

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 983 of 2012

- Islam Khan, aged about 68 years, son of Late Imam Khan, Retired Assistant Teacher, R/o In Front Of Bus Stand Khadgawan, PS Khadgawan, Distt. Korla C.G.

---- Petitioner

Versus

1. State Of Chhattisgarh, through the Secretary, Education Department, DKS Bhawan, Raipur, District Raipur (C.G.)
3. The Deputy Director, Education Department, Baikunthpur, Distt. Korla C.G.
4. The District Education Officer, Baikunthpur, Distt. Korla. C.G.

---- Respondent

For Petitioner	Mr. Vishnu Koshta, Advocate
For Respondent /State	Mr. Y.S. Thakur, Dy. A.G.

Hon'ble Shri Justice Prashant Kumar Mishra
Order On Board

19/2/2016

Heard.

(2) In this petition under Article 226 of the Constitution of India, the petitioner would pray for a direction to the respondents to treat him in service from the date of his suspension and pay him entire salary for the period till his superannuation and thereafter, the entire pension and retiral benefits be paid to him.

(3) Fact of the case, briefly stated, are that while working as Assistant Teacher at Government Primary School, Dubkola, Block East Khadgawan District Sarguja/Korla, the petitioner was involved in an

offence bearing Crime No.09/88 registered under Section 302/94 of IPC. On his arrest and detention for more than 48 hours, he was suspended on 17.02.88. He was initially convicted on 07.02.1991 by the Additional Sessions Judge, Manendragarh in Sessions Trial No.278/89 for committing offence under Section 325 of IPC and was awarded sentence of R.I. for 02 years and fine of Rs.500/-. Against the said conviction and sentence, the petitioner preferred an appeal in this High Court bearing Criminal Appeal No.174/91, which was allowed on 30.06.2009. In the meanwhile, the petitioner attained the age of superannuation on 13.03.2005. Immediately after his acquittal, he preferred representation on 11.07.2009 seeking entire back wages and pension along with other pensionary benefits. When no decision was taken by the authorities, the petitioner has preferred this writ petition.

(3) Mr. Vishnu Koshta, learned counsel for the petitioner, would argue that the petitioner was terminated for conviction in a criminal case and not in any departmental enquiry on allegation of violation of any service rule, therefore, the petitioner is entitled for the entire back wages, pension and retiral benefits.

(4) Per contra, Mr. Y.S. Thakur, learned Dy. A.G. for the State, would argue that since the criminal case was not initiated at the instance of employer, the petitioner is not at all entitled for back wages, however, after his acquittal, the petitioner may be entitled for entire pensionary benefits.

(5) Similar issue has been considered by this Court in the matter of Dr. Nirvana Kumar Tiwari Vs. State of Chhattisgarh and others, 2014 (1) CGLJ 124, decided on 26.09.2013. In the said case, the employee was prosecuted for committing offence under the P.C. Act, 1988, in

which, he was acquitted during his service period. He attained the age of superannuation after more than a year from the date of acquittal. Considering the issue, this Court held that once an employee is acquitted from the criminal charges, the employer is obliged to take appropriate decision with regard to continuation of suspension and regularization of the period of suspension.

(6) In respect of back wages, this Court, after referring to the decision of the Supreme Court in the matter of **Union of India and others Vs. Jaipal Singh, (2004) 1 SCC 121**, held that the employee is entitled to back wages from the date of acquittal till the date of superannuation and the said period shall be counted as duty period for all the purposes. In the matter of **Jaipal Singh (Supra)**, the Supreme Court held thus in para 3 & 4 :

3. Heard Mr. Raju Ramachandran, learned Additional Solicitor General appearing for the appellants, who placed strong reliance upon the decision of this Court in *Ranchhodji Chaturji Thakore v. Superintendent Engineer, Gujarat Electricity Board*, wherein this Court, in a case identical to the facts of the present case, has chosen to order only reinstatement but denied back-wages on the ground that the department was in noway concerned with the criminal case and, therefore, cannot be saddled with liability also for back wages for the period when he was out of service during/after conviction suffered by the respondent in the criminal case. Per contra, Mr. Ranbir Singh Yadav, learned counsel for the respondent sought to place reliance upon an order of this Court dismissing the special leave petition filed summarily against the judgment of the very same High Court dated 19.07.2001 in CWP No. 10201 of 2000. Learned counsel for the respondent, by inviting our attention to the judgment of the High Court in that case contended that on the facts the case on hand was also similar to the case considered therein but this Court dismissed the special leave petition when the relief granted for reinstatement

and back wages was contested by the authorities before this Court.

4. On a careful consideration of the matter and the materials on record, including the judgment and orders brought to our notice, we are of the view that it is well accepted that an order rejecting a special leave petition at the threshold without detailed reasons therefore does not constitute any declaration of law by this Court or constitute a binding precedent. Per contra, the decision relied upon by the appellant is one on merits and for reasons specifically recorded therefor it operates as a binding precedent as well. On going through the same, we are in respectful agreement with the view taken in Ranchhodji. 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 it 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 in so far as it directed payment of back wages is liable to be and is hereby set aside.

(7) In the case at hand also, the petitioner was initially suspended on 23.04.1988 (Annexure P/3) and on his conviction on 07.02.1991, he was terminated by an order dated 12.07.1991, which was made effective from the date of conviction. Since the petitioner was already retired on the date of acquittal, he is not entitled to back wages from the date of conviction till superannuation, however, the period from the date of suspension i.e 23.04.1988 to the date of conviction i.e. 07.02.1991, is required to be regularized so that the petitioner's pension can be finalised.

(8) In the result, the writ petition is disposed of with the following directions :

(i) The respondents shall take final decision with regard to regularization of the period of suspension of the petitioner in accordance with law within a period of 03 months from the date of submission of the certified copy of this order;

(ii) The pensionary benefits admissible to the petitioner be finalized as per rules within a period of 03 months from the date of submission of certified copy of this order and the entire arrears of pensionary benefits from the date of superannuation be paid within a period of 03 months.

Sd/-

Judge

(Prashant Kumar Mishra)