

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION (S) NO.1098 OF 2016**

Smt. Philomina Ekka W/o Mr. Amrit Kumar Ekka, Aged About 58 Years
Occupation Service, Posted As Bal Vikas Pariyojana Adhikari, Integrated
Child Development Scheme, Women and Child Development Scheme.
Women and Child Development Department, Nawagarh, District Janjgir
Champa Chhattisgarh.

...Petitioner(s)**Versus**

1. State of Chhattisgarh Through The Secretary Department Of Women And Child Development And Social Welfare, Mantralaya, Mahandi Bhawan, Naya Raipur Chhattisgarh.
2. Director, Department Of Women And Child Development And Social Welfare, Chhattisgarh Raipur Chhattisgarh.
3. District Programme Officer, District Women And Child Development Officer, Janjgir Champa Chhattisgarh.

... Respondent(s)

For Petitioner	:	Shri Ashish Shrivastava, Advocate.
For State	:	Shri Ashutosh Pandey, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****03/05/2018**

1. The relief sought for by the petitioner in the instant case is for quashment of order dated 04.03.2015 whereby the respondents have held that the period between 21.05.2004 to 02.03.2009 shall be treated as "No Work No Pay" that was the period during which the petitioner was placed under suspension.
2. The brief facts of the case is that the petitioner in the instant case while working as Project Officer under integrated Child Development Scheme Nawagarh, District Janjgir Champa was initially inflicted with punishment of stoppage of one annual increment without cumulative effect, however, later on, the respondents had vide order dated 21.05.2004 cancelled the order of punishment dated 18.05.2004 and placed the petitioner under suspension contemplating departmental

enquiry. It is alleged that thereafter a departmental enquiry was initiated, however, the same did not get concluded and finally an order was passed dropping the entire departmental enquiry against the petitioner vide order dated 26.07.2013. In between on 02.03.2009 the order of suspension of the petitioner stood revoked and the petitioner was reinstated as Project Officer and in the said order it was held that, as to how the period of suspension has to be treated would be decided after the outcome of the departmental enquiry.

3. Subsequent to the dropping of departmental enquiry against the petitioner, the respondents have passed the impugned order dated 04.03.2015 whereby the period of suspension between 21.05.2004 to 02.03.2009 has been declared as No Work No Pay. It is this order against which the petitioner has preferred this writ petition.
4. According to counsel for the petitioner, there is no justification on the part of the respondents in passing the impugned order of No Work No Pay. Infact the principle of No Work No Pay would not be applicable in the instant case for the reason that it is not a case where the petitioner has not discharged her duties. Rather, the service of petitioner was not taken by the respondents as she was placed under suspension and she was also attached to a particular office of the respondents and therefore, the said period under no circumstances could have been treated as No Work No Pay.
5. It was the further contention of the petitioner that subsequent to the order dated 26.07.2013 wherein departmental enquiry initiated against the petitioner has been dropped, the position as it stands would be that there was no departmental enquiry initiated at all against the

petitioner and the petitioner should have been granted all those benefits which otherwise would have been paid to the petitioner as if she would not have been placed under suspension. To substantiate his contentions, the petitioner relied upon the judgment of Supreme Court in case of Vijay Kumar Agrawal Vs. Union of India & Another, 2015(17)SCC 625 and also the observations in case of Union of India & Ors. Vs. K.V. Jankiraman and Ors. 1991(4)SCC 109.

6. The State counsel on the contrary opposing the petition submits that the stand of the respondents/State is one which has been taken in the reply of the State i.e. for the intervening period since the petitioner has not physically discharged her duties, the same has to be treated as No Work No Pay. Apart from this, the State counsel has not justified the decisions of the State Govt. in any manner.
7. Having heard the contentions put forth on either side and on perusal of records undisputedly the petitioner was placed under suspension on 21.05.2004. The order of suspension was contemplating departmental enquiry. The respondents had also initiated a departmental enquiry, but did not have sufficient material against the petitioner and ultimately the entire departmental enquiry proceedings were dropped vide order dated 26.07.2013. Once when the departmental proceedings have been dropped against the petitioner, it has to be presumed that there was no blot of any nature against the petitioner denying her consequential benefits. The respondent authorities ought to have passed an order keeping in view the provisions of FR 54-B which is applicable so far as service regulations governing the petitioner is concerned.

