
(2006) 02 MP CK 0064
In the Madhya Pradesh High Court

Kanhaiyalal Parmar

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 23-02-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2006) ILR (MP) 1404 : (2006) 2 MPJR 113 : (2006) 2 MPLJ 522 :
(2007) 2 SLJ 285

Hon'ble Judges : J.K. Maheshwari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

J.K. Maheshwari, J.

This petition has been filed assailing the order dated 9.3.2000 passed by respondent No. 3 by which on revocation of the suspension, a direction was issued for non-payment of the salary for such period except the subsistence allowance along with a direction to count such period permissible for the purpose of pension.

It is the case of the petitioner that he was appointed as Gram Sachiv with effect from 14.9.1965. As per the orders issued by the Government in the year 1982 the services of the petitioner was absorbed as Gram Sevak in the Panchayat and Social Welfare Department. In the year 1996, a criminal case was registered against the petitioner at Crime No. 80/96 u/s 302, Indian Penal Code. Because the petitioner was under detention for more than 48 hours, therefore, as per order dated 13.10.1996, he was placed under suspension. Vide order dated 29.11.1996 passed by this Court in M.Cr.C. No. 3399/96, petitioner was released on bail. Thereafter, the trial has resulted into acquittal as per judgment dated 31.8.1998 (Annexure-A/5). Some of the accused persons were convicted for the same offence but the petitioner was acquitted.

Arising out of the judgment passed on 31.8.1998, two appeals were preferred.

One appeal Cr.A. No. 1049/98 was preferred on behalf of the convicted accused persons and another Cri.A. No. 1345/98 was preferred on behalf of the State Government against petitioner Kanhaiyalal. Both these appeals have been decided by a common judgment dated 31.10.1999. The appeal filed on behalf of the convicted accused persons was allowed and the appeal filed by the State Government against the petitioner was rejected. In such a circumstance, it is apparent that the criminal prosecution lodged against the petitioner resulted into acquittal as per the order passed by the Sessions Court on 31.8.1998 and affirmed by the High Court.

Counsel for the petitioner submits that the order of his suspension was issued on 31.10.1996 on account of his detention in a criminal case as per Rule 9(2)(a) of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966. Petitioner was detained on account of registration of a criminal case wherein, on investigation, challan was filed; and after trial it resulted into acquittal by the order of learned Sessions Court dated 31.8.1998. However, on conclusion of the trial petitioner ought to be reinstated on revocation of suspension. It is further submitted by him that filing of the appeal against the order of acquittal passed by the Sessions Court against him having no consequences in revocation of suspension. Therefore, after 31.8.1998 till 9.3.2000 issuing the order Annexure-A/1 for revocation of suspension, he is entitled for full backwages and salary. It is further submitted by the Counsel for the petitioner that the period in between 30.10.1996 to 31.8.1998 in which the order of suspension was passed and the acquittal is resulted, should be dealt with in accordance with the provisions of F.R. 54-B(3) and (4) and the orders should be passed by recording the reasons by the Competent Authority. Counsel for the petitioner placed reliance on a judgment of this Court in the case of Ram Ratan Tiwari Vs. State of M.P. and Others, and it is urged that petitioner may be directed to pay full backwages since the date of his suspension till revocation of suspension. Reliance is also placed on a judgment of this Court in W.P. No. 6442103 Man Singh v. State of M.P. decided on 15.2.2006. However, it is prayed that the Government should have passed an order in accordance with the provisions of F.R. 54-B(3) and (4) and full salary should be allowed to the petitioner.

Respondents have filed their return and tried to justify their action. By filing the return, it is stated that because the order dated 31.8.1998 passed by the learned Sessions Court acquitting the petitioner was under challenge before the High Court in Cr. A. No. 1345/98 and the final order was passed in Cr. A. on 31.10.1999, therefore, the order Annexure-A/1 has rightly been passed. In the return, it is stated that because the petitioner was placed under suspension, therefore, the period in which he was under suspension has been directed to be treated as "no work no pay". Therefore; petitioner is not entitled for the benefit of the payment of the salary during the period of suspension by applying the principle of "no work no pay".

