



2024:CGHC:28306

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WP No. 3899 of 2006

1. Abdul Rahman Ahmed, son of Late Shri Siddik Ahmed, aged about 47 years, Assistant Draftsman, Office of the SDO, Minor Water Resources Sub-Division, Kailash Nagar, Rajnandgaon, Resident of Vivekanand Nagar, Behind Raj Cement Pipe Factory, Rajnandgaon (C.G) **... Petitioners**

versus

1. State of Chhattisgarh through the Secretary Water Resources Department, Secretariat, DKS Bhawan, Raipur.

2. The Engineer in Chief, Water Resources Department, Near Police Control Room, Civil Lines, Raipur.

3. The Chief Engineer, Water Resources Department, Mahanadi Godavari Basin, Shanti Nagar Square, Raipur **... Respondents**

For Petitioners : Mr. Anup Majumdar & Mr. Vibhor Govardhan,
Advocates

For the State/
Respondent : Mr. Rahul Tamaskar, Government Advocate.

(Hon'ble Shri Justice Goutam Bhaduri)

Judgment on Board

31-07-2024

1. The case of the petitioner is that he was appointed as Tracer on 31.08.1989 and his services were placed under Chief Engineer, Mahanadi Kachar Raipur. Subsequently he was transferred from the Chief Engineer and was placed under the Superintending Engineer, Water Resources. Consequent thereof, he joined services on 16.10.1989. On 19.04.1991, the Engineer-in-Chief, Water Resources, respondent no.2 passed an order of termination on the ground that on character verification certificate, the petitioner was found unfit for being retained in the government service as he was member of Anand Marg. As a consequence thereof,

the termination order dated 19.04.1994 was communicated to the petitioner by Annexure P-5.

2. The said termination of the order was subject to challenge before the then State Administrative Tribunal in OA No. 1321 of 1991. Eventually after a period of 8 years on 18.05.1999, the M.P. State Administrative Tribunal allowed the application filed by the petitioner vide order dated 18.05.1999 (Annexure P-1) and quashed the the termination order on the ground of violative of principles of natural justice. However, liberty was given to the respondent to conduct a departmental enquiry regarding the alleged petitioner's association with Anand Marg and at the relevant time. The said order was communicated to the respondent authority by the petitioner on 27.05.1999 vide Annexure P-6 and further reminders were given on 22.06.1999, 30.06.1999 & 05.10.1999.

3. Respondent No.1 secretary in compliance of the reinstatement order dated 18.05.1999 passed by the Tribunal decided not to proceed with any further departmental enquiry against the petitioner and issued the posting order dated 29.10.1999 and subsequent thereto the petitioner joined his service but was treated as new appointee with effect from 02.11.1999 and no consequential benefits were given. Petitioner submitted representations for grant of consequential benefits from initial date of appointment, however, the same was denied. Therefore, the petitioner filed M.A. before the M.P. State Administrative Tribunal on 22.06.2000 and after formation of the State of Chhattisgarh, the M.A., was transferred to Chhattisgarh High Court in form of Contemp Petition and in the year 2007, the contempt petition was disposed off for want of prosecution.

4. Before disposal of the contempt petition, the petitioner has filed the instant petition in the year 2006 stating that as per Fundamental Rule 54-A when the dismissal and removal has been set aside by the the Court of Law and he is reinstated without holding any further departmental enquiry, the period of absence of duty is required to be regularised and the Government Servant is required to be paid allowances which is due to him subject to direction of the Court, if any. It is submitted that he is entitled for entire allowance which would otherwise have fallen due and as per the provisions of Fundamental Rule 54(A) the reinstatement of the

petitioner cannot be treated to be re-appointment. He placed his reliance on a decision of the Supreme Court reported in (1981) 3 SCC 225 (*Mohan Lal Versus Management of M/s. Bharat Electronics Ltd.*). Further reliance was also made on a decision of the M.P. High Court in case of *Bhagwandeem Chaudhary Versus The state of Madhya Pradesh* decided on 4th January, 2012 as also the decision of Allahabad High Court in *Ramendra Kumar Sharma Versus State of U.P.* through Principal Secretary decided on 1st April, 2024.

5. Per contra, learned counsel for the respondents would submit that when the petitioner was terminated and the application was filed before the SAT, therein also the relief was claimed for financial benefit but in the order of the SAT, the same relief was not granted and having not granted the said relief, the petitioner did not file any appeal. Therefore that order would reach its finality and no further claim can be made. He further submits that the present petition is barred by principles of *res-judicata* and no relief can be entertained time and again.

6. I have heard learned counsel for the parties. The facts are not in dispute in this case that the petitioner who joined his service after selection in the month of October, 1989, the termination simplicitor was effected by order dated 19.04.1991 without any departmental enquiry by resorting to Article 311(2) of the Constitution of India. The said order was subject of challenge before the State Administrative Tribunal. The SAT by its order dated 18.5.1999 quashed the termination order and liberty was given to the respondents to conduct enquiry. The relevant part of the order passed by the SAT at paras 12 and 13 is reproduced here-in-below:

“11. As the case may be, it has already been held that an opportunity of being heard ought to have had been granted to the petitioner. Therefore, only after holding a departmental enquiry, may be a summary department inquiry only, the competent authority concerned could have had given a finding to the effect as to whether the petitioner was or was not a member of the said organisation known as Anand Marg. Consequently, the order dated 19.04.1991 and 01.05.1991 are quashed. The petitioner be taken back in service within one month of a certification of this order being produced by the petitioner before the respondents No.1 to 3.

12. However, the said respondents shall be free to hold a departmental inquiry regarding the allegation that the petitioner belongs or belonged at the relevant time to an organization known as Anand Marg and the said conduct and act of the petitioner is violative of Sub-Rule 1 or Rule 5 of MP Civil Services (Conduct) Rules.

13. In view of the reasonings mentioned above, the

present petition succeeds as detailed above. The order dated 19.04.1991 and 01.05.1991 are quashed.”

7. Reading of the aforesaid order would show that though the respondent was given liberty to hold departmental enquiry regarding the allegation which was levelled but such departmental enquiry was not contemplated as per the order dated 04.09.1999 (Annexure P-1A) of Chief Engineer, Water Resources Department and further by order dated 11th August, 1999 (Annexure 8-A) the State Government consciously decided not to file any appeal against the order of Tribunal dated 18.5.1999. The contents of Annexure 8-A are reproduced hereinbelow :

मध्यप्रदेश शासन, जल संसाधन विभाग, मंत्रालय, भोपाल

// आदेश //

क्रमांक 14-54/91/पी-2/31

भोपाल, दिनांक अगस्त, 1999

राज्य शासन, ओ.ए. क्रमांक 1231/91 श्री अब्दूल रहमान एहमद, अनुरेखक, विरुद्ध शासन के प्रकरण में माननीय राज्य प्रशासनिक अधिकरण, जबलपुर द्वारा पारित आदेश दिनांक 18-5-99 के विरुद्ध अपील नहीं करने का निर्णय लिया गया है।

मध्यप्रदेश के राज्यपाल के नाम से
तथा आदेशानुसार
सही/-
|| आर.सी.गुप्ता ||
अवर सचिव,
म.प्र.शासन, जल संसाधन विभाग,

पृ.क्र. 14-54/91/पी-2/31

भोपाल, दिनांक 11 अगस्त, 1999

प्रतिलिपि :-

- (1) प्रमुख अभियन्ता, जल संसाधन विभाग, अमरकंटक भवन, भोपाल
- (2) अवर सचिव, पी-1 शाखा, जल संसाधन विभाग, मंत्रालय, भोपाल
- (3) मुख्य अभियन्ता, महानदी गोदावरी कछार, जल संसाधन विभाग, रायपुर
- (4) अधीक्षण यंत्री, प्रभारी विधि प्रकोष्ठ, जल संसाधन विभाग, पचपेढी, जबलपुर
- (5) कार्यपालन यंत्री, जल संसाधन सम्भाग, रायपुर,

की ओर सूचनार्थ एवं आवश्यक कार्यवाही हेतु अग्रेषित। माननीय राज्य प्रशासनिक अधिकरण, जबलपुर द्वारा पारित आदेश दिनांक 18-5-1999 का पालन किया जावें। उक्त आदेश की छाया प्रति आवश्यक कार्यवाही हेतु संलग्न प्रेषित है।

संलग्न :- छायाप्रति स.क्र. 1 एवं 2 के लिए केवल।

॥ आर.सी.गुप्ता ॥
अवर सचिव,
म.प्र.शासन, जल संसाधन विभाग,
मंत्रालय, भोपाल

8. Fundamental Rule 54-A)(1) wherein the petitioner banks upon reads as under:

F.R.54-A (1). Where the dismissal, removal or compulsory retirement of a Government Servant is set aside by a Court of Law and such Government servant is reinstated without holding any further enquiry, the period of absence from duty shall be regularised and the Government servant shall be paid pay and allowance in accordance with the provisions of sub-rules(2) or (3) subject to the directions, if any, of the Court.

(2)(i) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by the Court solely on the ground of non-compliance with the requirement of clause (2) of Article 311 of the Constitution, and where he is not exonerated on merits, the Government servant shall, subject to the provisions of sub-rule (7) of rule 54, be paid such [amount (not being the whole) of the pay and allowances] to which he would have been entitled had he not been dismissed, removed or compulsory retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, 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.

Provided that any payment under this sub-rule to a Government servant other than a Government servant who is governed by the provisions of Payment of Wages Act, 1936), shall be restricted to a period of three years immediately proceeding the date on which the judgment of the Court was passed or the date of retirement on superannuation of such Government servant, as the case may be.

(ii) The period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension proceeding such dismissal, removal or compulsory retirement, as the case may be, and the date of judgment of the court, shall be regularised in accordance with the provisions contained in sub-rule (5) of Rule 54.

(3) If dismissal, removal or compulsory retirement of a Government servant is set aside by the Court on the merits of the case, the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension proceeding such dismissal, removal or

compulsory retirement as the case may be, and the date of reinstatement, shall be treated as duty for all purposes and he shall be paid full pay and allowances for the period to which he would have been entitled, had he not been dismissed, removed or compulsory retired, or suspended prior to such dismissal, removal or compulsory retirement as the case may be.

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

(5) Any payment made under this rule to a Government servant on his reinstatement, shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of dismissal, removal or compulsory retirement and the date of reinstatement. Where the emoluments admissible under this rule are equal to or less than those earned during the employment elsewhere, nothing shall be paid to the Government servant.

A simple interpretation of the said Rule would show that when the dismissal, removal or compulsory retirement of a government servant is set aside by a Court of law and when the government servant is reinstated without holding any further inquiry, the period has to be regularised in accordance to the provisions of sub-rule (2) and (3) subject to the directions, if any of the Court.

9. Admittedly, perusal of order of Tribunal (Annexure P-1) reflects that though liberty was given to the respondents to conduct the enquiry regarding allegations levelled against the petitioner, but as per the letter dated 11.08.1999 (Annexure P-8A), respondent no.1 decided not to proceed with any further enquiry against him, which has resulted into reinstatement of the petitioner. In any case, when the stigma of alleged misconduct is removed by Annexure P-8A which ultimately led to reinstatement of petitioner, then in such a case it cannot be treated to be re-employment as F.R.54-A(1) would lean in favour of the petitioner to hold that as if he was not at all out of service but because of such order of State he was stopped to work. Therefore, such interpretation was not at the behest of the petitioner. When the departmental enquiry as contemplated was dispensed with, the effect of Rule 54-A would come into play, which would take back the starting point of termination to 19.04.1991. Thereafter on 02.11.1999, the case was decided in favour of

petitioner by setting aside the termination. If the Government servant has been terminated simpliciter without adhering to the constitutional provisions of Article 311 then in such a case the provisions cannot be interpreted in favour of the State to deprive the employee of his legitimate claim.

10. The submission of the State that the claim was barred by resjudicata cannot be considered favourably for the reason that the State was given liberty to hold departmental enquiry regarding the allegation made on the petitioner, but the respondents themselves dispensed with it which would take the petitioner to his original state of termination and the period of 8 years i.e., 19.04.1991 to 18.05.1999 would not be taken to be break in service and on setting aside of termination of service, petitioner cannot be treated as re-employed. Accordingly, the petition is allowed. The petitioner would be entitled for all consequential benefits including his seniority which was severed due to such termination though was abridged by the subsequent order of the SAT. The petitioner shall also be entitled for fixation of salary as also arrears of salary in between the period from 1991 to 1999 for which he was deprived.

Sd
(GOUTAM BHADURI)
JUDGE

WP No.3899 of 2006**HEAD NOTE**

Where the dismissal, removal or compulsory retirement of a Government Servant is set aside by the Court and he is reinstated without any further enquiry, the period which he was out of job shall be treated as duty for all purposes and he shall be entitled to get full pay and allowances for the said period.

जहां किसी शासकीय सेवक की पदच्युति, निष्कासन या अनिवार्य सेवानिवृत्ति को न्यायालय द्वारा अपास्त कर दिया गया हो और उसे किसी अन्य जांच के बिना बहाल कर दिया गया हो, तो उस अवधि जिसमें वह सेवा से बाहर था, उसे सभी प्रयोजनों के लिए सेवा माना जाएगा तथा वह उक्त अवधि का पूर्ण वेतन एवं भत्ते पाने का हकदार होगा।