

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 699 of 2015**

Chhedilal Sahu S/o Shri Babulal Sahu Aged About 63 years Ex -
Driver Nagar Palika Nigam Korba District Korba (C.G.)

---- Petitioner

Versus

1. State Of Chhattisgarh through the Secretary, Department Of Urban Administration and Development, Mantralaya Manhanadi Bhawan, Naya Raipur (C.G.)
2. Municipal Corporation Korba Through Its Commissioner, Korba, District Korba (C.G.)

---- Respondents

For Petitioner	:	Shri Ashish Shrivastava, Advocate.
For Respondent No.1/ State	:	Shri B. Gopa Kumar, Dy. Advocate General.
For Respondent No.2	:	Shri B.D. Guru, Advocate.

HON'BLE THE CHIEF JUSTICE**Order On Board****10/07/2015**

1. Heard Learned Counsel for the Petitioner and the Respondents.
2. The Petitioner assails order dated 23.11.2014 passed by the Respondent Corporation denying him salary from the date of dismissal, i.e. 26.8.1997 till superannuation on 31.5.2010 being the period of dismissal, but counting the same period for other service purposes including pension.
3. Learned Counsel for the Petitioner submits that the Respondent Corporation itself by interpretation of Rule 54 of the Fundamental Rules had opined on 12.2.2014 that consequent to acquittal in appeal the Petitioner was entitled to full salary for the intervening period. The order dated 23.11.2014 by Respondent No.1 denying backwages on

the principle of “no work no pay” was contrary to law. The Rule provided that when a government servant dismissed from service was reinstated but for his superannuation, the competent authority could order payment of salary and also that the period be treated as spent on duty. Referring to (1991) 4 SCC 109 (Union of India vs. K.V. Jankiraman), referred to in the impugned order, Learned Counsel submits that the Supreme Court has held that where at the end of such sufferings, the government servant comes out with a clean bill, he has to be restored to all the benefits from which he was kept away unjustly. The principle of "no work no pay" will have no application as the situation would be akin to the employee being willing to work but was kept away from work by the authorities for no fault of his.

4. Learned Counsel for the Respondent Corporation opposing the writ application submitted that the impugned order calls for no interference.

5. The Petitioner was made an accused in a police case under Sections 148 and 302/149 IPC and convicted on 26.8.1997. Consequent to the conviction, he was dismissed from service on 26.8.1997. In appeal preferred before the erstwhile Madhya Pradesh High Court, he was acquitted in Criminal Appeal No. 1816 of 1997, by judgment dated 7.9.2013. Thus, the issue with regard to grant of backwages from the date of dismissal till scheduled superannuation on 31.05.2010 during the period of conviction.

6. K.V. Jankiraman (supra) essentially deals with the procedure to be followed where a delinquent is subjected to disciplinary

proceedings by the employer including the sealed cover procedure. It does not specifically deal with the situation where a government servant is convicted and is removed from service on that ground followed by acquittal leading to reinstatement.

7. The question arising for consideration in the present case stands covered in (1996) 11 SCC 603 (Ranchhodji Chaturji Thakore vs. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar) holding at paragraph 3 as follows:

'3. The reinstatement of the petitioner into the service has already been ordered by the High Court. The only question is whether he is entitled to back wages. It was his conduct of involving himself in the crime that was taken into account for his not being in service of the respondent. Consequent upon his acquittal, he is entitled to reinstatement for the reason that his service was terminated on the basis of the conviction by operation of proviso to the statutory rules applicable to the situation. The question of back wages would be considered only if the respondents have taken action by way of disciplinary proceedings and the action was found to be unsustainable in law and he was unlawfully prevented from discharging the duties. In that context, his conduct becomes relevant. Each case requires to be considered in its own backdrop. In this case, since the petitioner had involved himself in a crime, though he was later acquitted, he had disabled himself from rendering the service on account of conviction and incarceration in jail. Under these circumstances, the petitioner is not entitled to payment of back wages. The learned Single Judge and the Division Bench have not committed any error of law warranting interference.'

8. The position of facts was markedly similar to (2007) 1 SCC 324 (Banshi Dhar vs. State of Rajasthan). The Appellant was dismissed

consequent to conviction but was acquitted in appeal. He superannuated during the period of dismissal and before acquittal following the ratio in Ranchhodji Chaturji Thakore (supra) and noticing that no departmental proceedings had been commenced as is the case presently, it was held as follows:

'11. Departmental proceedings, however, could not be held as on the date of passing of the judgment of acquittal, he had already reached his age of superannuation. The learned counsel may be right that the decisions of this Court referred to hereinbefore involved the respective appellants therein on charge of murder under Section 302 of the Indian Penal Code, but, as noticed, it has also been laid down that each case has to be considered on its own facts. The High Court refused to exercise its discretionary jurisdiction having regard to the aforementioned decision of this Court in Ranchhodji Chaturji Thakore. We do not see any reason to take a different view. Grant of back wages, it is well settled, is not automatic. Even in cases where principles of natural justice have been held to have not been complied with, while issuing a direction of reinstatement, this Court had directed placing of the delinquent employee under suspension.'

9. The Court finds no reason to interfere with the impugned order. The writ application is dismissed.

(Navin Sinha)
CHIEF JUSTICE