

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 5012 of 2018**

Ashwani Kumar Shukla S/o Late Shri Yogendra Prasad Shukla, Aged About 54 Years Occupation - Assistant Jail Superintendent (Up Jail Surajpur), R/o Ward No. 10, Jail Para, Surajpur, Tehsil Surajpur, District Surajpur, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Department Of Home (Jail), Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur Chhattisgarh
2. Director General Of Jail Chhattisgarh Raipur, District Raipur, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Surfaraj Khan, Advocate
For State	:	Shri S. P. Kale, Dy. A.G.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****07.08.2018**

Challenge in the present writ petition is to the impugned orders Annexure P-1 dated 11.07.2017 and Annexure P-2 dated 25.11.2009.

2. Vide Annexure P-2 dated 25.11.2009 the petitioner's appeal against an earlier order of termination dated 15.06.2009 was allowed and his order of termination was set aside and the petitioner was in turn inflicted with a punishment of stoppage of 3 increments with cumulative effect. Subsequently, the petitioner is said to have filed a representation against the said order to which the State Govt. now vide Annexure P-1 dated 11.07.2017 has ordered that the intervening period i.e. the period from the

date of termination till allowing of the appeal on 25.11.2009, would be treated as “no work no pay”. It is these two orders that the petitioner is challenging.

3. So far as Annexure P-2 is concerned, counsel for the petitioner submits that the same is bad in law because the respondents ought to have conducted an enquiry.

4. However, this Court is not inclined to entertain the said prayer of the petitioner for the simple reason that Annexure P-2 was an order passed in November, 2009 and the present writ petition has been filed on 29.07.2018. There does not appear to be any further appeal preferred by the petitioner against the order dated 25.11.2009 Annexure P-2. Thus, the said relief sought for deserves to be and is rejected on the ground of delay.

5. So far as the order Annexure P-1 is concerned, the apprehension of the petitioner is that the order may have an adverse effect on the retiral dues payable to the petitioner in as much as the period of “no work no pay” may be treated by the the respondents as break in service thereby adversely affecting his retiral dues.

6. This prayer of the petitioner is only an apprehension whereas there is no substantial order in this regard. The only order which is passed is that the intervening period would be treated as “no work no pay”. Even otherwise under the service jurisprudence, it is by now a settled position of law that when an order of termination is set aside by the higher authorities or by a competent Court of law, the order of reinstatement relates to back to the date of termination and in between if the period has been declared as “no work no pay” that by itself cannot be treated as break in service and therefore the petitioner in the present factual matrix of the case need not

have any apprehension in this regard. The said period would be treated for all practical purposes as period spent on duty except for the fact that as per Annexure P-1, he would not be entitled for any monetary benefits for the said period.

7. Accordingly the present writ petition stands dismissed.

**Sd/-
P. Sam Koshy
Judge**