



**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**



S. B. Civil Writ Petition No. 7146/2003

Harbajan Singh S/o Shri Poonam Singh, aged 42 years,  
Presently Posted at IG Office, R/O Street No.1, Ambedkar  
Colony, Fatehpuria (II) Beawar

-----Petitioner

Versus

Superintendent of Police, District Ajmer, Ajmer.

-----Respondent

For Petitioner : Mr. Sunil Samdaria Advocate.  
For Respondent : Mr. Vinod Kumar Gupta, Additional  
Government Counsel

**HON'BLE MR. JUSTICE ANAND SHARMA**

**JUDGMENT**

**RESERVED ON :: 07.08.2025**  
**PRONOUNCED ON :: 14.08.2025**

1. The matter at hand is one of uncommon factual contour and legal complexity. It revolves around a set of circumstances, both peculiar and legally significant.
2. The present writ petition under Article 226 of the Constitution of India assails the penultimate part of the operative paragraph of order dated 10.10.2003 (Annexure-3) passed by the Disciplinary Authority, to the extent that the period during which the petitioner remained in judicial custody from 21.8.2000 to 01.08.2002 shall be treated as period of absence and shall be regularised as leave without pay. The petitioner has sought indulgence of this court with following prayer:



*"In Conspectus of above state of fact it is prayed to Hon'ble Court-*

*i) To issue an appropriate writ, order or direction quashing and setting aside the impugned part i.e.*

*"निलम्बन अवधि में यह कानि. 21.8.2000 से दिनांक 1.8.2002 तक अभिरक्षा में रहा इस अवधि को मुख्यालय से गैर हाजिर मानते हुए इस अवधि का अवैतनिक अवकाश स्वीकृत किया जाता है।"*  
*of the order dated 10.10.2003 (Exhibit-3)*

*ii) To issue an appropriate writ/order/direction directing the respondents to grant all consequential reliefs consequent to quashing of impugned part.*

*iii) Any other relief which this Court deem fit and proper in facts and circumstances of the case may also be awarded.*

*iv) Award cost of the writ petition."*

3. Learned counsel for the petitioner submits that the petitioner was holding post of Constable in the Police Department. He was arrested on 21.8.2000 and sent in judicial custody pursuant to one FIR lodged for committing alleged offences punishable under Sections 306 and 376 IPC and Sections 3(1) (12) and 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Consequent upon his arrest, he was also suspended on 21.08.2000 by the competent authority in exercise of Rule 13 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (hereinafter to be referred as 'the Rules of 1958') and departmental enquiry was also initiated against him vide charge sheet dated 16.04.2001. After undergoing a full-fledged trial, the petitioner was acquitted by the competent criminal court vide judgment dated 01.08.2002. After acquittal, his suspension from the post of Constable was also revoked on 11.09.2002. Petitioner underwent enquiry in accordance with the provisions of Rule 16 of the Rules of 1958 and vide order dated 10.10.2003, the Disciplinary Authority



exonerated the petitioner of all departmental charges and in the penultimate part of the operative paragraph held that he was entitled to all pay and allowances for the period of suspension (21.08.2000 to 11.09.2002) and that the suspension period shall be counted for all purposes in government service. Notwithstanding that clear direction, the penultimate part of the same operative paragraph treats the period 21.08.2000 to 01.08.2002 (the period of judicial custody) as period of absence and converts it into leave without pay. As per the petitioner, it is this manifestly inconsistent and punitive limb of order dated 10.10.2003, which is causing miscarriage of justice and grave prejudice to him. The petitioner challenges only the latter limb of the aforesaid order which denies pay for the period when he was in judicial custody.

4. Learned Additional Government Counsel appearing for the Respondents, in order to defend the impugned action, submits that the general principle of no work, no pay is a settled norm, that an employee who does not perform duty is not automatically entitled to salary for the period of non-attendance. As per respondents, the period when the petitioner was in judicial custody was a period of non-attendance and thus could legitimately be treated as absence. The Disciplinary Authority had already exercised its discretion in reasonable manner. While the Authority found fit to exonerate the petitioner and to count the suspension period for all other service benefits, it also took the view that the period of judicial custody must be treated as absence, and resultantly, as leave without pay inasmuch as,



during that period, the petitioner was not at the disposal of the department. The respondents would urge that administrative authorities are vested with flexible discretion to apportion or differentiate between suspension benefits and absence. It has been emphasized by learned counsel for the Respondents that an acquittal in criminal proceedings does not ipso facto entitle the employee to full back wages for the entire interregnum.

