

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (S) NO. 4637 OF 2014

Anand Singh Thakur, S/o Late Bahadur Singh, aged about 61 years, Lower Statistics Clerk (Assistant Grade-III) (terminated), R/o Village- Piproud, Post & P.S. Lakhanpuri, Civil & Revenue District Kanker (C.G.)

... Petitioner

Versus

1. State of Chhattisgarh, through under Secretary, Planning, Economical & Statistics Department, Capital Complex, Mahanadi Bhawan, Naya Raipur, District Raipur (C.G.)
2. Commissioner-cum-Director, Planning, Economical & Statistics Department, Kaushilya Bhawan Parishad, Bairan Bazar, Raipur, District Raipur (C.G.)
3. State of Madhya Pradesh, Planning, Economical & Statistics Department, Vallabh Bhawan, Bhopal (M.P.)
4. Commissioner-cum-Director, Planning, Economical & Statistics Department, Vindhyachal Bhawan, Bhopal (M.P.)
5. District Statistics Officer, Collectorate Building, Raipur, District Raipur (C.G.)

... Respondents

For Petitioner	:	Mr. A.S. Rajput, Advocate.
For Respondent-State of C.G.	:	Mr. D.R. Minj, Govt. Advocate.
For Respondent-State of M.P.	:	Mr. Prateek Kumar Singh, Advocate, under instructions of Mr. Rajeev Shrivastava, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

16/08/2017

1. Challenge in the present writ petition is to the order dated 28.4.2014 whereby the representation preferred by the Petitioner, in the light of the order passed by the High Court in an earlier round of writ petition filed by the Petitioner i.e. W.P.(S) No. 3637 of 2013, has been rejected by the Respondents.
2. The rejection was only on the ground that since the order of termination of the Petitioner, dated 17.12.1999, was passed by the erstwhile State of Madhya Pradesh and that the Petitioner was never officially allocated to the State of Chhattisgarh, the claim cannot be accepted by the State of Chhattisgarh. In addition, the rejection was also on the ground of applying the principle of 'no work no pay'.

3. Brief facts of the case are that the Petitioner was working as Assistant Grade-III in the office of Municipal Corporation, Raipur and was posted in the Economical & Statistics Department. He was charged for an offence punishable under Section 409 IPC and an FIR was lodged in this regard. Thereafter, the services of the Petitioner was placed under suspension on 11.8.1999. Meanwhile, the Petitioner was also subjected to trial in Criminal Case No. 512 of 1997 before the Chief Judicial Magistrate, Raipur. The said trial ended in the conviction of the Petitioner for the said offence and he was sentenced to undergo R.I. for 2 years with fine of Rs.1000/-.

4. The said judgement of conviction was subjected to an appeal vide Criminal Appeal No. 194 of 1998 before the 9th Additional Sessions Judge (F.T.C.), Raipur, who had also confirmed the order of conviction vide its order dated 23.4.2005. Against the said order, the Petitioner preferred a criminal revision before the High Court where the case was registered as Criminal Revision No. 349 of 2005. The High Court finally vide its order dated 4.5.2012 allowed the criminal revision and acquitted the Petitioner of the charge levelled against him. The said order of acquittal has not been subjected to challenge any further and in due course of time the same has attained finality. Meanwhile, the Petitioner has also crossed the age of superannuation.

5. The facts further show that pursuant to the Petitioner being placed under suspension on 11.8.1999 on conviction being passed by the Chief Judicial Magistrate, Raipur, the services of the Petitioner were terminated vide order dated 17.12.1999 passed by the erstwhile State of Madhya Pradesh (Annexure P-2 with the writ petition). A perusal of the order of the dismissal would reveal that the sole ground of terminating the services of the Petitioner was the order of conviction and that the department as such

had not conducted any sort of departmental enquiry before passing of the order of termination.

6. Subsequent to the said order of acquittal passed by the revisional Court, the Petitioner filed a writ petition before the High Court which was registered as Writ Petition (S) No. 3637 of 2013. This High Court vide its order dated 31.10.2013 disposed of the writ petition with a direction to the Petitioner to prefer a representation to the competent authority within a period of one month and the competent authority in turn was directed to decide the same by a reasoned order preferably within a period of three months from the date of submission of representation.

