

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on 02.08.2017

Judgment Delivered on 17.08.2017

Writ Appeal No. 241 of 2016

S. K. Singh S/o Late Shri Ramakant Singh Aged About 51 Years Working As Upper Division Teacher Middle School Dadhaulipara Block Lundra, District Surguja Chhattisgarh Permanent R/o Namnakala, Ambikapur, District Surguja Chhattisgarh

---- Appellant

Versus

1. State Of Chhattisgarh Through The Secretary, Tribal Development Department D.K.S. Bhawan, Raipur, Chhattisgarh
2. The Commissioner, Surguja Division Surguja Ambikapur, Chhattisgarh
3. The Collector, & District Election Officer Ambikapur, District Surguja, Chhattisgarh
4. Assistant Commissioner, Tribal Development Ambikapur, District Surguja, Chhattisgarh

---- Respondents

For Appellant	:	Mr. V.K. Pandey, Advocate
For Respondent -State	:	Mr. P.N. Bharat, Additional Advocate General

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Sharad Kumar Gupta, Judge

C.A.V. JUDGMENT**Per Sharad Kumar Gupta, Judge**

1. In this writ appeal the challenged levied is to the order dated 11.02.2016 passed by the learned Single Judge of this Court in Writ Petition (S) No.6761 of 2011 whereby the said writ petition was dismissed.

2. It is admitted that the appellant is an Upper Division Teacher, posted in Middle School, Dadhaulipara, District-Sarguja. When he was posted as Assistant Teacher in High School, Bataikela, he was attached with the District Election Office, Ambikapur from 7.04.2009 to 28.04.2009. His duty was to attend telephone calls from 2:00 pm to 10:00 pm. Sometimes, he was found absent from his duty. The Collector and the District Election Officer, District-Sarguja placed him under suspension vide order dated 29.04.2009 (Annexure-P/4). Departmental inquiry was initiated against him under the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966; for short 'Rules'. After conclusion of the inquiry, the said officer passed an order on 08.10.2010 (Annexure P/10) by which five increments were stopped with cumulative effect. His suspension was revoked and held that suspension period shall be treated as period spent on duty but the appellant shall not be entitled to any pay or allowances except the subsistence allowance. In appeal, the Commissioner, Sarguja Division, Ambikapur vide order dated 22.03.2011 (Annexure P/1) modified the said order by awarding warning instead of stoppage of five annual increments with cumulative effect.
3. In brief, the appellant's case is that he is entitled to get full salary and allowances for the period he was placed under suspension.
4. Shri V.K.Pandey, learned counsel for the appellant vehemently argued that no major punishment has been awarded. The State Government had issued a circular dated 13.01.2005 (Annexure P-13) directing that where departmental enquiry is initiated for a major punishment and after inquiry, minor punishment is imposed, then full salary and allowances may be given to the delinquent for the period he is placed under suspension. Thus the appellant is entitled for full salary and allowances during suspension period.

5. Shri P.N. Bharat, Additional Advocate General for the State supporting the order passed by the learned Single Judge submits that the same is in accordance with the Provisions of Rule 54-B of the Fundamental Rules and does not warrant any interference.
6. The Provisions of Rule 54-B (1),(2),(3) of the Fundamental Rules are noticeable to resolve the issue in case in hand and is reproduced hereunder :-

“F.R. 54-B. (1) When a Government servant, who has been suspended, is re-instated or would have been so re-instated but for his retirement on superannuation while under suspension, the authority competent to order re-instatement shall consider and make specific order-

- (a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with re-instatement or 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) Notwithstanding anything contained in rule 53, where a government servant under suspension, dies before the disciplinary or Court proceedings instituted against him are concluded, the period between the date of suspension and the date of death, shall be treated as duty for all purposes and his family, shall be paid the full pay and allowances for that period to which he would have been entitled had he not been suspended, subject to adjustment in respect of subsistence allowance already paid.

(3) Where the authority competent to order re-instatement is of the opinion that the suspension was wholly unjustified, the Government servant, shall subject to the provisions of sub-rule (8), be paid the full pay and allowances to which he would have been entitled, had he not been suspended:

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation within 60 days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him direct, for reasons to be recorded in writing that the Government servant shall be paid for the period of such delay, only such amount (not being the whole) of such pay and allowances, as it may determine.”

7. It is manifest from Annexure P-1 that said appellate authority had also found the appellant guilty but punished him with a warning which is a minor penalty. The said appellate authority had not given any finding that the suspension was wholly unjustified in accordance with the provisions of Rule 54(B)(3) of the Fundamental Rules. Moreover, as per the Annexure P/1 after conclusion of the departmental enquiry, notice for imposing minor penalty was issued to the appellant in place of major penalty. It is settled position that provisions of any circular issued by any authority cannot prevail upon the provision of statutory rule. Thus, in such circumstances, the appellant does not get any help from Annexure-P/13.
8. On the basis of foregoing facts, circumstances and reasons, we hold that this part of Annexure P/1 that the appellant is not entitled for any amount except the subsistence allowance on the principle of 'no-work no-pay' and it is in accordance with the provisions of Rule 54B(3) of the Fundamental Rules. Therefore, we are in agreement with the order passed by the learned Single Judge.
9. On the aforesaid facts and circumstances, we conclude that there is no substantial issue raised in this writ appeal calling for interference with the impugned order passed by the learned Single Judge.
10. Hence, this writ appeal deserves to be and is hereby dismissed. No order as to costs.

Sd/-

(Thottathil B. Radhakrishnan)
CHIEF JUSTICE

Sd/-

(Sharad Kumar Gupta)
JUDGE