

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 5502 of 2018

Chandrika Prasad Kujur S/o Shri Mangal Sai Kujur, Aged About 60 Years, Occupation Service, Presently, Working As Driver, In The Department Of Water Resources (Irrigation), Office Of The Sub Divisional Officer, Ambikapur, Civil And Revenue District Surguja, Chhattisgarh, R/o Village And Post - Jajga, Police Station And Tahsil Seetapur, District Surguja, Chhattisgarh.

---Petitioner

Versus

1. The State Of Chhattisgarh, Through The Secretary, Department Of Water Resources, New Mantralaya, New Raipur, Chhattisgarh.
2. The Chief Engineer, Department Of Water Resources, Gandhi Nagar (Mahuapara), Ambikapur, District Surguja, Chhattisgarh.
3. The Chief Engineer, Hasdev Ganga Kachhar, Department Of Water Resources, Ambikapur, District Surguja, Chhattisgarh.
4. The Sub Divisional Officer, Department Of Water Resources (Irrigation), Irrigation Colony, Near Pratappur Naka, Ambikapur, Civil And Revenue District Surguja, Chhattisgarh.

---Respondents

For petitioner	:	Shri A.N.Bhakta, Advocate.
For State	:	Shri Ratan Pusty, Government Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

27/08/2018

1. The challenge in the present Writ Petition is to the order Annexure P/1 dated 03/01/2017 whereby after the petitioner had been acquitted in a criminal appeal by High Court, the intervening period during which he was out of employment has been treated as no work no pay.
2. According to the counsel for the petitioner, before passing the said order, no opportunity of hearing was given to the petitioner. He further

submits that, once when there is an order of acquittal in his favour, it is to be presumed that the petitioner for all practical purposes has to be treated as in service and he should also be given all monetary benefits of the said period.

3. The admitted factual matrix in the instant case is that, the petitioner was prosecuted for an offence under Section 302/34 of IPC and he stood convicted vide judgment dated 20/08/1998.

4. The said judgment of conviction was put to challenge in an appeal before the High Court and the High Court vide its order in a criminal appeal No. 2147/1998 decided on 17/10/2013 allowed the appeal and acquitted the appellant of the charges. Thereafter, the petitioner was reinstated in service from 12/09/2016.

5. The undisputed fact is that, from 1998 to 2013, the status of the petitioner was that of a convicted person which disqualifies him from government employment. After the judgment of acquittal, the petitioner has been reinstated.

6. All that is required by the authorities to decide is how that intervening period has to be treated.

7. Perusal of record would show that, since the petitioner after his acquittal had reported for joining, the respondents did not acted upon his application which led to the petitioner filing a Writ Petition i.e. WPS No. 6176/2014 which stood decided on 27/11/2014 directing the petitioner to approach the authorities by making a detailed representation which the authorities would consider in accordance with law, yet the respondents in spite of

representation being made did not take a decision so far as reinstating the petitioner is concerned.

8. Thereafter, the petitioner had to file a contempt petition i.e. contempt case No. 340/2016 and when the notices were issued to the respondents, they thereafter complied with the order and gave joining to the petitioner with effect from 12/09/2016.

9. The requirement under law i.e. Fundamental Rules 54 and 54-A is that, when an order of dismissal or removal is set-aside, the authorities concerned have to pass a suitable order determining the intervening period as to how the same has to be treated.

10. Vide Annexure-P/1, the respondents have passed an order treating the said period as no work no pay.

11. The counsel for the petitioner submits that, the petitioner immediately on his getting acquitted in a criminal case in an appeal had reported for duty, but he was deprived joining by the respondents and he had to approached the High Court in a writ jurisdiction and later again in the contempt jurisdiction for getting joining. He further submits that, the respondent authorities should have considered this aspect while passing the order Annexure P/1 dated 03/01/2017.

12. It would be relevant at this juncture to refer to the judgment passed by the Hon'ble Supreme Court in the cases of State of Haryana & Anr. v. Ved Kaur [2017 6 SCC 769] and State Bank of India & Anr. v. Mohammed Abdul Rahim [2013 11 SCC 67].

13. In the case of Mohammed Abdul Rahim (Supra), the Hon'ble Supreme Court dealing with a similar issue in paragraphs 9 to 12 has held as under:-

“9. In the present case, the respondent was acquitted by the appellate court. There can be no manner of doubt that the said acquittal would relate back and the initial order of conviction would stand obliterated. On that basis, there can be no manner of doubt that the substratum of the cause that had led to the respondent's dismissal/discharge in the present case had ceased to exist. The same would entitle him to be reinstated in service, an act that has been duly performed by the appellant Bank.

