

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (S) NO. 2418 OF 2016

Chhedi Lal Sahu, S/o Shri Babulal Sahu, aged about 65 years, Ex-Driver,
Nagar Palika Nigam, Korba, Civil and Revenue District Korba (C.G.)

... Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Department of Urban Administration and Development, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur (C.G.)
2. Municipal Corporation, Korba, through its Commissioner, Korba, District Korba (C.G.)
3. Director, Urban Administration and Development, Indravati Bhawan, New Raipur, District Raipur (C.G.)
4. Additional Director (Finance), Secretariat, Urban Administration and Development, Chhattisgarh, Raipur, District Raipur (C.G.)
5. Joint Director, Regional Office, Urban Administration and Development, Bilaspur, District Bilaspur (C.G.)
6. Accountant General, Chhattisgarh, Raipur, District Raipur (C.G.)

... Respondents

For Petitioner	:	Mr. Dharmesh Shrivastava, Advocate.
For Respondents 1, 3, 4 & 5	:	Mr. D.R. Minj, Dy. Govt. Advocate.
For Respondent 2	:	Mr. B.D. Guru, Advocate.
For Respondent 6	:	Mr. R.K. Gupta, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

29/08/2017

1. The present writ petition has been filed seeking for quashment of the order dated 27.7.2015 (Annexure P-1) passed by Respondent No.1 disentitling the petitioner for pension invoking Rule 24 of the Chhattisgarh Civil Services (Pension) Rules, 1976 (in short, 'the Pension Rules').
2. Brief facts relevant for the adjudication of the present dispute are that the petitioner was initially appointed as a driver under the erstwhile Special Area Development Authority (in short, "SADA"), Korba, in the year 1985. The said SADA subsequently got merged with Respondent No.2- Municipal Corporation, Korba and the petitioner continued to discharge his duties that of a driver under the said Corporation.

3. The petitioner got involved in a criminal case and was charged for the offence punishable under Sections 148, 149 and 302 of the Indian Penal Code (in short, "IPC"). The Sessions Court, vide judgment dated 26.8.1997, convicted the petitioner and sentenced him for life imprisonment with fine of Rs.500/- for the offence punishable under Section 302/149 of IPC and also sentenced him for 2 years of R.I. for the offence punishable under Section 148 of IPC.

4. The said judgment of conviction was assailed in Criminal Appeal No. 1816/1997 and this High Court vide judgment dated 7.9.2013 allowed the criminal appeal and acquitted the petitioner.

5. During the pendency of the criminal appeal before the High Court, the petitioner crossed the age of superannuation of 60 years on 31.5.2010.

6. After the order of acquittal from the High Court, the petitioner moved an appropriate application for the consequential orders pertaining to his service and retiral dues be passed in the light of the acquittal.

7. It is pertinent at this juncture to mention that the competent authority had terminated the services of the petitioner by virtue of the conviction order from the date of conviction itself i.e. from 26.8.1997.

8. The competent authority considering the judgment of acquittal passed by the High Court in Criminal Appeal No. 1816/1997, dated 7.9.2013, vide its order dated 12.2.2014 (Annexure P-5), initially passed an order invoking Rule 54 of the Fundamental Rules (in short, "F.R. 54") holding that the petitioner shall be entitled for all pay and allowances and other benefits for the intervening period, that is, from the date of termination i.e. 26.8.1997 to the date of his superannuation i.e. 31.5.2010.

9. The competent authority at the same time had sent an intimation in this regard to the Director, Urban Administration and Development Department, Raipur and a letter initially was also sent to the Principal

Secretary, Urban Development Department, Raipur, for appropriate sanction for releasing all the dues that were payable to the petitioner.

10. The Government of Chhattisgarh, Urban Administration and Development Department, vide its order dated 3.11.2014 (Annexure P-7), had accepted the fact that by virtue of the judgment of acquittal the petitioner was entitled for reinstatement. However, considering the factual matrix of the case it ordered that under said circumstances it is the principles of 'no work no pay' which should be applied and appropriate action may accordingly be initiated.

11. Based upon the said correspondence of the State Government, the Municipal Corporation, Korba, vide Annexure P-8, dated 23.11.2014, modified its earlier order dated 12.2.2014 (Annexure P-5) and held that in the given factual matrix of the case the petitioner shall not be entitled for any monetary benefits for the intervening period, that is, from the date of termination i.e. 26.8.1997 to the date of superannuation i.e. 31.5.2010 and the petitioner, however, shall be entitled for all other dues that he would otherwise be entitled for on his superannuation.

