



**CWP-7776-2024 and
other connected cases**

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140+241

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**1) CWP-7776-2024
Reserved on 29.05.2024
Date of Pronouncement :05.06.2024**

IQBAL SINGH Petitioner

Versus

STATE OF PUNJAB AND OTHERS Respondents

**2) CWP-7785-2024
PRABHJOT SINGH**Petitioner

Versus

STATE OF PUNJAB AND OTHERSRespondents

**3) CWP-11816-2024
RANJIT SINGH**Petitioner

Versus

STATE OF PUNJAB AND OTHERSRespondents

**4) CWP-11440-2024
PRABHJINDER SINGH**Petitioner

Versus

STATE OF PUNJAB AND ORSRespondents

**5) CWP-11608-2024
KULDEEP SINGH**Petitioner

Versus

STATE OF PUNJAB AND OTHERSRespondents

**6) CWP-11395-2024
AJIT SINGH**Petitioner



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Versus

STATE OF PUNJAB AND OTHERS

....Respondents

7)

CWP-743-1997

SUKHDEV SINGH

.....Petitioner

Versus

STATE OF PUNJAB AND ORS.

.....Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Ranjivan Singh, Advocate and
Mr. Risham Raag Singh, Advocate
for the petitioner(s)
(in CWP-7776-2024 and CWP-7785-2024).

Mr. V.K. Sandhir, Advocate
for the petitioner(s) (in CWP-11440-2024)

Mr. Vipin Mahajan, Advocate and
Ms. Chandanpreet Kaur Ahluwalia, Advocate
for the petitioner (in CWP-11395-2024).

Mr. G.S.Bal, Sr. Advocate with
Ms. Lovepreet Kaur, Advocate
for the petitioner in CWP-11608-2024.

Mr. Raj Karan Singh Verka, Advocate
for the petitioner in CWP-11816-2024.

Mr. P.S. Dhaliwal, Advocate
for the petitioner in CWP-743-1997.

Mr. Aman Dhir, DAG, Punjab and
Mr. Sehajbir Singh Aulakh, AAG, Punjab.

JAGMOHAN BANSAL, J. (Oral)

1. By this common order, CWP-7776-2024, CWP-7785-2024,
CWP-11440-2024, CWP-11395-2024, CWP-11608-2024, CWP-743-



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1997 and CWP-11816-2024 are disposed of as issues involved in all the petitions are common. The petitioners are police officers and working with Punjab Police. They at one point of time were dismissed from service and later on reinstated, however, were neither paid pay & allowance for the period from dismissal to reinstatement nor aforesaid period was treated as 'period spent on duty'. They are seeking back wages and counting of aforesaid period as 'spent on duty'.

Civil Writ Petition No.7776 of 2024, 7785 of 2024 & 11816 of 2024:

2. Facts and prayers sought in CWP No.7776 of 2024, CWP No.7785 of 2024 and CWP No.11816 of 2024 are identical, thus, for the sake of convenience, the facts are borrowed from CWP-7776-2024.

Reply by way of affidavit dated 27.05.2024 of Gurmeet Kaur PPS, Additional Deputy Commissioner of Police (Hqrs.), Ludhiana filed (in CWP No.7776 of 2024) on behalf of respondents No.1 to 5 is taken on record. Registry is directed to tag the same at an appropriate place.

3. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 02.08.2018 (Annexure P-4) passed by Director General of Police (Law & Order) to the extent period of dismissal has been treated as 'leave of kind due' while setting aside order of dismissal dated 25.10.2014.

4. The brief facts leading to controversy in hand are that the petitioner on 15.10.2010 joined Punjab Police as Constable. He alongwith three other persons came to be implicated in FIR No.161 dated 25.10.2014, under Sections 394 read with 34 of IPC registered at Police



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Station Sadar Ludhiana. The Commissioner of Police, Ludhiana on the very same day dismissed him from service. Constable-Prabhjot Singh (Petitioner in CWP No.7785 of 2024) was also implicated in the aforesaid FIR as well as dismissed from service. The respondent exercised power conferred by Section 7 of Police Act, 1861 read with Rule 16.1 of Punjab Police Rules, 1934 (for short '1934 Rules') and second proviso to Article 311 (2) of the Constitution of India. The relevant extracts of dismissal order dated 25.10.2014 passed by Commissioner of Police, Ludhiana are reproduced as below:

“Now therefore, I, Promod Ban, IPS, Commissioner of Police, Ludhiana, being the competent authority to dismiss Const Iqbal Singh No. 2754/LDH and Const Prabhjot Singh No: 2771/Ldh in exercise of the powers conferred by section 7 of the Police Act, 1861 read with rule 16.1 of PPR and under article 311 (2) (b) of the Constitution of India, hereby dismiss Const. Iqbal Singh No: 2754/LDH and Const. Prabhjot Singh: No 2771/Ldh from service with immediate effect.”

5. The police completed investigation and presented its report under Section 173 of Cr.P.C. before the Trial Court. Petitioner and another Constable-Prabhjot Singh along with two more accused faced trial. The matter came up for final adjudication before Judicial Magistrate 1st Class, Ludhiana who vide judgment dated 18.08.2017 held that there are glaring discrepancies in the case of prosecution and the testimony of witnesses. The alleged eye witness has not supported case of the prosecution and deposed to the effect that there were three accused. He has not identified them. The Trial Court came to a conclusion that prosecution has miserably failed to prove the guilt of accused beyond



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shadow of reasonable doubt, accordingly, acquitted all the accused. The relevant extracts of judgment dated 18.08.2017 are reproduced as below:

“Thus, there are glaring discrepancies in the case of the prosecution and the testimony of witnesses. PW7 Ram Kumar, the alleged eye-witness, has not supported the case of the prosecution and has deposed to the effect that there were only three accused. But he has not identified them. The most important witness of the present case PW2 Ram Nagina also does not inspire confidence and his testimony is suffering from major infirmities and discrepancies. Neither the identity of the accused is established on record nor the number of accused is proved as to whether there were total three accused or four accused. As such, prosecution has miserably failed to prove its case against the accused as alleged. Accordingly, point of determination no. 1 is answered negatively.

Conclusion.

21. In view of my findings on point of determination no. 1, the prosecution has miserably failed to prove the guilt of accused Surinder Singh @ Shinda, Iqbal Singh, Harjot Singh @ Jot and Prabhjot Singh @ Joti are acquitted of the charges framed against them. They and their sureties also stand discharged from their bail bonds and surety bonds. Case property, if any, be disposed of as per rules after the expiry of period of appeal/revision, if any, as the case may be. File be consigned to the record room.”

6. The petitioner preferred an appeal before appellate authority seeking setting aside of order of dismissal and prayed for reinstatement in the service. The Director General of Police (Law & Order) vide orders dated 02.08.2018 and 31.07.2008 set aside order of dismissal dated 25.10.2014 and reinstated petitioner as well as Prabhjot Singh (CWP



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No.7785 of 2024). He further ordered that period of dismissal shall be treated as leave of kind due. It is apt to mention here that respondent reinstated petitioner from the date of his dismissal i.e. 25.10.2014. The relevant extracts of order dated 02.08.2018 passed by Director General of Police (Law & Order) are reproduced as below:

“The Appellant -Ex-Constable Iqbal Singh No. 2754/Ludhiana has made an Appeal to me against the above-mentioned Orders. After the perusal of the Appellant's Service Record, Service Book, Dismissal File, Judgment of Acquittal dated 18.08.2017 as passed by the Ld. Court and other documents, he appeared before me on 10.07.2018 to present his stand, where, after hearing the pleas raised by him, it is found that the appellant has been acquitted by the Ld. Court in the criminal case registered against him. Keeping in view, the said Judgment of Acquittal and agreeing with the pleas raised by him, I accept/allow his Appeal and after quashing the punishment/dismissal order as passed by the Commissioner of Police, Ludhiana, I hereby reinstate him in the service from the date of his dismissal i.e. 25.10.2014. It is ordered that the period from his dismissal till rejoining be treated as the leave of kind due. This order be implemented in its letter and spirit.”

