



1

WP-18632-2021

IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ASHISH SHROTI

ON THE 24<sup>th</sup> OF FEBRUARY, 2026WRIT PETITION No. 18632 of 2021*SMT. CHHOTI DEVI TOMAR**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

.....  
Appearance:

Shri Anil Sharma - Advocate for the petitioner.

Shri Sohit Mishra -GA for the respondents/State.

.....

ORDER

Petitioner has filed this writ petition praying for a direction to respondents to pay her full pay and allowances for the period of suspension from 1/9/1999 to 30/8/2016. She has also prayed for interest on the aforesaid amount.

2. Facts necessary for decision of this case are that the petitioner was working as ANM and was posted at Sub-Health Centre, Badapura under Community Health Centre, Porsa, District Morena. A criminal case was registered against the petitioner at Police Station Mahua, District Morena for offence punishable under Section 307, 294, 341 & 34 of IPC. In connection with the said criminal case, she was arrested by the Police. Resultantly, she was placed under suspension by the respondents on 1/9/1999.

3. After investigation, the challan was filed and the petitioner was tried for the aforesaid offences. Trial concluded with judgment dated 18/11/2005,



whereby, the petitioner was convicted under Section 307 & 34 of IPC and was directed to undergo imprisonment for five years with fine. Petitioner challenged the said judgment of conviction and sentence before this Court by filing Cr.A. No.810/2005. Criminal Appeal was allowed vide judgment dated 23/3/2017 (Annexure P/2) and the petitioner stood acquitted.

4. While the criminal appeal was pending before this Court, the petitioner attained the age of superannuation and stood retired from service w.e.f. 31/8/2016. After acquittal in the criminal case, she approached respondents for regularization of period of her suspension. Accordingly, vide impugned order dated 25/1/2019 (Annexure P/1), the period of suspension has been treated as *on duty* for all purposes except for pay and allowances for the said period. The petitioner is thus aggrieved by the denial of monetary benefit of full pay & allowances for the suspension period and is therefore, filed the present writ petition.

5. Learned counsel for the petitioner challenged the impugned order on the ground that once the petitioner is acquitted in the criminal case, the very foundation of placing her under suspension vanished. He accordingly submitted that petitioner's suspension was unjustified and she is entitled to get full pay and allowances for the said period. Learned counsel also submitted that even though no charge-sheet was issued to the petitioner, however, an enquiry was conducted by the enquiry officer and he gave a verdict vide his report (filed at page no.13 of the reply) that the petitioner is not entitled for pay and allowances for the period of suspension. It is his submission that by denying the monetary benefits, petitioner has been



punished for the offence in which she has been acquitted by the Court. Learned counsel for the petitioner placed reliance upon the decision of *Apex Court in the case of Brahma Chandra Gupta Vs. Union of India*, reported in *AIR 1984 SC 380* and the order passed by this Court in the case of *Brijesh Singh Kushwaha Vs. State of M.P. & Ors.* passed in *W.P. No.22404/2021* to submit that once the petitioner is acquitted in the criminal case, the reason on account of which she was placed under suspension vanished. The learned counsel therefore, submitted that the petitioner's suspension was unjustified and therefore, he should be paid full pay and allowances for the said period.

6. On the other hand, counsel for the respondents supported the impugned action of the respondents and submitted that the petitioner got involved in the criminal case because of her own acts and the respondents were not instrumental in her prosecution. He further submitted that the petitioner was arrested by the police, she was required to be placed under suspension. Thus, it cannot be said that the petitioner's suspension was unjustified. He further submitted that the respondents have treated the suspension period of the petitioner as on duty for all purposes except the benefit of full pay & allowances. He referred to provisions of FR 54-B in support of his submissions. It is his submission that the competent authority since did not find the suspension of petitioner as wholly unjustified, she is rightly denied full pay & allowances for the period of suspension. He relied upon Division Bench judgment in the case of *Ramesh Singh Vs. M.P. State Electricity Board* reported in *2011(1) MPLJ 466* as also in the case of *Pratap Singh vs. State of M.P. & ors.* passed in *W.A. No.2397/2025*. The learned



counsel thus prayed for dismissal of writ petition.

7. Considered the arguments and perused the record.

8. In relation to his prosecution in the criminal case, the petitioner remained under suspension from 1/9/1999 till 31/8/2016 i.e. the date of her retirement. It is not in dispute that criminal prosecution of the petitioner was not at the instance of the respondents. Further, since the petitioner was arrested by police, it was incumbent on the part of respondents to place her under suspension by virtue of Rule 9(2)(a) of M.P. Civil Services (Classification, Control & Appeal) Rules, 1966. Thus, it cannot be said that the action of the respondents in placing the petitioner under suspension was unjustified.

