

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 5825 of 2011**

Shiv Charan Tivree S/o Shri Trilochan Ram, Aged about 55 years, R/o. Behrapara, Dharamjaigarh, District Raigarh Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, School Education Department, Mantralaya, D.K.S. Bhavan, Raipur, Chhattisgarh
2. The Director, Public Education, Directorate Chhattisgarh, Raipur, District Raipur Chhattisgarh
3. The District Education Officer, Raigarh, District Raigarh Chhattisgarh

----Respondents

For Petitioner	:	Mr. Ajeet Kumar Yadav, Advocate
For State	:	Mr. Suyash Dhar, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Order on Board****22/11/2021**

1. Aggrieved by the impugned order Annexure P/1 dated 23.06.2010 the present writ petition has been filed. The petitioner is assailing the impugned order to the extent of not granting the wages for the intervening period, the petitioner was out of employment i.e. between the period 28.07.1998 till the date of reinstatement i.e. 23.06.2010 applying the principles of "No Work No Pay".
2. The contention of the petitioner is that the impugned order, so far as denying the back wages to the petitioner is per se illegal as the respondents could not have withheld the wages/salary and consequential benefits to the petitioner, particularly when his earlier writ petition i.e. WPS No. 2891/2005 stood allowed on 26.03.2009 and the impugned order was only supposed to be an order of

implementation of the order of the High Court and it would not have been in any manner detrimental to the interest of the petitioner.

3. The relevant facts for the disposal of the present writ petition is that the petitioner was a nephew of one Tribhuwan Lal Tivree, who was working under the Education Department and who died in harness. Since the widow of the deceased employee was not in a position to take employment in terms of the circular pertaining to compassionate appointment dated 10.06.1994, which gave an option to the widow to nominate some other near relative to be given compassionate appointment, who could take care of the widow also. The petitioner was appointed as he was the nephew of the deceased employee. The petitioner was given appointment vide order dated 23.01.1995 on the post of peon. The petitioner thereafter continued to discharge his duties up till 27.07.1998, when his services were terminated by the order dated 28.07.1998, whereby his appointment order was cancelled.
4. The petitioner thereafter challenged the order dated 28.07.1998 by way of a petition before the Madhya Pradesh State Administrative Tribunal vide O.A. No. 352/1999, which was subsequently on abolition of the Tribunal transferred to the High Court of Chhattisgarh, where it was registered as WPS No. 2891/2005. The said writ petition stood allowed on 26.03.2009. Pursuant to the petition being allowed, the impugned order thereafter has been passed taking the petitioner back in services vide Annexure P/1 dated 23.06.2010. However, the authorities concerned had denied the petitioner the consequential

benefit of back wages applying the principles of “No Work No Pay”, which is under challenge in the present writ petition.

5. The contention of the petitioner is that once when the order of termination has been set-aside, as a natural consequence, petitioner would be entitled for the entire consequential benefits of the back wages, seniority and promotion, etc. which he would have otherwise got, had he not been terminated from service. Therefore the principles of “No Work No Pay” could not have been applied. It was the further contention of the petitioner that the authorities concerned also ought to have considered the fact that once when the High Court has allowed the WPS No. 2891/2005, it would amount to the order of termination being declared *ab initio void* and totally illegal and arbitrary.
6. Once when the action and order of the State Government becomes *ab initio void* and is declared illegal and arbitrary, the result would be that the petitioner would have to be treated for all practical purposes to have been continued in employment, as if the order of termination never existed, since it was per se illegal. Therefore, the principles of “No Work No Pay” cannot be applied under such circumstances as a thumb rule. It is not a case where the respondent authorities have found the petitioner to have been gainfully employed elsewhere during the intervening period for applying the principles of “No Work No Pay” or for that matter being gainfully employed elsewhere.
7. The State counsel on the other hand submits that since the petitioner at the first instance while challenging the termination order in WPS No. 2891/2005 had not claimed for back wages and consequential

benefits, he cannot be permitted to claim the same by way of a fresh petition now. It is the further contention of the learned State counsel that admittedly from 28.07.1998, the petitioner is out of employment and therefore admittedly he has not discharged his duties during the intervening period, till he was reinstated vide the impugned order. Therefore the Department has rightly applied the principles of “No Work No Pay”. It was the further contention of the State counsel that unless specifically ordered by the High Court at the first instance while disposing of the WPS No. 2891/2005, the petitioner could not have claimed for back wages independently now by way of a second writ petition.

