

(2020) 02 CHH CK 0132
In the Chhattisgarh High Court
Case No : Writ Appeal No. 554 Of 2019

Lalaram Shakya

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision : 13-02-2020

Acts Referred:

Citation : (2020) 02 CHH CK 0132

Hon'ble Judges : P.R. Ramachandra Menon, CJ; Parth Prateem Sahu, J

Bench : Division Bench

Advocate : Sumit Singh Rathore, Ghanshyam Patel

Final Decision : Dismissed

Judgement

@JUDGMENT-JUDGMENT

P.R. Ramachandra Menon, CJ

1. Correctness of the verdict passed by the learned Single Judge while deciding the claim projected by the Appellant in the writ petition with regard to

the finalization of the disciplinary proceedings and in denying the back wages made the aggrieved writ petitioner to approach this Court by way of this

appeal.

2. Heard Shri Sumit Singh Rathore, the learned counsel for the Appellant as well Shri Ghanshyam Patel, the learned Government Advocate

representing the State.

3. The sequence of events reveals that the Appellant, who was a member of Uniformed Force, while serving the Police Department, was proceeded

against in respect of serious misconduct. The Department appointed an Enquiry Officer to go into the alleged misconduct and Shri K.S. Tomar,

Company Commander, Police Training Centre, Borgaon was appointed in this regard, who completed the enquiry and submitted the report on

15.12.2002. Based on the finding in the enquiry, that the Appellant was guilty of the charges levelled against him, Annexure-P/6 order dated

22.05.2004 was passed, whereby he was compulsorily removed from the service. This was challenged by filing an appeal before the Departmental

Authority i.e. the Additional Director General of Police, who dismissed the appeal as per Annexure-P/7 order dated 24.07.2004. These orders were

put to challenge in the writ petition filed by the Petitioner in the following terms :

7.1 That, the petitioner above named most respectfully prays to this Hon'ble Court to call for entire record for its kind perusal.

7.2 That the petitioner most humbly and respectfully prays to this Hon'ble Court to issue writ of Certiorari for quashing the impugned order dated

24/7/2004 passed by Deputy Director General Of Police, Chhattisgarh Armed Force contained in ' ANNEXURE P-7', whereby the concerned

authority has affirmed the imposed major punishment of Compulsory Retirement which was earlier pronounced by the Deputy Inspector General Of

Police for the reason that the punishment is disproportionate to the alleged misconduct.

7.3 That the petitioner most humbly and respect fully prays to this Hon'ble Court to issue a writ of Mandamus for directing the respondents to reinstate

the petitioner with back wages and to release the consequential benefits granted to the petitioner under the relevant service law.

7.4 Any other relief whatsoever, this Hon'ble Court may deem fit and proper may also be granted to the petitioner.

4. The prayers were opposed from the part of the Respondents. The main contention raised before the learned Single Judge was that no 'Presenting

Officer' was appointed by the Department, which was very much prejudicial to the rights and interest of the Petitioner. The learned Judge, with

reference to the materials on record, arrived at a finding that the witnesses were cross-examined by the Enquiry Officer himself at length and that this

was not correct or sustainable in view of the various judgments referred to as given in paragraphs 9 to 14. It was accordingly, that a finding was

rendered to the effect that the enquiry was vitiated because of the said infirmity and observing that the delinquent employee / writ petitioner had

already attained the age of superannuation, the writ petition was allowed to the extent of declaring that he will be entitled to get all the retiral benefits

with notional fixation of the annual increments without any promotional benefit and that the principle of 'No Work No Pay' would be attracted for the

intervening period; thus declining back wages for the period from the date of issuance of the impugned order dated 22.05.2004 till the date the

Petitioner crossed the age of superannuation. The observations in this regard, as given in paragraphs 16 to 18 are in the following terms :

16. Given the aforesaid legal position as it stands, this court has no hesitation in holding that the departmental enquiry conducted against the

petitioner also suffers from same infirmity and is not sustainable in the eye of law and it is in complete violation of the principles of natural justice.

