
(2004) 07 CHH CK 0013
In the Chhattisgarh High Court
Case No : Writ Petition No. 1220 of 2001

Banwari Lal Shrivastava

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 14-07-2004

Acts Referred:

Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 — Rule 9
Prevention of Corruption Act, 1947 — Section 5(1), 5(2)

Citation : (2004) 2 CGLJ 102 : (2005) 104 FLR 20 : (2004) 4 MPHT 53

Hon'ble Judges : Fakhruddin, J

Bench : Division Bench

Advocate : V.G. Tamaskar, for the Appellant; Sanjay S. Agrawal, Government Advocate, for the Respondent

Judgement

Fakhruddin, J.—Applications for urgent hearing are allowed.

2. Heard.

3. The petitioner, who was Naib Tehsildar, was prosecuted for an offence punishable under Sections 5(1)(d) and 5(2) of the Prevention of Corruption Act, 1947. He was placed under suspension on 30-9-93. He continued under suspension. It is stated that as per Annexure P-1 he was relieved. He was however acquitted by the Special Judge, Sarguja vide judgment dated 31-1-2000. It is submitted that after his acquittal, the suspension was not revoked. It is further submitted that notices on merits as well as M.W.P. were issued but neither the return nor the reply has been filed and the matter itself is pending since 2001.

4. Learned Counsel for the State on the other hand submitted that against the acquittal of the petitioner, State has preferred Misc. Criminal Case for leave to appeal before this Court, which is pending consideration. It is submitted that though Misc. Criminal Case was filed barred by limitation and the limitation has been condoned but leave has not been granted.

5. Learned Counsel for the petitioner placed reliance upon the judgment of the Apex Court in the case of Union of India (UOI) and Others Vs. Jaipal Singh, and the judgment of Gujrat High Court in the case of Mukesh Kumar Premshankar Joshi v. State of Gujarat and Anr., reported in 2004 Lab. IC 271. It is submitted that the order was passed in view of the pendency of the criminal case, however the petitioner was acquitted and no departmental enquiry is pending against him, therefore, it is not open for the department to continue further suspension in view of filing of the criminal appeal against the order of acquittal. It is further submitted that it is a settled principle of law that if prosecution, which ultimately resulted in acquittal of the person concerned was at the behest of or by the department itself, perhaps different considerations may arise.

6. In Mukesh Kumar (supra), Gujarat High Court has held as under:-

"It is required to be noted that the petitioner is acquitted and even at present, no departmental enquiry is pending against him. In that view of the matter, there is absolutely no justifiable reason for the Department not to reinstate the petitioner by revoking the suspension order. It is a matter of pity that since 2000, the petitioner is requesting the Department to give him appropriate posting order by revoking the suspension order in view of the acquittal order; yet, without any justifiable ground, suspension order is not revoked by the Department. Instead, the Deputy Secretary informed the petitioner, by letter dated 18th September, 2002 that since Criminal Appeal is filed against the judgment of the Sessions Court, the petitioner is required to be kept under suspension. It is difficult to appreciate as to under which provision the Secretary has taken such view. When there is an order of acquittal, it was the duty of the Department to revoke the suspension order in view of the acquittal order. Simply because the appeal is pending is no ground to continue the petitioner under suspension especially when the suspension order itself is passed in view of the pendency of the criminal case.

The learned Advocate for the petitioner has also relied upon the decision of this Court in Special Civil Application No. 2960 of 1997, which is annexed with the compilation at page 12. This Court has also taken the view that the petitioner can not be continued under suspension under the guise that some complaints are pending investigation. In the aforesaid case, in view of the acquittal of the petitioner, in connection with the criminal case, it was held that the petitioner therein is entitled to reinstatement irrespective of the pendency of the revision application before this Court."

7. Having considered the facts and circumstances, the material on record and in view of the aforesaid judgments, it is directed that the order of suspension is revoked from the date of acquittal of the petitioner. Since the petitioner was suspended during the pendency of the criminal case and he has been acquitted, he is entitled for consequential benefits from the date of acquittal.

8. Subject to what has been stated above, this petition stands disposed of.

9. Consequently, M.W.P. No. 2628/2003 stands disposed of.

Certified copy as per rules.