

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 2726 of 2021**

1. Chamru Sai Yadav S/o Prem Sai Yadav Aged About 60 Years R/o Village And Post Machadoli, Lalpur, P.O. Bango, Tahsil Katghora, District Korba Chhattisgarh. **---- Petitioner**

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Water Resources, Mahanadi Bhawan, Atal Nagar, Nava Raipur, District Raipur Chhattisgarh.
2. Chief Engineer Minimata (Hasdeo Project) Water Resources Department Bilaspur Chhattisgarh.
3. Executive Engineer Minimata Bango Project Mandal Division No. 5, Kharsiya District Raigarh Chhattisgarh.
4. Executive Engineer Kelo Project Sarvekshan Division, Raigarh, District Raigarh Chhattisgarh.
5. Sub Divisional Officer Kelo Project Sarvekshan Division, Sub Division No. 1 Lakha, District Raigarh Chhattisgarh.
6. Collector Raigarh District Raigarh Chhattisgarh. **----Respondents**

For Petitioner	:	Shri K. P.S. Gandhi, Advocates.
For State	:	Ms. Akanksha Jain, Dy.G.A.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****22.06.2021**

1. Aggrieved by the order passed by the respondents (Annexure P/1) dated 20.04.2010, the present writ petition has been filed.
2. Vide the impugned order, the respondents had terminated the services of the petitioner after giving him one month (30 days) notice.
3. The facts of the case are that the petitioner herein was appointed under the respondents as a daily wage employee in the year 1984, thereafter the petitioner stood regularized in service on 08.09.2008 (Annexure

P/2). When the regularization was done, it was specifically held that services of the petitioner can be terminated after giving one month notice or one month salary in lieu of notice. It was also the condition of regularization that the credential of the petitioner and other workers would be subject to the verification and the regularization would be subject to the said verification including that of the character certificate to be provided by the Police Authorities. Subsequently, the Department received an intimation that the petitioner was involved in a criminal case for the offence punishable under Section 148, 324, 323 R/w section 149 and 249 of the IPC. It was also revealed that the petitioner had been under judicial custody for a period from 19.05.2009 to 07.07.2009. When the said character report of the petitioner was received from the Police Department by the employer, the impugned order (Annexure P/1) has been passed and Annexure P/1 shows that the order of termination has been passed after giving one month notice.

4. The said impugned order dated 20.04.2010 was never questioned or challenged by the petitioner before any authority of law. Down the line after eight years pending the trial before the Trial Court, the petitioner compromised the matter with the complainant and got the case compounded and the case got disposed of vide order dated 14.07.2018 before the Lok Adalat. Now the petitioner approaches the department for treating the order of the Criminal Court dated 14.07.2018 as an order of acquittal and thereby the petitioner be taken back in employment.
5. This Court is of the opinion that firstly, the writ petition is highly belated in as much as the challenge to the termination is after more than a decade. Secondly, the order of termination is only on the basis of a

Police verification report received by the Department wherein it was found that the petitioner was having a criminal background, he has also remained under custody for about two months and the criminal case was pending on the date when he was regularized. Thirdly, what can also not be overlooked is the fact that the order passed in favour of the petitioner on 14.08.2018 is not after completion of the entire trial, it's an order where in the midst of a trial, the petitioner entered into a compromise with the complainant and thereafter with the leave of the Court, offences have been compounded. Though it may have an effect of acquittal in-terms of the provision of CrPC but what has to be also seen is whether on the date when the impugned order (Annexure P/1) was passed, the authorities were justified in passing such an order or not. Admittedly on the date when (Annexure P/1) was passed i.e. on 20.04.2010, the petitioner had a criminal antecedent and he was involved in a criminal case for the aforesaid offences, he had been in judicial custody for a period of around two months followed by a Police verification report received by the department in respect of the criminal antecedent and the petitioner having a criminal background.

6. Under the circumstances, the action on the part of the respondents when the impugned order was passed in the year 2010 can not be said to be in any manner arbitrary or malafide. Only because in the year 2018 the matter i.e. the criminal case got compounded by itself would not give rise to an occasion for challenging a termination order which was otherwise passed only on the ground of criminal antecedent. The said order can not be said to be an order of termination of service on account of his getting involved in a criminal case or having remained in judicial custody for a period of around two months. It is a case where

the order of regularization in service, which was otherwise subject to verification, on verification of finding the criminal antecedent, the services have been discontinued and the same is also purely in accordance with the conditions stipulated in the order of regularization itself.

7. The view of this Court gets fortified from a recent decision of the Hon'ble Supreme Court in CIVIL APPEAL NO.3894 OF 2020 in the case of State of Rajasthan vs Love Kush Meena decided on 24-03-21 wherein in paragraph 23 to 27 it has been held as under :-

“23.Examining the controversy in the present case in the conspectus of the aforesaid legal position, what is important to note is the fact that the view of this Court has depended on the nature of offence charged and the result of the same. The mere fact of an acquittal would not suffice but rather it would depend on whether it is a clean acquittal based on total absence of evidence or in the criminal jurisprudence requiring the case to be proved beyond reasonable doubt, that parameter having not been met, benefit of doubt has been granted to the accused. No doubt, in that facts of the present case, the person who ran the tractor over the deceased lady was one of the other co-accused but the role assigned to the others including the respondent herein was not of a mere bystander or being present at site. The attack with knives was alleged against all the other co-accused including the respondent.

24. We may also notice this is a clear case where the endeavour was to settle the dispute, albeit not with the job in mind. This is obvious from the recital in the judgment of the Trial Court that the compoundable offences were first compounded during trial but since the offence under Section 302/34 IPC could not be compounded, the Trial Court continued and qua those offences the witnesses turned hostile. We are of the view that this can hardly fall under the category of a clean acquittal and the Judge was thus right in using the terminology of benefit of doubt in respect of such acquittal.

25. The judgment in Avtar Singh's case (*supra*) on the relevant parameter extracted aforesaid clearly stipulates that where in respect of a heinous or serious nature of crime the acquittal is based on a benefit of reasonable doubt, that cannot make the candidate eligible.

26. We may also note the submission of learned counsel for the respondent that as per para 38.3 in Avtar Singh's case (*supra*), the employer has to take into consideration the Government orders/instructions/rules applicable to the employee at the time of taking a decision. It is her say that the issue whether the circular dated 28.03.2017 would apply or not was *res integra* in view of the earlier order of the learned Judge dated 14.05.2018. She has further contended that, in any

case, the circular had come into force and as per the judgment in Avtar Singh's case (supra) para 38.4, it is the date of decision which is material and as on the date of decision dated 23.05.2017, the said circular was applicable.

27. We may note here that the circular dated 28.03.2017 is undoubtedly very wide in its application. It seeks to give the benefit to candidates including those acquitted by the Court by giving benefit of doubt. However, such circular has to be read in the context of the judicial pronouncements and when this Court has repeatedly opined that giving benefit of doubt would not entitle candidate for appointment, despite the circular, the impugned decision of the competent authority dated 23.05.2017 cannot be said to suffer from infirmity as being in violation of the circular when it is in conformity with the law laid down by this Court.

8. For all the aforesaid reasons, this Court does not find any strong case made out by the petitioner calling for an interference with the impugned order Annexure P/1. The writ petition therefore sans merits and is accordingly rejected.

Sd/-

**P. Sam Koshy
Judge**