

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**Writ Petition (S) No. 394 of 2014**

1. Rajendra Prasad Chandel S/o Kartik Ram Chandel Aged About 48 Years Head Master Primary School Dugli Block Nagri District Dhamtari, Chhattisgarh, R/o Village Chati P.S. Kurud Distt. Durg, Chhattisgarh.

**---Petitioner(s)**

**Versus**

1. State of Chhattisgarh Through the Secretary Tribal Department New Mantralaya Raipur, Chhattisgarh
2. Collector, Tribal Welfare Dhamtari District, Dhamtari, Chhattisgarh
3. Assistant Commissioner, Tribal Welfare Dhamtari District Dhamtari, Chhattisgarh.

**---Respondents**

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| For Petitioner        | : | Shri Ajay Shrivastava, Advocate.                                                                                 |
| For Respondents/State | : | Shri Alok Bakhshi, Addl. AG along with Shri Sudeep Verma, Dy. Govt. Advocate and Shri S.S. Thakur, Panel Lawyer. |

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**Hon'ble Shri Justice P. Sam Koshy**

**Order on Board**

**25.02.2021**

1. Challenge in the present writ petition is to the order dated 09.04.2013 whereby the respondents have held that for the period of suspension that the petitioner has undergone i.e. for the period between 12.09.2000 to 20.02.2009 he shall only be entitled for 75 percent of the subsistence allowance that was released to him during the period of suspension.
2. The facts of the case is that the petitioner was working as a Headmaster at Primary School under the respondents. On the alleged ground of misappropriation of funds allotted for Scholarship to the students the petitioner was implicated in a criminal case on an FIR lodged by the respondent authorities for the offence punishable under Sections 409,467,468 and 420 IPC. The services of the petitioner was immediately placed under suspension on 12.09.2000. Pending the criminal case before the trial court, the respondents revoked the suspension vide order dated 22.07.2009. While passing the order of revocation dated 22.07.2009 the

authorities made an observation that the period of suspension shall be treated later on subject to outcome of the criminal case pending against the petitioner.

3. Down the line the petitioner stood acquitted in the criminal case vide judgment dated 28.06.2011. After the petitioner was acquitted from the criminal charges levelled against him, the respondent authorities thereafter has passed the impugned order so far as how the period of suspension has to be treated and have held that the petitioner would be only entitled for 75 percent of subsistence allowance that he has received during the period of suspension, however, the said period shall be treated as period spent of duty for the purpose of pension etc. It is this order which is under challenge in the present writ petition.
4. The contention of learned counsel for the petitioner is that he has been falsely implicated by the respondent authorities in a criminal case and have been unjustifiedly kept under suspension for a considerable long period of time and now in the light of judgment of acquittal the petitioner has to be provided with the entire consequential benefits as if the order of suspension never issued. According to the petitioner, he is not at fault in any manner for being denied the consequential benefits for the intervening period. Referring to Fundamental Rules 54 the counsel for the petitioner submits that in terms of Fundamental Rules 54 the moment there is a judgment of acquittal, the petitioner ought to have been provided with all consequential benefits as stipulated under FR-54 which according to the petitioner though is a situation where the person was inflicted with an order of dismissal or removal. In the instant case it is only an order of suspension, therefore, his case is in better footing.
5. The State counsel on the other hand opposing the petition submits that it cannot be said that petitioner has been unjustifiedly placed under

suspension. Admittedly the petitioner was involved in a criminal case. He was also arrested and a criminal case also was initiated against him for serious offences under Sections 409,467,468 and 420 IPC and therefore under the given facts the petitioner was rightly placed under suspension and since trial took a long period for conclusion, the department itself had revoked the order of suspension thereby reinstating the services of the petitioner. Therefore, he was not entitled for anything in addition to what he has already received during the period of suspension and in any case the authorities have already protected the period as period spent on duty for the purpose of pension etc.

6. Having heard the contentions put forth on either side and on perusal of records the admitted position as it stands from the pleadings is that the petitioner was placed under suspension on 12.09.2000. The suspension was on account of petitioner getting inflicted in a criminal case. Since the criminal case was not decided promptly, the respondents in terms of the circular issued by the General Administration Department, revoked the suspension of the petitioner on 22.07.2009 subject to outcome of the criminal case and the petitioner stood reinstated and he was discharging his duties. The criminal case finally resulted in an acquittal of the petitioner vide judgment dated 28.06.2011 as the respondents could not adduce any evidence on merit. Since the respondents did not pass any order as to how the period of suspension has to be treated, the petitioner made a representation to the authorities in the department which has led to the issuance of the impugned order.
7. At this juncture it would be relevant to take note of certain provisions of the Fundamental Rules dealing with an employee who has been placed under suspension and who has been subsequently reinstated. FR-54-B is the provision under which a decision has to be taken by the employer in the

event of an employee is reinstated. For ready reference Sub rules 1,3,5,6 and 7, relevant for disposal of the present writ petition, are being reproduced hereinunder:

“F.R. 54-B. (1) When a Government servant who has been suspended is re-instated or would have been so re-instated but for his retirement on superannuation while under suspension, the authority competent to order re-instatement shall consider and make specific order-

- (a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with re-instatement or the date of his retirement on superannuation, as the case may be, and
- (b) whether or not the said period shall be treated as a period spent on duty.

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- (3) Where the authority competent to order re-instatement is of the opinion that the suspension was wholly unjustified, the Government servant shall subject to the provisions of sub-rule (8), be paid the full pay and allowances to which he would have been entitled had he not been suspended:

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reason directly attributable to the Government servant it may, after giving him an opportunity to make his representation within 60 days from the date on which the communication in this regard is served in him] and after considering the representation, if any, submitted by him direct, for reasons to be recorded in writing that the Government servant shall be paid for the period of such delay only such [amount (not being the whole)] of such pay and allowances as it may determine.

- (5) In cases other than those falling under sub-rules (2) and (3) the Government servant shall subject to the provisions of sub-rules (8) and (9) be paid such [amount (not being the whole) of the full pay and allowances] to which he would have been entitled had he not been suspended, as the competent authority may

determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period [which in no case shall exceed sixty days from the date on which the notice has been served as may be specified in the notice.

(6) Where suspension is revoked pending finalisation of the disciplinary or court proceedings, any order passed under sub-rule (1) before the conclusion of the proceedings, against the Government servant, shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in sub-rule (1) who shall make an order according to the provisions of sub-rule (3) or sub-rule (5) as the case may be.

(7) In a case falling under sub-rule (5) the period of suspension shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specified purpose:

Provided that if the Government servant so desires, such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the Government servant.”

8. A plain reading of the aforesaid provision envisaged under the Fundamental Rules it clearly reflects that the authorities, after a final decision either in the departmental proceedings or in the court case, has to take a fresh decision with regard to how the period of suspension has to be treated and to what extent of benefit the employee shall be entitled for?
9. If we read Sub-rule 3, there is a clear mandate of the statute that there has to be a conclusion arrived at by the authorities in the department as to whether the suspension under the given facts was justified or unjustified. Likewise, Sub-rule 5 further mandates that the authorities have to take a decision in this regard after giving a show cause notice to the petitioner/employee in respect of the proposed benefits by the State authority. Sub-rule 6 also stipulates that subsequent to the final outcome

of the disciplinary proceedings or the court case, as the case may be, the authorities have to review the decision so far as how the period of suspension has to be treated.

- 10.** In the instant case though the impugned order has been passed by the authorities holding that the petitioner would be entitled for only 75 percent of subsistence allowance that he has received, but the order is silent so far as the reasons and basis on which the respondents have arrived at such a conclusion.
- 11.** Similarly, from the plain reading of the impugned order it also reveals that requirement of giving notice to the employee on the proposed benefit that the authorities intend to extend to the employee also has not been complied with. Neither is it established from the reply that the respondents have filed that any such notice to the employee was offered before issuance of the impugned order.
- 12.** The facts which needs consideration at this juncture is that the criminal case that was initiated against the petitioner was at the behest of the respondent employer and it is they who have failed to establish the charges levelled against the petitioner resulting in an acquittal of the petitioner. Given the facts, while passing the impugned order the respondent authorities were required to consider the aforementioned law which otherwise is not reflected from the same.
- 13.** Under the circumstances, this court is of the opinion that the impugned order would not be sustainable and the same needs reconsideration at the level of the respondents. The same therefore deserves to be and is accordingly set aside/quashed and the matter stands remitted back to the respondent No.3 to take a fresh decision so far as the entitlement of the petitioner for the period of suspension between 12.09.2000 to 22.07.2009.

**14.** Considering the fact that it is a matter pertaining to suspension that was issued as early as in the year, 2000, the respondent No.3 is expected to take a decision afresh in accordance with provisions of Fundamental Rules 54-B at the earliest preferably within a period of 60 days from the date of receipt of copy of this order.

**15.** The writ petition accordingly stands allowed.

Sd/-  
(P. Sam Koshy)  
**Judge**

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