8. In the instant case since departmental enquiry has been dropped, it has to be presumed that there was no material with which the petitioner could have been blamed for being suspended. On the contrary, infact the respondents did not have any substantial material available with them for placing the petitioner under suspension.
9. Given the entire facts and circumstances of the case, particularly the fact that departmental enquiry initiated against the petitioner has been dropped by the respondents without reaching to any conclusion would show that there was no stigma against the petitioner with which she could have been denied the salary for the period of suspension. From the manner in which the respondents have placed the petitioner under suspension and kept her away from discharging her duties shows that the action on the part of respondents was with malafide intention. The period of suspension in the instant case is also quite substantial which is almost of about 5 years.
10. It would be relevant at this juncture to refer to the recent decision of Supreme Court in case of Vijay Kumar (Supra) wherein in paragraphs 19 and 20 it has been held as under :

“19. With this background, we revert back to writ petition Nos.916/2007 and 2768/2007. As far as writ petition No.916/2007 is concerned, let it be recapitulated that it arises out of OA No.1714/2003 wherein the petitioner had challenged the order dated May 13, 1996 by which his suspension was revoked. This OA was allowed by the Tribunal on the ground that it was necessary for the Government to pass composite order which was the requirement of Rule 5-B of the Rules and since the Government had not indicated in the order as to how the suspension period would be reckoned and the decision for payment of salary during the suspension period was also not taken, the order was bad in law. The liberty, however, was granted to the State Government to pass fresh order regarding salary of suspension period. This part of the order granting liberty to the State Government was sought to be reviewed by the petitioner by filing review petition which was dismissed and

this dismissal was challenged by the petitioner in the said writ petition No.916/2007.

20. The High Court while dealing with this writ petition took the view that in case order revoking the suspension did not deal with the suspension period or payment of the salary for suspension period, order revoking suspension cannot be treated as void or non est. The only effect thereof would be that the competent authority is precluded from exercising its power under FR 54B and the legal position was that if while revoking the suspension or within a reasonable time thereof no order is passed pertaining to pay and allowances for the period of suspension, the authority is denuded from passing such an order. The necessary consequences thereof would be that the Government servant, in such a situation, is entitled to full salary for the period he remained under suspension. Therefore, High Court held that the petitioner was entitled to full pay and allowances for the period he remained under suspension and in the present case, the Supreme Court had already passed the order for grant of full salary for the period May 01, 1988 to May 13, 1996 and this amount had also been received by the petitioner though initially he had refused to accept the same when it was tendered to him in the Court. Moreover, the State of Maharashtra had not revoked the suspension on its own but to facilitate petitioner's inter- cadre transfer from Maharashtra cadre to Punjab cadre and, therefore, the order of revocation of suspension was not in exercise of power to revoke the suspension on the ground that the petitioner was no longer required to kept under suspension and these peculiar circumstances were not kept in mind by the Tribunal."

- 11.** It is also worthwhile to refer landmark judgment of Supreme Court in case of K.V. Jankiraman (Supra) wherein in paragraphs 25 and 26 it has been held as under :

"25. We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases.

26. We are, therefore, broadly in agreement with the -find- ing of the Tribunal that when an employee is completely exonerated meaning thereby that he is not 'found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/ criminal proceedings. However, there may be cases' where the pro ceedings, whether disciplinary or criminal, are, for example, delayd at the instance of the employee or the clearance in the disciplinary proceedings

or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it.”

12. Taking into consideration the aforesaid judgments of the Supreme Court and considering the sequence of events in the case of the petitioner, undoubtedly there was no order of penalty imposed upon the petitioner still worse even the departmental enquiry initiated had not been concluded. Rather, it was dropped midway and it was closed forever. Under the said circumstances, the petitioner cannot be put at loss for the substantial period of suspension that she was placed i.e. for the period of about 5 years between 21.05.2004 to 02.03.2009.
13. Under the circumstances, the writ petition deserves to be and is accordingly allowed. The impugned order dated 04.03.2015 (Annexure P/1) to the extent of declaring that the intervening period as No Work No Pay is not sustainable. The same deserves to be and is hereby set aside.
14. The petitioner shall be entitled for the entire pay and allowances including revision of pay, if any, during the intervening period which she was placed under suspension.
15. The writ petition accordingly stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge