

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for Order on : 04.07.2019

Order Passed on : 29.07.2019

CONT. CASE (C) No. 359 of 2019

Anita Renu Kujur, D/o. Late Kunwar Kujur, Aged About 36 Years,
Occupation - Service, R/o. Indranagar, Nawapara, Ambikapur, District
Surguja Chhattisgarh.

---- Petitioner

Versus

Shri B.P. Verma, District and Sessions Judge, Surguja, Ambikapur
Chhattisgarh.

-----Respondent

For Petitioner	: Mr. C.J.K. Rao, Advocate
For Respondent	: Mr. Manoj Paranjpe, Advocate with Mr. Vaibhav A. Goverdhan, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V ORDER

29/07/2019

1. Heard.
2. It is submitted by the counsel for the petitioner that the petitioner was working as Assistant Grade-III in the Court of District and Sessions Judge, Sarguja, before she was prosecuted in Sessions Case No.R-98/14. The petitioner was convicted and sentenced in that case, against which she preferred a criminal appeal bearing Cr.A. No.1708/2018. This Court has pleased to pass an order on 20.03.2019 staying the conviction of the petitioner in the case against her, therefore, after staying of the conviction, the

conditions prior to the conviction of the petitioner were restored, on the basis of which, the petitioner approached the respondent praying for reinstatement as employee of the establishment by making a representation vide Annexure C-2. It is submitted that respondent has communicated the petitioner vide Annexure C-3 that her representation has been filed in light of the Rule 19 of the C.G. Civil Services (Classification, Control & Appeal) Rules, 1966.

3. It is submitted that the decision taken by the respondent against the interest of the petitioner is clearly a contempt of order passed by this Court on 20.03.2019 in Cr.A. No.1708/2018. Therefore, prayed that contempt proceeding be drawn against the respondent.
4. Counsel appearing on behalf of the respondent submits that after initiation of prosecution, the petitioner was placed under suspension by order dated 08.07.2014, which is attached as Annexure R-1. Thereafter, subsequent to the conviction of the petitioner by the trial Court on 26.10.2018, her services were terminated under the provisions of Rule 10 of M.P./C.G. Civil Services (Classification, Control & Appeal) Rules, 1966 by order dated 22.11.2018, copy of which is attached as Annexure R-2. Therefore, the order of dismissal of the petitioner had been prior to the order of stay of conviction by this Court on 20.03.2019.

5. It is further submitted that in the order dated 20.03.2019 by this Court, there is no direction to the petitioner or no liberty was granted to her to make a representation for her reinstatement in service. Therefore, the effect of the order is only to this extent that the petitioner shall not be regarded as convict till the final decision of the appeal filed by her.
6. Relying on the judgment of M.P. High Court in **Kunal Kanti Majee Vs. Chancellor, Rani Dhrgawati Vishvavidyalaya, Jabalpur**, reported in **2008 (1) M.P.L.J. 577**, it is submitted that it is held in the judgment that stay of operation of an order would mean that it would not be operative it but does not wipe out the conviction from the existence. Similarly reliance has been placed on the judgment of High Court of Kerala in case of **State of Kerla & Anr. Vs. Anitha Fisheries Sub Inspector**, reported in **2015 SCC OnLine Ker 635** and also placed reliance on the judgment of Supreme Court in **Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras**, reported in **(1992) 3 SCC – 1**, and it is submitted that such contempt petition is not maintainable.
7. In reply, it is submitted by the counsel for the petitioner that no notice for dismissal was served upon the petitioner by the respondent. Further the order for dismissal passed was antedated, therefore, there is deliberate disobedience of the order passed by this Court.

8. I have heard the learned counsels for the parties and perused the documents placed on record.
9. Operative part of the order dated 20.03.2019, passed in Cr.A. No.1708/2018 is reproduced as here under :-

“Accordingly, the application is allowed and it is ordered that conviction against appellant No.1 Anita Renu Kujur shall remain stayed till disposal of this appeal.”