7. The petitioner preferred review petition before Director General of Police wherein he prayed that period of dismissal like cases of other employees may be treated as “period spent on duty”. The said petition came up for consideration before Additional Director General of Police (Law & Order) who vide order dated 01.08.2019 dismissed the same. He further preferred revision petition before Director General of Police who vide order dated 07.01.2020 dismissed his petition. He unsuccessfully preferred mercy petition before Principal Secretary Home.



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Civil Writ Petition No.11440 of 2024

8. The petitioner along with Balwinder Singh @ Baba was implicated in an FIR No. 46 dated 01.06.2017 under Sections 21 & 29 of NDPS Act, 1985. There was allegation of possession of 5 grams heroin by Balwinder Singh @ Baba. The respondent, on account of his involvement in FIR, vide order dated 08.06.2017 dismissed him from service. He unsuccessfully preferred appeal before Appellate Authority. The Special Court, Amritsar vide judgment dated 04.06.2018 discharged him. Court did not find it appropriate to frame charge against him. The relevant extracts of judgment dated 04.06.2018 are reproduced as below:

“As per the allegations made in the FIR, the recovery of 5 grams heroin was effected from the polythene envelope held by accused Balwinder Singh @ Babba and no contraband was recovered from accused Prabhjinder Singh and he has been implicated in this case merely on the ground that he was going alongside accused Balwinder Singh @ Babba and on seeing the police party sat down, therefore, it cannot be held that accused Prabhjinder Singh was in conscious possession of 5 grams heroin which as per version of the prosecution was got recovered from the polythene envelope held by accused Balwinder Singh @ Babba in his left hand. There is nothing on record to prove that accused Prabhjinder Singh has any relation with the accused Balwinder Singh @ Babba as they are residents of different area and even there is no allegation against him that he had hatched any conspiracy with co-accused Balwinder Singh @ Babba, regarding possession of 5 grams heroin, even no offence under Section 29 of the NDPS Act was enhanced during investigation, therefore, no offence against accused Prabhjinder Singh is made out, rather a prima facie case for the commission of offence under Section 21(b) of the NDPS



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Act, is made out only against accused Balwinder Singh Babba, so, accused Prabhjinder Singh is accordingly discharged in this case.”

The petitioner preferred Civil Writ Petition No.13626 of 2019 before this Court assailing order of dismissal dated 08.06.2017. This Court vide judgment dated 12.10.2022 set aside orders of dismissal as well as appellate order. The dismissal order was set aside relying upon Rule 16.3 of 1934 Rules. The petitioner was dismissed from service without conducting inquiry, thus, the department was granted liberty to conduct departmental inquiry, if so required, and conclude the same within a period of 3 months from the date, the inquiry is initiated. The petitioner was reinstated vide order dated 23.01.2023 passed by Director General of Police, Punjab. While reinstating, Director General of Police, Punjab ordered to initiate fresh departmental inquiry and decide fate of period from the date of dismissal to reinstatement, as per law after completing inquiry.

8.1 The Director General of Punjab while reinstating the petitioner ordered to initiate departmental inquiry, however, it was never initiated though there was specific order of this Court that it would be concluded within 3 months from the date of initiation. It appears that department has not actually initiated inquiry because petitioner was dismissed on the ground of registration of FIR and he was discharged by Trial Court holding that there is no material to frame charge against him.

Civil Writ Petition No.11608 of 2024

9. An FIR dated 23.10.2019, under Section 7 of Prevention of Corruption Act, 1988 (for short ‘P.C Act’) came to be registered against



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him. He was arrested in December' 2019 and thereafter released on bail on 04.02.2020. He remained absent from duty from 24.10.2019 to 14.12.2019. A departmental inquiry was initiated against him alleging absence from duty. He was exonerated from the charge of absence from duty. The respondent on account of registration of FIR initiated another inquiry against him. After completing inquiry, he was dismissed from service vide order dated 28.10.2020. He preferred an appeal before appellate authority which remanded the matter back to disciplinary authority for imposing lesser punishment than dismissal or voluntary retirement. Accordingly, the disciplinary authority ordered to forfeit 2 years' service for the purpose of increment. The Trial Court vide judgment dated 18.08.2023 acquitted him from the charge under Section 7 of P.C Act, however, convicted co-accused.

Civil Writ Petition No.11395 of 2024

10. An FIR dated 26.09.2011, under Sections 326, 324, 323, 148 and 149 of IPC was registered against him. In the investigation, he was found innocent, however, he was summoned as an additional accused under Section 319 of Cr.P.C. He was convicted vide judgment dated 15.03.2017 passed by Judicial Magistrate 1st Class, Batala. He was awarded sentence of rigorous imprisonment of 2 years. On account of conviction, the disciplinary authority vide order dated 10.06.2017 invoking Rule 16.2 (2) of 1934 Rules dismissed him from service. He filed an appeal before appellate authority which came to be dismissed vide order dated 22.11.2018. The petitioner in the interregnum vide judgment dated 10.05.2018 came to be acquitted by appellate Court i.e.



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Additional Sessions Court, Gurdaspur. He, on 15.10.2018 preferred Civil Writ Petition No.26661 of 2018 before this Court seeking setting aside of order of dismissal. This Court vide order dated 30.05.2022 directed the respondent to take fresh decision in the light of judgment of acquittal. The respondent vide order dated 14.09.2022 reinstated him in service, however, ordered to conduct fresh departmental inquiry. The respondent conducted departmental inquiry. The Enquiry Officer found him innocent and disciplinary authority vide order dated 24.03.2023 accepted the report of Enquiry Officer and ordered to close departmental inquiry. In this backdrop, the petitioner requested respondent to pay him back wages and regularize his period of dismissal from service. The respondent vide order dated 31.01.2024 has rejected his claim on the ground that he was acquitted on the ground of suspicion. He cannot claim intervening period as spent on duty.

Civil Writ Petition No.743 of 1997

11. The petitioner in March' 1990 was posted at Mohali. The Senior Superintendent of Police, Sangrur on the basis of a complaint received against him, vide order dated 06.12.1990 dismissed him from service. He preferred appeal before the appellate authority which came to be dismissed. He further preferred revision which was allowed vide order dated 30.03.1995, however, it was ordered that period spent out of service shall be treated as leave of the kind due. He was reinstated on 07.05.1995. The Senior Superintendent of Police, Sangrur vide order dated 29.05.1995 regularized 1641 days absence period. Period of 121 days was declared as earned leave on full pay. 220 days period was treated as leave on half pay and 1270 days period was treated as



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extraordinary leave. The respondent conducted fresh inquiry in terms of Rule 16.38 of 1934 Rules. The Enquiry Officer did not find substance in the complaint, accordingly, District Magistrate proposed to drop the departmental inquiry. The Senior Superintendent of Police, Sangrur vide order dated 02.10.1996 accepted report and the matter came to be closed. The petitioner is claiming pay and allowances of 1270 days on the ground that he has been exonerated in the departmental proceedings. It is apt to notice here that revision was allowed on the ground that petitioner was dismissed without following due procedure contemplated by Rule 16.38 of 1934 Rules. The petitioner, during the pendency of present petition, died on 23.05.2012 and his LRs are on record.

Submission by Petitioner:

12. Mr. Ranjivan Singh, Advocate, Mr. Risham Raag Singh, Advocate for the petitioner(s) (in CWP-7776-2024 and CWP-7785-2024) and Mr. Raj Karan Singh Verka, Advocate for the petitioner (in CWP-11816-2024) submit that petitioners were dismissed from service without conducting inquiry as contemplated by Rule 16.24 of 1934 Rules and Article 311 (2) of the Constitution of India. The respondent without assigning any plausible reason invoked second proviso to Article 311 (2) of the Constitution of India and dispensed with mandatory inquiry. The respondent dismissed petitioners on the sole ground of registration of FIR. The petitioners have been reinstated after their acquittal in criminal proceedings, however, period of dismissal has been treated as 'leave of kind due'. The period of dismissal should be treated as 'period spent on duty'. They should be paid salary for the 'dismissal period'.

13. Mr. V.K. Sandhir, Advocate for the petitioner (in CWP-



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11440-2024) submits that petitioner was dismissed from service on account of registration of FIR. The police after completing investigation filed its report under Section 173 of Cr.P.C, however, Trial Court did not even frame charge against him. Meaning thereby, he was discharged at the first available opportunity. It indicates that petitioner was fully exonerated and he is entitled to full pay and allowances and period of dismissal should be counted as 'period spent on duty'.

14. Mr. G.S. Bal, Senior Advocate (in CWP No.11608 of 2024) submits that appellate authority while remanding the matter back to disciplinary authority had observed that in case judicial verdict in criminal case goes against the petitioner, the punishing authority would be at liberty to review/enhance the punishment order and pass fresh order of punishment. The petitioner was acquitted in the criminal proceedings, thus, disciplinary authority was bound to reconsider quantum of punishment and pass a fresh order.

15. Mr. Vipin Mahajan, Advocate (in CWP-11395-2024) submits that petitioner may not be entitled to back wages and benefit of 'period spent on duty' pre-acquittal, however, he is entitled to benefit of salary as well as regularization of period after acquittal. He was acquitted on 10.05.2018 and preferred Civil Writ Petition No.26661 of 2024 before this Court on 15.10.2018. The respondent was supposed to reinstate him after acquittal because no departmental inquiry was conducted and he was dismissed on the ground of conviction. The respondent actually reinstated him on 14.09.2022, thus, he is entitled to salary and regularization of period from 11.05.2018 to 14.09.2022.



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16. Mr. P.S. Dhaliwal, Advocate (in CWP-743-1997) submits that no criminal case was registered against petitioner and he was found innocent in the inquiry which was conducted on the asking of revisionary authority. Period of 1270 days ought to be treated as period 'spent on duty' and he should be paid 100% of back wages.

17. The petitioners, in support of their arguments cited judgments of this Court in *'Ishwar Singh Vs. State of Haryana and others 2012(2) SCT 209, General Manager Operation Circle, Dakshin Haryana Bijli Vitran Nigam, Narnaul and others Vs. Mathura Dass Gupta 2012 (4) SCT 7, Hukam Singh Vs. State of Haryana and another 2001 (2) SCT 696, Ram Anjore Vs Uttari Haryan Bijli Vitran Nigam Limited through its Managing Director, Panchula and others 2016 (2) SCT 716 and Ex-Sub Inspector Ram Kishore Vs. State of Haryana and another 2020 (1) SCT 828.*

Submission by State-

18. Per contra, learned State counsel submits that petitioners were not honorably acquitted, thus, they are not entitled to pay and allowances for the dismissal period. They in accordance with Rule 7.2 of Punjab PCS Rules, were paid subsistence allowance during the suspension period, however, they cannot claim subsistence allowance or full pay post dismissal from service. They were facing criminal proceedings and they have not been acquitted honorably. They were either acquitted extending benefit of doubt or on account of turning witnesses hostile. Few petitioners have remained in custody and they cannot be paid salary during the custody period. In case, a Government



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employee is implicated in a criminal case which has no bearing with official duty, he cannot claim pay and allowances for the period he remained in custody or was dismissed after his conviction. As per Rule 16.2 (2) of 1934 Rules read with Article 311 (2) of the Constitution of India, department has right to dismiss an employee who is convicted in any criminal case. The department dispensed with inquiry contemplated by Article 311 (2) of the Constitution of India and Rule 16.24 of 1934 Rules because it was not practicable to conduct inquiry. The petitioners are part of Punjab Police and they are governed by of 1934 Rules. There are specific Rules governing the situation in hand, thus, petitioners cannot be granted benefit contemplated by Rules 7.3, 7.3A or 7.3B of Punjab PCS Rules. Petitioners in any case cannot be paid full back wages.

Discussion & Findings

19. For the adjudication of present petition, it is inevitable to dwell into statutory provisions. The petitioners are part of Punjab Police and they are governed by Punjab Police Rules, 1934 as well as Punjab Civil Services Rules (for short "PCS Rules"). Article 311 of the Constitution of India provides protection to Government employees from being dismissed, removed or reduced in rank. It provides that no Government servant shall be dismissed or removed or reduced in rank by an authority subordinate to appointing authority. It further provides that no officer shall be dismissed or removed or reduced in rank except after an inquiry, in which he has been informed of the charges against him and given a reasonable opportunity of being heard. Second proviso to Article 311 (2) provides that in three circumstances an employee may be dismissed or removed or reduced in rank without conducting inquiry.



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Clause (a) of said proviso provides that Government servant may be dismissed or removed or reduced in rank without inquiry, if he is convicted on a criminal charge. Clause (b) of said proviso to Article 311 provides that Government servant may be dismissed or removed or reduced in rank without inquiry, if competent authority records in writing that it is not reasonably practicable to hold inquiry. Article 311 is reproduced as below:

“311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.—

(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply—]

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a



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person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.”

19.1 Rule 16.17 of 1934 Rules provides that pending inquiry or investigation, any enrolled Police Officer who is guilty or is reasonably suspected of misconduct may be suspended. Rule 16.17 is reproduced as below:

“16.17 Power to suspend an officer.- Any police officer above the rank of head constable may suspend, pending inquiry or investigation, any enrolled police officer junior to him in rank, Who is guilty or is reasonably suspected of misconduct. An officer may be released from suspension only by the gazetted officer empowered to punish him. The suspension of an upper subordinate shall be reported immediately to the Deputy Inspector-General in Form 16.17. The release of such officer and the reason therefore shall also be reported to the Deputy Inspector-General.”

19.2 Rule 16.19 of 1934 of Rules provides that a Police Officer charged with a criminal offence shall be placed under suspension from the date on which he is sent for trial. Suspension is compulsory during any period in which a Police Officer is committed to prison. Rule 16.19 of 1934 of Rules is reproduced as below:



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“16.19. Suspension in Judicial cases.- A police officer charged with a criminal offence shall unless the Deputy Inspector-General of Police of the Assistant Inspector-General, Government Railway Police for special reasons to be recorded in writing otherwise directs, be placed under suspension from the date on which he is sent for trial, if such action has not already been taken under the provisions of rule 16.17. Suspension is compulsory during any period in which a police officer is committed to prison. A police officer, who may be arrested by order of a civil court in execution of a decree or otherwise shall be considered as under suspension from the date of arrest till his release from custody is ordered by the Court.”

19.3 Rule 16.20 of 1934 of Rules provides that a Police Officer under suspension shall be given subsistence grant. As a result of an inquiry, if he is punished, his subsistence grant for the time spent under suspension may not exceed one-fourth of his pay. If, he is acquitted either as the result of an original enquiry or on appeal, the assessment of subsistence grant is governed by fundamental Rule 54. Rule 16.20 (1) is reproduced as below:

“16.20 Subsistence Grants.- (1) A Police officer under suspension shall be given a subsistence grant. If, as the result of an enquiry, a police officer under suspension is punished, his subsistence grant for the time spent under suspension may not exceed one-fourth of his pay (Fundamental Rule 53); if he is acquitted either as the result of an original enquiry or on appeal, the assessment of the subsistence grant is governed by Fundamental Rule 54.”

From the perusal of above quoted rule, it is evident that period post suspension is governed by Fundamental Rules 53, 54 & 54A.