10. The issue relating to entitlement to back wages, however, stands on a somewhat different footing. While in *Ranchhodji Chaturji Thakore v. Gujarat Electricity Board*, (1996) 11 SCC 603 : 1997 SCC (L&S) 491, *Union of India v. Jaipal Singh*, (2004) 1 SCC 121 : 2004 SCC (L&S) 12 and *Baldev Singh v. Union of India*, (2005) 8 SCC 747 : 2006 SCC (L&S) 35, the basis of refusal of back wages by this Court would appear to be the inability of the employer to avail of the service of the employee due to his incarceration in jail, in *Banshi Dhar v. State of Rajasthan*, (2007) 1 SCC 324 : (2007) 1 SCC (L&S) 205 the refusal of back wages by this Court was in a situation largely similar to the case before us, namely, where the employee was all along on bail and was thus available for work.

11. In *Banshi Dhar* (Supra) this Court answered the question against the employee by holding that grant of back wages is not automatic and such an entitlement has to be judged in the

context of the totality of the facts of a given case. It is on such consideration that back wages were declined. In the present case, it will not even be necessary for the Court to perform the said exercise and delve into the surrounding facts and circumstances for the purpose of adjudication of the entitlement of the respondent to back wages in view of the provisions of Section 10(1)(b)(i) of the Act. The said provisions impose a clear bar on a banking company from employing or continuing to employ a person who has been convicted by a criminal court of an offence involving moral turpitude. No discussion as to the meaning of the expression "moral turpitude" is necessary having regard to the nature of the offences alleged against the respondent, namely, under Section 498-A IPC and Section 4 of the Dowry Prohibition Act, 1961. No doubt, the respondent was not in custody during the period for which he has been denied back wages inasmuch as the sentence imposed on him was suspended during the pendency of the appeal. But what cannot be lost sight of is that the conviction of the respondent continued to remain on record until it was reversed by the appellate court on 22-2-2002. During the aforesaid period there was, therefore, a prohibition in law on the appellant Bank from employing him. If the respondent could not have remained employed with the appellant Bank during the said period on account of the provisions of the Act, it is difficult to visualise as to how he would be entitled to payment of salary during that period. His subsequent acquittal though obliterates his conviction, does not operate retrospectively to wipe out the

legal consequences of the conviction under the Act. The entitlement of the respondent to back wages has to be judged on the aforesaid basis. His reinstatement, undoubtedly, became due following his acquittal and the same has been granted by the appellant Bank.

12. The respondent was acquitted on 22-2-2002, the demand for reinstatement was made by him on 22-4-2002 and he was reinstated in service by the appellant bank on 7-11-2002. On the view that we have taken, at the highest, what can be said in favour of the respondent is that he is entitled to wages from the date he had lodged the demand for the same following his acquittal, namely, from 22-4-2002, until the date of his reinstatement, if the same has not already been granted by the appellant Bank.”

14. Considering the aforesaid legal decisions as has been laid down by the Supreme Court, the petitioner would definitely be entitled for joining immediately after the judgment of acquittal which was passed in his favour by the High Court which in the instant case was passed on 17/10/2013.

15. According to the counsel for the petitioner, the petitioner had reported for duty in October-2013 itself and had later on issued legal notices also in this regard on 28/10/2013, but none of them were acted upon and therefore the respondents atleast should have considered the petitioner for entitlement for monetary benefits from 28/10/2013 i.e. the first legal notice which was issued by the petitioner in this regard.

16. Considering the ratio laid down in the aforesaid two judgments and the facts in the instant case where undoubtedly the services of the petitioner was terminated on account of his being convicted in a criminal case vide order dated 26/07/1999, the respondents thereafter rejected the order of termination and reinstated the petitioner with effect from 12/09/2016, this Court has no hesitation in holding that, the petitioner would be entitled for monetary benefits of wages from the date he had first reported for duty in the office of the respondents as per the records available with the respondents i.e. after the petitioner was acquitted by the High Court on 17/10/2013.

17. The Writ Petition thus stands partly allowed to the extent that, the impugned order would stands modified to the extent that, the petitioner would be entitled for monetary benefits from the date he has reported for duty after the judgment of acquittal and for the prior period, it would be treated as no work no pay but period spent on duty.

18. However, the same would be treated as period spent on duty for the purpose of counting seniority and also for other benefits.

Sd/-

(P. Sam Koshy)
JUDGE