9. The regularization/treatment of period of suspension of a Govt. servant is governed by the provisions of FR 54-B. Sub-rule (3) of FR 54-B is relevant for consideration of the controversy involved in this case and is thus extracted below:

*"(3) 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:*

*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 reason 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 in 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."*

Thus, from reading FR 54-B(3), it is evident that full pay & allowances are payable to the employee only when the competent authority forms an opinion that the suspension of the employee was wholly unjustified. In other words, it is only when the authority comes to the conclusion that suspension was wholly unjustified, the pay and allowances for the period of suspension are liable to be paid to the employee. In this Case, there is no such finding recorded by the competent authority nor the petitioner could establish that his suspension was wholly unjustified.

10. The issue involved in this case was considered by the Division Bench of this Court in the case of **Ramesh Singh (supra)**, wherein, the Division Bench held in para 7 as under:-

*"7. Thus, from perusal of F.R. 54-B(3) of the Fundamental Rules it is apparent that the authority who is competent to pass order of reinstatement is required to form an opinion as to whether suspension was wholly unjustified. If the authority comes to the conclusion that suspension was wholly unjustified, then the incumbent would be entitled to full pay and allowances under sub-rule (8) of Rule 54-B. In the instant case, the competent authority vide order dated 31.3.2010 which was assailed in the writ petition by the appellant, has found that suspension of the appellant was mandatory as challan against him was filed in the Court for a criminal case. The appellant was acquitted by the court only by giving benefit of doubt, therefore, it cannot be said to be wholly unjustified. Accordingly, the period of suspension from 25.3.2000*



*to 22.9.2002 was directed to be treated as on duty and his pay and allowances for the said period were restricted to the subsistence allowance already paid to him. Thus, cogent reasons have been assigned by the competent authority while passing the order in terms of Rule 54-B(3) of the Fundamental Rules. The discretion conferred by the rule has rightly been exercised by the competent authority."*

11. Similar view was taken by this Court in the case of *Pratap Singh vs. State of M.P. & ors. In W.P. No.165 of 2024* . The order passed in writ petition has been affirmed by Division Bench in *W.A. No.2397/2025* holding as under:

*"10. As in the present appeal, appellant was arrested on 22.07.2017 in pursuance to the criminal case and he was remained in custody up to 26.07.2017 which is more than 48 hours, therefore, he was placed under suspension w.e.f. 22.07.2017. The said suspension on account of arrest in a criminal case which was under Rule 9(2)(a) (deeming clause) of Rules 1966 on account of custody for more than 48 hrs., the authority had no other option but to place employee under suspension under the deeming clause of Rule 9(2)(a) of Rules 1966. Therefore, the said suspension cannot be treated as unjustified even in case of acquittal also, because at the time of suspension it was justified under deeming clause of Rule 9(2) of Rules 1966.*

*11. Once it is held that suspension of employee was not wholly unjustified, he cannot be held entitled to pay allowances for the period of suspension. As at the time of suspension, there was no other option but to suspend the appellant on account of his custody in a criminal case. Merely because he was acquitted, the said suspension of petitioner which was under the statutory rules*



*cannot be treated as wholly unjustified."*

12. The issue regarding payment of back-wages to an employee who was dismissed from service on account of conviction in criminal case and was later reinstated on his acquittal, has been dealt with by Apex Court at more than one occasion. In the case of **Ranchhodji Chaturji Thakore vs. Gujarat Electricity Board** reported in (1996)11 SCC 603, the Court was dealing with an issue regarding payment of back wages to an employee who was dismissed from service on account of his conviction in the criminal case. The Court held thus:

*"2. This case does not warrant interference for the reason that, admittedly, the petitioner was charged for an offence under Section 302 read with Section 34 IPC for his involvement in a crime committed on 1-10-1986. The Sessions Judge had convicted the petitioner under Section 302 read with Section 34 IPC and sentenced him to undergo imprisonment for life. On that basis, the respondents had taken action to have him dismissed from service since he was working as a Junior Clerk in the respondent-Electricity Board. The petitioner challenged the validity of the dismissal order by way of a special civil application filed under Article 226 of the Constitution. Pending disposal, the Division Bench of the High Court by its judgment dated 14-10-1992 acquitted him of the offence. Consequently, while disposing of the writ petition, the learned Single Judge directed the respondent to reinstate him into the service with continuity of the service, but denied back wages. The petitioner then filed Letters Patent Appeal No. 319 of 1993 which was dismissed by the impugned order dated 26-8-1993. Thus, this special leave petition.*

