

(2013) 01 CHH CK 0049
In the Chhattisgarh High Court
Case No : Writ Petition No. 293 of 2005

Sirottam Prasad Patel

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 03-01-2013

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Prevention of Corruption Act, 1988 — Section 13(1)(e), 13(2)

Citation : (2013) 1 CG.L.R.W. 175 : (2013) 1 CGBCLJ 391 : (2013) 3 CGLJ 244 : (2013) LabIC 1176

Hon'ble Judges : Manindra Mohan Shrivastava, J

Bench : Division Bench

Advocate : Jitendra Pali, for the Appellant; A.V. Shridhar, Panel Lawyer for State, for the Respondent

Judgement

Manindra Mohan Shrivastava, J.—By this writ petition under Articles 226, 227 of the Constitution of India, the petitioner has prayed for following reliefs:-- (A) The suspension period of the petitioner ought to have been considered for regularization.

(B) The petitioner is entitled for full salary after the order of acquittal i.e. from 30-4-2004 till the date of retirement i.e. 31-1-2005.

(C) The petitioner is entitled for full pension in place of provisional pension including arrears of amount with the interest at the rate of 10% per annum.

(D) The gratuity and leave encashment amount of the petitioner with the interest at the rate of 10% per annum.

Brief resumption of facts necessary for adjudication of controversy involved in the petition are that while the petitioner was working as Sub-Engineer and posted in the office of Executive Engineer, Minimata Canal Division No. 5, Kharsia, District Raigarh, on the allegation of being possessed of income disproportionate to the known sources of income, criminal case was registered by

Special Police Establishment and after investigation, charge-sheet was filed on 3-12-1997 alleging commission of offence under Sections 13(1)(e) and 13(2) of the Prevention of Corruption Act, 1988. The petitioner was placed under suspension vide order dated 17-12-1997 (Annexure-P-1) and his headquarter was fixed in the office of Chief Engineer, Bansagar Pariyojna, Rewa, which was later on changed to office of Executive Engineer, Minimata Canal Division No. 5, Kharsia, District Raigarh. 2. The petitioner was, however, acquitted from all the charges levelled against him vide order dated 29-4-2004 (Annexure-P-2) passed by the Special Judge. Raigarh, District Raigarh in Special Criminal Case No. 03/1997. After his acquittal, the petitioner submitted series of representation dated 15-6-2004, 8-9-2004, 4-10-2004 and 1-11-2004 praying for revocation of his suspension and also for grant of back wages with other consequential benefits. Recommendation was also made by the Superintending Engineer vide memo dated 12-8-2004 addressed to the Chief Engineer. However, neither any decision was taken by the respondents in respect of the period, during which, the petitioner was suspended nor petitioner was reinstated in service.

While the matter stood thus, the petitioner attained the age of superannuation on 31-1-2005. Pension case of the petitioner was also not finalized nor retiral dues paid. Aggrieved by non-finalization of pension, withholding of retiral benefits, non-revocation of suspension upon acquittal and also inaction towards regularization of the period of suspension, the petitioner has filed this petition.

3. Learned counsel for the petitioner raised manifold contentions dealing with the aspects relating to non-regularization of the period of suspension, non-reinstatement upon acquittal and non-finalization of pension and release of all pensionary benefits. Learned counsel for the petitioner submitted that once the petitioner was acquitted from the criminal charges by a Court of competent jurisdiction, the respondents were duty bound and obliged under the law to reinstate the petitioner immediately, as there was no further ground available under the law warranting continuance of the suspension of the petitioner, after his acquittal from criminal charges. According to him, the respondents were not justified in continuing his suspension only on the ground that against the judgment of acquittal, criminal appeal has been preferred by the State, which is pending before this Court. Further submission is that acquittal of the petitioner from the criminal charges which alone was the basis for placing him under suspension, established that his suspension was wholly unjustified and further, the entire period of suspension is liable to be regularized as on duty, entitling the petitioner to all consequential benefits including full pay/wages. The respondents have acted arbitrarily in not taking decision with regard to period of suspension. In support of his submission, learned counsel for the petitioner relied upon the order dated 7-5-2010 passed by the Division Bench of this Court in the case of Jagdish Pandey v. State of Chhattisgarh and others (Writ Appeal No. 89 of 2010, decided on 7-5-2010).

