

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 77 of 2019**

Surjeet Sen S/o Shri Paritosh Sen Aged About 55 Years R/o C/o 15 A, Gurukul Parshar, Kalibadi Road, Raipur, District Raipur Chhattisgarh.

---- Appellant**Versus**

1. State Of Chhattisgarh Through Secretary, Cum Commissioner, Department Of Higher Education, Mahanadi Bhavan, New Mantralaya, Atal Nagar, Village - Rakhi, New Raipur, District Raipur Chhattisgarh.
2. Governing Body Of Kamla Devi Sangeet Mahavidyalaya Gandhi Chowk, Raipur Chhattisgarh, Through Its Secretary, Cum Principal Of Kamala Devi Sangeet Mahavidyalaya, Raipur, District Raipur Chhattisgarh.

---- Respondents

For Appellant	:	Shri Yogesh Pandey, Advocate.
For Respondent/State	:	Shri R.S. Baghel, Deputy Advocate General.
For Respondent No.2	:	Shri Sourabh Sharma, Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board**08/02/2019****Per Ajay Kumar Tripathi, Chief Justice**

1. Heard counsel for the parties.
2. Appellant filed a writ application against the illegal action of acceptance of a so-called resignation letter as a ploy to discontinue him from service.
3. By a detailed order dated 26.11.2018, the learned Single Judge allowed the writ application, set aside the orders contained in Annexures P/1 and P/2 to the writ application and ordered reinstatement of the Appellant back on the post of Book-Lifter under the Respondent-Governing Body of what is known as Kamla Devi Sangeet Mahavidyalaya.

4. While allowing the writ application and holding the impugned orders to be bad, the learned Single Judge however limited the relief in matter of payment of back wages to 50% though all consequential benefits were allowed. The reason for restricted payment of back wages to 50% given by the learned Single Judge was the principle of 'no work no pay'. It is this part of the order which is being assailed by the employee in the present appeal.

5. Contention of the counsel for the Appellant is that the principle of 'no work no pay' will not apply to the facts of the present case since the learned Single Judge has clearly and categorically held that the order of removal on the basis of a so-called resignation letter to be a case of malafide and a ploy to get rid of the service of the Appellant, then obviously, it was an illegal order. It was because of the said illegal decision, the Appellant was prevented from performing his duty from 2004 till the writ application came to be allowed on 26.11.2018 or till he is restored back to his post as compliance of writ order.

6. The Court is informed that the Appellant has not derived the benefit of the order of the writ Court probably for the reason that the Governing Body was in appeal before this Court.

7. Reliance has been placed by the counsel for the Appellant in the matter of **Shobha Ram Raturi v. Haryana Vidyut Prasaran Nigam Limited and Others** reported in **(2016) 16 SCC 683**, wherein the Hon'ble Apex Court took a view that the principle of 'no work no pay' will not come in the way if the fault lies with the Respondent i.e. the employer in not having utilized the services of the employees.

8. Another reliance has been placed in the matter of **Srikantha S.M. v. Bharath Earth Movers Ltd.** reported in **(2005) 8 SCC 314** wherein in similar circumstance, the Hon'ble Apex Court had this to say :-

“28. The next question is, as to what benefits the appellant is entitled to. As he withdrew the resignation and yet he was not allowed to work, he is entitled to all consequential benefits. The learned counsel for the respondent-Company no doubt contended that after 15-1-1993, the appellant had not actually worked and therefore, even if this Court holds that the action of the respondent-Company was not in consonance with law, at the most, the appellant might be entitled to other benefits except the salary which should have been paid to him. According to the counsel, the principle of “no work, no pay” would apply and when the appellant has admittedly not worked, he cannot claim salary for the said period.

29. We must frankly admit that we are unable to uphold the contention of the respondent-Company. A similar situation had arisen in *J.N. Srivastava v. Union of India*, (1998) 9 SCC 559, and a similar argument was advanced by the employer. The Court, however, negated the argument observing that when the workman was willing to work but the employer did not allow him to work, it would not be open to the employer to deny monetary benefits to the workman who was not permitted to discharge his duties. Accordingly, the benefits were granted to him. In *Shambhu Murari Sinha v. Project and Development India Ltd.*, (2002) 3 SCC 437 also, this Court held that since the relationship of employer and employee continued till the employee attained the age of superannuation he would be entitled to “full salary and allowances” of the entire period he was kept out of service. In *Balram Gupta v. Union of India*, 1987 Supp SCC 228, in spite of specific provision precluding the Government servant from withdrawing notice of retirement, this Court granted all consequential benefits to him. The appellant is, therefore, entitled to salary and other benefits.”

9. Keeping in mind that the principle of 'no work no pay' is not applicable in the given case, the Appellant must succeed and the direction of the learned Single Judge restricting payment of back wages to 50% is held to be bad. The

Respondent-Governing Body has an obligation to pay the entire salary and emoluments of the Appellant from the date of his removal i.e. 23.09.2004 till the date of his reinstatement which must be carried out now within a period of two weeks from today. The arrears of dues must be paid within a period of eight weeks from today. If there is failure on the part of the Respondent-Governing Body to pay the dues as directed, the Appellant will be entitled to interest @ 6% per annum from the date of removal till date of payment.

10. The appeal is allowed in terms of the above.

Sd/-

(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-

(Parth Prateem Sahu)
JUDGE

Anu