

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 1405 of 2013**

1. Sadashive Durge S/o Parashram Durge Aged About 56 Years
R/o Vill Albela Para, Kanker, Thana & Dist Kanker, Cg

---- Petitioner**Versus**

1. State Of Chhattisgarh, Through Secretary, School Of Education,
Mahanadi Bhawan, Mantralaya, New Raipur, Dist Raipur, Cg
2. Commissioner Directorate Of Public Instructions, Raipur, Dist
Raipur, Cg
3. District Education Officer North Bastar, Kanker, Dist Kanker, Cg
4. Principal Govt. Higher Secondary School, Korrar, Dist North
Bastar, Kanker, Cg

---- Respondent

For Petitioner	Shri Malay Shrivastava, Advocate
For Respondent/State	Shri Arvind Dubey, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****08/09/2015**

1. Petitioner has assailed the legality and validity of the order dated
28-3-2013 and the order dated 17-11-2006 passed by the
Commissioner, Directorate of Public Instructions, Raipur.

2. By the second order i.e. order dated 17-11-2006 the petitioner was placed under suspension on account of incarceration for more than 24 hours in relation to crime No.316/06 registered at Police Station Kanker for commission of offence punishable under Section 304-B read with Section 34 of the Indian Penal Code and by the first order i.e. order dated 28-3-2013 it has been held that for the period of suspension the petitioner shall not be entitled for any other monetary benefits over and above the subsistence allowance and further that the period of suspension shall not be treated as period in service for any other purposes.
3. Facts of the matter, as projected in the writ petition, are that at the relevant time the petitioner was posted as Lecturer (Hindi) in the Government Higher Secondary School, Korrar, District North Bastar (Kanker), On 11-11-2006 he was arrested by the Kanker police for allegedly committing the offence under Section 304-B of the IPC. Soon thereafter, the petitioner was suspended on 17-11-2006. The petitioner attained the age of superannuation on 31-5-2011. In the meanwhile, the Additional Sessions Judge, Kanker, convicted the petitioner vide judgment dated 8-2-2008 passed in ST No.46/2007. The petitioner preferred Cr.A.No.176 of 2008, which was allowed by the High Court in his favour by judgment dated 2-2-2012. After his acquittal the petitioner moved

an application for his reinstatement and release of all consequential benefits. The impugned order Annexure – P/1 has been passed while deciding the said representation of the petitioner.

4. Shri Malay Shrivastava, learned counsel appearing for the petitioner, would refer to an order passed by this Court in **Dr. Nirvana Kumar Tiwari v. State of C.G. & Others**¹, to argue that once the petitioner has been acquitted and there being no departmental proceedings ever initiated against him, the petitioner is entitled for all consequential benefits. Learned counsel would also refer to the decision of the Supreme Court in **Ranchhodji Chaturji Thakore v. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar (Gujarat) and Another**.
5. Per contra, Shri Arvind Dubey, learned Panel Lawyer appearing for the State, would refer to the order passed by the Division Bench of the Madhya Pradesh High Court in **Munnalal Mishra v. Union of India and Others**², to argue that the petitioner is not entitled for any other benefit than the subsistence allowance already paid to him during the period of suspension, however, he

1 2014 (1) CGLJ 124

2 2005 (3) MPHT 125 (DB)

would not dispute the legal position that the petitioner would be entitled for pensionary benefits, as no departmental enquiry was ever initiated against him.

6. After placing reliance on the decisions of the Supreme Court, the Division Bench of the High Court of Madhya Pradesh in **Munnalal Mishra** (supra) and **Union of India v. Jaipal Singh**³ held thus :

10. But when a Government (or Railway) servant is dismissed or removed or compulsorily retired, not in pursuance of any disciplinary proceeding, but without inquiry on the ground of conviction in a criminal case, then F.R. 54, 54-A and 54-B (or corresponding Rules 1343, 1344 and 1345 of Railway Code) would not apply. As a consequence, we will have to fall back on the general principles and Fundamental Rule No. 17 (1) which provides that no work will mean no pay. Therefore, the Government (or Railway) servant will not be entitled to any pay for the period when he was not in service. He will be entitled to be reinstated from the date of acquittal. If he is not reinstated on acquittal, he will be entitled to pay and allowances from the date of acquittal. This position is made clear by the Supreme Court in several decisions.

10.1 In *Ranchhodji Chaturji Thakore v. Superintendent Engineer, Gujarat Electricity Board, Himmat Nagar* (1996) 11 SCC 603, the Supreme Court considered a case of an employee dismissed from service on account of his conviction by a Criminal Court for his involvement in an offence under Section 302/34, IPC. Subsequently the employee was acquitted and as a consequence reinstated. The Supreme Court considered whether back wages should be

3 (2004) 1 SCC 121

paid to the employee for the period between the date of dismissal and the date of reinstatement. The Supreme Court held thus :--

'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.

