

(2019) 04 MP CK 0117

In the Madhya Pradesh High Court

Case No : Writ Petition No. 13075 Of 2018

Haridas Bairagi

APPELLANT

Vs

State Of Madhya Pradesh And Ors

RESPONDENT

Date of Decision : 15-04-2019

Acts Referred:

Madhya Pradesh Civil Services (Classification, Control And Appeal), Rules 1966 — Rule 10(4)

Citation : (2019) 3 MPLJ 309

Hon'ble Judges : Vivek Rusia, J

Bench : Single Bench

Advocate : L.C. Patne, Amit Pal

Final Decision : Allowed

Judgement

The petitioner has filed the present petition being aggrieved by order dt.27.12.2017, passed by the Chief Executive Officer, Jila Panchayat, Dewas - cum - District Project Director Sarv Shiksha Abhiyan by which punishment of stoppage of one increment with non-cumulative effect has been imposed under Rule 10(4) of M.P. Civil Services (Classification, Control and Appeal), Rules 1966 (hereinafter referred as the 'Rules of 1966'), by revoking the suspension. By the impugned order, he has also held that the petitioner shall be entitled for subsistence allowance paid during the suspension period. Though, the petitioner has assailed the aforesaid order challenging the punishment as well as the non grant of salary and other allowance payable during the suspension period but during the course of the arguments Shri Patne, learned counsel appearing for the petitioner has confined this petition only in respect of denial of salary and other allowances payable during the suspension period.

2. Shri Patne, learned counsel for the petitioner submits that once the disciplinary action has ended with the imposition of minor penalty then it is presumed that the suspension was not at all warranted, hence, the petitioner is entitled for full salary and allowances for the entire period of suspension. He has

also placed reliance over the circular dated 13.1.2005 issued by the General Administration Department (GAD) of State of M.P in which it has been held that if the suspended employee is imposed minor penalties then, suspension was not warranted and he is entitled for entire salary and allowances of the suspension period. In support of his contention, he has placed reliance over the judgment passed by this court in the case of Deena Nath Tiwari V/s. Dr. Hari Singh Gour Vishwavidyalaya, Sagar, 2004 (2) MPLJ Pg.11 and in the case of Y.S. Sachan V/s. State of M.P. & Ors. 2004(1) MPHT 22.

3. Shri Amit Pal, learned Govt. Advocate appearing for the respondents/State submits that looking to the misconduct committed by the petitioner, a punishment of stoppage of one increment with cumulative effect was rightly imposed and against which the petitioner has not filed any appeal. The disciplinary authority while imposing the penalty has also exercised the power conferred under Section 54(B) of the Fundamental Rules and decided not to pay the full salary and allowances for the suspension period. Hence, no interference is called for with the impugned order and the petition is liable to be dismissed.

4. The petitioner while working as headmaster of primary school Haranwada, submitted an application for one day casual leave on account of illness. On the next date, he submitted another application to the Sankul Principal Govt. Higher Secondary School, requesting him to sanction the medical leave, in view of the advice given by the medical practitioner. By order dt.14.9.2017, he was placed under suspension by the respondent No.2 on account of his absence during the surprise inspection made on 13.9.2017. The petitioner remained on medical leave w.e.f. 13.9.2017 to 18.9.2017 and submitted a joining on 19.9.2017 along with a fitness certificate issued by the medical practitioner. The petitioner was issued a charge-sheet dated 27.10.2017, in respect of unauthorized absence from the duty on 13.9.2017. The petitioner submitted a detailed and exhaustive reply. After considering the reply submitted by the petitioner by impugned order dt.27.12.2017, the disciplinary authority imposed a minor punishment withholding annual increment without cumulative effect under Rule 10(4) Rules of 1966 and also held that petitioner shall be entitled for the subsistence allowance already paid to the petitioner during the suspension period from 14.9.2017 to 27.12.2017.

5. The petitioner is at the verge of retirement therefore, he is not challenging the punishment given to him, but he is aggrieved only by order passed under Section 54(5) F.R. Rule by which he has been denied full salary and allowances payable during period of suspension. As per F.R. 54(B) when a Government servant who has been suspended is reinstated the authority competent to order reinstatement shall consider and make a specific order regarding pay and allowances to be paid to him for the period of suspension ending with reinstatement. According to Sub Rule (3) where the authority competent to order reinstatement is of the opinion that the suspension is wholly unjustified, the Government Servant shall be subject to the provision of the Sub Rule 8 be paid full pay and allowances to

which he would have been entitled had he not been suspended. As per Sub Rule 5, if the Government servant is not found entitled for the full amount of pay and allowances payable during the suspension period the the Competent Authority may determine any amount after giving notice to the Government servant by proposing the quantum payable to him. It is not in dispute that the period of suspension is liable to be treated into the service. In the present case, before passing the impugned order, the petitioner was not given any opportunity to give the representation and the competent authority has decided not to pay the full pay and the allowances to him. This court in the case of Deena Nath Tiwari V/s. Dr. Hari Singh Gour Vishwavidyalaya, Sagar (supra) and in the case of Y.S. Sachan V/s. State of M.P. & Ors. (supra) has held that withholding of two increments as a minor penalty and in case of imposition of such penalty, the employee is not to be a deprived of his salary for the period of suspension as that become more penal than the penalty, which has been imposed. No reasons have been assigned for depriving him of his salary for the suspension period. The suspension can be said to be wholly unjustified in terms of F.R. 54-B and the concerned employee should be paid full pay and allowance for the period of suspension by passing a suitable order under F.R.54-B. The guidelines issued by the Central Government for its employees are just and reasonable and should be followed by the State Government in its instrumentality. In the State of M.P, the General Administration Department has also issued a circular dated 13.1.2005 to the same effect that if the suspended employee is imposed a minor penalty after the conclusion of the departmental enquiry, then the suspension was not warranted and the State Government has taken a decision to give full pay and salary and allowances for the suspension period.

6. In view of the above, the petition succeeds and is hereby allowed in part. The order dated 27.12.2017 is quashed, so far it relates to the denial of full salary and allowances payable during the period of suspension. The respondents are directed to pay the full salary and other allowances admissible to the petitioner during the suspension period from 14.9.2017 to 27.12.2017.

7. No order as to cost.