Next submission of learned counsel for the petitioner is that once the petitioner is

acquitted from all the criminal charges, the petitioner was entitled to be reinstated in service immediately and no option was left with the respondents, because none of the rules operating in the field dealing with the period of suspension allowed continuance of suspension only on the ground that against the judgment of acquittal, an appeal has been preferred. In support of his submission, learned counsel for the petitioner relies upon the judgment of the Supreme Court in the case of Union of India (UOI) and Others Vs. Jaipal Singh,

Last submission of learned counsel for the petitioner is that after acquittal, even though, an appeal has been preferred against the order of acquittal, in the absence of there being any order withholding or withdrawing pension or any part thereof of the petitioner, under any of the provisions contained in Chhattisgarh Civil Services Pension Rules, 1976, (In short "the Rules of 1976"), the pension of the petitioner was liable to be finalized and all retiral dues including G.P.F., leave encashment, gratuity and group insurance etc. also deserves to be released.

Learned counsel for the petitioner further prays for grant of interest on the retiral dues, which according to him, were illegally withheld, relying upon the decision in the case of S.K. Dua Vs. State of Haryana and Another, .

4. Per contra, learned State counsel sought to justify the action of the respondents by submitting that even though the petitioner was acquitted of the criminal charges, he is not entitled to full back wages or treatment of the entire period of suspension as duty for all purposes as a matter of course, but that will require due consideration of the entire facts and circumstances of the case as to what treatment should be given to the period of suspension, which may include limiting wages only to the extent of suspension allowance already paid without any other benefits by treating the petitioner on duty during the period of suspension. Reliance has been placed on the decision of the Supreme Court in the case of The Greater Hyderabad Municipal Corporation Vs. M. Prabhakar Rao, . Learned State counsel further submits that once the State has filed an appeal against the judgment of acquittal, matter is res integra and therefore, on that ground the respondents were justified in not revoking the suspension of the petitioner. Appropriate decision in that regard would be taken only after the decision of the criminal appeal pending before this Court. Learned State counsel repelled contentions on the aspect of pensionary benefits by submitting that once an appeal against the acquittal has been preferred before this Court, the respondents are entitled to defer finalization of pension till the decision of the criminal appeal. He further submits, referring to the affidavits filed during the pendency of the petition, that payment towards Group Insurance Scheme, Family Benefit Fund, General Provident Fund have already been paid to the petitioner on 2-5-2006 and the petitioner has been allowed anticipatory pension to the extent of 90%, amounting to Rs. 6,816/- per month with effect from January, 2005.

5. As far as petitioner's claim for regularization of the period of suspension is concerned, there is no specific provision contained either in Rule 9 of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 (In

short "the Rules of 1966") or Rule 54-A and 54-B of the Fundamental Rules. In an identical fact situation, this aspect was considered by a Division Bench of this Court in the case of Jagdish Pandey (supra). In that case also, employee was acquitted from all the criminal charges. The State filed an appeal against the judgment of acquittal, but the period of suspension was not regularized on account of pendency of appeal against acquittal. The Divisional Bench of this Court, after examining the statutory provisions contained in Rule 9 of the Rules of 1966 as also the provisions contained in Fundamental Rule 54-A and 54-B, held that the Fundamental Rules 54-A and 54-B or any other provision do not throw light in the circumstances when a Government servant is acquitted from the criminal charges and an appeal against the acquittal is filed against the judgment of acquittal. It was also observed that the criminal case, which was under investigation or enquiry and thereafter filing of charge-sheet and conducting trial, all had come to an end and the employee was acquitted and there was no challan or criminal investigation pending. On various consideration, it was held that non-regularization of the period of suspension upon acquittal, when no further investigation or trial is pending, was against the law. It was also held that the Rules of 1966 do not provide continuous suspension or keeping the matter pending regarding the period of suspension of the person, who has been acquitted. The Division Bench of this Court was of the view that the State could not claim to file an appeal against the acquittal as a matter of right. It was held that it is binding on the State Government to consider the case of regularization of the period of suspension, after acquittal from the criminal charges and consequently consider other benefits arising out of such considerations including pension.

6. Therefore, what follows from the aforesaid decision is that once an employee is acquitted from the criminal charges, the employer and in the present case, the State Government is obliged under the law to take appropriate decision with regard to further continuance of suspension and regularization of the period of suspension and the same could not be deferred only on the ground that against the judgment of acquittal, an appeal has been preferred by the State Government, which is pending.

