

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 554 of 2019****(Arising out of order dated 25.03.2019 passed by the learned Single Judge in
WP No. 1991/2005)**

- Lalaram Shakya S/o Late Shri Jhamman Lal Shakya Aged About 70 Years
Occupation Ex Head Constable No. 10, Police Training Centre, Borgaon,
R/o Village Khadepur, Post Kishni, District Mainpuri Uttar Pradesh.

---- Appellant**Versus**

1. State of Chhattisgarh Through The Secretary, Department Of Home,
Mantralaya, Mahanadi Bhawan, Atal Nagar Nawa Raipur, District Raipur
Chhattisgarh.
2. Director General of Police Police Head Quarter, Raipur, District Raipur
Chhattisgarh.
3. Inspector General of Police Chhattisgarh Armed Force, Bhilai, District
Durg Chhattisgarh.
4. Deputy Director General of Police Chhattisgarh Marmed Force, Head
Quarter, Bhilai, District Durg Chhattisgarh.
5. Commandant Police Training Centre, Borgaon, District Bastar
Chhattisgarh.

---- Respondents

For Appellant : Shri Sumit Singh Rathore, Advocate
For Respondent-State : Shri Ghanshyam Patel, Government Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Judgment on Board****P. R. Ramachandra Menon, CJ.****13.02.2020**

1. Correctness of the verdict passed by the learned Single Judge while
deciding the claim projected by the Appellant in the writ petition with
regard to the finalization of the disciplinary proceedings and in denying the
back wages made the aggrieved writ petitioner to approach this Court by
way of this appeal.

2. Heard Shri Sumit Singh Rathore, the learned counsel for the Appellant as well Shri Ghanshyam Patel, the learned Government Advocate representing the State.
3. The sequence of events reveals that the Appellant, who was a member of Uniformed Force, while serving the Police Department, was proceeded against in respect of serious misconduct. The Department appointed an Enquiry Officer to go into the alleged misconduct and Shri K.S. Tomar, Company Commander, Police Training Centre, Borgaon was appointed in this regard, who completed the enquiry and submitted the report on 15.12.2002. Based on the finding in the enquiry, that the Appellant was guilty of the charges levelled against him, Annexure-P/6 order dated 22.05.2004 was passed, whereby he was compulsorily removed from the service. This was challenged by filing an appeal before the Departmental Authority i.e. the Additional Director General of Police, who dismissed the appeal as per Annexure-P/7 order dated 24.07.2004. These orders were put to challenge in the writ petition filed by the Petitioner in the following terms :

“7.1 That, the petitioner above named most respectfully prays to this Hon'ble Court to call for entire record for its kind perusal.

7.2 That the petitioner most humbly and respectfully prays to this Hon'ble Court to issue writ of Certiorari for quashing the impugned order dated 24/7/2004 passed by Deputy Director General Of Police, Chhattisgarh Armed Force contained in 'ANNEXURE P-7', whereby the concerned authority has affirmed the imposed major punishment of *Compulsory Retirement* which was earlier pronounced by the Deputy Inspector General Of Police for the reason that the punishment is disproportionate to the alleged misconduct.

7.3 That the petitioner most humbly and respect fully prays to this Hon'ble Court to issue a writ of Mandamus

for directing the respondents to reinstate the petitioner with back wages and to release the consequential benefits granted to the petitioner under the relevant service law.

7.4 Any other relief whatsoever, this Hon'ble Court may deem fit and proper may also be granted to the petitioner.”

4. The prayers were opposed from the part of the Respondents. The main contention raised before the learned Single Judge was that no 'Presenting Officer' was appointed by the Department, which was very much prejudicial to the rights and interest of the Petitioner. The learned Judge, with reference to the materials on record, arrived at a finding that the witnesses were cross-examined by the Enquiry Officer himself at length and that this was not correct or sustainable in view of the various judgments referred to as given in paragraphs 9 to 14. It was accordingly, that a finding was rendered to the effect that the enquiry was vitiated because of the said infirmity and observing that the delinquent employee / writ petitioner had already attained the age of superannuation, the writ petition was allowed to the extent of declaring that he will be entitled to get all the retiral benefits with notional fixation of the annual increments without any promotional benefit and that the principle of 'No Work No Pay' would be attracted for the intervening period; thus declining back wages for the period from the date of issuance of the impugned order dated 22.05.2004 till the date the Petitioner crossed the age of superannuation. The observations in this regard, as given in paragraphs 16 to 18 are in the following terms :

“16. Given the aforesaid legal position as it stands, this court has no hesitation in holding that the departmental enquiry conducted against the petitioner also suffers

from same infirmity and is not sustainable in the eye of law and it is in complete violation of the principles of natural justice. Thus, the enquiry proceedings and the subsequent decision taken on the basis of the enquiry conducted in an illegal manner deserves to be and accordingly stands set aside/quashed.

17. Since this court is setting aside the impugned orders on technicalities, applying the doctrine of 'No Work No Pay' it is ordered that the petitioner would not be entitled for the wages for the period from the date of issuance of the impugned order dated 22.05.2004 till the date the petitioner crossed the age of superannuation. However, the said period for all practical purposes have to be treated as period spent on duty and the petitioner would be entitled for consequential benefits that he would be entitled on his retirement.

18. The petitioner would be entitled for only the notional fixation of the annual increments and any promotional benefits which he would have got had he been in service between May, 2004 till his retirement. The petitioner however would be entitled for all the actual retiral dues that he was entitled for after giving him notional fixation of all the benefits that he would be entitled for from the date of issuance of the order of compulsory retirement till his retirement.”

5. The learned counsel for the Appellant submits that the principle of 'No Work No Pay' cannot be made applicable to the case of the Appellant as he was virtually prevented from doing any service / work and hence the Appellant is entitled to get the consequential benefits as well. The learned counsel seeks to rely on the recent ruling rendered by the Apex Court in **Chief Regional Manager, United India Insurance Company Limited v. Siraj Uddin Khan**¹ to contend that, in a case where the employee concerned is virtually prevented from doing the service, the principle of 'No Work No Pay' cannot be attracted.

1 AIR 2019 SC 3388

6. We have gone through the said judgment. The factual situation as discussed therein was involving a transfer ordered by the United India Insurance Company Limited and non-joining of duty by the person concerned, leading to disciplinary proceedings. The non-obeyance of the order and the unauthorised absence were sought to be pursued and two different charges were issued. It was observed by the Apex Court that in respect of the first charge, there was a reduction of pay by two stages and this punishment came to be set aside by the High Court, which had become final. In respect of the second charge raised separately, for which punishment of dismissal was imposed on 26.06.2012, it was noted that the High Court had set aside the punishment firstly, for the reason that the charge sheet was not served and secondly, that the punishment was imposed (on 26.06.2012) after attaining the age of superannuation on 20.06.2012, which was not possible. These verdicts were noted as having become final. Proceedings in the earlier round, when the SLP preferred before the Apex Court came to be dismissed was also taken note of. Considering the question whether payment of back wages is automatic and also whether the principle of 'No Work No Pay' would be attracted, the only direction given by the Apex Court is in paragraph 23 which is extracted below :

“23. In view of the foregoing discussion, the appeals succeed and are accordingly allowed. The impugned order insofar as it relates to dismissal of the appellants' (landowners) cross objection (Para 24) is set aside.”

From the above, it is quite clear that the above case was finalized in the particular factual context and no declaration is made that payment of back wages is automatic. It does not come to the rescue of the Appellant.

7. As mentioned in paragraph 16 of the judgment under challenge, the learned Judge has observed that the enquiry has been interdicted only on technicalities. If the enquiry is rendered invalid, for any reason, it cannot be said that it will exonerate the delinquent employee from all the charges. If the enquiry is invalid, then an opportunity has to be given to have it rectified and to proceed with from that stage, to be continued further so as to take the proceedings to a logical conclusion. This is the law declared by the Apex Court in a celebrated decision rendered by the Constitution Bench in ***Managing Director, ECIL, Hyderabad, etc. etc. v. B. Karunakar, etc.etc.***² This course has not been pursued by the learned Single Judge presumably for the reason that, the employee had already attained the age of superannuation and hence the relief was moulded accordingly. Even if the enquiry was conducted any further, since the 'master and servant' relationship had been cut off, it might not led to any punishment.
8. In the above circumstances, we are of the view that it is not a fit case where the Writ Petitioner / Appellant could be declared as eligible to get any relief over and above the relief already granted by the learned Single Judge. Hence, both the IA for condonation of delay in filing the appeal and the Appeal stand dismissed, as devoid of any merit.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge