

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 943 of 2012**

Balram Prasad Jaiswal, S/o. Dhaniram Jaiswal, Aged about 56 years, Occupation service, Posted as Peon at Tahsil Office Marwahi, R/o. Marwahi, District Bilaspur Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh, The Secretary, Revenue Department, D.K.S. Building, Raipur, District Raipur, Chhattisgarh.
2. Commissioner, Bilaspur division, Bilaspur Chhattisgarh
3. Collector, Bilaspur, District Bilaspur Chhattisgarh
4. Sub-Divisional Officer (Revenue, Kota, District Bilaspur Chhattisgarh

----Respondents

For Petitioner	:	Mr. Sunil Sahu, Advocate
For State	:	Ms. M. Asha, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Order on Board****13/03/2018**

1. Present is a writ petition challenging the order dated 20.10.2011, passed by the respondent (Annex.P/1), whereby the order of suspension has been revoked, but the period of suspension has been ordered to be treated as break in service.
2. The contention of the petitioner is that the said order is bad in law for the reason that the period of suspension cannot under any circumstances be said to be break in service for the reason that the department has on the petitioner being acquitted in the criminal case has revoked the suspension order. Once the order of suspension stands revoked, the respondent-employer was supposed to consider the case of the petitioner in the light of Rule 54B of the Fundamental Rules governing the service conditions.

3. Present is a second round of litigation, the earlier round of litigation was by way of WPS No. 5401/2011, which was disposed of by this Court on 14.09.2011, whereby the petitioner was granted the liberty to make a representation to the respondents, who in turn would decide the representation in accordance with the rules. Subsequent to the disposal of the said writ petition, the impugned order has been passed leading to the filing of the present writ petition. The challenge of the present writ petition is only to the extent of the direction of the respondents holding the said period as break in service.
4. The contention of the counsel for the petitioner is that by virtue of the said order, the petitioner has been denied the incremental benefits and also the consequential benefits which the petitioner would have derived had he not been placed under suspension. It was also the contention of the petitioner that once when the order of conviction has been set-aside by the Appellate Court and the present petitioner has been acquitted of the charges leveled against him, the petitioner would have to be treated as if the charge leveled against him is not in existence any more and that the petitioner would be entitled for all the consequential benefits accordingly.
5. At this juncture, it would be relevant to refer to Rule 54B of the Fundamental Rules, which for ready reference is reproduced herein under:-

“F.R. 54-B. (1) When a Government servant who has been suspended is re-instated or would have been so re-instated but for his retirement on superannuation while under suspension, the

authority competent to order re-instatement shall consider and make specific order-

(a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with re-instatement or the date of his retirement on superannuation, as the case may be, and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Notwithstanding anything contained in rule 53, where a Government servant under suspension dies before the disciplinary or court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family, shall be paid the full pay and allowances for that period to which he would have been entitled had he not been suspended, subject to adjustment in respect of subsistence allowance already paid.

(3) Where the authority competent to order re-instatement is of the opinion that the suspension was wholly unjustified, the Government servant, shall, subject to the provisions of sub-rule (8), be paid the full pay and allowances to which he would have been entitled, had he not been suspended:

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reason 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 in him] and after considering the representation, if any, submitted by him direct, for

reasons to be recorded in writing that the Government servant shall be paid for the period of such delay, only such [amount (not being the whole)] of such pay and allowances, as it may determine.

(4) In a case falling under sub-rule (3), the period of suspension, shall be treated as a period spent on duty for all purposes.

(5) In cases other than those falling under sub-rules (2) and (3), the Government servant, shall, subject to the provisions of sub-rules (8) and (9), be paid such [amount (not being the whole)] of the full pay and allowances] to which he would have been entitled had he not been suspended, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period [which in no case shall exceed sixty days from the date on which the notice has been served], as may be specified in the notice.

(6) Where suspension is revoked pending finalisation of the disciplinary or court proceedings, any order passed under sub -rule (1) before, the conclusion of the proceedings, against the Government servant, shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in sub-rule (1), who, shall make an order according to the provisions of sub-rule (3) or sub-rule (5), as the case may be.

(7) In a case falling under sub-rule (5), the period of suspension shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specified purpose:

Provided that, if the Government servant so desires, such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the Government servant.”

