

HIGH COURT OF CHHATTISGARH, BILASPUR**WP No. 2756 of 2006**

- Suryanath Prasad, S/o Late Khedan Ram, Aged about 63 years, R/o Gandhi Nagar, Near Dairy Farm, Ambikapur, District Surguja (CG)

---- Petitioner**Versus**

1. State of Chhattisgarh, Through: Secretary, Tribal Welfare Department, D.K.S. Bhawan, Raipur, District Raipur (CG)
2. Commissioner, Tribal Welfare Department, Raipur, District Raipur (CG)
3. Collector (Tribal Welfare), Ambikapur, Surguja, District Surguja (CG)
4. Assistant Commissioner, Tribal Welfare, Ambikapur, District Surguja (CG)

---- Respondents

For Petitioner : Shri Manoj Paranjpe, Advocate.
 For Respondents : Shri AV Shridhar, Panel Lawyer.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****21/04/2015**

1. This petition under Article 226/227 of the Constitution of India has been preferred by the petitioner, a retired Principal of the Higher Secondary School, Tribal Welfare Department, Ambikapur. He has prayed for quashing the orders dated 10.10.2005 and 21.4.2006, Annexure-P/12 & P/15 respectively whereby anticipatory pension has been stopped and an order for recovery of subsistence

allowance already paid to him from 1.3.2000 to 30.6.2005 amounting to Rs.7,52,912/- has been passed against him.

2. Facts of the case, briefly stated, are that the petitioner was charge-sheeted for committing offence under Section 7 read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and was tried in Special Sessions Trial No.1/94 by the Special Judge (PC Act) Ambikapur wherein by a judgment dated 29.2.2000 he was convicted, however, Cr.A. No.645/2000 preferred by him was allowed by the High Court by a judgment dated 20.6.2014.
3. During pendency of the trial, the petitioner was placed under suspension by an order dated 26.2.1998. The petitioner was eventually allowed to retire when he attained the age of superannuation on 26.6.2005. However, he was neither proceeded departmentally nor was terminated after his conviction. During the entire period i.e. from the date of his conviction till the date of superannuation the petitioner continued to receive subsistence allowance.
4. When the petitioner was permitted to retire on attaining the age of superannuation in June, 2005, an order releasing the anticipatory pension was passed by the Assistant Commissioner, Tribal Development, Surguja on 24.8.2005, however, subsequently, this order was cancelled on receipt of communication from the department of Tribal Development, Government of M.P. Dated 26.9.2005 and thereafter the second impugned order (Annexure-

P/15) was issued directing the petitioner to deposit amount of Rs.7,52,912/- paid as subsistence allowance to him on and after his conviction till the date of superannuation.

5. Learned counsel for the petitioner would submit that since during the pendency of this petition, the very basis on which the anticipatory pension was cancelled and the recovery of subsistence allowance paid to him earlier was ordered has been wiped out on allowing the petitioner's criminal appeal by this Court, the impugned orders deserve to be set aside and direction for settlement of pension and payment of all the retiral benefits deserves to be issued at the earliest.
6. Learned State counsel would submit that a proposal for finalization of pension, payment of retiral benefits and regularization of period of suspension is pending consideration before the concerned authorities and recommendation in favour of the petitioner has been made vide Annexure-P/17, therefore, the writ petition may be disposed of permitting the authorities to take appropriate decision in the matter in accordance with law.
7. Admittedly, the respondents have not initiated any disciplinary proceeding against the petitioner. His suspension was only on account of pendency of criminal case wherein although initially he was convicted, eventually he was acquitted by the High Court. Thus, there is no order which may be a foundation for the respondents for withholding the pension or for recovery of subsistence allowance

already paid to the petitioner. It appears, when the petitioner was allowed to superannuate, the authorities should have passed an order of his reinstatement though it could have been observed that decision for regularizing the period of suspension shall be taken after the judgment in the pending criminal appeal. However, the same having not been done, the authorities are now required to take decision to regularize the period of suspension in accordance with the rules so that the pension papers can be finalized and the retiral benefits can be paid to the petitioner.