10. This shows that there was no liberty granted to the petitioner to make any representation for reinstatement neither any direction was issued in this respect by this Court.
11. The effect of the stay order is only to this extent that conviction against the petitioner was made inoperative. Whereas paragraph 17 & 18 of the judgment of M.P. High Court in *Kunal Kanti Majee Vs. Chancellor (supra)* have relevance with this case, which are reproduced as here under :-

“17. At this juncture, we must make it clear that on a careful reading of the aforesaid decisions we are of the considered opinion that the same do not apply to the case at hand. In this context we may refer with profit to a two-Judge decision of the Apex Court rendered in *M/s. Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association, Madras* (AIR 1992 SC 14389), wherein Their Lordships in Paragraph 10 while dealing with the effect of interim order expressed the opinion on the following terms:

“.....While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence.....”

12. Similarly Para-11 of the judgment of High Court of Kerala in *State of Kerala Vs. Anitha (Supra)* has relevance, which is reproduced as under :-

11. The exception as carved out in clause (a) of the second proviso to Article 311(2) is that when a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge, no enquiry needs to be held. The Apex Court in *Deputy Director of Collegiate Education (Administration) v. S.Nagoor Meera [(1995)3 SCC 377]* had occasion to consider clause (a) of the second proviso to Article 311(2). In the said case also the employee was convicted on a charge under Section 420 of Indian Penal Code and Section 5 of the Prevention of Corruption Act, 1947. The employee in the above case filed appeal against the conviction and sentence and the Court suspended the sentence imposed and released him on bail. Relevant observations have been made in

paragraphs 9 and 10 of the judgment, which are quoted as below:-

"9. The Tribunal seems to be of the opinion that until the appeal against the conviction is disposed of, action under clause (a) of the second proviso to Article 311(2) is not permissible. We see no basis or justification for the said view. The more appropriate course in all such cases is to take action under clause (a) of the second proviso to Article 311(2) once a government servant is convicted of a criminal charge and not to wait for the appeal or revision, as the case may be. If, however, the government servant-accused is acquitted on appeal or other proceeding, the order can always be revised and if the government servant is reinstated, he will be entitled to all the benefits to which he would have been entitled to had he continued in service. The other course suggested, viz., to wait till the appeal, revision and other remedies are over, would not be advisable since it would mean continuing in service a person who has been convicted of a serious offence by a criminal court. It should be remembered that the action under clause (a) of the second proviso to Article 311(2) will be taken only where the conduct which has led to his conviction is such that it deserves any of the three major punishments mentioned in Article 311(2). As held by this Court in *Shankar Dass v. Union of India*: (SCC p. 362, para 7).

"Clause (a) of the second proviso to Article 311(2) of the Constitution confers on the Government the

power to dismiss a person from service 'on the ground of conduct which has led to his conviction on a criminal charge'. But that power like every other power has to be exercised fairly, justly and reasonably. Surely, the Constitution does not contemplate that a government servant who is convicted for parking his scooter in a no-parking area should be dismissed from service. He may, perhaps, not be entitled to be heard on the question of penalty since clause (a) of the second proviso to Article 311(2) makes the provisions of that article inapplicable when a penalty is to be imposed on a government servant on the ground of conduct which has led to his conviction on a criminal charge. But the right to impose a penalty carries with it the duty to act justly."

10. What is really relevant thus is the conduct of the government servant which has led to his conviction on a criminal charge. Now, in this case, the respondent has been found guilty of corruption by a criminal court. Until the said conviction is set aside by the appellate or other higher court, it may not be advisable to retain such person in service. As stated above, if he succeeds in appeal or other proceeding, the matter can always be reviewed in such a manner that he suffers no prejudice".

13. In view of the observations made in the judgment mentioned herein above, it is very clear that stay of operation of conviction is not wiped out until the quashment of such conviction. Further there being no direction of this Court for compliance to be made by the respondent in this case, it can not be said that the

respondent has deliberately disobeyed the order of this Court. The stay of operation of the conviction may have an effect to claim for reinstatement but in absence of any direction or order by the Court staying operation of conviction, the employer department is under no compulsion to pass any order for reinstatement. Therefore, after overall consideration of the circumstances and the law applicable in this case, I am of this view that there is no substance in this petition to make out a ground for proceeding against the respondent under the Contempt of Courts Act, 1971.

14. Resultantly, the contempt petition has no merit and it is dismissed accordingly.

Sd/-
(Rajendra Chandra Singh Samant)
Judge