7. Pursuant to the disposal of the said writ petition, the Petitioner preferred a detailed representation categorically bringing to the notice of the authorities concerned that since the order of conviction has been set aside by the High Court in Criminal Revision No. 349 of 2005 dated 4.5.2012, as a consequence the termination order issued on the basis of conviction deserves to be set aside and he be taken back in employment. This representation of the Petitioner has been rejected by the authorities concerned vide Annexure P-8, dated 28.4.2014, i.e., by the Principal Secretary, Government of Chhattisgarh, Planning, Economical & Statistics Department. While rejecting the claim of the Petitioner, the stand of the State of Chhattisgarh was that since the order of termination was passed by the erstwhile State of Madhya Pradesh and that the Petitioner at the relevant point of time was working under the State of Madhya Pradesh in addition there being no official allocation of the Petitioner to the State of Chhattisgarh, it was not possible for the State of Chhattisgarh to accept the liability. Therefore no any order could be passed by the State of Chhattisgarh in this regard for the aforesaid reasons. At the same time, the authorities concerned have further ruled out the possibility of any

consequential relief to the Petitioner applying the principle of 'no work no pay'. It is this order which is under challenge in the present writ petition.

8. The contention of the learned Counsel for the Petitioner is that once when the order of conviction has been set aside by the superior Court, the consequence would be that the order of conviction does not exist any further. Further, it was also the contention of the Petitioner that once when the basis for termination of his services itself is not in existence, the order of termination also becomes bad in law and the same deserves to be quashed. It was also the contention of the Petitioner that at the time of the passing of the order of termination, he was posted under the erstwhile State of Madhya Pradesh at the Municipal Corporation, Raipur which now is within the territories of the State of Chhattisgarh. He further submits that if the order of termination would not had been passed or the order of conviction would not had been passed, the Petitioner would have continued his work in the State of Chhattisgarh itself at the Municipal Corporation, Raipur till attaining the age of superannuation which was in the year 2012. Thus, for all practical purposes, the State of Chhattisgarh ought to have accepted the liability of grant of consequential relief to the Petitioner.

9. Opposing the petition learned Counsel for the State of Chhattisgarh however submits that since there was no order of allocation or any sort of a document by which it could be presumed that the services of the Petitioner came under the employment of the State of Chhattisgarh, the liability cannot be unilaterally fastened upon the State of Chhattisgarh. Any liability as a consequence of his order of conviction getting set aside would first fall upon the State of Madhya Pradesh and thereafter only it could be shifted to the State of Chhattisgarh if any. He further submits that since the services of the Petitioner stood terminated before creation of the State of

Chhattisgarh, the liability of reinstatement as also for grant of any consequential benefit would first have to be fastened upon the State of Madhya Pradesh as all the actions under challenge arose from the order of termination and the order of conviction which both were issued by the erstwhile State of Madhya Pradesh.

10. Learned Counsel for the State of Madhya Pradesh however opposing the petition as well as opposing the contentions of the State of Chhattisgarh submits that since the cause of action arose within the territories of the State of Chhattisgarh and the petitioner's last place of posting also being within the State of Chhattisgarh and that he continued to reside within the State of Chhattisgarh till his age of superannuation, for all practical purposes, the liability would fall upon the State of Chhattisgarh and not upon the State of Madhya Pradesh.

11. Having considered the rival contentions put forth on each side and on perusal of the records, it would be relevant at this juncture to refer to Sections 82 and 83 of the Reorganization Act, 2000, which deals with the issue pertaining to legal proceedings and transfer of pending proceedings:

“82 Legal proceedings.– Where immediately before the appointed day, the existing State of Madhya Pradesh is a party to any legal proceedings with respect to any property, rights or liabilities subject to apportionment between the State of Madhya Pradesh and Chhattisgarh under this Act, the State of Madhya Pradesh or Chhattisgarh which succeeds to, or acquires a share in, that property or those rights or liabilities by virtue of any provision of this Act shall be deemed to be substituted for the existing State of Madhya Pradesh or added as a party to those proceedings, and the proceedings may continue accordingly.

