

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 2115 of 2010**

Ajay Kumar Sahu S/o Late Hira Lal Sahu, Aged about 32 years,
Presently Working As Assistant Grade-III At O/o Project Officer
Women And Child Welfare Development Department Abhanpur,
District Raipur Chhattisgarh

R/o. Opposite Vishwahindu Parishad Office, Kali Nagar, Pandari,
Raipur, Tahsil and District Raipur Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh, Through: the Secretary, Department of Women & Child Welfare Development, D.K.S. Bhawan, Mantralaya, Raipur, District Raipur, Chhattisgarh.
2. The Commissioner, Raipur division, Raipur Chhattisgarh
3. The Collector, District Raipur Chhattisgarh
4. District Programme Officer, Women & Child Welfare Department, Collectorate Campus, Raipur, District Raipur Chhattisgarh
5. Shri Taman Singh Sonwani, Departmental Enquiry Officer and Upper Collector, Raipur, District Raipur Chhattisgarh
6. Smt. Priyanka Thakur, District Woman & Child Development Welfare Officer, Raipur Chhattisgarh

----Respondents

For Petitioner	:	None
For State	:	Mr. S.P. Kale, Dy. A.G.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****01/10/2018**

1. The challenge in the present writ petition is to the order Annexure P/1 dated 31.03.2010, whereby the Commissioner, Raipur division had allowed the revision of the petitioner against the order of termination passed by the Collector dated 04.01.2008. However, while allowing the appeal to the extent of setting aside the order of termination, the Commissioner had ordered for treating the intervening period between 04.01.2008 to 31.03.2010 i.e. the date of decision in the appeal to be treated as "No work no pay". It is this

observation of “No work no pay”, which is under question in this writ petition.

2. On the previous date of hearing, the State counsel was directed to seek instructions so far as the present status of the departmental enquiry, if any, initiated against the petitioner is concerned.
3. The State counsel makes a submission that he has received the instructions to the extent that the departmental enquiry was conducted and an inquiry report also has been submitted by the Additional Collector, whereby the finding is that all the charges leveled against the petitioner are not proved and has forwarded the inquiry report to the Disciplinary authority, thereafter no further instructions is available with the State counsel.
4. The only point of consideration in the instant case is that whether while deciding the appeal, the Appellate authority having once reached to the conclusion that the order of termination dated 04.01.2008 was not justified and had remitted the matter to the Disciplinary authority to pass a fresh order, could the Appellate authority have also while deciding the appeal have decided, how the intervening period has to be treated.
5. Under the provisions of the Fundamental Rules, this action is within the domain of the Disciplinary authority to decide as to how the intervening period has to be treated and not with the Appellate authority.
6. Once when the order stands remitted back to the Disciplinary authority to take a fresh decision on the disciplinary proceedings initiated against the petitioner, the intervening period and how that

period is to be treated also would have to be left open for the Disciplinary authority to decide. The Appellate authority while deciding how the intervening period has to be treated, has literally foreclosed the claim of the petitioner from raising any benefit, even if the Disciplinary authority ultimately exonerates the petitioner of all the charges leveled against him. This would be detrimental to the interest of the petitioner.

7. Given the said facts, this Court is of the opinion that the impugned order Annexure P/1 to the extent of declaring the said intervening period between 04.01.2008 to 31.03.2010 as “No work no pay” is not justified or sustainable and the same is accordingly set-aside/quashed and it is left open for the Disciplinary authority to take a decision while passing a final decision on the remand being made by the Commissioner and if such a decision has not been taken, the Collector Raipur is directed to take an appropriate decision as to how that intervening period has to be treated i.e. the period between 04.01.2008 to 31.03.2010 or till the date he has reinstated back in service and while deciding the same the Disciplinary authority shall keep in mind the provisions of the Fundamental Rules, so also the findings of the Inquiry officer, as also the decision of the Disciplinary authority in this regard, if not already decided.
8. With the aforesaid observations, the writ petition stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge