

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No.13 of 2006**

- Madan Mohan Rajwade, aged 53 years, Son of Shri Shivprasad Rajwade, Food and Civil Supplies Inspector, Gariaband, District Raipur (MP)

---- Petitioner**Versus**

1. State of Madhya Pradesh through the Secretary, Department of Food and Civil Supplies, Vallabh Bhawan, Bhopal (M.P.)
2. The Director of Food and Civil Supplies, Madhya Pradesh, Bhopal, M.P.

---- Respondents

For Petitioner	:	Shri A.V. Shridhar, Advocate
For Respondent/State	:	Shri S. Majid Ali, Dy.GA

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****17/04/2018**

Heard.

2. The petitioner filed this petition seeking reliefs that the order passed in the departmental enquiry on 02-07-1985 and order passed in appeal on 08-01-1988 be quashed ; the respondents be directed to reinstate the petitioner in service for all purposes including full pay between the period 28-12-1965 to 30-06-1978; respondents be directed to pass orders of confirmation with effect from 18-05-1976 and consequent placement in the gradation list as on 01-04-1986 below R. C. Sonpuri (S.No.12) and above S. L. Dewangan (S.No.13); direct respondents to constitute review DPC to consider the petitioner retrospectively upon due fixation of seniority and grant promotion to

the post of Assistant Food Officer and then as Food Officer as also consequential benefits of salary.

3. The petitioner was initially appointed as Food & Civil Supplies Inspector in the year 1963. On certain allegations of misconduct, he was suspended on 15-12-1965 followed by issuance of charge sheet on 17-02-1966. Suspension, however, was, later on, revoked on 01-09-1967. The enquiry was eventually completed and enquiry report was submitted on 12-09-1967 resulting in issuance of an order of removal from service vide order dated 06-10-1969. The appeal was also dismissed in the year 1973. Aggrieved by the order of removal from service and the order passed in appeal, the petitioner approached the High Court of Madhya Pradesh by filing petition numbered as M.P.No.531 of 1973 (Madan Mohan Rajwade vs. State of MP), which was allowed vide order dated 24-01-1978. The petitioner was reinstated in service vide order dated 30-06-1978, though wages for the intervening period were denied by application of principle of "No work No pay". The petitioner also started raising claim for promotion. One such representation dated 10-03-1979 is on record.

While the matter stood thus, the respondents, on the same allegations, on which, earlier punishment order was passed and which was quashed by the High Court, initiated fresh enquiry on 06-06-1982, in which, penalty order was passed on 02-07-1985 withholding two increments without cumulative effect. The penalty order was affirmed in appeal vide order dated 08-01-1988.

5. In support of the relief sought in the petition, learned counsel for the petitioner contended that once the order of penalty was passed on certain set of allegations, which was quashed by the High Court vide its order dated 24-01-1978, without reserving any liberty to the respondents to issue fresh

charge sheet, fresh enquiry was not permissible and therefore, all the proceedings initiated in the second enquiry and the second order of penalty are illegal. It is next submitted that the petitioner having been reinstated in service under a judicial order, he was entitled to continuity in service, during the period, he remained out of employment. The petitioner was entitled to consequent seniority, pay & perks. The respondents, though, reinstated the petitioner, illegally denied him salary in respect of the intervening period by applying incorrect principle of "No work No pay". It is then submitted that the petitioner was entitled to be confirmed in service with effect from 18-05-1976, but the respondents illegally deferred the date of confirmation to 18-05-1980. According to learned counsel for the petitioner, the only operative reason for not considering petitioner's confirmation from due date because there was no occasion on account of removal from service. Once, the petitioner was reinstated in service under a judicial order, the respondents were obliged to consider his case for confirmation from the date he became eligible for confirmation. It is then submitted that if the petitioner is granted seniority and confirmation as claimed by him, he would be entitled to be placed at an appropriate place in the gradation list of Food and Civil Supplies Inspector below Shri R. C. Sonpuri and above Shri S. L. Dewangan. Shri S. L. Dewangan was granted promotion to the next higher post of Assistant Food Officer with effect from 08-04-1973 and as Food Officer with effect from 02-07-1979 and therefore, the petitioner is also entitled to be granted promotion to the post of Assistant Food Officer and Food Officer from the date his junior S. L. Dewangan was granted promotion.

