

(2007) 11 MP CK 0011
In the Madhya Pradesh High Court

Smt. Mahmoodan Khan

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 21-11-2007

Acts Referred:

Citation : (2008) ILR (MP) 36 : (2008) 2 MPHT 26

Hon'ble Judges : A.K. Patnaik, C.J;Ajit Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

A.K. Patnaik, C.J.—This is an appeal against the order dated 28-9-2007 passed by the learned Single Judge in Writ Petition No. 12876/2007 (S).

2. The relevant facts briefly are that the appellant has been working as Investigator in the office of Block Education Officer, Rewa. The District Education Officer, Rewa suspended the appellant as well as other persons who were found absent from duty. The appellant was also re-instated in service by order dated 17-3-2006. Thereafter disciplinary proceeding was initiated against her and after enquiry the District Education Officer, Rewa passed an order dated 23-2-2007 holding that the charge against the appellant was found proved and she was not entitled for pay and allowances during the period of her suspension on the principle of "no work no pay". Aggrieved, the appellant filed Writ Petition No. 12876/2007 (S) and contended that the District Education Officer, Rewa could not have directed that the appellant will not be entitled to pay and allowances during the period of suspension on the principle of "no work no pay". In the impugned order, the learned Single Judge found that against the order dated 23-2-2007 passed by the District Education Officer, Rewa, the appellant filed an appeal before the Joint Director, Public Instructions, Rewa Division which is still pending and directed the Joint Director, Public Instructions, Rewa Division to decide the appeal of the appellant within a period of two months by passing a speaking order.

3. Mr. Dilip Pandey, learned Counsel for the appellant submitted that the writ petition of the appellant was directed only against the direction in the order dated 23-2-2007 of the District Education Officer, Rewa that the appellant will not be entitled to pay and allowances during the period of suspension on the principle of "no work no pay" and against this direction no appeal was available under Rule 23 of the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 (in short "the Rules of 1966") and, therefore, the Joint Director, Public Instructions, Rewa Division had no authority to decide the question whether the District Education Officer, Rewa could have directed that the appellant will not be entitled to pay and allowances during the period of suspension on the principle of "no work no pay".

4. Mr. Kumaresh Pathak, Deputy Advocate General, very fairly conceded that no appeal was available under Rule 23 of the Rules of 1966 against any orders by the Disciplinary Authority directing that the Government servant placed under suspension will not be entitled to pay and allowances during the period of suspension on the principle of "no work no pay". He submitted that if the suspension of the Government servant is revoked then a specific order will have to be passed by the Disciplinary Authority under Fundamental Rule 54-B.

5. Fundamental Rule 54-B of the Fundamental Rules is reproduced herein below:

F.R. 54-B, (1) When a Government servant who has been suspended, is re-instated or would have been so re-instated but for his retirement on superannuation while under suspension, the authority competent to order re-instatement shall consider and make a specific order-

(a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with re-instatement or the date of his retirement on superannuation, as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Notwithstanding anything contained in Rule 53, where a Government servant under suspension dies before the disciplinary or Court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not been suspended, subject to adjustment in respect of subsistence allowance already paid.

(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.

(5) In cases other than those falling under Sub-rules (2) and (3), the Government servant, shall subject to the provisions of Sub-rules (8) and (9) be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been suspended, as the Competent Authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period which in no case shall exceed sixty days from the date on which the notice has been served as may be specified in the notice.

(6) Where suspension is revoked pending finalization of the disciplinary or Court proceedings, any order passed under Sub-rule (1) before the conclusion of the proceedings, against the Government servant, shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in Sub-rule (1) who, shall make an order according to the provisions of Sub-rule (3) or Sub-rule (5), as the case may be.

(7) In a case falling under Sub-rule (5), the period of suspension shall not be treated as a period spent on duty, unless the Competent Authority specifically directs that it shall be so treated for any specified purpose:

Provided that if, the Government servant so desires, such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the Government servant.

Note :- The order of the Competent Authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of-

(a) extra-ordinary leave in excess of three months in the case of temporary Government servant; and

(b) leave of any kind in excess of five years in the case of permanent or quasi-permanent Government servant.

(8) The payment of allowances under Sub-rule (2), Sub-rule (3) or Sub-rule (5), shall be subject to all other conditions under which such allowances are admissible.

(9) The amount determined under the proviso to Sub-rule (3) or under Sub-rule (5), shall not be less than the subsistence allowance and other allowances

admissible under Rule 53.

6. It will be clear from the provisions of Fundamental Rule 54-B quoted above that the aforesaid Fundamental Rule makes elaborate provisions how a Government servant will be dealt with after revocation of his suspension and on re-instatement in service. Sub-rule (1) of Fundamental Rule 54-B provides that when a Government servant who has been suspended is re-instated or would have been so re-instated, the authority competent to order re-instatement shall consider and make a specific order; (a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with re-instatement and (b) whether or not the period of suspension shall be treated as period spent on duty. Sub-rule (3) of Fundamental Rule 54-B further provides that where the authority competent to order reinstatement 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. Sub-rule (4) of Fundamental Rule 54-B states that in a case falling under Sub-rule (3), the period of suspension shall be treated as a period spent on duty for all purposes. Sub-rule (5) of Fundamental Rule 54-B further states that in cases other than those falling under Sub-rule (3), the Government servant, shall subject to the provisions of Sub-rules (8) and (9) be paid such amount of the pay and allowances to which he would have been entitled had he not been suspended, as the Competent Authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period as may be specified in the notice. Sub-rule (7) of Fundamental Rule 54-B states that in a case falling under Sub-rule (5), the period of suspension shall not be treated as a period spent on duty, unless the Competent Authority specifically directs that it shall be so treated for any specified purpose.

7. It is, thus, clear that the authority competent to order reinstatement has to form an opinion whether the suspension was justified or unjustified and if he finds that the suspension was wholly unjustified, he will treat the period of suspension as spent on duty for all purposes and in that case the Government servant would be entitled to his full pay and allowances subject to the provisions of Sub-rule (8). But in cases where he finds some justification for the suspension of the Government servant he has to pass a specific order indicating therein what amount of pay and allowances he would be entitled during the period of suspension after giving notice to the Government servant of the quantum of pay and allowances proposed and after considering the representation, if any, submitted by the Government servant in that connection. It appears that these provisions of Fundamental Rule 54-B have not been complied with by the District Education Officer, Rewa, in the present case before issuing the direction in the order dated 23-2-2007 that the appellant will not be entitled to pay and allowances during the period of suspension on the principle of "no work no pay".

8. The appeal is, therefore, allowed and the impugned order dated 28-9-2007 of the learned Single Judge in Writ Petition No. 12876/2007 (S) is set aside and the direction in the order dated 23-2-2007 of the District Education Officer, Rewa that the appellant will not be entitled to pay and allowances during the period of suspension on the principle of "no work no pay" is quashed. We make it clear that we have not quashed the finding of the District Education Officer, Rewa in the order dated 23-2-2007 that the appellant was guilty of charges and it will be open for the appellant to pursue her appeal against the said finding of guilty recorded by the District Education Officer.

The District Education Officer, Rewa will now pass fresh orders in accordance with the Fundamental Rule 54-B as explained in this order within one month from the date of the certified copy of this order.