

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 3264 of 2019

Unis John W/o Shiv Kumar Dhruw, Aged About 38 Years Working As Aya, Employees State Insurance Services, Champa Centre, R/o Gaga Bhawan, Infront Of Trimurty Talkies, Korwa Para, Champa, District Janjgir-Champa, 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, Chhattisgarh.

---Respondent

For Petitioner	:	Mr. Vikas Dubey, Advocate
For State	:	Ms. Astha Shukla, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy

Order on Board

02/05/2019

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 23/01/2016 to be a period that would be treated as break in service with no back wages also.
3. The facts of the case is that the petitioner was appointed as Aya by a due process of law on 05/06/2002. Services of the petitioner however was terminated alleging irregularities in the selection process vide order dated 19/11/2014. The petitioner preferred a writ petition i.e. WPS No. 6660/2014, which stood dismissed vide order dated 12/01/2016. The order dated 28/09/2015 was subjected to challenge in the writ appeal I. e. WA No. 692/2016 and Division Bench of this Court allowed the writ appeal on

12/01/2016 holding that the order of removal dated 19/11/2014 was bad in law. The petitioner subsequently stood reinstated in service w.e.f. 23/01/2016 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 23/01/2016 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 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 all 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

Ved