6. On the other hand, learned State counsel would submit that at the time of reinstatement of the petitioner on 30-06-1978, the respondents did not grant

salary for the intervening period applying the principle of “No work No pay”. The petitioner was having full knowledge about the order, but he did not challenge the same. Similarly, the petitioner was confirmed only with effect from 18-05-1980. Even the confirmation from 18-05-1980 was not challenged by the petitioner. The petitioner has also not challenged the refusal to grant salary for the intervening period and confirmation from 18-05-1980 within a reasonable time, hence, he is not entitled to any relief because in the matter of challenge to denial of pay and date of confirmation, the petition is hit by delay and laches. In so far as imposition of penalty is concerned, learned State counsel seeks to justify the action by submitting that as the High Court set aside the order of penalty against the petitioner on the ground of violation of principles of natural justice, the respondents were fully entitled to initiate fresh enquiry on the same set of allegations. The petitioner was afforded due opportunity of hearing and his reply was taken and the order passed, which cannot be said to be disproportionate to the gravity of misconduct. The appeal was considered and dismissed as such no relief could be sought by the petitioner.

7. It is not in dispute that the fresh enquiry was initiated against the petitioner on 06-06-1982 on the same set of allegations, on which, earlier penalty was imposed on the petitioner vide order dated 06-10-1969. If that be so, this Court is of the considered opinion that initiation of fresh enquiry on the same set of allegations was not permissible under the law in the absence of any liberty granted by the High Court while allowing the petition filed by the petitioner vide order dated 24-01-1978.

8. The petitioner's claim for salary in respect of the period, during which, he remained out of employment did not find favour with the Court because in the order dated 24-01-1978 passed by the High Court, there is no direction for

payment of salary in respect of the period, during which, the petitioner remained out of employment. The petitioner did not challenge that part of the order. When the order of reinstatement was passed on 30-06-1978, denying salary in respect of the period, during which, the petitioner remained out of employment, the petitioner did not raise any issue and acquiesced in the action because no petition was filed by the petitioner within reasonable time. Similarly, belated confirmation vide order dated 18-05-1980, irrespective of correctness of the said decision, was also not challenged. As a matter of fact, the petitioner, after reinstatement, did not challenge denial of payment of salary of the intervening period of confirmation. It is only when the penalty was imposed, penalty in fresh enquiry, which was confirmed in appeal, while filing the instant petition, the petitioner clubbed other stale claims. Those stale claims are therefore liable to be and are accordingly rejected.

9. It has to be held, as a settled legal position under the law, once a person is reinstated in service under a judicial order, the entire period during which he remained out of employment has to be counted for the purpose of seniority and continuity in service. This legal position has been authoritatively propounded by the Division Bench of this Court in the case of WPS No.1703 of 2015 (***Tukaram Vs. State of Chhattisgarh***) and batch of petitions decided on 16.05.2017. Therefore, the petitioner is entitled to continuity in service since the initial date of appointment without any break.

10. As the date of confirmation of the petitioner was subsequent to that of S. L. Dewangan, the petitioner's claim for seniority would be accepted though for all purposes, the period has to be treated as continuity in service. Resultantly, the petitioner is entitled to get benefits like higher pay scale, notional pay fixation, increments etc. Moreover, the period of service from the

date of initial appointment has to be taken into consideration for the purpose of pension also, because by now, the petitioner stands retired from government service.

11. In the result, the petition is partly allowed. The period, during which, the petitioner remained out of employment i.e. from 06-10-1969 to 30-06-1978 shall be counted for the purpose of service and the aforesaid period shall be treated as continuity in service. This period shall be counted for the purpose of grant of benefits, determining length of service as also for pensionary purposes. The order of penalty passed on 06-06-1982 and the appellate order dated 08-01-1988 are quashed.

SD/-
(**Manindra Mohan Shrivastava**)
Judge