6. The admitted fact in the instant case is that the petitioner was charged for an offence under Section 420 of the Indian Penal Code and the F.I.R. was also registered against him. The case against the petitioner for the said offence was put to trial before the Additional Chief Judicial Magistrate, Bilaspur, who vide its order dated 06.03.1998 had convicted the petitioner for the said offence and sentenced the petitioner to undergo two years of rigorous imprisonment and fine of Rs.2000/-. The matter was put to challenge in Criminal Appeal No. 64/1998 before the 2nd Additional Sessions Judge, Bilaspur. The 2nd Additional Sessions Judge, Bilaspur also dismissed the appeal of the petitioner vide order dated 20.07.1999. The petitioner thereafter preferred a Criminal Revision vide Criminal Revision No. 1167/1999. The petitioner meanwhile entered into compromise with the complainants and by virtue of a compromise the matter was compounded and an order was obtained from the Revisional Court i.e. the High Court on 26.04.2011 and the High Court disposing of the said Revision petition made the following observations:

“In this view of the matter and keeping in view the fact that offence under Section 420 of the I.P.C. is compoundable in nature, the compromise arrive at between the parties is permitted to be entered into. Consequently, applications mentioned above are allowed and the compromise desired by the parties.

The result of this compromise would be the acquittal of the accused applicant of the offence punishable under Section 420 of the Indian Penal Code. Order accordingly.”

7. The plain reading of the aforesaid order would show that the petitioner stood acquitted from the criminal charges under Section 420 of the Indian Penal Code alleged against him.
8. Meanwhile, the services of the petitioner had been placed under suspension on 22.02.1993 by the department and subsequent to the order of acquittal by the High Court, the petitioner sought for revocation of the suspension which the respondent did not act upon. The petitioner then filed a writ petition before this Court vide WPS No. 5401/2011, which stood disposed of on 14.09.2011, whereby the petitioner was directed to make the fresh representation to the respondents, who in turn shall expeditiously decide the case. The impugned order has been passed thereafter.
9. A perusal of the impugned order shows that though the respondents have taken into consideration the judgment of acquittal in favour of the petitioner, but while passing the impugned order they have treated the intervening period i.e. from 1993 to 2011 i.e. the period of suspension to be break in service. The break in service would always be detrimental to the interest of the petitioner. The perusal of Fundamental Rule 54B clearly reflects that on an acquittal having being obtained by the petitioner, the respondents ought to have considered the case of the petitioner as if he was in service without the order of suspension having being issued. What cannot be lost sight is that though the petitioner was placed under suspension on criminal charges under Section 420 of the Indian Penal Code, the

respondents have not initiated any disciplinary proceedings against the petitioner at any point of time. Thus as a consequence of the order of acquittal by the High Court, the respondents were incumbent to consider the case of the petitioner who was under suspension as per the provisions of Rule 54B of the Fundamental Rules.

10. As a natural consequence, the effect of the order of acquittal would bring home the revocation of the suspension order as the department has not proceeded against the petitioner in any disciplinary proceedings. If the charges leveled against the petitioner goes, then for all the practical purposes, the intervening period or the period of suspension which in the instant case would be from 22.02.1993 to 20.10.2011 has to be treated as in service. The respondents were not justified in treating the said period as break in service.

11. It is a known fact that a break in service is always treated as the period which stands wiped of and in the instant case the respondent by virtue of the impugned order would not count the service of the petitioner between 1993 to 2011. Once when the order of charges leveled against the petitioner goes and there is an order of acquittal in his favour the petitioner having being suspended only on account of the criminal charge leveled against him, the natural consequence would be that the petitioner would have to be treated as if in service in view of the provisions of Rule 54B of the Fundamental Rules. The impugned order thus is not sustainable and the same deserves to be and is accordingly set-aside to the extent holding the intervening period in the service of the petitioner i.e. from the date of

suspension 22.02.1993 to 20.10.2011 to be spent as if on duty without any actual monetary benefits payable to the petitioner. In other words, the said period have to be notionally taken into consideration treating the intervening service period be treated as period spent on duty. As a result, the petitioner would be entitled for all consequential benefits though notionally to be granted without there being any actual monetary benefits being released to the petitioner. But the said period would definitely be counted while counting his total length of service for the purpose of determining the retiral and pensionary benefits.

12. The writ petition thus stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

Ved