discharged from the service. He claimed to have completed the requisite period of service from the date of enrolment to the date of discharge and claimed entitlement to the release of arrears of salary for the period from March 30, 1987 to September 30, 1993 as also pension for the subsequent periods.

The respondents contested the appellant's claim. It was averred that after his conviction in the criminal case the appellant was dismissed from service with effect from July 18, 1990. The averment that the appellant had reported for duty in the unit on April 5, 1992 has also been denied. It was specifically averred that he did not report on duty despite several reminders to him for the purpose. It was also pointed out that after the appellant's acquittal by the Court, the Army Headquarters had directed vide letter dated August 18, 1993 that he be reinstated in service. Orders for the appellant's reinstatement with effect from July 18, 1998 were passed. On receipt of this order the appellant was repeatedly advised by his parent Unit to rejoin forthwith. The respondents placed on record letters dated September 6, 1993 and September 9, 1993 to substantiate this stand. When the appellant did not respond to these letters a courier was sent to his place to pursue him to rejoin the

duty. Despite all this the appellant never rejoined the duty. He was accordingly, discharged from service with effect from September 30, 1993 (afternoon). Still further, it was pointed out that due to the appellant's failure to resume duty despite repeated requests, the auditors raised objections regarding the admissibility of the pay etc. for the period from March 30, 1987 to September 30, 1993. The matter was referred to the Government of India. The audit authorities returned the documents with various observations and asked the reasons for non-joining duty by the appellant. It was further observed that when the appellant has not reported for duty despite issue of as many as nine letters and also after sending a person to his home, it is felt that case does not warrant consideration for regularization by obtaining Government sanction. On this basis, the respondents prayed that the appellant's claim for the release of pay etc. be dismissed.

The High Court held that from the materials on record it was clear that in spite of several attempts the writ-petitioner avoided to join duty and his conduct established a clear motive for only getting arrears of salary and pension. It was held that he was to be entitled to salary for the period for which the writ petitioner actually rendered service and not for earlier periods. He is entitled to receive salary for the period he had actually worked or offered to work. The admitted position was that the appellant had neither worked nor offered to work during the period from 30th March, 1987 to 30th September, 1993. In fact, he was in custody while facing trial upto March, 1992. He had rendered service for the period September 1978 and end of March 1987. He had not completed actual fifteen years of service and, therefore, was not entitled to pension. Additionally it was submitted that the date of discharge was 30th September, 1993 and the writ petition was filed on December 22, 1997 and there was considerable delay. Even suit for payment of arrears of salary may be barred by limitation. Accordingly, the writ petition was dismissed.

In support of the appeal, learned counsel for the appellant submitted that the certificate issued to the appellant clearly shows his period of service to be 15 years and 18 days and the effect of acquittal in a criminal case cannot be wiped out and because of the proceedings which ended in acquittal the appellant was unable to attend duty. When the conviction which was originally recorded was set aside, the effect is that there was no proceeding in the eye of law. The dismissal was as a consequence of the conviction by order dated 18th July, 1990. He was under custody from 9th April, 1987 to 16th August, 1988. Against the conviction by the Trial Court, he filed an appeal before the Punjab and Haryana High Court which was allowed. But in the meantime because of his conviction, he had been dismissed in terms of para 423 of the Regulation for the Army 1987 (in short the 'Regulation'). According to the appellant, the natural consequence of an order of acquittal is that the period in custody has to be treated as if he was on duty and the order of dismissal is non est.

Learned counsel for the respondent supported the judgment of the High Court.

As the factual position noted clearly indicates the appellant was not in actual service for the period he was in custody. Merely because there has been an acquittal does

not automatically entitle him to get salary for the concerned period. This is more so, on the logic of no work no pay. It is to be noted that the appellant was terminated from service because of the conviction. Effect of the same does not get diluted because of subsequent acquittal for the purpose of counting service. The aforesaid position was clearly stated in Ranchhodji Chaturji Thakore v. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar (Gujarat) and Anr. (1996 (11) SC 603).

The position was reiterated in Union of India and Ors. v. Jaipal Singh (2004 (1) SCC 121).

Learned counsel for the appellant further pointed out that the authorities were awaiting Government sanction to grant the consequential relief. Reference is made in this connection to some documents, more particularly, letter of the Officiating Chief Record Officer for Commanding Officer dated 4.12.1996. A bare perusal of the letter shows that nowhere was it indicated that the appellant was to be paid for the period he was absent from duty. It merely stated that the claims and dues admissible will be settled after the Government sanction is received. This only was an indication that only after the Government sanction for regularization is received the claim will be settled. Nowhere there was admission of the entitlement of the appellant. In any event the appellant having not rendered service, the question of inclusion of the period, does not arise and if the said period is excluded then the inevitable conclusion is that the appellant has not rendered the requisite period i.e. service of 15 years in order to be entitled to pension.

Looked from any angle the High Court's order does not suffer from any infirmity.

The appeal deserves to be dismissed which we direct. Costs made easy.