83. Transfer of pending proceedings.– (1) Every proceeding pending immediately before the appointed day before a court (including High Court), tribunal, authority or officer in any area which on that day falls within the State of Madhya Pradesh shall, if it is a proceeding relating exclusively to the territory, which as from that day are the territories of Chhattisgarh State, stand transferred to the corresponding court, tribunal, authority or officer of the State of Chhattisgarh.

(2) If any question arises as to whether any proceeding should stand transferred under sub-section (1), it shall be referred to High Court of Madhya Pradesh and the decision of that High Court shall be final.

(3) In this Section—

- (a) “proceeding” includes any suit, case or appeal; and
- (b) “corresponding court, tribunal, authority or officer” in the State of Chhattisgarh means—
 - (i) the court, tribunal, authority or officer in which, or before whom, the proceeding would have laid if it had been instituted after the appointed day; or
 - (ii) in case of doubt, such court, tribunal, authority, or officer in the State of Chhattisgarh, as may be determined after the appointed day by the Government of that State or Central Government, as the case may be, or before the appointed day by the Government of the existing State of Madhya Pradesh to be corresponding court, tribunal, authority or officer.”

12. In the instant case what cannot be lost sight of is that, the Criminal Case No. 512/1997 initiated against the Petitioner was before the Court at Raipur i.e. Chief Judicial Magistrate, Raipur, which got concluded vide order dated 27.11.1998. This order was subjected to challenge before the Sessions Court at Raipur vide Criminal Appeal No. 194 of 1998 and the appeal also stood decided after the State of Chhattisgarh was carved out, on 23.4.2005. Thus, the case of the Petitioner falls squarely within the provisions of Sections 82 and 83 of the Reorganization Act, 2000. The subsequent revision petition was also preferred by the Petitioner before the High Court of Chhattisgarh, which ultimately stood allowed on 4.5.2012. Since the Petitioner at the relevant of time was working in the territory which has fallen in the State of Chhattisgarh and the criminal cases initiated against the Petitioner also being within the State of Chhattisgarh, the Petitioner for all practical purposes would have to be treated as an employee of the State of Chhattisgarh and thus definitely approach the

same State under whose jurisdiction falls the office or place of posting of the Petitioner from where he had been terminated which undisputedly falls within the State of Chhattisgarh. If at all, if any dispute in respect of the liability as a consequence of the Petitioner getting acquitted from the criminal case which was initiated against him, the same has to be resolved *inter se* between the two States i.e. the erstwhile State of Madhya Pradesh as well as the newly carved out State of Chhattisgarh.

13. So far as the liability on the merits of the case is concerned, what is undisputed from the pleadings of the parties is that the termination order dated 17.12.1999 has been passed only on the basis of the conviction in the criminal case. That is to say, as a consequence of the order of conviction getting set aside and there being an order of acquittal, the order of termination also has to be automatically recalled with. However, by the time, the Petitioner could get an order of acquittal in his favour from the revisional Court, he stood retired from the services on attaining the age of superannuation in March, 2012.

14. The Hon'ble Supreme Court in one of its recent decisions reported in 2009 AIR SCW 5069 (Basanti Prasad v. The Chairman, Bihar School Examination Board & Others) dealing with a similar issue of termination on the ground of conviction, held as under:

“19 Now reverting back to the facts of this case, the services of the appellant's husband was terminated only on the ground, that he was convicted by a Judicial Magistrate for certain offences under the provisions of Indian Penal Code. It is not a case where the delinquent employee was dismissed from service on the ground that he was charge sheeted by the police for certain offences under Indian Penal Code after holding a departmental enquiry. In the later circumstances, the delinquent employee could not have been heard to say that he did not question the order within a reasonable time, since the order of conviction passed by the Judicial Magistrate has nothing to do with the order passed by disciplinary authority. As we have already noticed, the dismissal was in view of the order of conviction passed by the Magistrate, till that order is set aside by a superior forum, the appellant's husband or the appellant could

not have questioned the same till he was acquitted by the Sessions Court. In view of these peculiar circumstances, in our view, the High Court was not justified in rejecting the prayer of the appellant primarily on the ground of delay and laches on the part of the appellant in questioning the order of termination passed on 4.8.1992 in a petition filed in the year 2005. In the present case, we are of the opinion that there is no such negligence or laches or acquiescence on the part of the appellant as may disentitle her for grant of a writ. Having said so, the matter requires to be remanded back to the High Court for taking a decision on the merits of the case. But taking into consideration the pendency of the litigation between the parties from last one decade and taking also into consideration the plight of the poor widow who is fighting the litigation before various forums with limited resources, we desist from remanding the matter and we intend to decide the matter on merits here itself in order to give quietus to this litigation.