8. Having heard the contentions put forth on either side and on perusal of record, it would be relevant at this juncture to take note of the order of this Court in WPS No. 2891/2005. This Court taking into consideration the judgment of the Hon'ble Supreme Court in the case of **“P. Tuls Das and others v. Govt. of A.P. & others” (2003) 1 SCC 364** had reached to the conclusion that the right which has already accrued in favour of a government employee, cannot have been taken away or withdrawn by virtue of a subsequent circular coming into force.
9. In the instant case also the petitioner at the time of his appointment on 31.03.1995 was granted appointment based on the circular dated 10.06.1994. On the basis of the appointment, the petitioner continued to work for a period of more than 3½ years till 28.07.1998. Subsequently applying another circular, which was issued by the State Government much after the petitioner came in employment, his

appointment was cancelled and he stood terminated from service. It is this action of the State Government that is relying upon a circular which was subsequently issued after the appointment of the petitioner, which has been said to be outrightly bad in law by this Court in its judgment dated 26.03.2009. This in other word means that the Court below had put an authoritative conclusion that the action on the part of the respondents-State in canceling the appointment was per se illegal and the same amounts to be *ab initio void*.

10. Under the circumstances, when the order of termination dated 28.07.1998 is set-aside, as a natural corollary petitioner has to be taken back in service and it has to be presumed and given effect to as if the order of termination never existed. There has to be a justifiable reason for denying the back wages to a government employee, in whose favour there exists an order of reinstatement. The principles of “No Work No Pay” cannot be automatically made applicable as a rule of thumb.
11. Plain perusal of the provisions of Fundamental Rules also would show that Rule 54 touching on the aspect lays down that when a government servant gets acquitted or exonerated from the criminal case or in the departmental enquiry, he would be entitled for all the consequential benefits including that of pay and arrears.
12. Recently, this Court in the case of **“Shankar Lal Soni (Died) through LR's v. State of Chhattisgarh & others” WPS No. 994/2010** decided on 09.07.2021 dealing with the principles of “No Work No Pay” in paragraphs No. 31 to 35 has elaborately dealt with principles of “No Work No Pay” and has thereafter reached to the

conclusion that the same cannot be applied in a straight jacket formula, unless there is a justifiable reason available for the State Government for denying the back-wages, it cannot be withheld as a matter of routine. For ready reference paragraphs No. 31 to 35 passed in WPS No. 994/2010 are reproduced hereinunder:-

“31. The principle of 'No Work No Pay' is based upon a fundamental concept in a Law of Contract of Employment namely wages and salary are paid by the employer in consideration of work / service rendered by the employee. 'No Work No Pay' principle has been laid down keeping in view public interest that a Government servant who does not discharge his duty is not allowed pay and arrears at the cost of public exchequer. (See **Union Territory, Chandighr v. Brijmohan Kaur (2007) 11 SCC 488**),

32. The Supreme Court in the matter of **State of Bihar and others v. Kripa Nand Singh and another (2014) 14 SCC 375** has observed that 'No Work No Pay' is the rule and 'No Work Yet Pay' is the exception. It was pointed out that exception would apply only when employee is compelled (compulsory waiting period) not to attend his duty without any violation or without any fault on his part.

33. The Supreme Court in the matter of **State of Uttar Pradesh and others v. Madhav Prasad Saharma (2011) 2 SCC 212** has held that principle of 'No Work No Pay' cannot be applied as a rule of thumb. Full back wages in certain circumstances may be justified particularly when promotion is wrongly denied.

34. Similarly, in the matter of **Commissioner, Karnataka Housing Board v. C. Muddaiah (2007) 7 SCC 689** the Supreme Court has reiterated that principle of 'No Work No Pay' is not absolute in a given case, if it is that the person was willing to work but he was illegally and unlawfully not allowed to do so, the Court may in the circumstances, direct the authority to grant him all benefits considering “as if he had worked”.

35. In the considered opinion of this Court, the principle of 'No Work No Pay' would not be applicable where the rule expressly direct otherwise like subrule (2) of Rule 54 of the Fundamental Rules, which clearly provides that the Government servant who had been dismissed, removed or compulsorily retired has been fully exonerated, shall be paid full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired, but subject to proviso to subrule (2) of Rule 54 and if the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, but in that case also, the amount determined under proviso to subrule (2) shall not be less than the subsistence allowance and other allowances admissible under Rule 53, as such, when the rule expressly provides for grant of full pay and allowances on full exoneration of the Government servant from punishment/criminal charges, the principle of 'No Work No Pay' would have no application and said principle of 'No Work No Pay' would not override subrule (2) of Rule 54 of the the Fundamental Rules which provides full pay and allowances on full exoneration.”

13. In view of the aforesaid facts and circumstances of the case, this Court is of the opinion that the impugned order, so far as non-granting the back-wages to the petitioner for the intervening period from 28.07.1998 till 23.06.2010 is bad in law and the observations so far as applying the principles of “No Work No Pay”, therefore deserves to be and is accordingly set-aside. As a consequence, the petitioner is ordered to be entitled for the entire wages for the intervening period between 28.07.1998 to 23.06.2010 and also would be entitled for all the benefits of revision of pay, if any, which had accrued in the intervening period. The petitioner be granted the relief of wages for the intervening period within a period of 3 months from the date of receipt of the copy of this order.
14. The writ petition accordingly stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

Ved