Thus, the enquiry proceedings and the subsequent decision taken on the basis of the enquiry conducted in an illegal manner deserves to be and

accordingly stands set aside/quashed.

Since this court is setting aside the impugned orders on technicalities, applying the doctrine of 'No Work No Pay' it is ordered that the petitioner would

not be entitled for the wages for the period from the date of issuance of the impugned order dated 22.05.2004 till the date the petitioner crossed the

age of superannuation. However, the said period for all practical purposes have to be treated as period spent on duty and the petitioner would be

entitled for consequential benefits that he would be entitled on his retirement.

The petitioner would be entitled for only the notional fixation of the annual increments and any promotional benefits which he would have got had he

been in service between May, 2004 till his retirement. The petitioner however would be entitled for all the actual retiral dues that he was entitled for

after giving him notional fixation of all the benefits that he would be entitled for from the date of issuance of the order of compulsory retirement till his

retirement.

5 The learned counsel for the Appellant submits that the principle of 'No Work No Pay' cannot be made applicable to the case of the Appellant as he

was virtually prevented from doing any service / work and hence the Appellant is entitled to get the consequential benefits as well. The learned

counsel seeks to rely on the recent ruling rendered by the Apex Court in Chief Regional Manager, United India Insurance Company Limited v. Siraj

Uddin Khan AIR 2019 SC 3388 to contend that, in a case where the employee concerned is virtually prevented from doing the service, the principle of 'No Work No Pay' cannot be attracted.

6 We have gone through the said judgment. The factual situation as discussed therein was involving a transfer ordered by the United India Insurance

Company Limited and non-joining of duty by the person concerned, leading to disciplinary proceedings. The non-obeyance of the order and the

unauthorised absence were sought to be pursued and two different charges were issued. It was observed by the Apex Court that in respect of the

first charge, there was a reduction of pay by two stages and this punishment came to be set aside by the High Court, which had become final. In

respect of the second charge raised separately, for which punishment of dismissal was imposed on 26.06.2012, it was noted that the High Court had

set aside the punishment firstly, for the reason that the charge sheet was not served and secondly, that the punishment was imposed (on 26.06.2012)

after attaining the age of superannuation on 20.06.2012, which was not possible. These verdicts were noted as having become final. Proceedings in

the earlier round, when the SLP preferred before the Apex Court came to be dismissed was also taken note of. Considering the question whether

payment of back wages is automatic and also whether the principle of 'No Work No Pay' would be attracted, the only direction given by the Apex

Court is in paragraph 23 which is extracted below :

â??23. In view of the foregoing discussion, the appeals succeed and are accordingly allowed. The impugned order insofar as it relates to dismissal of

the appellants' (landowners) cross objection (Para 24) is set aside.â??

From the above, it is quite clear that the above case was finalized in the particular factual context and no declaration is made that payment of back

wages is automatic. It does not come to the rescue of the Appellant.

7. As mentioned in paragraph 16 of the judgment under challenge, the learned Judge has observed that the enquiry has been interdicted only on

technicalities. If the enquiry is rendered invalid, for any reason, it cannot be said that it will exonerate the delinquent employee from all the charges. If

the enquiry is invalid, then an opportunity has to be given to have it rectified and to proceed with from that stage, to be continued further so as to take

the proceedings to a logical conclusion. This is the law declared by the Apex

Court in a celebrated decision rendered by the Constitution Bench in

Managing Director, ECIL, Hyderabad, etc. etc. v. B. Karunakar, etc.etc. AIR 1994 SC 107 4This course has not been pursued by the learned Single

Judge presumably for the reason that, the employee had already attained the age of superannuation and hence the relief was moulded accordingly.

Even if the enquiry was conducted any further, since the 'master and servant' relationship had been cut off, it might not led to any punishment.

8. In the above circumstances, we are of the view that it is not a fit case where the Writ Petitioner / Appellant could be declared as eligible to get any

relief over and above the relief already granted by the learned Single Judge. Hence, both the IA for condonation of delay in filing the appeal and the

Appeal stand dismissed, as devoid of any merit.