

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (S) No. 189 of 2019**

Smt. Kalpana Pandey Wd/o Late Shri Sunil Pandey, Aged About 52 Years, Ex-Assistant Professor Under The Government Of Chhattisgarh Higher Education (Collegiate) Department, R/o 55/A Maitri Vihar Colony, Near Hanuman Temple Supela, Bhilai, District Durg, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Higher Education Mahanadi Bhawan, New Mantraya, Atal Nagar District Raipur, Chhattisgarh
2. The Director, Higher Education, Directorate Indrawati Bhawan, Atal Nagar, Raipur, District Raipur, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Palash Tiwari, Advocate
For State	:	Mr. Saleem Kazi, Dy. A.G.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****11/01/2019**

1. With the consent of the parties, the matter was heard finally.
2. The challenge in the present writ petition is to the order Annexure P-1 dated 12.11.2018 passed by the Additional Secretary, Higher Education Department by the name and order of Governor of Chhattisgarh.
3. Brief facts relevant for adjudication of the present dispute are that the petitioner was working as an Assistant Professor in Government Paluram Dhananiya College, Raigarh. On 15.02.1994

the petitioner was charged for the offence under Section 302 of IPC. Later on, the petitioner was placed under suspension vide order dated 01.06.1994. In the criminal case, the petitioner was convicted by the trial Court vide its judgment of conviction dated 03.03.2003 and sentenced her with life imprisonment. Pursuant to the conviction of the petitioner she was inflicted with punishment of termination from service vide order dated 12.06.2003 and the termination order was purely based on the judgment of conviction.

4. The judgment of conviction was subjected to challenge before the High Court in Criminal Appeal no. 308/2003. The said appeal was finally decided by the Division Bench of this Court vide judgment dated 30.01.2017 and the petitioner was acquitted of the charges which were levelled against her.
5. Pursuant to acquittal, the petitioner moved a representation before the authorities for reinstatement but the same was not considered which led to the petitioner approaching the High Court in WPS No. 1405/2018. The said writ petition came up for hearing before this Court on 13.02.2018 and this Court disposed of the said writ petition directing the authorities to decide the representation of the petitioner in accordance with the provisions of law and also keeping in view the fact that the petitioner stands acquitted from the criminal case.
6. The impugned order in the present case has been passed after the writ Court disposed of the earlier writ petition. While rejecting the representation of the petitioner vide the impugned order the authorities have held that since in the judgment of acquittal there is no mention of the petitioner being entitled for reinstatement, the

reinstatement cannot be ordered. It is further held by the authorities in the Department that merely because the petitioner stands acquitted in the criminal case would not automatically give her the benefit of reinstatement and there has to be a specific order by the criminal Court in this regard. The authority concerned also held that since there is no finding so far as the reinstatement part is concerned in the judgment of acquittal, the provisions of Fundamental Rule 54 A (1) would not be applicable. The authority concerned has relied upon a judgment of the Supreme Court in the case of Deputy Inspector General of Police & another Vs. S. Samuthiram (2013) 1 SCC 598 for denying the relief sought for by the petitioner.

7. This Court prima facie is of the opinion that the authority concerned either lacks of knowledge on the subject or has not properly appreciated the contents of the judgment which he has relied upon. The judgment which the authority has relied upon in the case of S. Samuthiram (supra) was a case where the dismissal was after a departmental enquiry unlike the present case where the dismissal was only on the basis of conviction. Therefore, the ratio laid down in the said judgment could not have been applied in the present case. The authority who has taken the decision does not seem to have applied his mind on the issue nor has he taken care to go through the facts of the present case. The impugned order prima facie therefore is not sustainable.
8. In the present case, the order Annexure P-3 dated 12.06.2003 clearly reflects that the termination was only based upon the conviction. If that base i.e. the conviction itself is not in existence as

a result of the judgment of acquittal, the order of termination also needs to be reconsidered as on the acquittal, the basis for termination does not survive any further. There is no further disqualification left upon the petitioner for which she entails an order of termination.

9. The impugned order therefore deserves to be and is accordingly set aside. The matter is remitted back to the authority concerned to pass a fresh order in the light of the judgment of acquittal passed by the Division Bench of this Court and also keeping in view that there was no departmental enquiry before issuance of the termination order and also the fact that the basis for termination was only an order of conviction which no longer survives in the present case. Let a fresh order be passed by the authority concerned within a period of 90 days from today. While passing the fresh order, the authority concerned would also take into consideration the provisions of the Fundamental Rules and decide as to how the intervening period i.e. from the date of suspension till the date of termination and from the date of termination to the date of reinstatement if any has to be treated.

Sd/-

(P. Sam Koshy)
Judge