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For the sake of convenience Fundamental Rules 53, 54 & 54A are reproduced as below:

“F.R. 53: (1) A Government servant under suspension or deemed to have been placed under suspension by an order of the appointing authority shall be entitled to the following payments, namely:

(i) in the case of a Commissioned Officer of the Indian Medical Department or a Warrant Officer in Civil employ who is liable to revert to Military duty, the pay and allowances to which he would have been entitled had he been suspended while in military employment;

(ii) in the case of any other Government servant

(a) a subsistence allowance at an amount equal to the leave salary which the Government servant would have drawn, if he had been on leave on half average pay or on half-pay and in addition, dearness allowance, if admissible on the basis of such leave salary:

Provided that where the period of suspension exceeds three months, the authority which made or is deemed to have made the order of suspension shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of the first three months as follows:

(i) the amount of subsistence allowance may be increased by a suitable amount, not exceeding 50 per cent of the subsistence allowance admissible during the period of the first three months, if, in the opinion of the said authority, the period of suspension has been prolonged for reasons to be recorded in writing, not directly attributable to the Government servant;



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(ii) the amount of subsistence allowance, may be reduced by a suitable amount, not exceeding 50 per cent of the subsistence allowance admissible during the period of the first three months, if, in the opinion of the said authority, the period of suspension has been prolonged due to reasons, to be recorded in writing, directly attributable to the Government servant;

(iii) the rate of dearness allowance will be based on the increased or, as the case may be, the decreased amount of subsistence allowance admissible under sub-clauses (i) and (ii) above.

(b) Any other compensatory allowances admissible from time to time on the basis of pay of which the Government servant was in receipt on the date of suspension subject to the fulfilment of other conditions laid down for the drawal of such allowances.

(2) No payment under sub-rule (1) shall be made unless the Government servant furnishes a certificate that he is not engaged in any other employment, business, profession or vocation:

Provided that in the case of a Government servant dismissed, removed or compulsorily retired from service, who is deemed to have been placed or to continue to be under suspension from the date of such dismissal or removal or compulsory retirement, under sub-rule (3) or sub-rule (4) of Rule 12 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957, and who fails to produce such a certificate for any period or periods during which he is deemed to be placed or to continue to be under suspension, he shall be entitled to the subsistence allowance and other allowances equal to the amount by which his earnings during such period or periods, as the case may be, fall short



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of the amount of subsistence allowance and other allowances that would otherwise be admissible to him; where the subsistence allowance and other allowances admissible to him are equal to or less than the amount earned by him, nothing in this proviso shall apply to him.

F.R. 54: (1) *When a Government servant who has been dismissed, removed or compulsorily retired is reinstated as a result of appeal or review or would have been so reinstated but for his retirement on superannuation while under suspension or not, the authority competent to order reinstatement shall consider and make a specific order*

(a) regarding the pay and allowances to be paid to the Government servant 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 reinstatement is of opinion that the Government servant who had been dismissed, removed or compulsorily retired has been fully exonerated, the Government servant shall, subject to the provisions of sub-rule (6), be paid the 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 servant had been delayed due to reasons directly, attributable to the Government servant it may, after giving him an opportunity to make his representation within



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sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government servant 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 such 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 appellate or reviewing authority solely on the ground of non compliance with the requirements of Clause (1) or Clause (2) of Article 311 of the Constitution and no further inquiry is proposed to be held) the Government servant shall, subject to the provisions of sub rules (5) and (7), be paid such amount (not being the whole) of the 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, as the competent authority may determine, after giving, notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice.

(5) In a case falling under sub-rule (4), the period of absence from duty including the period of suspension preceding his



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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 treated so for any specified purpose:

Provided that, if the Government servant 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 servant.

Note: The order of the competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of extraordinary leave in excess of three months in the case of temporary Government servant; and

(b) leave of any kind in excess of five years in the case of permanent or quasi permanent Government servant.

(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 53.

(8) Any payment made under this rule to Government servant 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 servant.”



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***F.R. 54-A:(1)** Where the dismissal, removal or compulsory retirement of a Government servant is set aside by a Court of Law and such Government servant is reinstated without holding any further inquiry, the period of absence from duty shall be regularized and the Government servant shall be paid pay and allowances in accordance with the provisions of sub-rule (2) or (3) subject to the directions, if any, of the Court.*

(2)(i) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by the Court solely on the ground of non-compliance with the requirements of Clause (1) or Clause (2) of Article 311 of the Constitution, and where he is not exonerated on merits, the Government servant shall, subject to the provisions of sub-rule (7) of Rule 54, be paid such amount (not being the whole) of the 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, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him, in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice:

(ii) The period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of judgment of the Court shall be regularized in accordance with the provisions contained in sub-rule (5) of Rule 54.

(3) If the dismissal, removal or compulsory retirement of a Government servant is set aside by the Court on the merits of



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the case, the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement shall be treated as duty for all purposes and he shall be paid the full pay and allowances for the period, 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.

(4) The payment of allowances under sub-rule (2) or sub-rule (3) shall be subject to all other conditions under which such allowances are admissible.

(5) Any payment made under this rule to a Government servant 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 dismissal, removal or compulsory retirement and the date of reinstatement.

Where the emoluments admissible under this rule are equal to or less than those earned during the employment elsewhere, nothing shall be paid to the Government servant.

[Emphasis Supplied]

19.4 Rule 16.24 of 1934 Rules prescribes procedure for departmental inquiries. It prescribes detailed procedure of departmental inquiry. The delinquent officer is supplied statement of charge. If officer does not accept misconduct, the Enquiry Officer records evidence in support of accusation. If evidence does not substantiate allegations, the accused is discharged. If Enquiry Officer finds substance in the allegations, he frames formal charges and calls upon delinquent to answer. The accused may lead his defense evidence. The Enquiry Officer



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on the basis of evidence on record may pass order of acquittal or punishment, if he is empowered to do so. In case, punishing authority is different, the matter is referred to said authority who is required to pass an appropriate order. No order of dismissal or reduction in rank can be passed without affording reasonable opportunity of showing cause to delinquent employee. The opportunity of showing cause is not required where officer is dismissed on the ground of conduct which led to his conviction on a criminal charge or where it is recorded in writing that it is not reasonably practicable to give an opportunity for showing cause. Sub-rule (1) of Rule 16.24 of the 1934 Rules is reproduced as below:

“16.24 Procedure in departmental enquiries.- (1) The following procedure shall be followed in departmental enquiries:-

(i) The police officer accused of misconduct shall be brought before an officer empowered to punish him, or such superior officer as the Superintendent may direct to conduct the enquiry. That officer shall record and read out to the accused officer a statement summarizing the alleged misconduct in such a way as to give full notice of the circumstances in regard to which evidence is to be recorded. A copy of the statement will also be supplied to the accused officer free of charge. (ii) If the accused police officer at this stage admits the misconduct alleged against him, the officer conducting the enquiry may proceed forthwith to frame a charge, record the accused officer's plea and any statement he may wish to make in extenuation and to record a final order, if it is within his power to do so, or a finding to be forwarded to an officer empowered to decide the case. When the allegations



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are such as can form the basis of a criminal charge, the Superintendent shall decide at this stage, whether the accused shall be tried departmentally first and judicially thereafter.

(iii) If the accused police officer does not admit the misconduct, the officer conducting the enquiry shall proceed to record such evidence, oral and documentary, in proof of the accusation, as is available and necessary to support the charge. Whenever possible, witnesses shall be examined direct, and in the presence of the accused, who shall be given opportunity to take notes of their statements and cross-examine them. The officer conducting the enquiry is empowered, however, to bring on to the record the statement of any witness whose presence cannot, in the opinion of such officer, be procured without undue delay and expense or inconvenience, if he considers such statement necessary, and provided that it has been recorded and attested by a police officer superior in rank to the accused officer or by a magistrate, and is signed by the person making it. This statement shall also be read out to the accused officer and he shall be given an opportunity to take notes. The accused shall be bound to answer any questions which the enquiring officer may see fit to put to him with a view to elucidating the facts referred to in statements or documents brought on the record as herein provided.