5. I have carefully considered the submissions made at the bar by learned counsel for the parties.

6 Obviously, the question involved in the present petition is as to whether the Disciplinary Authority could, consistently with law and rules, treat the period of judicial custody as period of absence and convert it into leave without pay, after expressly directing regularization and counting the suspension period for all purposes? And whether the impugned limb of order dated 10.10.2003 violates Rule 54 of the Rajasthan Service Rules, 1951 or not?

7. Rule 54 of the Rajasthan Service Rules, 1951 (hereinafter to be referred as 'the Rules of 1951') reads as under:

**"54. Re-instatement—** (1) *When a Government servant who has been dismissed, removed, compulsorily retired or suspended is re-instated or would have been re-instated but for his retirement on superannuation while under suspension, the authority competent to order the re-instatement 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 or for the period of suspension ending with the date of his retirement on superannuation as the case may be; and*

(b) *Whether or not the said period shall be treated as a period spent on duty.*



(2) Where such competent authority holds that the Government Servant has been fully exonerated or, in the case of suspension that it was wholly unjustified, the Government servant shall be given the full pay and dearness allowance to which he would have been entitled had he not been dismissed, removed or compulsorily retired as a penalty or suspended, as the case may be.

(3) In other cases, the Government servant shall be given such proportion of such pay and dearness allowance as such competent authority may prescribe.

(4) In a case falling under clause (2) the period of absence from duty shall be treated as a period spent on duty for all purposes.

(5) In a case falling under clause (3) the period of absence from duty shall not be treated as a period on duty unless such authority specifically directs that it shall be so treated for any specified purpose:

[Provided that if the Government so desires, such authority may direct that the period of absence from duty shall be converted into leave of any kind due and admissible to the Government servant.]

[Note:- The order of the competent authority regarding the treatment of the period of absence from duty passed under this proviso is absolute and no higher sanction would be necessary for the grant of extra-ordinary leave in excess of three months in so far as temporary Government servant are concerned.]

[(6) In cases where punishment order does not indicate as to whether the suspension period is to be counted for the purpose of pension or not, the period of suspension shall be counted for the purpose of pension. In all other cases action shall be taken as per punishment order.]

[(7) 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, business, profession or vocation 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, business, profession or vocation elsewhere, nothing shall be paid to the Government servant.]"



8. Rule 54 of the Rules of 1951 deals with suspension, subsistence allowance and the regularization/adjustment of suspension period in certain contingencies. The Rule contemplates that in appropriate circumstances, the period of suspension may be regularized for certain purposes and that subsistence allowance/leave salary entitlements are to be governed by the Rule's provisions and allied administrative instructions. The Rule has been judicially construed in a host of writ proceedings and forms an important part of the statutory matrix governing suspension and its financial consequences.

9. The broad and salutary principle is that where an employee is detained in custody on criminal charges not attributable to the employee's misconduct in the discharge of official duties and is subsequently acquitted, the employee cannot be made to suffer an avoidable punitive financial burden. This court finds that inequity results where an employee, who remained out of duty on account of detention (and not by his own volition), is treated more harshly than an employee who remained under suspension while on bail. In recent pronouncements, the Hon'ble Supreme Court has also cautioned that the entitlement to back wages depends on the factual matrix and whether disciplinary proceedings were dropped or otherwise disposed of; but that the settlement of pay consequences must be fair and founded on reasoned application of rules.