xxx

xxx

xxx

21. The facts are not in dispute. The services of the appellant's husband was terminated only on the ground that he was convicted by a Judicial Magistrate for the offences under Indian Penal Code. That only means, no independent departmental enquiry was held against the delinquent employee. In the appeal filed before the Sessions Court against the order of conviction, the appellant has succeeded. Since, the punishment imposed was based on an order of conviction and since the same is set aside by an order passed by a superior forum and that order having become final for various reasons, including the death of the appellant's husband, as natural corollary, the request of the appellant requires to be redressed by the employer and since that was done, a writ court ought to have come exercised its extraordinary jurisdiction by commanding the respondents to redress the grievance of the appellant without resorting to a hypertechnical approach. In view of the above, the order passed by the respondents terminating the services of the appellant requires to be set aside and we do so."

15. This Court also in one of its recent decisions in Writ Petition (S) No. 5712 of 2010 (Afjal Aajami Vs. State of Chhattisgarh & Others), decided on 13.3.2015, in a case where the dismissal from services was dated 24.4.1990 and the dismissal was purely on the basis of the conviction, and the order of conviction being set aside by the High Court setting aside the order of termination has allowed the writ petition seeking consequential relief of the petitioner therein. It would be relevant to quote paragraph 6 of the said judgement herein below:

“6. It is a settled procedure of law that once the dismissal order of the delinquent is not based on the findings of the departmental enquiry, but based merely on the judgment of conviction by the trial Court which was subsequently set aside by the higher Court acquitting the delinquent of the charges and the said order of acquittal attained finality, the delinquent is definitely entitled for reinstatement. The respondent authorities were not justified in refusing reinstatement of the petitioner on the ground that his acquittal by this Court was not honourable as he was acquitted by extending him benefit of doubt. The basis for suspension of the petitioner was the criminal charge levelled against him and on his conviction by the trial Court, he was dismissed from services. The moment he was acquitted of the charge, he was acquitted of the blame in criminal law, the Courts are called upon to decide whether the prosecution has succeeded in bringing home the guilt to the accused beyond all reasonable doubt. When the Court is not satisfied regarding the guilt of the accused, he is acquitted. Whether a person is acquitted after being given benefit of doubt or for other reasons, the result is that his guilt is not proved. The Code of Criminal Procedure does not contemplate acquittal being honourable or otherwise. The only words known to the Code are “discharged” or “acquitted”. The effect of a person being discharged or acquitted is the same in the eye of law. It is futile to expect a finding of either honourable acquittal or complete innocence in a judgment of acquittal.”

16. In view of the aforesaid decisions rendered by the Hon'ble Supreme Court and also by this High Court, this Court has no hesitation in reaching to the conclusion that since the order of conviction which was the basis for the passing of the order of termination itself is not in existence by virtue of the order of acquittal, the consequential relief would be that the order of termination also has to go. It is ordered accordingly. On account of the acquittal of the Petitioner in Criminal Revision No. 349 of 2005, dated 4.5.2012, the order of termination dated 17.12.1999 also stands set aside/quashed.

17. In view of the fact that there was an order of conviction against the Petitioner which also stood affirmed by the trial Court till it was finally set aside by the revisional Court on 4.5.2012, the Petitioner applying the principle of 'no work no pay' shall not be entitled for any monetary benefits for the intervening period till the date of retirement except the fact that the

said period shall have to be treated for all practical purposes granting continuity of service for the purpose of pension and pensionary benefits inclusive of all retiral dues. The retiral dues and other payments which fell due on retirement will have to be actually paid to the Petitioner. It is made clear that the Petitioner shall also be entitled for all arrears of the pension and the pensionary benefits.

18. The writ petition is allowed and disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge

/sharad/