

**IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR  
BEFORE  
HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE  
WRIT PETITION No. 79 of 2016**

***HAKIM SINGH RAJPUT***

*Versus*

***THE STATE OF MADHYA PRADESH THR AND OTHERS***

**Appearance:**

*Shri D.S. Raghuwanshi - Advocate for the petitioner.*

*Shri Jitesh Sharma - GA appearing on behalf of State.*

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Reserved on	23/06/2025
Delivered on	02/07/2025

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**ORDER**

1. The present petition under Article 226 of the Constitution of India has been filed feeling aggrieved by the order dated 10.12.2015 passed by respondent no.3, whereby in compliance of the order passed by this Court in W.P. No.2791/2007 decided on 19.08.2015, whereby the period from 19.06.2007 to 31.05.2010 was held to be reckoned for the purposes of calculation of the retiral dues, but for the said period no salary was paid on the principle of no work no pay.

2. The aforesaid order has been assailed on the ground that it

is contrary to the earlier order passed by this Court in the aforesaid writ petition, wherein after setting aside the order of dismissal, the petitioner was reinstated with all consequential benefits, but ignoring the aforesaid directives, the impugned order has been passed rejecting the representation. Thus, alleging the action of the respondents to be highly objectionable, the present petition has been filed.

3. Learned counsel for the petitioner while referring to the order passed by this Court in W.P. No.2791/2007 dated 19.08.2015 has argued that the order dated 19.06.2007 passed by SDO, whereby penalty of dismissal from service was imposed upon the petitioner, was set aside which automatically resulted in reinstatement of the petitioner and reinstatement as it implies would include all consequential benefits and the period for which the petitioner was forcibly kept out of employment due to the order of dismissal, cannot be reckoned as period of no work and no pay and the salary for the aforesaid period is required to be paid to the petitioner, but without considering the aforesaid, the order has been passed which is contrary to the order passed by this Court in the earlier round of litigation. On the aforesaid ground, learned counsel has prayed that the petition be allowed and while setting aside the order dated 10.12.2015, the respondents be directed to pay the salary to the petitioner w.e.f. 19.06.2007, the date of his dismissal till 31.05.2010, the date of his retirement and also grant the consequential benefits including

gratuity accordingly.

4. On the other hand, learned counsel for the respondent/State submitted that since the petitioner after his dismissal from service had not worked for a single day till his retirement in the year, 2010 and only in pursuance to the order of this Court passed in W.P. No.2791/2007 dated 19.08.2015 that the order of dismissal was quashed, the consideration of the representation of the petitioner for non-grant of salary for the period after he was terminated till his attaining the age of superannuation was rightly considered on the basis of no work no pay, thus, no infirmity or illegality can be said to have been committed. Thus, the petition being sans merit is liable to be dismissed.

5. In support of his argument, learned counsel has placed reliance in the matters of **Ramlal Solanki vs. The State of M.P and Ors** passed in **W.A. No.1421/2023 dated 19.03.2024**, in the matter of **Vijay Singh Bhadoriya vs. The State of M.P and Ors** passed in **W. P. No.11412/2008 dated 06.05.2025** and in the matter of **Ajit Singh vs The State of M.P and Ors** passed in **W.P. No.19180/2019 dated 29.02.2025**.

6. Heard the counsels for the parties and perused the record.

7. In **Deepali Gundu Surwase vs Kranti Junior Adhyapak & Ors** reported in **2013 (10) SCC 324**, the Hon'ble Apex Court while dealing with the case wherein an employee of a school was terminated and the said termination was set aside by the school tribunal and reinstatement with full backwages was directed, upon

challenge against the tribunals order, the quashing of termination was upheld by the High Court, but the question of backwages was set aside, while considering the case of **Hindustan Tin Works Pvt. Ltd vs Empkoyees Of Hindustan Tin Works Pvt Ltd** reported in **1979 (2) SCC 80** has observed that when termination is found to be invalid, then award of full backwages is the normal rule though further therein it is noted that even on the basis of Hindustan Tin Works (P) Ltd (supra) there is no strait-jacket formula for awarding relief of back wages.

8. In the aforesaid matter the Apex Court further analyzed various other decisions on this issues including **J.K. Synthetics Ltd. vs K.P.Agrawal & Anr** reported in **2007 (2) SCC 433** and culled out the position as follows:-

*vii) The observation made in [J.K. Synthetics Ltd. v. K.P. Agrawal](#) (supra) that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge Benches referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman.*

9. In a very recent judgment in the matter of **Salim Ali Centre for Ornithology & Natural History, Coimbatore and Another vs Dr. Mathew K. Sebastian** passed in **Special Leave to Appeal No.5218/2022 dated 04.04.2022** in para 7 has held as under:-

*7. As far as the submission on behalf of the petitioners that even on the principle of “no work no pay”, the writ petitioner shall not be entitled to back wages is concerned, the said principle*

*shall not be applicable to the facts of the case on hand, where the employee remained unemployed due to the stay order granted by the appellate court. It was the management who preferred the appeal and at the instance of the management, there was an order of stay against reinstatement as ordered by the learned Single Judge and the appeal came to be dismissed and consequently the stay came to be vacated in the year 2010. Therefore, the employee/writ petitioner/respondent herein cannot be denied the back wages for no fault of his. Therefore, the principle of “no work no pay” shall not be applicable in such a situation.*

10. From the aforesaid enunciations the legal position which is culled out is that in cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule and the courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrong doer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrong doings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages. The Courts should also bear in mind that in most of these cases, the employer is in an advantageous position *vis-à-vis* the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer i.e. the employee or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin

Works (P) Ltd(supra).

11. Reverting to the case in hand, this Court finds that while allowing W.P. No.2791/2007 it was held that the authority, who has passed the order of dismissal of the petitioner from service was not competent to review the earlier punishment order dated 12.07.2001, whereby two increments of the petitioner were withheld without cumulative effect and the order dated 19.06.2007, whereby the petitioner was dismissed from service was quashed. This Court when had held the very order of dismissal of the petitioner from service to be illegal, without jurisdiction, there would be no justification to give premium to the respondents of their wrong doings as it was due to the act of the respondents that the petitioner was kept out of service for the aforesaid period and was not out of his own choice.

12. In view of the aforesaid fact, this Court has no hesitation to hold that denial of backwages to the petitioner for the period from 19.06.2007 to 31.05.2010 was bad in law.

13. As a result, the petition is **allowed**, the order dated 10.12.2015 is hereby set aside, the respondents are directed to pay salary for the period from 19.06.2007 to 31.05.2010 with an interest at the rate of 9 percent per annum.

14. The respondents are also directed to give all the consequential benefits attached to the post which the petitioner was entitled to after his reinstatement, if not yet paid. The consequential monatory benefits if still unpaid, shall also carry

interest at the rate of 9 percent per annum.

15. The judgments cited by the learned counsel for the respondent/State do not lay any analogy, therefore, are not applicable to the present case.

(Milind Ramesh Phadke)  
Judge

chandni/