12. These two orders passed by the Municipal Corporation, Korba, i.e. the order dated 12.2.2014 (Annexure P-5) and the order dated 23.11.2014 (Annexure P-8), are very specific that it is only the monetary benefit which the petitioner would not be entitled for from termination till retirement. In other words, he would only not be entitled for the actual payment that he was otherwise entitled for, for the period from the date of his termination till he has attained the age of superannuation. At the same time, the order is equally specific holding that the petitioner would be entitled for all consequential benefits which he is entitled for on his superannuation which took place during the pendency of the criminal appeal before the High Court.

13. At this juncture, it would also be relevant to refer to F.R. 54, which reads as under:

“F.R. 54. Pay and allowances on re-instatement.”-(1) When a Government servant, who has been dismissed, removed or compulsorily retired, is re-instated as a result of appeal or review or would have been so re-instated but for his retirement on superannuation, while under suspension or not, the authority competent to order re-instatement, shall consider and make a specific order-

- (a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, and
- (b) whether or not the said period shall be treated as a period spent on duty.

(2) Where the authority competent to order re-instatement is of the opinion that the Government servant who had been dismissed, removed or compulsorily retired has been fully exonerated, the Government servant shall, subject to the provisions of sub-rule (6), be paid full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be:

Provided that where such authority is of 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, subject to the provisions of sub-rule (7), be paid for the period of such delay, only such amount not being the whole of such pay and allowances as it may determine.

(3) In a case falling under sub-rule (2), the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be shall be treated as a period spent on duty for all purposes.

xxx xxx xxx xxx”

14. The only inference which can be drawn under F.R. 54 is that on the order of conviction getting set aside and the order of conviction being the only basis for his termination, once when the order of conviction is set aside it has to be presumed that the order of termination also does not

exist or it stands wiped out from the records and the petitioner for all practical purposes has to be considered as if he was continuously in employment without there being any interruption. This analogy by itself would clearly reveal that except for the monetary benefits from the date of termination till the age of superannuation so far as pay and allowances are concerned, the entire service of the petitioner would have to be construed as if it was spent on duty and the same has to be taken into consideration for the purpose of counting of his total length of service with which the pension and pensionary benefits as also the retiral dues payable to the petitioner has to be calculated.

15. Rule 24 of the Pension Rules relied upon by the State for disentitling pension to the petitioner, this Court is of the opinion that applying the said rules for denying pension to the petitioner is totally misconceived as the same would not be applicable in the given facts of the present case. It is not a case where the petitioner's service stands terminated or removed particularly after the judgment of acquittal the competent authority having issued two orders i.e. Annexure P-5, dated 12.2.2014 and Annexure P-8, dated 23.11.2014.

16. What is also relevant at this juncture to take note of is the fact that Rule 24 of the Pension Rules deals with *forfeiture of service on dismissal or removal*. In the instant case, there was an order of termination or dismissal i.e. on 26.8.1997 that was for the reason of a conviction and the moment the conviction order was set aside by the High Court, the F.R. 54 automatically became applicable and the competent authority, therefore, invoking F.R. 54 had rightly passed the two orders, on 12.2.2014 and amended order on 23.11.2014.

17. What is also relevant to take note of is the fact that the State Government also vide Annexure P-7, dated 3.11.2014, had reached to a conclusion so far as the case of the petitioner is concerned of his being entitled for reinstatement on account of his acquittal from the criminal charges levelled against him.

18. In view of the aforesaid factual matrix of the case, this Court is of the opinion that the impugned order (Annexure P-1) so far as applying Rule 24 of the Pension Rules for denying the petitioner his pension was unjustified, illegal and bad in law and the same deserves to be and is accordingly set aside.

19. It is ordered that the petitioner shall be entitled for the pension and pensionary benefits as also all retiral dues that would had been otherwise payable to him on his superannuation. It is also made clear that the intervening period, i.e., from 26.8.1997 to 31.5.2010, for all practical purposes, has also to be taken into consideration for calculating the length of service of the petitioner for proper fixation of his pension and retiral dues. Needless to mention that the petitioner shall also be entitled for the periodical revision of pay that has occurred while granting the fixation and quantification of retiral dues.

20. The writ petition accordingly stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge