
(2009) 07 CHH CK 0019
In the Chhattisgarh High Court

Ram Sharik Singh

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 14-07-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96

Citation : (2009) 4 MPHT 37

Hon'ble Judges : Pritinker Diwaker, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Pritinker Diwaker, J.—The petitioner who retired from service as Forest Guard on 31-12-2004, had approached the State Administrative Tribunal on 13-10-1997 by way of Original Application assailing therein the communication letter dated 12-9-97 (Annexure P-10) issued by respondent No. 3, Divisional Forest Officer informing him that his claim for back wages was considered in compliance with the judgment and decree passed by the Civil Judge Class-II, Gariyaband, in Civil Suit No. 2-A/85 and has been rejected on the principle of "no work no pay".

2. A thumbnail sketch of the turn of events is necessary for disposal of the present petition.

3. The petitioner was working as Forest Guard by virtue of order dated 17-12-65. He became a permanent employee of the department on 1-3-1977. As on 10-6-1981 he proceeded on unauthorized leave, his services came to be terminated by order dated 19-7-1982 with effect from 10-6-1982. The said termination order was challenged by the petitioner in Civil Suit No. 2-A/1985 before Civil Judge Class II, Gariyaband who vide judgment and decree dated 13-4-1988 set aside the termination order of the petitioner and thus, his services were reinstated: However, as regards back wages the Trial Court left the same to be decided by the department after giving adequate opportunity to the petitioner and if ultimately the petitioner is found to be entitled for the same in accordance

with law it should be given to him. The department challenged the judgment and decree passed by the Trial Court before the District Judge, Raipur u/s 96 read with Order 41 Rule 1 of the CPC which on formation of the Madhya Pradesh State Administrative Tribunal came to be transferred there and it was registered as T.A. No. 44/1992. The Tribunal after hearing the parties dismissed the appeal filed by the department vide order dated 24-9-93. It is not disputed that no appeal has been preferred by any one against the order of the Tribunal dated 24-9-93 and thus the impugned judgment and decree dated 13-4-1988 attained finality.

4. Counsel for the petitioner submits that after passing of the judgment and decree dated 13-4-1988 by the Trial Court, the petitioner approached the department for giving him permission to join his duties but the department adamantly refused the petitioner to do so on the pretext of appeal having been preferred against the judgment and decree of the Trial Court. Ultimately after the judgment and decree of the Trial Court was affirmed by the Tribunal vide order dated 24-9-93 the petitioner was permitted to join his duties on 21-2-94 as Forest Guard. According to the Counsel for the petitioner even after a consistent and persistent request made by the petitioner for permitting him to join his duties and release his back wages in the light of the judgment and decree of the Trial Court, instead of taking any positive view of the matter, the department straightaway informed the petitioner by a communication letter dated 12-9-97 that a decision had already been taken by the respondent No. 1 on 4-5-94 whereby he has been held as disentitled for the back wages claimed by him for the period 10-6-81 to 20-2-94. He further submits that the petitioner has not been given any opportunity of hearing in compliance of the judgment and decree passed by the Trial Court and the decision taken by the respondent No. 1 regarding denial of back wages to the petitioner is a unilateral one and, therefore, the petitioner is entitled for back wages right from the date from which the petitioner allegedly absented from his duties for the reason that his termination for his alleged unauthorized absence has been set aside by the Trial Court which ultimately came to be affirmed by the Tribunal in an appeal preferred by the department. Counsel for the petitioner laid much stress on the point that the petitioner was not engaged in any gainful employment after his termination from services; rather he kept himself under the disposal of the authorities concerned to oblige him by giving joining in compliance of the judgment and decree passed by the Trial Court. Thus, in totality the argument of the petitioner is that under no circumstance the petitioner can be denied the grant of back wages following the principle of "no work no pay".

5. Countering the submissions of the Counsel for the petitioner, learned Dy. Govt. Advocate appearing for the respondents submits that the order dated 12-9-97 is merely a communication of the order dated 4-5-94 by which the services of the petitioner were terminated and, therefore, instead of order dated 12-9-97 the petitioner should have assailed the order dated 4-5-94. He further submits that by letter dated 15-3-94 issued by the Divisional Forest Officer the petitioner was asked to remain present on that very day and put forth his case and thus he was

given due opportunity of hearing in compliance with the judgment and decree passed by the Trial Court. According to him, while on 15-3-94 the proceedings were on, the petitioner appeared before the Divisional Forest Officer and pleaded that he had left his headquarter on the basis of oral permission from his superior. Thus, as the petitioner himself has admitted that he left the headquarters on oral permission of his superior, he is not entitled for any back wages.