I have heard the learned Counsel appearing for the parties and perused the

record. On perusal of the record, it is apparent that the suspension of the petitioner was on account of his detention in a criminal case registered at Crime No. 28/97 for an offence u/s 302, Indian Penal Code. Sessions trial has been concluded as per order dated 31.8.1998 resulting into acquittal of the petitioner and conviction of some accused persons. Against the judgment of the Sessions Court two appeals were preferred, one is on behalf of the convicted accused persons and another is on behalf of the State Government challenging the acquittal of the petitioner. Both these appeals have been decided by a common judgment dated 13.10.1999. The appeal preferred by the State Government has been rejected and the appeal preferred by the accused persons was allowed. In such a circumstance, it is apparent that the criminal proceedings which were initiated against the petitioner were resulted into acquittal by the order of learned Sessions Court acquitting him from the charged offence. Thereafter, neither any criminal offence was under investigation, enquiry or trial against the petitioner. Filing of appeal against him by the Government is having no consequence or correlation to keep the petitioner under suspension. Therefore, it is to be held that after acquittal of the petitioner by learned Sessions Court keeping the petitioner under suspension with effect from 31.8.1998 is undesirable and not permissible as per the provisions enumerated under Rule 9 of M.P. Civil Services (Classification, Control and Appeal Rules, 1966. In such circumstances action of the respondents to keep petitioner under suspension is illegal, arbitrary and against the Rule 9(4) of M.P. Civil Services (Classification, Control and Appeal) Rules, 1966.

Now, it is to be seen whether the petitioner is entitled for the benefit of full, salary for the period in between 31.10.1996 to 31.8.1998 or not. The petitioner was placed under suspension on account of registration of a criminal case to keep him under detention in that criminal case. The order of suspension was passed on 31.10.1996 and such criminal case has resulted into acquittal vide order dated 31.8.1998. However, such a period of suspension ought to have been dealt with in accordance with the provisions as enumerated in E.R. 54-B(3)(4), Provisions of F.R. 54-B(3) and (4) read as under:

(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 reasons 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 on 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.

(4) In a case falling under Sub-rule (3), the period of suspension shall be treated as a period spent on duty for all purposes.

The authority competent ought to have passed an order determining the fact that placing the petitioner under suspension was justifiable or not and continuation of his suspension during the trial was justified or not. In the present case", on perusal of the document Annexure-A-I, it does not reveal that the Competent Authority has passed an order in due exercise of his powers.

In the present case in order impugned Annexure A-1 dated 9.3.2000, the period with effect from the date of passing of an order of suspension till revocation of such suspension was treated on duty but during such period petitioner has been directed to be paid the subsistence allowance only. In the return filed by the Government in para 3, it is mentioned that because during suspension period petitioner has not worked, therefore, by applying the principle of "no work no pay", the period of suspension has been decided. The stand as taken in the return is not known to the service jurisprudence. Once a person is placed under suspension by an employer and decided not to take work from him although the master and servant relation exists, and taking work from him has been ordered to be suspended. In such a circumstance the principle of "no work no pay" having no application. It is a case in which the petitioner is willing to work but by an order of employer he was placed under suspension. Even after an order of acquittal by the competent Court, respondents have continued him under suspension. However, it cannot be said that the petitioner was not willing to work; but it was the employer, who had not permitted the employee to perform his duties due to suspension order. Therefore, the application of principle of "no work no pay" in the facts of present case is arbitrary and denial of arrears of the salary for this reason is also arbitrary. In this context, I may profitably refer the judgment of the Apex Court in the case of K.V. Jankiraman v. Union of India AIR 1990 SC 2010 while discussing the application of principle of "no work no pay".

Considering the aforesaid, I am of the view that application of the principle of "no work no pay" in the present case as ordered by the respondents is not permissible. In view of the foregoing reasons, this petition is hereby allowed, the order Annexure A-1 denying the salary to the petitioner during suspension period is hereby quashed. Following directions are issued to the respondents:

(1) Respondents are directed to pass an order for the period 13.10.1996 to 31.8.1998 i.e. the date of passing of the order till acquittal in accordance with F.R. 54-B(3) and (4). The petitioner is entitled for the salary and backwages and release the benefit of the salary accordingly.

(2) Respondents are directed to pay full salary to the petitioner for the period 1.9.1998 till passing of order of revocation of suspension dated 9.3.2000.

(3) Respondents are directed to fix the pay of the petitioner accordingly and pay

all arrears to him along with 6 per cent interest per annum from due date.

(4) The aforesaid exercise should be completed within a period of four months from the date of communication of the order. In the circumstances, there is no order as to cost.