(iv) When the evidence in support of the allegations has been recorded the enquiring officer shall, (a) if he considers that such allegations are not substantiated, either discharge the accused himself, if he is empowered to punish him, or recommended his discharge to the Superintendent, or other officer, who



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may be so empowered, or (b) proceed to frame a formal charge or charges in writing, explain them to the accused officer and call upon him to answer them.

(v) The accused officer shall be required to state the defence witnesses whom he wishes to call and may be given time, in no case exceeding forty eight hours, to prepare a list of such witnesses, together with a summary of the facts as to which they will testify. The enquiring officer shall be empowered to refuse to hear any witnesses whose evidence he considers will be irrelevant or unnecessary in regard to the specific charge framed. He shall record the statements of those defence witnesses whom he decides to admit in the presence of the accused, who shall be allowed to address questions to them, the answers to which shall be recorded; provided that the enquiring officer may cause to be recorded by any other police officer superior in rank to the accused the statement of any such witness whose presence cannot be secured without undue delay or inconvenience, and may bring such statement on to the record. The accused may file documentary evidence and may for this purpose be allowed access to such files and papers, except such as form part of the record of the confidential office of the Superintendent of Police, as the enquiring officer deems fit. The supply of copies of documents to the accused shall be subject to the ordinary rules regarding copying fees.

(vi) At the conclusion of the defence evidence, or, if the enquiring officer so directs, at any earlier stage following the framing of a charge, the accused shall be required to state his own answer to the charge. He may be permitted to file a written statement and may be given time, not exceeding one week, for its



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preparation, but shall be bound to make an oral statement in answer to all questions which the enquiring officer may see fit to put to him, arising out of the charge, the recorded evidence, or his own written statement.

(vii) The enquiring officer shall the proceed to pass orders of acquittal or punishment, if empowered to do so, or to forward the case with his finding and recommendations to an officer having the necessary powers. Whenever the officer passing the orders of punishment proposes to take into considerations the adverse entries on the previous record of the accused police officer, he shall provide reasonable opportunity to the defaulter to defend himself; and a copy or at least a gist of those entries shall be conveyed to the defaulter and he shall be asked be conveyed to the defaulter and he shall be asked to give such explanation as he may deem fit. The explanation furnished by the defaulter shall be taken into account by the officer before passing orders in the case."

(viii) Nothing in the foregoing rule shall debar a Superintendent of Police from making or causing to be made a preliminary investigation into the conduct of a suspected officer. Such an enquiry is not infrequently necessary to ascertain the nature and degree of misconduct which is to be formally enquired into. The suspected police officer may or may not be present at such preliminary enquiry, as ordered by the Superintendent of Police or other gazetted officer initiating the investigation, but shall not cross-examine witnesses. The file of such a preliminary investigation shall form no part of the formal departmental record, but statements therefrom may be brought to the formal record when the witnesses are



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no longer available in the circumstances detailed in clause (iii) above. All statements recorded during a preliminary investigation should be signed by the person making them and attested by the officer recording them.

(ix) No order of dismissal or reduction in rank shall be passed by an officer empowered to dismiss a police officer or reduce him in rank until that officer has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him, provided that this shall not apply -

(a) where a police officer is dismissed or reduced in rank on the ground of conduct which led to his conviction on a criminal charge; or

(b) where the officer empowered to dismiss him or reduce him in rank is satisfied that for some reason to be recorded by that officer in writing, it is not reasonably practicable to give to that police officer an opportunity of showing cause.

Before an order of dismissal or reduction in rank is passed, the officer to be punished shall be produced before the officer empowered to punish him, and shall be informed of the charges proved against him, and called upon to show- cause why an order of dismissal or reduction in rank should not be passed. Any representation that he may make shall be recorded, shall form part of the record of the case, and shall be taken into consideration by the officer empowered to punish him before the final order is passed :

Provided that if, owing to the complicated nature of the case or other sufficient reason to be recorded, the officer empowered to impose the punishment considers



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this procedure inappropriate, he may inform the officer to be punished in writing of the charges proved against him, and call upon him to show-cause in writing why an order of dismissal or reduction in rank should not be passed. Any written representation received shall be placed on the record of the case and taken into consideration before the final order is passed.

[Emphasis Supplied]

- 19.5 The aforesaid rule 16.24 contains following special feature:
- (i) In case, the allegations against a Police Officer are such as can form the basis of a criminal charge, the Superintendent shall decide whether the accused shall be tried departmentally first and judicially thereafter.
 - (ii) The Officer passing the orders of punishment may take into consideration adverse entries on the previous record of the accused Police Officer, however, he shall provide reasonable opportunity to delinquent to defend himself and a copy or at-least gist of those entries shall be conveyed to him.
 - (iii) Clause (ix) of Rule 16.24 (1) of 1934 Rules is *pari materia* with Article 311 (2) of the Constitution of India.
 - (iv) Before an order of dismissal or reduction in rank is passed, the delinquent employee is produced before the Officer empowered to punish. The accused Officer is informed about charges proved against him and



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called upon to show cause as to why an order of dismissal should not be passed. The presence of delinquent employee may be dispensed with owing to complicated nature of the case, however, he is called upon to show cause in writing as to why an order of dismissal or reduction in rank should not be passed.

19.6 Rule 10.70 of 1934 Rules provides that subsistence allowance at a rate not exceeding one quarter of pay may be granted to a Police Officer placed under suspension. It further provides that if Police Officer under suspension is honorably acquitted as a result of original inquiry or appeal, he may be granted full pay to which, he would have been entitled if he had not been suspended. In case of acquittal on other grounds, the authority has discretion to prescribe the proportion of pay and allowances which shall be granted. In case of honorable acquittal, the period of suspension or dismissal shall be treated as a 'period spent on duty' and in all other cases, it will not be treated as a 'period spent on duty' unless revising or appellate authority so directs. Rule 10.70 is reproduced as below:

“10.70. Allowances of officers, suspended or dismissed.-

(1) Subsistence allowance at a rate not exceeding one-quarter of his pay maybe granted by the authority suspending him to police officer placed under suspension pending enquiry into his alleged misconduct. (Fundamental Rules 43 and 53).

(2) If a police officer under suspension is honorably acquitted of the charges against him, either as a result on the original enquiry or on appeal, the authority conducting the enquiry or accepting the appeal, as the case may be, may grant



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him the full pay, to which he would have been entitled if he had not been suspended, and, by an order to be separately recorded, any allowance of which he was in receipt prior to being suspended. In cases of acquittal on other grounds the appellate or revising authority has discretion to prescribe the proportion of pay and allowances, which shall be granted.

In cases of honourable acquittal the period of suspension or dismissal will be treated as a period spent on duty. In other cases it will not be treated as a period spent on duty unless the revising or appellate authority so directs. Leave may not be granted to a Government servant under suspension. [Fundamental Rule 54 (a), (b)].

(3) The grant of allowances under the preceding sub-rules ordinarily requires the prior sanction of Government in the Administrative Department, if extra cost to the State is involved. In cases, however, where it does not exceed Rs. 500, and where the period during which the Government servant has remained unemployed through suspension or dismissal does not exceed six months, the excess expenditure may be admitted on the sanction of the suspending authority, or the revising or appellate authority as the case may be. (Finance Department letter No. 20314 Fin-Genl., dated the 2nd August 1933).

(4) The pay and allowances of a police officer, who is dismissed from service, cease from the date of such dismissal.”