7. The question, however, which arises for consideration, is whether the petitioner is entitled to claim regularization of the period of suspension in the manner that entire period of suspension should be treated as period spent on duty entitling the petitioner to full wages and benefits, had he continued to perform duties but for suspension. This issue came up for consideration before the Supreme Court in the case of The Greater Hyderabad Municipal Corporation Vs. M. Prabhakar Rao, wherein the Supreme Court held:--

15. Sub-rule (3) of FR 54-B does not state that in case of acquittal in criminal proceedings the employee is entitled to his salary and allowances for the period of suspension. Sub-rule (3) of FR 54-B also does not state that in such case of acquittal the employee would be entitled to his salary and allowances for the

period of suspension unless the charge of misconduct against him is proved in the disciplinary proceedings. Sub-rule (3) of FR 54-B vests power in the competent authority to order that the employee will be paid the full pay and allowances for the period of suspension if it is of the opinion that the suspension of the employee was wholly unjustified. Hence, even where the employee is acquitted of the charges in the criminal trial for lack of evidence or otherwise, it is for the competent authority to form its opinion whether the suspension of the employee was wholly unjustified and so long as such opinion of the competent authority was a possible view in the facts and circumstances of the case and on the materials before it, such opinion of the competent authority would not be interfered with by the Tribunal or the Court.

Therefore, all that can be said is that once a criminal case ended in acquittal, the employer is obliged under the law to take appropriate decision as to whether suspension of the employee was wholly unjustified and for that purpose, the authorities are required to apply its mind to the relevant facts and circumstances of the given case while exercising discretion in the matter. It cannot be accepted as a proposition of law as has been submitted by learned counsel for the petitioner, that invariably, in all cases of acquittal, employee would be entitled to regularization of the period of suspension only in a particular manner entitling him for all consequential benefits and full wages as also treatment of the period as duty for all purposes. The ratio of the aforesaid judgment of the Supreme Court is clear and it is for the authority to take appropriate decision with regard to period of suspension. Thus, what logically follows from the judgment of the Supreme Court is that only on the ground of pendency of appeal against acquittal, employer is not justified in keeping in abeyance the decision with regard to regularization of period of suspension and the employer has to take decision one way or the other regularizing the period of suspension, after due application of mind to the facts and circumstances of the case and relevant consideration as to whether suspension was wholly unjustified.

8. As far as grievance arising on account of non-reinstatement after acquittal; is concerned, there is considerable force and merit in the submission of learned counsel for the petitioner. Learned State counsel could not bring to the notice of this Court any provision contained in either Rule 9 of the Rules of 1966 or in Fundamental Rules 54-A and 54-B enabling the State to continue suspension, even after acquittal, merely on the ground that against the order of acquittal, an appeal has been preferred, which is pending. The power of suspension is conferred on the authority within the four corners of the provisions contained in Rule 9 of the Rules of 1966 read with Rule 54-A and Rule 54-B of the Fundamental Rules. Therefore, the power of suspension has to be exercised consistent with the statutory scheme and not beyond such provisions. The circumstances, in which, a Government servant could be placed under suspension or deemed to have been placed under suspension have been exhaustively enumerated in Rule 9 of the Rules of 1966. In cases relating to allegations of criminal offence, Rule 9(1)(b) of the Rules of 1966 enables the

appointing authority to place a Government servant under suspension, where a case against him, in respect of any criminal offence, is under investigation or enquiry or trial. Under sub-rule (2) of Rule 9 of the Rules of 1966, a Government servant shall be deemed to have been placed under suspension by an order of appointing authority in circumstances enumerated in Clause (a) and (b). Sub-rule (3) and sub-rule (4) further provide for continuance of suspension by deeming fiction in certain circumstances. None of these circumstances remained available to the State to continue the petitioner under suspension after his acquittal.

In the case of Jagdish Pandey (*supra*), the Division Bench of this Court clearly observed in para 9 of its order that the criminal offence, which was under investigation or trial and thereafter, filing of charge-sheet and conducting trial, all have come to an end and upon acquittal, no challan of criminal trial or investigation is said to be pending. It has also been held by the Division Bench of this Court that the Fundamental Rules 54-A and 54-B or any other provision do not throw light in the circumstances when a Government servant is acquitted from the criminal charges and an appeal against the acquittal has been filed against the judgment of acquittal.