*3. The reinstatement of the petitioner into the service has already*



*been ordered by the High Court. The only question is whether he is entitled to back wages. It was his conduct of involving himself in the crime that was taken into account for his not being in service of the respondent. Consequent upon his acquittal, he is entitled to reinstatement for the reason that his service was terminated on the basis of the conviction by operation of proviso to the statutory rules applicable to the situation. The question of back wages would be considered only if the respondents have taken action by way of disciplinary proceedings and the action was found to be unsustainable in law and he was unlawfully prevented from discharging the duties. In that context, his conduct becomes relevant. Each case requires to be considered in its own backdrop. In this case, since the petitioner had involved himself in a crime, though he was later acquitted, he had disabled himself from rendering the service on account of conviction and incarceration in jail. Under these circumstances, the petitioner is not entitled to payment of back wages. The learned Single Judge and the Division Bench have not committed any error of law warranting interference."*

13. The similar view was taken by Apex Court in the case of *Union of India vs. Jaipal Singh* reported in (2004)1 SCC 121, wherein the Court held thus:

*"4. On a careful consideration of the matter and the materials on record, including the judgment and orders brought to our notice, we are of the view that it is well accepted that an order rejecting a special leave petition at the threshold without detailed reasons therefor does not constitute any declaration of law by this Court or constitute a binding precedent. Per contra, the decision relied upon by the appellant is one on merits and for reasons specifically recorded therefor it operates as a binding precedent as well. On going through the same, we are in respectful agreement with the*



*view taken in Ranchhodji [(1996) 11 SCC 603 : 1997 SCC (L&S) 491]. If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest of or by the department itself, perhaps different considerations may arise. On the other hand, if as a citizen the employee or a public servant got involved in a criminal case and if after initial conviction by the trial court, he gets acquittal on appeal subsequently, the department cannot in any manner be found fault with for having kept him out of service, since the law obliges a person convicted of an offence to be so kept out and not to be retained in service. Consequently, the reasons given in the decision relied upon, for the appellants are not only convincing but are in consonance with reasonableness as well. Though exception taken to that part of the order directing reinstatement cannot be sustained and the respondent has to be reinstated in service, for the reason that the earlier discharge was on account of those criminal proceedings and conviction only, the appellants are well within their rights to deny back wages to the respondent for the period he was not in service. The appellants cannot be made liable to pay for the period for which they could not avail of the services of the respondent. The High Court, in our view, committed a grave error, in allowing back wages also, without advertent to all such relevant aspects and considerations. Consequently, the order of the High Court insofar as it directed payment of back wages is liable to be and is hereby set aside."*

14. The aforesaid legal proposition is reiterated by Apex Court in the case of *Crop. Mithilesh Kumar Vs. Union of India and Ors.*, reported in *(2020)12 SCC 423*.

15. The aforesaid judgments by Apex Court held that a Govt. Servant is not entitled to back wages if he got involved in a criminal case for his own acts and the department is not responsible for his prosecution and resultant



conviction. This is because, the department could not avail his services while he was out of service because of his conviction. The matter is held to be different if the prosecution was at the instance of department.

16. Similar is the case with an employee who is suspended because of his involvement in criminal case, lodged not at the instance of department but at the instance of a third person with which department is not concerned. In such case also, under the service rules, the department is obliged to place the employee under suspension and is thus not in a position to avail services of the Govt. servant. As is held by Apex Court in aforementioned cases, the employer cannot be burdened with payment of back wages in such cases. Similarly, as has been held by Division Benches of this Court in the case of *Ramesh Singh and Pratap Singh (supra)*, the suspension in these circumstances would not be wholly unjustified and the concerned Govt. servant would not be entitled to full pay and allowances for the period of suspension even when he is acquitted in the criminal case. This is because, on his arrest, the suspension is inevitable.

