

AFR

HIGH COURT of CHHATTISGARH, BILASPUR**Writ Petition (S) No.2548 of 2018**

Santosh Kumar Patnayak S/o Bhawan Shankar Patnayak, aged about 55 years, R/o Sarangarh Tahsil – Gharghoda, District Raigarh, Chhattisgarh.

----Petitioner**Versus**

1. State of Chhattisgarh, through – its Secretary, Department of Revenue and Disaster Management Department Mahanadi Bhawan, Mantralaya, Naya Raipur, Chhattisgarh.
2. The Collector, Raigarh District Raigarh, Chhattisgarh.
3. Sub-Divisional Officer (Revenue Department) Gharghoda, Raigarh District Raigarh, Chhattisgarh.

---- Respondents

For petitioner	:	Shri Varun Sharma, Advocate.
For respondent-State	:	Shri Dheeraj Wankhede, G.A.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****23.03.2018.**

1. The challenge in the present writ petition is to the order dated 06.05.2014 (Annexure P-1) whereby subsequent to the acquittal from the High Court in criminal appeal, the petitioner has been re-instated in service and the intervening period has been treated as “No Work No Pay”. The Counsel for the petitioner submits that the said order of No Work No Pay passed by the authority concerned is bad in law to the extent that no opportunity of hearing was given to the petitioner to explain before such an order was passed.
2. According to petitioner, since the petitioner has got an order of acquittal in his favour, it has to be presumed that the order of termination also has become bad in law and the same would not be sustainable and the petitioner would therefore be entitled for all

consequential benefits as if he had not been terminated from employment. The petitioner would also be entitled for all consequential benefits as has been received by the immediate junior to the petitioner in service. The petitioner relies upon the circular of the State Govt. dated 15.09.1977 issued under Chhattisgarh Fundamental Rules wherein it is the requirement of the authorities concerned to consider the case of the petitioner for grant of consequential benefits during the intervening period treating the service as period spent on duty and also as regards entitlement for full wages and allowances and such claim of the petitioner should be decided by a speaking order.

3. Counsel for the petitioner, in support of his contention relied upon the decision of Supreme Court in case of M.Gopalakrishna Naidu Vs. State of Madhya Pradesh, AIR 1968 SC 240, in O.P. Gupta Vs. Union of India & Ors., 1987 (4) SCC 328 and also in case of Jaipur Vidyut Vitran Nigam Ltd.& Ors. Vs. Nathu Ram, 2010(1)SCC 428.
4. The State counsel, on the contrary opposing the petition submits that the order impugned does not warrant any interference for the simple reason that the petitioner was implicated in a criminal case and was prosecuted for the offence punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act. The trial court also convicted the petitioner with Rigorous Imprisonment of one year with fine of Rs.1000/-. It is only in appeal before the High Court that the petitioner could succeed and there was an order of acquittal in his favour. Therefore, the intervening period i.e. from the date of

termination till the date of reinstatement the services of the petitioner has to be treated as “No Work No Pay” and as such there is no illegality or perversity in the order so passed and the same being devoid of merit deserves to be rejected.

5. Having heard the counsel for the parties and on perusal of record, indisputably the petitioner was placed under suspension on 23.06.1992 on his being prosecuted for the offence under Prevention of Corruption Act. The trial court void its judgment dated 24.11.1998 in Special Case No.4/1992 found the petitioner guilty for the offence and convicted him. The said judgment of conviction was challenged in an appeal. The appellate court vide its judgment dated 23.08.2013 set aside the order of conviction and acquitted him of all the charges levelled. After the order of acquittal, the petitioner reported to the department seeking reinstatement and the impugned order dated 06.05.2014 (Annexure P/1) has been passed whereby the intervening period i.e. from the date of termination till the date of reinstatement was treated as “No Work No Pay”.
6. On perusal of records, particularly the judgments cited by the counsel for the petitioner, the requirement of law was that after order of acquittal has been passed in criminal case, the case of the petitioner or a government employee has to be considered under Fundamental Rules 54. That, while considering the case of an employee under Fundamental Rules 54, a reasonable opportunity of hearing to the employee should be provided. The reason to provide an opportunity is that the order which may be passed under Fundamental Rules 54

may result in pecuniary loss to the government servant and therefore while taking a decision under Fundamental Rules 54, the consideration must be objective rather than subjective.

7. In the case of Gopal Krishna Naidu (Supra) the Supreme Court held that if an opportunity to show cause against the action proposed is not afforded, as admittedly it was not done in the present case, the order is required to be struck down as invalid on the ground of it being breach of principles of natural justice.
8. In view of the aforesaid factual matrix and the legal position and also considering the contents of order dated 06.05.2014 (Annexure P/1) wherein no discussion whatsoever has been made out by the authorities concerned so far as how that intervening period has to be treated and what sort of consequential relief the petitioner would be entitled for, the same is not sustainable, it deserves to be and is accordingly set aside.
9. The matter stands remitted back to the respondent No.3, who in turn, in the light of the discussions held in the preceding paragraphs shall reconsider the case of the petitioner keeping in view the provisions of Fundamental Rules 54 without being influenced by any of the observations, and thereafter shall pass a speaking order afresh within a period of three months from the date certified copy of this order is made available.
10. The writ petition stands allowed and disposed of.

Sd/-

(P.Sam Koshy)
Judge