8. In **Basanti Prasad Vs. The Chairman, Bihar School Examination Board & Ors.**¹, the Supreme Court was dealing with a case wherein the employee was terminated on the ground of conviction in criminal case which was set aside in appeal but the prayer made by the widow for grant of pension was rejected on the ground of delay and laches. The Supreme Court held that family pension to the widow cannot be withheld but she was held not entitled to back wages.
9. In WP(S) No.4071/2009 {Dr. Nirvana Kumar Tiwari Vs. State of Chhattisgarh & others}, decided by this Court on 26.9.2013, the petitioner was acquitted by the criminal Court and thereafter he was allowed to superannuate. However, pension was withheld and retiral dues were not paid to him on account of pendency of acquittal appeal in the High Court. This Court, considering that neither in the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 nor under FR-54A & 54B dealt with a situation

¹ 2009 AIR SCW 5069

with which the Court was confronted, allowed the writ petition by making following observations in paragraphs-6, 7 & 8 of the order:-

“6. As far as petitioner's claim for regularization of the period of suspension is concerned, there is no specific provision contained either in Rule 9 of the Rules of 1966 or Rule 54-A & 54-B of the Fundamental Rules. In an identical fact situation, this aspect was considered by a Division Bench of this Court in the case of **Jagdish Pandey vs. State of Chhattisgarh and others** {Writ Appeal No.89 of 2010, decided on 07-05-2010}. In that case also, employee was acquitted from all the criminal charges. The State filed an appeal against the judgment of acquittal, but the period of suspension was not regularized on account of pendency of appeal against acquittal. The Division Bench of this Court, after examining the statutory provisions contained in Rule 9 of the Rules of 1966 as also the provisions contained in Fundamental Rule 54-A & 54-B, held that the Fundamental Rules 54-A and 54-B or any other provision do not throw light in the circumstances when a Government servant is acquitted from the criminal charges and an appeal against the acquittal is filed against the judgment of acquittal. It was also observed that the criminal case, which was under investigation or enquiry and thereafter filing of charge sheet and conducting trial, all had come to an end and the employee was acquitted and there was no charge sheet or criminal investigation pending. On various considerations, it was held that non-regularization of the period of suspension upon acquittal, when no further investigation or trial is pending, was against the law. It was also held that the Rules of 1966 do not provide continuous suspension or keeping the matter pending regarding the period of suspension of the person, who has been acquitted. It was held that it is binding on the State Government to consider the case of regularization of the period of suspension, after acquittal from the criminal charges and consequently consider other benefits arising out of such considerations including pension.

7. Therefore, what follows from the aforesaid decision is that once an employee is acquitted from the criminal charges, the employer and in the present case, the State Government/Respondents 3 & 4 are obliged under the law to take appropriate

decision with regard to further continuance of suspension and regularization of the period of suspension. In fact, the case on hand is on much better footing because the State has not filed any appeal against the petitioner's acquittal in the criminal case.

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**², 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 the 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 the 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. In the case at hand, the amount already paid to the petitioner as subsistence allowance cannot be recovered from him because he stood acquitted by the High Court. Therefore, the order (Annexure-P/15) is quashed. Although by Annexure-P/12, anticipatory pension which was made admissible to the petitioner was cancelled, however, by an interim order passed by this Court on 14.6.2006, the petitioner was permitted to avail benefit of anticipatory pension.

11. Therefore, the writ petition is disposed of with a direction that the respondents shall decide the petitioner's case for grant of pension and other retiral benefits within a period of 3 months from today. The petitioner shall continue to receive anticipatory pension during this period. The respondents shall also consider and decide the issue of regularization of the period of suspension keeping in view the

observations made hereinabove and the judgment of Supreme Court
in the matter of **Greater Hyderabad Municipal Corporation** (Supra).

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