17. The issue was also considered by Apex Court in the case of *Gurpal Singh v. High Court of Judicature of Rajasthan* reported in *(2012)13 SCC 94*. It was a case where a Judicial Magistrate was prosecuted for charge of murder. On account of his arrest, he was placed under suspension by Rajasthan High Court on 22.12.1985. He remained under suspension till his acquittal by Trial Court and thereafter the appeal against acquittal was decided by High Court. His suspension still continued since the High Court initiated disciplinary proceedings thereafter wherein also the employee was



exonerated. At this stage his suspension was revoked by High Court on 26.03.2008. He thus remained under suspension for a long period of time from 22.12.1985 to 26.03.2008. While deciding the issue as to whether the petitioner is entitled to full pay and allowances for the period of suspension or not, the Apex Court divided the entire period into different stages. The extract of the Apex Court judgment is reproduced hereunder-

*"29. The only issue that needs to be resolved at this stage is as to whether the petitioner would be entitled only to the subsistence allowance as already paid to him or full salary and allowances, in view of his acquittal in the criminal case and the exoneration in departmental proceedings. Related to the aforesaid issue would be a consequential issue of notional promotion from the date an officer junior to him was promoted in the Rajasthan Judicial Service and the consequential entitlement to the emoluments on the promotional post, which in turn would determine the amount of suspension allowance and the other retiral benefits.*

*xxx xxx xxx*

*35. We have examined the entire issue keeping the aforesaid principles in mind. In order to determine the issue relating to the entitlement of the petitioner to the salary and other allowance(s) upon reinstatement, the matter needs to be examined at the different stages/point of time. The first stage commenced at the time when the petitioner was initially suspended on 22-12-1985 w.e.f. 20-12-1985. The petitioner, in our opinion, cannot legitimately protest against his suspension, at the initial stage, when he had remained in police custody for more than forty-eight hours, though unfortunately for circumstances for which he was not responsible. This suspension was naturally continued when he was facing the trial for murder.*

*xxx xxx xxx*

*39. As noticed above, Mr Calla has submitted that the suspension of the petitioner should have been revoked at this stage. It will not be possible to accept the proposition that as soon as the trial court had acquitted the petitioner, the Rajasthan High Court was required to forthwith revoke the order of suspension. Undoubtedly, the petitioner could have been given a non-sensitive posting, not involving judicial functions. But, it was not imperative for the High Court to revoke the suspension, at that stage. It is a matter of record, that the prosecuting agency decided*



*to file an appeal against the judgment and order passed by the trial court, acquitting the petitioner. The appeal filed by CBI was admitted by the Delhi High Court and remained pending till it was decided on 27-9-2005 [State v. Gural Singh, (2005) 124 DLT 282]. Therefore, the conclusions recorded by the trial court, were not final. They were liable to be reversed in appeal by the High Court. Thus, during the said period/stage, it cannot be said that the continuance of the suspension of the petitioner was wholly unjustified. Merely because the High Court could have revoked the suspension, would not render the decision to continue the suspension, wholly unjustified.*

XXX XXX XXX

*52. We, therefore, partly allow the writ petition. We reject the submissions of Mr Calla that the suspension of the petitioner was rendered wholly unjustified upon acquittal by the trial court. We also reject the submissions of Mr Calla that the suspension of the petitioner was wholly unjustified during the pendency of the appeal before the High Court. We, however, hold that the continued suspension of the petitioner during the pendency of the departmental proceedings was wholly unjustified. The petitioner is, therefore, held entitled to full pay and allowances from 27-9-2005 i.e. the date of the judgment [State v. Gural Singh, (2005) 124 DLT 282] rendered by the Delhi High Court onwards. We further hold that the petitioner was entitled to be considered for promotion notionally from the date when an officer junior to him was promoted. We, therefore, direct the High Court to consider the case of the petitioner for promotion (if he otherwise satisfies the requirements as per the Rules) from the date when a person junior to him was considered and promoted to the next higher post. Let such a decision be taken by the High Court within a period of three months from the date of receipt of this order."*

It is thus evident that, even though the petitioner therein was found to be fully innocent, the period of suspension during the trial was held to be justified inasmuch as it was inevitable to suspend the petitioner on account of his arrest in criminal case. He was thus held not entitled to pay & allowances for this period and was granted the same for the period thereafter. The issue thus stood conclusively decided by Apex Court in the case of Gural Singh (supra).



18. This Court has also considered the similar issue in the case of *Vijay Kumar Sharma Vs. MPMKVVCom. Ltd. & Ors.*, passed in W.P. No.6869/2023, which has been confirmed by the Division Bench in W.A. No.184/2026.

19. In view of the aforesaid discussion made above, petitioner is not entitled for the full pay and allowances for the period of suspension. Impugned order is therefore found to be just and proper, same is accordingly upheld. Petition fails and is hereby **dismissed**.

(ASHISH SHROTI)  
JUDGE

JPS/-