[Emphasis Supplied]

20. From the perusal of record, it stares beyond the pale of doubt that petitioners were dismissed from service without conducting inquiry as contemplated by Rule 16.24 of 1934 Rules read with Article 311 of the Constitution of India. These are not isolated cases where the jurisdic-



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tional SSP(s) of State of Punjab have dispensed with inquiry contemplated by 1934 Rules and Constitution of India. This Court has found that as soon as an FIR is registered against a police official, the jurisdictional SSP opts to dispense with the inquiry. He does not deem it necessary to conduct inquiry which is mandatory. As per second proviso to Article 311 (2) of the Constitution of India, inquiry may be dispensed with where (i) person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge, or (ii) the competent authority finds that it is not reasonably practicable to hold such inquiry, or (iii) President or the Governor is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

21. A conspectus of Article 311 (2) and Rule 16.24 of 1934 Rules reveals that in case of conviction, inquiry may be dispensed with. Inquiry may also be dispensed with where it is not reasonably practicable to hold such inquiry. The reason advanced by SSP, not in one but all the cases in hand, for dispensing with inquiry is not contemplated by Article 311 (2) and Rule 16.24. Mere writing one line in the impugned order 'it is not practicable to hold inquiry' or 'it is in the public interest' is not compliance of mandate of either Constitution of India or Rule 16.24 of 1934 Rules. Dispensing with enquiry should be exception and not Rule whereas respondent in almost every case had adopted easy way of dispensing with inquiry. The respondent instead of straight away dismissing could put delinquent under suspension and thereafter conduct inquiry. This court in many cases has set aside dismissal order on account of non-compliance of procedure of mandatory enquiry. The respondent,



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in many cases, has not even recorded reason while dispensing with enquiry. Dismissal of police officers without conducting enquiry lead to their reinstatement as soon as they are acquitted by Criminal Court. A Constitutional bench in *Union of India v. Tulsiram Patel, (1985) 3 SCC 398*, has observed that while invoking the rigor of clause (b) of second-proviso to Article 311(2), if disciplinary authority fails to record reason as to why it is not practicable to hold inquiry such an order is void and unconstitutional. The relevant extracts of the judgment read as:

“133. The second condition necessary for the valid application of clause (b) of the second proviso is that the disciplinary authority should record in writing its reason for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by Article 311(2). This is a constitutional obligation and if such reason is not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional.”

22. The respondent has contended that of 1934 Rules are special rules whereas PCS Rules are general rules and it is a settled proposition of law that special rules override general rules. There is substance in the argument of the State. Police officers of Punjab Police are governed by Punjab Police Act and Rules made there-under. All the Government servants of the State of Punjab are governed by PCS Rules. Though Police Officers are also Government servants yet they cannot invoke PCS Rules particularly in a given situation where a specific rule in the Punjab Police Rules is available. If a particular situation is not contemplated by Punjab Police Act or Rules made there-under, an Officer may take shelter of PCS Rules.



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This court is not oblivious of the fact that Rule 16.3 (2) of 1934 Rules provides that a police officer shall not be deemed to have been honorably acquitted for the purpose of Rule 7.3 of PCS Rules. It *prima facie* indicates that Rule 7.3 of PCS Rules is applicable to Punjab Police Officers, however, this Court finds that in view of Rule 10.70 of Punjab Police Rules which deals with wages during suspension period, reliance should be placed upon Fundamental Rules 53/54/54A which more or less are *pari materia* with Rule 7.2/7.3/7.3A of PCS Rules.

23. The petitioners are relying upon Rules 7.3 and 7.3A of PCS Rules and they have cited many judgments wherein Rule 7.5 has been relied upon. Rule 7.5 of PCS Rules, applicable to Government servants of State of Punjab is altogether different from Government servants of State of Haryana. All the cases in hand are relating to officials of State of Punjab, thus, none of the judgment which is founded upon Rule 7.5 is applicable to cases in hand. Rules 7.3 and 7.3A of PCS Rules are reproduced as below:

“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



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(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



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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 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.



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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,



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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



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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.

7.3-A. (1) Where the dismissal, removal or compulsory retirement of a Government employee is set aside by a court of law and such Government employee is re-instated without holding any further inquiry, the period of absence from duty shall be regularised and the Government employee shall be paid pay and allowances in accordance with the provisions of sub-rule (2) or sub-rule (3) subject to the directions, if any, of the court.

(2) (i) Where the dismissal, removal or compulsory retirement of a Government employee is set aside by the court solely on the ground of non-compliance with the requirements of article 311 of the Constitution, and where he is not exonerated on merits, the Government employee shall, subject to the provisions of sub-rule (7) of rule 7.3, be paid such amount (not being the whole) of the pay and allowances, to which he would have been entitled had he not been dismissed, removed or compulsorily retired, suspended prior to such dismissal, removal or 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 made 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 the



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judgment of the court was passed or the date of retirement on superannuation of such Government employee, as the case may be.

(ii) The period intervening the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of judgment of the court shall be regularised in accordance with the provisions contained in sub-rule (5) of rule 7.3.

(3) If the dismissal, removal or compulsory retirement of a Government employee is set aside by the court on the merits of the case, the period intervening the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement shall be treated as spent on duty for all purposes and he shall be paid full pay and allowances for that period 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.

(4) The payment of allowances under sub-rule (2) or sub-rule (3) shall be subject to all other conditions under which such allowances are admissible.

(5) 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 dismissal, removal or compulsory retirement and the date of reinstatement. Where the emoluments admissible under this rule are equal to or less than those earned during the employment elsewhere nothing shall be paid to the Government employee.”



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24. A conspectus of Rule 10.70 and Rule 16.20 of 1934 Rules reveals that Police Officers during suspension period and for the period from dismissal to reinstatement in service are entitled to pay and allowances as envisaged in Fundamental Rules 53 and 54. FR 53 is *pari materia* with Rule 7.2 of PCS Rules and FR 54 is *pari materia* with Rule 7.3. FR 54 A is *pari materia* with Rule 7.3A.

25. From the reading of Rule 10.70 & Rule 16.20 of 1934 Rules and FR 53 and 54, a legal position governing payment of pay and allowances during suspension and for the period from dismissal to reinstatement can be culled out as below:

(i) A Government servant shall be entitled to subsistence allowances during suspension period equal to the leave salary which he would have drawn if he had been on leave on half average pay or on a half pay in addition to dearness allowance.

(ii) Where the period of suspension exceeds three months, the competent authority shall be competent to vary the amount of subsistence allowances for a period subsequent to three months.

(iii) No subsistence allowances shall be paid unless Government servant furnishes a certificate that he is not engaged in any other employment, business and profession or vocation.

(iv) The competent authority at the time of reinstatement of a Government servant has to make a specific order regarding pay and allowances to be paid for



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the period of his absence from duty and whether or not said period shall be treated as 'spent on duty'.

(v) In case competent authority forms an opinion that Government servant has been fully exonerated, the Government servant shall be paid full pay and allowances to which he would have been entitled during dismissal period. The period of absence from duty shall be treated as a 'period spent on duty'.

(vi) In case government servant has not been fully exonerated, he shall be paid such amount as competent authority may determine, after giving notice to him of the quantum proposed and considering his representation.

(vii) In case order of dismissal or removal or compulsory retirement is set aside by appellant or reviewing authority solely on the ground of non-compliance of requirements of Clause (1) or (2) of Article 311 and no further inquiry is held, a Government servant shall be at par with an employee who has not been fully exonerated.

(viii) In case a Government servant is not fully exonerated, the period of absence from duty is not treated as a 'period spent on duty'.

(ix) The amount of pay and allowances payable in any case cannot be less than subsistence allowances and other allowances admissible under FR 53.

(x) FR 53 and Rule 7.2 of PCS Rules are *pari materia* and provide that a Government servant during



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suspension shall be entitled to subsistence allowance.

(xi) FR 54 and Rule 7.3 of PCS Rules are *pari materia* and provide that a Government servant shall be entitled to full pay and allowances if he is fully exonerated.

(xii) FR 54 and Rule 7.3 of PCS Rules further provide that a Government servant shall be entitled to pay and allowances as determined by competent authority if he is not fully exonerated. The amount of pay and allowances determined by competent authority would not be less than amount payable under FR 53 or Rule 7.2 of PCS Rules.