6. Replying to this submission of the State Counsel, it has been argued on behalf of the petitioner that the record maintained by the authorities is self eloquent as to the manner in which the opportunity of hearing was given to the petitioner. According to him, letter dated 15-3-94 was issued to the petitioner asking him to remain present before the authorities concerned on that very day and when the petitioner did that, his signatures were obtained on a blank paper and all the proceedings have been drawn behind the back of the petitioner. It is also submitted on behalf of the petitioner that he has also assailed the order dated 4-5-1994 by which he was denied the back wages claimed by him.

7. Relying on the judgment of the Supreme Court in the matter of Union of India Vs. K.V. Jankiraman, etc. etc., , learned Counsel for the petitioner submits that normally the rule of "no work no pay" is not applicable to the cases where though the employee is willing to work but he is kept away by the authorities for no fault of his. Further placing reliance on the judgment of the Supreme Court in the matter of State of Kerala and Others Vs. E.K. Bhaskaran Pillai, , it is submitted by the Counsel for the petitioner that the principle of "no work no pay" cannot be accepted as a thumb rule and the monetary benefit can be granted from the date of institution of the suit. Counsel for the petitioner also placed reliance on the decision of the Supreme Court in the matter of U.P.S.R.T.C. Ltd. Vs. Sarada Prasad Misra and Another, and submitted that the back wages can be awarded from the date of award. According to him, in this case the judgment and decree was passed by the Trial Court on 13-4-88 in favour of the petitioner and from that very day the petitioner had been requesting the authorities to give him joining but the authorities on the pretext of pendency of the appeal did not allow him to join. This fact has been admitted by the State Government in Paragraph 12 of its return saying that "since the non applicants prefer an appeal against the judgment and decree of Civil Judge Class-II, Gariyaband, the applicant was not permitted to join". He further submits that even in spite of the judgment and decree passed by the Trial Court the petitioner was made to wander from pillar to post and ultimately was permitted to join his duties only on 21-2-94 which is nothing but high handedness on the part of the authorities.

8. On the other hand, placing reliance on the decision of the Supreme Court in the matter of Airport Authority of India and Others Vs. Shambhu Nath Das @ S.N. Das, , learned Counsel for the respondent/State submitted that nobody is entitled to claim the wages for the period he remain absent from work without leave.

9. I have heard Counsel for the parties at considerable length and gone through

the documents filed by the respective parties.

10. It is not in dispute that termination order of the petitioner dated 19-7-82 terminating his services with effect from 10-6-82 was set aside by Civil Judge Class-II, Gariyaband vide its judgment and decree dated 13-4-88 and the First Appeal preferred by the State before the District Judge, which was later transferred to the State Administrative Tribunal on its formation was also dismissed vide its order dated 24-9-93. It is also not disputed that after the termination being set aside by the Trial Court, the petitioner was not permitted to join his duties on the pretext of pendency of appeal and it is only after the dismissal of that appeal, the petitioner was permitted to join his duties on 21-2-94.

11. Now the question remains whether the impugned order dated 12-9-97 regarding denial of back wages to the petitioner is justified or not.

12. In respect of grant or denial of back wages where is no straight jacket formula. There are host of factors like manner and method of appointment such as whether it was ad hoc, short term, daily wage, temporary or permanent and also the period he served the department. It is settled law that grant of back wages is discretionary and the Court should not be rigid or mechanical but flexible and realistic and the back wages should be awarded keeping in view the justice of equity and good conscience. In this case, it is not disputed that the petitioner joined the department as Forest Guard on 17-12-65 and acquired the status of permanent employee on 1-3-1977 and thus, he was a permanent employee of the State Government and had rendered more than 17 years of service at the time of passing of termination order and, therefore, his case cannot be compared to a short term or intermittent & daily wage employment.

13. In the considered opinion of this Court, the order dated 12-9-97 communicating the petitioner in respect of denial of back wages is not in accordance with law because for no fault of his the petitioner was not permitted to join his duties and, therefore, the analogy drawn by the State that the petitioner is not entitled for back wages on account of the principle of "no work no pay" is wholly unjustified in the facts and circumstances of this case.

14. Consequently, in view of the aforesaid analytical dissection of the facts and figures, this Court is of the view that the impugned order dated 4-5-1994 denying the back wages to the petitioner and the order 12-9-97 communicating the said denial to him are wholly arbitrary, illegal and contrary to the provisions of law. Thus, the petition being well merited is hereby allowed. The respondents are directed to grant full back wages to the petitioner from 13-4-88, the date on which the termination order of the petitioner was set aside by the Trial Court to 21-2-94, the date on which the petitioner resumed his duties with all consequential benefits. As regards the interregnum period from 19-7-1982 to 13-4-1988 (from the date of termination till the judgment of the Trial Court setting aside the said order), the petitioner would be entitled to get a lump sum

amount of Rs. 25,000 which would include the cost of this petition also.