(Emphasis supplied)

10.2 The question again came up for consideration in Union of India v. Jaipal Singh, (2004) 1 SCC 121. The Supreme Court after expressing agreement with the view in Ranchhodji, observed thus :--

'.....If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest of or by the department itself, perhaps different considerations may arise. On the other hand, if as a citizen the employee or a public servant got involved in a criminal case and if after initial conviction by the trial court, he gets acquittal on appeal subsequently, the department cannot in any manner be found fault with for having kept him out of service, since the law obliges a person convicted of an offence to be so kept out and not to be retained in service. Consequently, the reasons given in the decision relied upon, for the appellants are not only convincing but are in consonance with reasonableness as well. Though exception taken to that part of the order directing reinstatement cannot be sustained and the respondent has to be reinstated in service, for the reason that the earlier discharge was on account of those criminal proceedings and conviction only, the appellants are well within their rights to deny back wages to the respondent for the period he was not in service. The appellants cannot be made liable to pay for the period for which they could not avail of the services of the respondent. The High Court, in our view, committed a grave error, in allowing back wages also, without adverting to all such relevant aspects and considerations. Consequently, the order of the High Court insofar as it directed payment of back wages is liable to be and is hereby set aside.

The respondent will be entitled to back wages from the date of acquittal and except for the purpose of denying the

respondent actual payment of back wages, that period also will be counted as period of service, without any break.'
(Emphasis supplied)

7. In **Dr. Nirvana Kumar Tiwari** (supra) this Court held thus :

8. The question, however, which arises for consideration, is whether the petitioner is entitled to claim regularization of the period of suspension in the manner that entire period of suspension should be treated as period spent on duty entitling the petitioner to full wages and benefits, had he continued to perform duties, but for suspension. This issue came up for consideration before the Supreme Court in the case of Greater Hyderabad Municipal Corporation vs. M. Prabhakar Rao (2011) 8 SCC 155, wherein the Supreme Court held :

15. Sub-rule (3) of FR 54-B does not state that in case of acquittal in criminal proceedings the employee is entitled to his salary and allowances for the period of suspension. Sub-rule (3) of FR 54-B also does not state that in such case of acquittal the employee would be entitled to his salary and allowances for the period of suspension unless the charge of misconduct against him is proved in the disciplinary proceedings. Sub-rule (3) of FR 54-B vests power in the competent authority to order that the employee will be paid the full pay and allowances for the period of suspension if it is of the opinion that the suspension of the employee was wholly unjustified. Hence, even where the employee is acquitted of the charges in the criminal trial for lack of evidence or otherwise, it is for the competent authority to form its opinion whether the suspension of the employee was wholly unjustified and

so long as such opinion of the competent authority was a possible view in the facts and circumstances of the case and on the materials before it, such opinion of the competent authority would not be interfered with by the Tribunal or the Court.

Therefore, all that can be said is that once a criminal case ended in acquittal, the employer is obliged under law to take appropriate decision as to whether suspension of the employee was wholly unjustified and for that purpose, the authorities are required to apply its mind to the relevant facts and circumstances of the given case while exercising discretion in the matter. It cannot be accepted as a proposition of law as has been submitted by learned counsel for the petitioner, that invariably, in all cases of acquittal, employee would be entitled to regularization of the period of suspension only in a particular manner entitling him for all consequential benefits and full wages as also treatment of the period as duty for all purposes. The ratio of the aforesaid judgment of Supreme Court is clear that it is for the authority to take appropriate decision with regard to period of suspension. Thus, what logically follows from the judgment of the Supreme Court is that only on the ground that the employee had faced a criminal trial or that an appeal against acquittal is pending, the employer is not justified in keeping in abeyance the decision with regard to regularization of period of suspension and the employer has to take decision one way or the other regularizing the period of suspension, after due application of mind to the facts and circumstances of the case and relevant consideration as to whether suspension was wholly unjustified.

10. Therefore, in the considered opinion of this Court, in the absence of there being any specific provision, either allowing suspension to continue by deeming fiction upon filing of an appeal against acquittal or any other provision

empowering government to place its employee under suspension, after acquittal, has no sanction of law. Therefore, the respondents were obliged to reinstate the petitioner in service immediately upon acquittal and had no authority under the law to continue the suspension, after his acquittal in the criminal trial. In the case of Union of India and Others v. Jaipal Singh, the Supreme Court held that upon acquittal, employee is entitled to be reinstated and paid backwages from the date of acquittal. It was also held that the period will also be counted as period of service, without any break.....

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Therefore, in view of above enunciation of law, it has to be held that the petitioner was entitled to be reinstated in service and the order of suspension was liable to be revoked from the date of acquittal from criminal charges entitling the petitioner to payment of backwages from the date of acquittal and further that the period, from the date of acquittal till the petitioner has attained the age of superannuation i.e. 30.6.2000, shall be reckoned as period of service without any break.

8. In the case in hand, the initiation of criminal proceeding against the petitioner was not at the instance of the department, but he was allegedly involved in an offence under Section 304-B of the IPC on account of death of his daughter-in-law otherwise than in normal circumstances, therefore, the ratio laid down by the Supreme Court in **Ranchhodji Chaturji Thakore** (supra)

and **Jaipal Singh** (supra), would squarely apply in the present case.

9. For the foregoing, while holding that the first part of the order dated 28.3.2013 (Annexure-P/1) whereby the petitioner has been held not entitled for any other monetary benefits except the subsistence allowance during the period of suspension is not interfered, however, the other part wherein the Directorate of Public Instructions has directed for not treating the petitioner in service during period of suspension is quashed.
10. Consequently, the petitioner be treated in service during the period of suspension and his pension/retiral dues be calculated on that basis. Let the petitioner's pension be decided within a period of three months from the date of submission of certified copy of this order before the appropriate authority.
11. As an upshot, the writ petition is allowed to the extent indicated above. No order as to costs.

Sd/-

Judge
(Prashant Kumar Mishra)

Gowri