(xiii) FR 54A and Rule 7.3A of PCS Rules are *pari materia*. Both are applicable where order of dismissal is set aside by a Court. In case of full exoneration, 100% of back wages and in other cases, as determined by Competent Authority which shall not be less than subsistence allowance provided under FR 53/Rule 7.2 would be payable.

26. Sub-rule (2) of Rule 10.70 of Punjab Police Rules provides that in case of honorable acquittal, the police officer shall be entitled to full pay. It further provides that in case of honorable acquittal, the period of suspension or dismissal shall be treated as period spent on duty. This rule does not provide for payment of pay and allowances for the period of dismissal where a police officer has not been honorably acquitted. It is apposite to notice that aforesaid rule talks of 'honorable acquittal' as a result of original inquiry or appeal. In the judicial parlance, the expression 'acquittal' is used in a criminal trial whereas aforesaid rule



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has used said expression for original inquiry or appeal. Inquiry is conducted in the manner prescribed under Rule 16.24 of 1934 Rules. Sub-rule (vii) of Rule 16.24 empowers Enquiry Officer to pass orders of 'acquittal'. Use of expression 'acquittal' in sub-rule (vii) of Rule 16.24 and Rule 10.70 (2) indicates that legislature has treated expression 'exoneration' and 'acquittal' inter-changeable/synonyms.

27. FR 54, 54A as well as Rule 7.3 and 7.3A provide for payment of salary in case of reinstatement after departmental proceedings. These provisions envisage exoneration/acquittal in departmental proceedings either at the inquiry or appellate or revisional stage. Rule 7.3A and FR 54A provide for payment of salary where a Government servant has been reinstated on account of setting aside of order of dismissal by a Court of law. None of the provision provides for payment of salary for the period of dismissal where dismissal took place on account of registration of FIR or conviction. Rule 7.5 of PCS Rules as applicable to State of Haryana provides for payment of salary where a Government servant has been acquitted of criminal charge. The petitioners have cited five judgments of this Court which are based upon Rule 7.5 of PCS Rules. All the judgments are relating to Haryana Government employees whereas present bunch of petitions relates to Police Officer of State of Punjab. The Punjab Police Officers are governed by Punjab Police Rules read with Fundamental Rules, thus, PCS Rules are not applicable in toto. Further, Rule 7.5 of PCS Rules is applicable to State of Haryana, therefore, this Court is of the opinion that judgments cited by petitioners do not come to their rescue.



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28. As discussed above, the Fundamental Rules and Punjab Police Rules provide for back wages in case of reinstatement emanating from setting aside of order of dismissal. The petitioners were dismissed from service without conducting inquiry. They were dismissed as soon as FIR came to be registered against them. The Disciplinary Authority found it convenient to dispense with inquiry. For the said purpose, the Disciplinary Authority invoked Clause (b) of second proviso to Article 311 (2) of the Constitution of India. Clause (b) of aforesaid proviso can be invoked if it is not practicable to hold inquiry. Clause (a) of aforesaid proviso can be invoked in case of conviction. The registration of FIR may culminate in conviction. The appropriate course for the respondent was either to conduct inquiry or wait till the conclusion of criminal proceedings. The respondent, without conducting and further assigning any reason for dispensing with inquiry, dismissed the delinquent employee in haste. An employee who is implicated in a criminal case, as provided by Rule 16.19 of 1934 Rules should be put under suspension. He may be posted at a non sensitive post like where there is no public dealing. The respondent dismissed petitioners on the ground of their involvement in criminal case(s) and reinstated on their acquittal. The reinstatement after acquittal took place either on the request of petitioners or on the direction of this Court especially where dismissal order was set aside on account of non-compliance of mandate of Article 311 of the Constitution of India.

29. As, there was no departmental inquiry and petitioners were reinstated after their acquittal in criminal proceedings, a question arises as to how their pay and allowances should be determined. This Court



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finds that a common thread running through Fundamental Rules, Punjab Police Rules and PCS Rules with respect to payment of salary in case of reinstatement after dismissal from service is that the full salary should be paid in case of honorable acquittal/exoneration. In case of acquittal/exoneration other than honorable, payment of salary for the period of dismissal should be determined by competent authority at the time of reinstatement. The amount determined by Competent Authority shall not be less than salary payable during suspension.

A Division Bench of this Court in *Shashi Kumar Vs. Uttri Haryana Bijli Vitran Nigam and another 2005 (1) SCT 576* has held that terms “honorable acquittal” or “fully exonerated” are unknown in the Code of Criminal Procedure or in Criminal jurisprudence. In this judgment Court has ordered to pay full wages in case of acquittal. The Court has relied upon Rule 7.5 of PCS Rules which is inapplicable to employees of the Punjab Government.

30. Rule 16.3 of 1934 Rules provides that a police officer shall not be punished departmentally if he has been tried and acquitted by a criminal Court. The said principle is not applicable where criminal charge has failed on technical grounds or the prosecution witnesses have been won over or Court has held that suspicion rests upon the police officer or additional evidence in departmental proceedings is available. Rule 16.3 is reproduced as below:

“16.3. Action following on a judicial acquittal. - (1) When a Police Officer has been tried and acquitted by a criminal court he shall be not be punished departmentally on the same charge or on a different charge upon the evidence cited



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in the criminal case, whether actually led or not, unless -

(a) the criminal charge has failed on technical grounds; or

(b) in the opinion of the Court or of the Superintendent of Police, the prosecution witnesses have been won over; or

(c) the Court has held in its judgment that an offence was actually committed and that suspicion rests upon the police officer concerned; or

(d) the evidence cited in the criminal case discloses facts unconnected with the charge before the court which justify departmental proceedings on a different charge; or

(e) additional evidence admissible under rule 16.25(1) in departmental proceedings is available.

(2) Departmental proceedings admissible under sub-rule (1) may be instituted against Lower Subordinates by the order of the Superintendent of Police but may be taken against Upper Subordinates only with the sanction of Deputy Inspector-General of Police, and a police officer against whom such action is admissible shall not be deemed to have been honorably acquitted for the purpose of rule 7.3 of the Civil Services Rules (Punjab), Volume I, Part I.”

The above cited rule makes it clear that if a police officer who has been acquitted by a criminal Court, may be punished departmentally, if any of the ingredient mentioned in different clauses of said rule is available. The circumstances contemplated in different clauses of sub-rule (1) as well as sub-rule (2) of said Rule declare that every acquittal by criminal Court is not an honorable acquittal. The expression honorable acquittal has not been defined under Criminal Procedure Court, however, existence of situations contemplated by Rule



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16.2 (1) make an acquittal other than honorable acquittal.

A two Judge Bench of Supreme Court in *Ram Lal vs. State of Rajasthan, 2023 SCC Online SC 1618* has held that Court dealing with the matter must scrutinize the judgment of acquittal and thereafter form an opinion whether acquittal was honorable or not. The relevant extracts of the judgment are reproduced as below:

“28. Expressions like “benefit of doubt” and “honorably acquitted”, used in judgments are not to be understood as magic incantations. A court of law will not be carried away by the mere use of such terminology. In the present case, the Appellate Judge has recorded that Exh. P-3, the original marksheet carries the date of birth as 21.04.1972 and the same has also been proved by the witnesses examined on behalf of the prosecution. The conclusion that the acquittal in the criminal proceeding was after full consideration of the prosecution evidence and that the prosecution miserably failed to prove the charge can only be arrived at after a reading of the judgment in its entirety. The court in judicial review is obliged to examine the substance of the judgment and not go by the form of expression used.”