9. Therefore, in the considered opinion of this Court, in the absence of there being any specific provision, either allowing suspension to continue by deeming fiction upon filing of an appeal against acquittal or any other provision empowering Government to place its employee under suspension, after acquittal, on the ground of pendency of appeal against acquittal, continuance of suspension, after acquittal, has no sanction of law. Therefore, the respondents were obliged to reinstate the petitioner in service immediately upon acquittal and had no authority under the law to continue the suspension, after acquittal only on the ground that the State has contemplated and filed an appeal against the order of acquittal. In the case of Union of India (UOI) and Others Vs. Jaipal Singh, the Supreme Court held that upon acquittal, employee is entitled to be reinstated and paid back wages from the date of acquittal. It was also held that the period will also be counted as period of service without any break. There was specific direction for reinstatement as would be clear from following observations:--

5. The respondent will be entitled to back wages from the date of acquittal and except for the purpose of denying the respondent actual payment of back wages, that period also will be counted as period of service, without any break. The reinstatement, if not already done, in terms of the order of the High Court will be done within thirty days from today.

10. Therefore, in view of above enunciation of law, it has to be held that the petitioner was entitled to be reinstated in service and the order of suspension was liable to be revoked from the date of acquittal from criminal charges entitling the petitioner to payment of back wages from the date of acquittal and further that the period, from the date of acquittal till the petitioner has attained the age

of superannuation i.e. 31-1-2005, shall be counted as period of service without any break.

11. The next issue, which needs consideration, is as to whether the respondents are justified in not finalizing pension of the petitioner only on the ground that the criminal appeal against the acquittal is pending.

12. On the date, the petitioner attained the age of superannuation i.e. 31-1-2005, the petitioner stood acquitted though an appeal, against the acquittal, was pending. Learned State counsel could not bring to the notice of this Court any provision contained in the C.G. Civil Services Pension Rules, 1976, which confers power on the respondents to delay or defer finalization of pension till the decision of the criminal appeal. Submission of learned State counsel is that as criminal appeal is pending, pension of the petitioner cannot be finalized, cannot be accepted, in the absence of there being any specific power in that regard, conferred expressly or impliedly on the Government under the provisions of the Rules of 1976. It is not in dispute that there is no specific order passed by the Government in exercise of power under Rule 9 of the Rules of 1976, withholding or withdrawing pension or part thereof whether permanently or for specified period. On the face of the provisions, occasion to exercise such power would arise only if in any departmental or judicial proceedings, the petitioner is found guilty. In the present case, no departmental enquiry has been instituted much less any order passed holding the petitioner guilty of any misconduct. Therefore, the pension sanctioning authority also has not passed any order in terms of Rule 8 of the C.G. Civil Services Pension Rules, 1976, withholding or withdrawing pension or part thereof whether permanently or for specified period on account of conviction for a serious crime or guilty of grave misconduct. In the absence of there being any order either under Rule 8 or Rule 9 of the C.G. Civil Services Pension Rules, 1976, the respondent authority has no discretion left except to finalize the pension of the petitioner instead of keeping the same pending and releasing only anticipatory pension till the decision of the appeal. Resultantly, it has to be held that pendency of criminal appeal against the order of acquittal is not a valid ground to withhold finalization of pension, in the absence of specific order of a competent authority either under Rule 8 or Rule 9 of the Rules of 1976.

13. Though, the petitioner has claimed penal interest relying upon the judgment in the case of S.K. Dua Vs. State of Haryana and Another, taking into consideration the pendency of criminal appeal, as far as interest part is concerned, at this stage, I am not inclined to grant interest. It would be open for the petitioner to raise this claim, after the decision of the criminal appeal. The facts stated in the affidavit, filed on 28-4-2010 by the respondents that Group Insurance Amount of Rs. 47,958/-, Family Benefit Fund amount of Rs. 13,611/-, General Provident Fund of Rs. 4,11,624/- have been paid to the petitioner on 2-5-2006 and further that 90% anticipatory pension amounting to Rs. 6,816/- has been fixed with effect from 31-1-2005 has not been specifically disputed by

learned counsel for the petitioner. In the result, this petition is partly allowed in the manner and to the extent indicated, in following terms:--

(A) The respondents shall take final decision with regard to regularization of period of suspension in accordance with law and the observations made by this Court within a period of three months from the date of communication of this order.

(B) The petitioner is entitled to full wage's from the date of acquittal till the date of superannuation i.e. 31-1-2005. The said period shall also be counted as duty period for all purposes.

(C) Pension of the petitioner shall be finalized within a period of three months from the date of receipt of a copy of this order and upon such finalization of pension arrears of pension shall also be paid to the petitioner within a further period of two months from the date of finalization of pension along with the rates of interest permissible under the rules.

(D) Gratuity as also Leave Encashment amount as admissible to the petitioner under the Rules shall also be paid along with the interest payable under the Rules, within a period of three months from the date of receipt of a copy of this order.

No order as to costs.