10. It would be relevant to refer that in the case of **Raj Narain v. Union of India & Others (2019) 5 SCC 809**, Hon'ble





Supreme Court has dealt with a similar situation. Para 7 & 8 of the aforesaid judgment are significant and lays down as under:

*"7. The point that remains to be considered is whether the appellant is entitled to payment of full wages between 1979 and 1987. The appellant was placed under suspension on 23-10-1979 and his suspension was revoked on 21-10-1987. An interesting development took place during the interregnum by which the disciplinary proceedings were dropped on 21-3-1983. It is clear from the record that the appellant was the one who was seeking postponement of the departmental enquiry in view of the pendency of criminal case. The order of suspension was in contemplation of disciplinary proceedings. By virtue of the disciplinary proceedings being dropped, the appellant becomes entitled to claim full salary for the period from the date of his suspension till the date of closure of the departmental enquiry. Thereafter, the respondents took four years to reinstate him by revoking his suspension. The order of suspension dated 23-10-1979 came to an end on 21-3-1983 which is the date on which disciplinary proceedings were dropped. The appellant ought to have been reinstated immediately thereafter unless a fresh order was passed, placing him under suspension during the pendency of the criminal trial which did not happen. Ultimately, the appellant was reinstated by an order dated 21-10-1987 by revocation of the order of suspension. Though, technically, the learned Additional Solicitor General is right in submitting that the impugned judgment does not even refer to the IA, we are not inclined to remit the matter to the High Court at this stage for fresh consideration of this point. We hold that the appellant is entitled for full wages from 23-10-1979 to 21-10-1987 after adjustment of the amounts already paid towards subsistence allowance.*

*8. For the reasons mentioned above, we approve the judgment of the High Court by holding that the appellant shall be entitled for back wages only from the date of acquittal on 31-8-2001, till the date of his reinstatement on 20-1-2003. Further, the appellant shall be entitled to full salary from 23-10-1979 to 21-10-1987."*



11. The Allahabad High Court in **Abhaya Chandra Mishra vs. State of U.P., [Writ-A No. 67719 of 2013 decided on 20.05.2025]; (Neutral Citation No.-2015:AHC: 84395)**, in a recent and instructive pronouncement as well as in an earlier decision delivered in the case of **Anil Kumar Singh vs. State of UP and 4 others, Writ-A No. 11555 of 2021**, has cogently emphasised the distinction between an under-trial on bail who may remain suspended, but available for duty and a person who is physically detained in custody (unable to render service). The Allahabad High court held that where detention prevented performance of duty and the employee was ultimately acquitted, application of the rigid 'no work no pay' rule would be inequitable; it accordingly granted salaries for the period of detention, having regard to the genesis of detention and acquittal. The Allahabad court expressly relied on and applied the Supreme Court's guidance in **Raj Narain v. Union of India & Others ( Supra)**, while keeping in view the distinctive facts of the detained employee. It was held by Allahabad High Court in the aforesaid case as under:

"3. The petitioner was implicated in a criminal case and he was detained in jail from 28.05.1997 to 09.08.1999. While he was in jail the respondents have not initiated any disciplinary proceedings nor suspended his services. Consequent upon acquittal he joined his services on 10.08.1999 and from that date the petitioner's salaries have been released and the salaries for the period he was in jail has not been released. As he is entitled for salaries from 28.05.1997 to 09.08.1999 after acquittal, he moved an application but the same was rejected by the impugned order dated 27.08.2012. Hence, the present writ petition is filed.





4. As the learned counsel for the petitioner has relied on order passed by this Court in Writ-A No.11555 of 2021 (Anil Kumar Singh Vs. State of U.P. and 4 Others), wherein an identical issue is filed for consideration and this Court has passed the following order:-

"10. In the absence of any departmental proceeding being drawn, the only conclusion that can be drawn is that petitioner was restrained from discharging duties on account of his detention in jail in connection with a criminal case a circumstance to be taken as beyond his control and his innocence ultimately being proved by way of acquittal in the said criminal case, he should not be penalized.

11. The principle of 'no work no pay' could have been attracted if petitioner had enjoyed bail in criminal case and had been merely kept under suspension but this is not the case either. Petitioner remained in detention until he was acquitted. There was no question of petitioner giving any certificate that he was not gainfully employed anywhere during the period he was under suspension. One must draw difference between an under-trial on bail and convicted person in jail.

6. Considering the submissions made by learned counsel for the petitioner and also on perusal of the order of this Court in Anil Kumar Singh (supra), wherein this Court has followed the principle laid down by Apex Court in Raj Narain V. Union of India and Others (2019) 5 SCC 809 and as observed by the Apex Court the writ petition was allowed by granting the monetary benefits to the persons who are detained and subsequently who got clear acquittal. Considering the observations made by the Apex Court as well as the order passed in Anil Kumar Singh (supra), this writ petition is also disposed of on same terms."

12. Apparently, two decisive features of the record, which compel judicial intervention, are:



(a) Express inconsistency in the Disciplinary Authority's operative paragraph. The penultimate limb of the operative paragraph of order dated 10.10.2003 unequivocally holds that the petitioner is entitled to all pay and allowances for the suspension period (21.08.2000 to 11.09.2002) and that the suspension period shall be counted for all purposes. That finding is a final and favorable adjudication on the disciplinary side. It is settled law that when an authority records such a concession or direction, the same cannot be surreptitiously negated by an inconsistent concluding clause in the same operative order. The operative part, which converts 21.08.2000 to 01.08.2002 into leave without pay, is evidently self-conflicting and ineffectual limb which defeats the penultimate finding. The canon of reasoned decision making prohibits the Authority from awarding a benefit and in the very next breath withdrawing it without any reasoned or recorded justification. This internal inconsistency is fatal.

(b) The petitioner's non-attendance between 21.08.2000 and 01.08.2002 was not voluntary; it was occasioned by custodial detention. He was physically deprived of liberty and thus prevented from rendering service. The jurisprudential yardstick, as recently emphasized by the Allahabad High Court and the Supreme Court, is that where detention is the cause of non-performance and the accused is ultimately acquitted, equity demands that the employee should not be saddled with financial prejudice for a period during which he could not possibly have worked. The Disciplinary Authority's penultimate paragraph recognises that very equity by awarding pay and counting the



period for all purposes. The penultimate paragraph repudiates the very equity without any reasoned explanation or supporting material and thus, can be held as unreasonable and unjustified.

13. The Rajasthan Service Rules, in particular Rule 54, contemplate mechanisms to regulate suspension, subsistence allowance and regularization. If an authority, after disciplinary enquiry, finds the employee exculpated, the power to treat the suspension period as service or to regularize it arises from the Rule and administrative instructions. The Disciplinary Authority has, by its own operative directive, already elected to provide the financial and service consequences for the said period. That exercise of discretion cannot be diluted by a contradictory conclusion within the same order. This Court cannot countenance an order that is self-defeating and which inflicts hardship by way of a cryptic and unexplained denial.

14. The respondents' reliance on the 'no work no pay' principle must be assessed contextually. Such principle does not put blanket bans on relief; rather depends on variable circumstances. The present case is not one where the petitioner chose self-imposed absence; he was deprived of liberty by the State; his acquittal left nothing criminal to be visited upon him and more particularly, the Disciplinary Authority concluded in exonerating. All such factors point to the conclusion that the petitioner should not be penalised. The respondents have offered no reasoned material to justify the anomalous conversion of the custody-period into leave without pay.



15. The impugned part of the operative paragraph in order dated 10.10.2003 which treats the period 21.08.2000 to 01.08.2002 as period of absence and regularizes the same as leave without pay is manifestly inconsistent with the penultimate part of the same operative paragraph which awards regularization for the suspension period 21.08.2000 to 11.09.2002 and directs that the suspension period be counted for all purposes. Hence, it can be concluded that denial of salary for the same period is arbitrary, unreasonable and in conflict with Rule 54 of the Rajasthan Service Rules, 1951 (which authorises regularisation and payment in appropriate circumstances). Rule 54 of Rules of 1951 adumbrate and insist upon reasoned, humane and legally consistent outcomes. The impugned limb of order dated 10.10.2003 is neither reasoned, nor consistent and the same is, therefore, quashed.

16. For the foregoing reasons, the writ petition is allowed and the impugned part of the operative paragraph of order dated 10.10.2003 (Annexure-3) which reads, in essence, that the period from 21.08.2000 to 01.08.2002 is to be treated as period of absence and that the same shall be treated as leave without pay, is hereby quashed and set aside. The respondents are directed to comply with the penultimate direction contained in their own order dated 10.10.2003 and to treat the entire period of suspension (21.08.2000 to 11.09.2002), which includes the period of judicial custody 21.08.2000 to 01.08.2002, as service for all purposes, and to pay to the petitioner all pay and allowances due for that period, subject to adjustment of any amounts already paid or



earned by the petitioner during the intervening period. Payment of arrears shall be made within Ten weeks from the date of receipt of a certified copy of this judgment.

**(ANAND SHARMA),J**

MANOJ NARWANI/28