31. The Fundamental Rules as well as Rule 7.3 & 7.3A of PCS Rules provide that competent authority in case of reinstatement of the employee who has not been ‘fully exonerated’ would determine amount of salary payable for the period of dismissal. The authority at this stage has to examine whether employee has been fully exonerated in departmental proceedings. As noticed above, except two, all the petitioners were dismissed and thereafter reinstated without departmental proceedings. If, they are paid full salary for the period of dismissal irrespective of existence of any one of circumstance as contemplated by



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Rule 16.3 (1) of 1934 Rules, it would be contrary to scheme of Punjab Police Rules, Fundamental Rules as well as PCS Rules. A Government servant who was implicated in a criminal case and a criminal Court at one or another stage finds that he was not involved in the offence, cannot be compared with another servant who faced full-fledged trial and is acquitted because prosecution witnesses, on account of one or another reason did not support case of the prosecution. The petitioner of Civil Writ Petition No.11440 of 2024 was discharged at the stage of charge. The Court did not find substance in the police report and accused was discharged. This is a case of honorable acquittal whereas in all other cases accused have been acquitted because witnesses did not support case of the prosecution. The petitioners have not alleged that they were implicated by their seniors for ulterior motives. They were implicated on the complaint of general public. It is well known fact that commoners do not come forward to make allegations leaving aside false against police officers. The FIR(s) were registered and thereafter investigation was conducted by police officers. The Investigating Officer filed its report under Section 173 Cr.P.C. It cannot be expected that a colleague would register false FIR and thereafter file false police report. The Trial Court, findings substance in the police report, framed charges and thereafter recorded evidence. In such circumstances, this Court finds that it would not be just and equitable to declare every acquittal as honorable acquittal for the purpose of payment of salary for the period of dismissal from service.

32. Fundamental Rules as well as PCS Rules provide that competent authority, in cases other than honorable acquittal, shall



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determine amount of back wages payable for the period of dismissal. It further provides that before determining amount of back wages, competent authority shall issue notice and seek response of the Government servant. In the cases in hand, there is no case where authority before holding that the employee is not entitled to back wages, issued show cause notice and sought his response. This Court does not find it appropriate to remand the matter back to competent authority to issue show cause notice and thereafter determine amount of back wages because this course would delay the final adjudication and may multiply litigation, thus, I find it appropriate to decide amount of back wages payable to petitioners.

Civil Writ Petition No.7776 of 2024, 7785 of 2024 & 11816 of 2024:

33. From the perusal of judgment of acquittal passed in the case of aforesaid petitioners, I find that they faced full-fledged trial and were acquitted because prosecution witnesses did not support case of the prosecution. They were acquitted on the ground of benefit of doubt. I find unable to form an opinion that petitioners were honorably acquitted. They were dismissed from service without holding inquiry. The respondent neither conducted inquiry nor waited for outcome of criminal proceedings. They were dismissed on the sole ground of registration of FIR and came to be reinstated after their acquittal or setting aside of order of dismissal by this Court on the ground of non-compliance of mandate of Article 311 (2) of the Constitution of India. I hereby hold that they are entitled to 50% of pay and allowances which they would have received, had they not been dismissed from service. It is apt to mention here that learned



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counsel for the petitioners, during the course of arguments have conceded that grievance of the petitioners would be redressed, if they are paid 50% of back wages. The period of absence shall not be treated as 'period spent on duty'.

Civil Writ Petition No.11440 of 2024

34. The petitioner was discharge at the stage of framing charge because Trial Court did not find any evidence against him. It is a case of honorable acquittal and in view of above discussion and findings, he is entitled to 100% of back wages. The absence period shall be treated as 'period spent on duty'.

Civil Writ Petition No.11608 of 2024

35. The appellate authority vide order dated 26.02.2021 allowed appeal of the petitioner by way of remand. The disciplinary authority was directed to grant punishment except punishment of dismissal or premature retirement. The disciplinary authority was further permitted to enhance punishment in case petitioner is convicted in the judicial proceedings. Indubitably, the petitioner was acquitted, however, he cannot claim reduction of punishment awarded by disciplinary authority because he accepted order of appellate authority which while remanding the matter back granted liberty to adjudicating authority to reconsider quantum of punishment in case of conviction and did not ask/permit to pass fresh order in case of acquittal. The petitioner at that stage happily accepted orders of appellate authority and even till date has not challenged said order. The petitioner cannot turn around and claim that he should be exonerated in departmental proceedings on the ground that he



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was acquitted in criminal proceedings.

The petitioner was arrested alleging commission of offence punishable under Section 7 of P.C Act. From the perusal of judgment of acquittal, it comes out that he was acquitted because complainant turned hostile. As complainant turned hostile, the petitioner in view of mandate of Rule 16.3 of 1934 Rules cannot be treated as honorably acquitted. The petitioner was subjected to punishment in departmental proceedings and he was acquitted because complainant turned hostile. He was extended benefit of doubt, thus, it can neither be held that he was departmentally fully exonerated nor honorably acquitted in criminal proceedings. Therefore, he is entitled to 50% of back wages. The period of absence shall not be treated as 'period spent on duty'.

Civil Writ Petition No.11395 of 2024

36. An FIR dated 26.09.2011, under Sections 326, 324, 323, 148 and 149 of IPC was registered against him. In the investigation, he was found innocent, however, he was summoned as an additional accused under Section 319 of Cr.P.C. He was convicted vide judgment dated 15.03.2018 passed by Judicial Magistrate 1st Class, Batala. He was awarded sentence of rigorous imprisonment of 2 years. On account of conviction, he was dismissed from service in terms of Rule 16.2 (2) of 1934 Rules. The said rule candidly provides that a police officer shall be liable to be dismissed, if he is convicted. The petitioner is claiming back wages from the date of acquittal to reinstatement. He was acquitted on 10.05.2018. He was reinstated on 14.09.2022 and in the departmental inquiry conducted after disposal of Civil Writ Petition No. 26661 of 2018



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was exonerated.

In the facts and circumstances as well as above discussed legal position, I am of the considered opinion that petitioner is entitled to 100% of pay and allowances for the period from the date of acquittal to date of reinstatement. The said period shall be treated as 'period spent on duty'.

Civil Writ Petition No.743 of 1997

37. The petitioner remained out of service for 1641 days and he is claiming pay and allowances of 1270 days. There was no criminal case against him. He was dismissed from service without following procedure prescribed Rule 16.38 of 1934 Rules. The revisionary authority remanded the matter back on the ground of non-compliance of Rule 16.38 of 1934 Rules. The jurisdictional authorities conducted inquiry in terms of Rule 16.38 of 1934 Rules and fully exonerated him.

It is a case of 'fully exonerated'. In view of above discussion and findings, he is entitled to 100% of back wages for the period claimed i.e. 1270 days. The absence period shall be treated as 'period spent on duty'.

38. This Court is not oblivious of proviso to Rule 7.3 (4) which circumscribes period for the purpose of determination of back wages. The said proviso has not been applied because there is no such proviso in FR 54 & 54A and petitioners have been allowed 50% of back wages which is minimum amount. This Court has also kept in mind that petitioners had not worked during the aforesaid period and principle of 'no work no pay' has been recognized by courts in India. They were not reinstated no



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sooner did their acquittal. There is a substantial gap between date of acquittal and their date of reinstatement.

39. It is hereby made clear that petitioners shall not be entitled to interest on back wages provided respondent makes payment within 3 months from today. Payment beyond 3 months would carry interest @ 1% per mensem.

40. Before parting with this judgment, I would hasten to add that respondent authorities should avoid to dismiss a police officer close on the heels of registration of FIR. He may be put on suspension in terms of Rule 16.19 of Punjab Police Rules, 1934. The departmental inquiry may be deferred but it should not be dispensed with in a mechanical manner. In an appropriate case, outcome of criminal case may be awaited. If an officer is straightway dismissed and reinstated on account of acquittal by a criminal Court, it leads to payment of back wages without work.

41. All the petitions stand disposed of in above terms.

**(JAGMOHAN BANSAL)
JUDGE**

05.06.2024

Ali

Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>