

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION (S) NO. 727 OF 2013**

Lalan Prasad Dewangan S/o Late Shri Ballu Ram Dewangan Aged About 56 Years Assistant Teacher Primary School Rachabhata Block Nawagarh Distt. Janjgir Champa (CG).

...Petitioner(s)

Versus

1. State of Chhattisgarh Through Secretary Education Department New Mantralaya Raipur (CG).
2. District Education Officer Janjgir Champa (CG).

... Respondent(s)

For Petitioner	:	Shri Ajay Shrivastava, Advocate.
For Respondent-State	:	Shri Shashank Thakur, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

13.07.2018

1. The challenge in the present writ petition is to issuance of letter dated 05.06.2012 (Annexure P/1) whereby the authorities concerned i.e. respondent No.1 has treated the period of absence from duty of the petitioner between 29.06.1994 to 14.10.2011 i.e. 17 years 3 months and 15 days as dies non.
2. The facts of the case is that, the petitioner was working with the respondents as Assistant Teacher. While working on the said post, he got involved in a criminal case under Section 302 IPC. Subsequently, on conclusion of trial, it was found that the petitioner was guilty of having committed offence under Section 302 IPC and vide judgment dated 29.06.1994 he was convicted. Immediately after conviction he was taken into custody where he remained in custody up till 02.09.1994 when in the Criminal Appeal he got released on bail. Subsequently, the Criminal Appeal finally stood

allowed on 08.03.2011 whereby the appellate court had set aside the judgment of conviction and has acquitted the petitioner from the charge under Section 302 IPC. After acquittal of the petitioner from the criminal case, the petitioner stands reinstated in service on 14.10.2011 and since then he is continuing in employment.

3. The grievance of the petitioner is that vide the impugned order the respondents have passed an order of treating the intervening period till his reinstatement as dies non. The contention of the petitioner is that since there is an order of dies non and that the effect of the order of dies non is that of a major punishment, it was necessary/incumbent upon the respondents to at-least issue a show cause notice, or if not, an enquiry should had been conducted before passing the same. It was also the contention of the petitioner that pursuant to the order of acquittal by the Trial Court, for all practical purposes, the period has to be treated as spent on duty and on this count also the order of dies non would not be sustainable.
4. It was the further contention of the petitioner that the respondents were also required to pass a suitable order as to how the period between 29.06.1994 to 14.10.2011 would be treated. Whether it would be treated as if he was placed under suspension or not. If it has to be treated as under suspension then he would also be entitled for subsistence allowance for the intervening period.
5. A perusal of record would show that the petitioner stood convicted on 29.06.1994 and remained in jail for a period of three months when he was released on bail in criminal case on 02.09.1994. The petitioner since then till filing of the present petition has never

approached any competent court of law for grant of subsistence allowance though he moved an application for joining during the intervening period. This court is of the opinion that he could not have been granted joining for the simple reason that the order of conviction was still in operation against the petitioner and the status of the petitioner was that of a convict even though he was on bail and as such he could not have been taken back in employment.

6. The petitioner finally got acquittal only on 08.03.2011 and thereafter the respondents have reinstated him in service w.e.f. 14.10.2011. The effect of the order of acquittal would mean that the petitioner stands exonerated of the charges under Section 302 IPC. The respondents after having reinstated the petitioner in service ought to have passed an appropriate order as to how the intervening period had to be treated. The authorities should have taken note of the order of acquittal passed in his favour. They also should have taken note of the fact that the petitioner has now been reinstated in service.
7. Given the aforesaid factual matrix of the case, the respondent authorities ought to have passed an order whereby they should have discussed the entire facts and thereafter should have passed a reasoned order so far as how the intervening period has to be treated.
8. So far as the order of dies non is concerned, it is by now well settled that before issuance of an order of dies non the least that is expected from the authorities is to conduct an inquiry by calling upon the concerned person to explain his conduct as to why the period be

not declared as dies non. In the instant case, perusal of record shows that the Petitioner at no point of time had been called upon or an explanation was sought from the Petitioner before issuance of the impugned order, Annexure P-2.

9. It would be relevant at this juncture to refer to a decision rendered in the case of **Smt. Mrudula Rishi v. State of Chhattisgarh & Others**, decided on **30.10.2013** in **Writ Petition No. 101 of 2006** wherein it has been observed as under:-

“9. In the opinion of this Court, an order adverse to the Government servant, who has remained wilfully absent after expiry of leave, cannot be passed without initiating any disciplinary proceeding, as provided under Rule 24(2) of the Rules, 1977. While holding so this Court would take assistance of the law laid down by the High Court of Madhya Pradesh in *Ali Hussian (Dr.) v. State of M.P.*, 1984 J.L.J. 67, and *Mahesh Kumar Shrivastava v. State of M.P. & Others*, 2007 (3) M.P.L.J. 525.

10. In *Battilal v. Union of India & Others*, 2005 (3) M.P.H.T. 32 (DB), the High Court of Madhya Pradesh has held as under :

“3...When the Authority directs that the period will be treated 'dies-non', it means that continuity of service is maintained, but the period treated as 'dies-non' will not count for leave, salary, increment and pension. In fact, F.R. 54(1) casts such a duty on the authority. It provides that when a Government servant who has been dismissed, removed or compulsorily retired is reinstated as a result of appeal or review, the authority competent, to order reinstatement 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.”

Thus, the law is well settled that while the disciplinary authority is competent to direct the period of willful absence as

dies non, as a measure of penalty, such order cannot be passed unless the concerned employee has been proceeded departmentally under the provisions of Rule 24(2) of the Rules, 1977 read with the Rules, 1996.”

10. Taking into consideration the aforesaid legal position as it stands, in the instant case the authorities concerned ought to have taken in to consideration the entire facts and circumstances of the case and should have passed a reasoned order. Before passing of order of dies non, it was necessary for the authorities to grant an opportunity of hearing to the petitioner.
11. The impugned order dated 05.06.2012 (Annexure P/1) to that extent is not sustainable. The same deserves to be and is hereby set aside. The matter is remitted back to the respondents for passing order afresh so far as petitioner is concerned in respect of period of absence from 29.06.1994 to 14.10.2011.
12. Let an appropriate decision be taken at the earliest preferably within a period of three months. It would be the responsibility of the petitioner to bring into the notice of the respondent No.1 so far as order of this court is concerned.

Sd/-
(P. Sam Koshy)
Judge