

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 2903 of 2019

Smt. Sandhya Singh W/o Shri Akhilesh Singh, Aged About 44 Years
Working As Aya At Employee State Insurance Services, Hathkhoj
Centre, Bhilai, District Durg Chhattisgarh, R/o House No. 91, Smriti
Nagar, Apolo Hospital Road, Nehru Nagar, Police Station Supela
Bhilai, District Durg, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of
Labour, Mantralaya, Atal Nagar, Raipur, District Raipur Chhattisgarh
2. Director, Employees State Insurance Services, Chhattisgarh, Raipur,
Indrawati Bhawan, Atal Nagar, Raipur, District Raipur

---- Respondents

For Petitioner	:	Shri Vikas Dubey, Advocate
For State	:	Ms. Shriya Mishra, P.L.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

16/04/2019

1. With the consent of the parties the writ petition was heard finally at
motion stage.
2. The challenge in the present writ petition to the order Annexure (P-1)
dated 01/08/2018. Vide the impugned order the respondents have
ordered holding the intervening period between 19/11/2014 to
01/01/2016 to be a period that would be treated as break in service
with no back wages also.

3. The facts of the case are that the petitioner was appointed as Aya by a due process of law on 05/06/2002. Services of the petitioner however were terminated alleging irregularities in the selection process vide order dated 19/11/2014. The petitioner preferred a writ petitioner i.e. WPS No. 235/2015, which stood dismissed vide order dated 28/09/2015. The order dated 28/09/2015 was subjected to challenge in the writ appeal i.e. WA No. 600/2015 and Division Bench of this Court allowed the writ appeal on 15/12/2015 holding that the order of removal dated 19/11/2014 was bad in law. The petitioner subsequently stood reinstated in service w.e.f. 01/01/2016 onwards.
4. Subsequently the impugned order now has been passed holding the intervening period, when the petitioner was out of service between 19/11/2014 to 01/01/2016 applying the principles of no work no pay would be treated as break in service and for that period the petitioner also would not be entitled for any back wages. It is this order which is under challenge in the present writ petition.
5. The contention of the petitioner is that the order is in two parts. Firstly, the intervening period has been treated as break in service. Secondly, for the intervening period, it has been held that the petitioner would not be entitled for any back wages. The contention of the petitioner is that both these directions directions given by the authorities are bad in law for the reason that once when an order of termination is held to be bad then as a natural consequence, the petitioner is supposed to be reinstated in service as if the order of termination was not in existence and therefore decision of break in

service is apparently bad in law. Further contention of the petitioner is that since the service of the petitioner was terminated by an illegal order which stands set aside, the petitioner would also be entitled for the back wages for the entire period he has remained out of employment by virtue of the an illegal order and therefore the impugned order is not sustainable on this ground also.

6. The State counsel however trying to justify the action of the department submits that since admittedly the petitioner has not discharged the duties from the date of termination till the date of reinstatement, the department is justified in treating the said period as no work no pay and therefore the impugned order cannot be said to be bad in law.
7. Having heard the contentions put forth on either side and on perusal of records so far as the factual matrix of the case is concerned, there is no dispute so far as the initial date of appointment, the date of termination, the date of allowing of the writ appeal by the Division Bench and subsequent reinstatement. What is also not in dispute that the impugned order of termination is held to be bad in law by Division Bench of this Court. Once when the order of termination has been set aside, the position stands as if the order of termination was never in existence. As a natural consequence, the petitioner would have to be treated for all practical purposes to have remained in employment as if the order of termination was never issued. For the said reason the impugned order to the extent of the intervening period being treated as break in service apparently bad in law and

same is not sustainable and the same deserves to be set aside/quashed and it is ordered accordingly.

8. However, as far as the grant of back wages part is concerned, the authorities concerned are expected of passing a detailed order mentioning the fact as to what would be the effect of no work no pay, for the reason, that if the petitioner is granted continuity of service, as has been ordered by this Court in the preceding paragraph, the petitioner also would have to be given the notional benefits for the intervening period. These aspects are silent in the impugned order. Accordingly, the impugned order to that extent also stands set aside/quashed and is remitted back to the authorities concerned to pass a fresh order in accordance with the provisions of law wherein the respondents are expected to pass a speaking order as to what benefits the petitioner would be entitled for.
9. Let a fresh decision be taken by the competent authority within a period of four months from the date of receipt of copy of this order. Accordingly, the writ petition stands disposed off.

Sd/-
(P. Sam Koshy)
Judge