

IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA

WRIT PETITION No. 5714 of 2009

Between:-

**UPENDRASINGH S/O UJIYAR SINGH BHATI ,
AGED ABOUT 46 YEARS,
OCCUPATION: SERVICE - POLICE INSPECTOR,
POLICE HEAD-QUARTER,
BHOPAL (MADHYA PRADESH)**

.....PETITIONER

**(BY SHRI D.D. VYAS – SENIOR ADVOCATE WITH SHRI AJAY
VYAS - ADVOCATE)**

AND

**1. STATE OF M.P. THROUGH PRINCIPAL
SECRETARY, DEPARTMENT OF HOME,
VALLABH BHAWAN, BHOPAL
(MADHYA PRADESH)**

**2. INSPECTOR GENERAL OF POLICE,
POLICE HEAD-QUARTER,
BHOPAL (MADHYA PRADESH)**

(BY SHRI ADITYA GARG – GOVT. ADVOCATE)

.....
Reserved on : 24.03.2022
Delivered on : 26.03.2022
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ORDER

The present petition filed under Article 226 and 227 of the Constitution of India takes an exception to the order dated 06.05.2009

(Annexure P/12) by which the petitioner's claim for the back-wages has been rejected by the respondents.

2) The facts adumbrated in nutshell are that the petitioner was appointed as Sub-Inspector in police department and at the relevant time, he was posted at Special Branch, Police Headquarter, Bhopal. A criminal case No.369/96 was registered at Police Station – Agar, Dist. Shajapur for commission of offences under Sections 8/18 and 29 of N.D.P.S. Act. He was put under suspension by order dated 24.02.1997. The petitioner was convicted by the Court of Special Judge, Shajapur in Sessions Trial No.10/1998 and was sentenced to undergo 10 years RI and to pay a fine of Rupees One Lakh. Further he was convicted under Section 29 of NDPS Act and was sentenced to undergo 2 years RI and to pay a fine of Rs.500/- under Section 58 (1) of NDPS Act and sentenced for six months RI and to pay a fine of Rs.500/- and also under Section 211 of IPC, RI for 2 years and fine of Rs.500/- by the judgment dated 04.08.1999.

3) The services of the petitioner were dismissed on account of the conviction by order dated 14.10.1999 as per para 238 of Police Regulations. Against the order of conviction, the petitioner filed an appeal before the High Court, Bench at Indore. The said appeal was allowed by judgment dated 08.11.2006 and the petitioner was acquitted of the charges. The petitioner approached the Department for setting aside his dismissal and reinstating him. He was reinstated by order dated 26.07.2007. His joining was accepted by letter dated 31.07.2007.

The said order was amended. The petitioner's suspension period has been considered to be on duties, but on the basis of no work no pay, his salary has been denied by order dated 08.09.2008. The said order was challenged before this Court in W.P. (s) No.5884/2008 which was disposed off by order dated 21.10.2008 directing the respondents to pass a fresh order in respect of back-wages for the petitioner after hearing him. By the impugned order, the claim for back wages has been rejected which is impugned in the present petition.

4) Counsel for the petitioner argued that since the petitioner has been acquitted in appeal by the High Court and no charge was found proved against him, the respondents could not have denied his back-wages during conviction and suspension. It is further submitted that the petitioner was falsely implicated and he remained in jail and did not work anywhere during the trial and ultimately, he was acquitted and no charge was found against him. In such circumstances, the respondents could not have deprived him from back wages. In support of his submissions, he placed reliance on the judgment passed by Single Bench in the case of *R.P. Upadhyaya vs. State of M.P. & Anr.* [2008(4) M.P.L.J. 162], *State of M.P. and Anr. vs. Shankar Lal Sahu & Anr.* [2001 (2) M.P.H.T. 19 (DB)] and *Union of India and Ors. vs. Mohd. Sharif Khan* [2006 (4) M.P.H.T. 140 (DB)].

5) Counsel for the respondents supported the impugned order and submitted that since the petitioner was involved in a criminal case and he could not work due to remaining in jail after conviction and,

therefore, the respondents cannot be saddled with liability to pay back wages to the petitioner for the period for which the petitioner remained in jail. The respondents have rightly rejected the claim of the petitioner for back wages on the ground of no work no pay.

6) I have heard the learned counsel for the parties and I do not find any merit in the petition.

7) The petitioner was initially convicted by the Court of Special Judge by judgment dated 04.08.1999 for commission of offences under the N.D.P.S. Act and sentenced to RI for 10 years coupled with other conviction and sentences under different provisions. The services of the petitioner were dismissed by order dated 14.10.1999 on the ground of conviction under para 238 of Police Regulations. After the acquittal by the High Court in the appeal by order dated 08.11.2016, the respondents reinstated the petitioner by order dated 26.07.2007. The suspension period of the petitioner has been directed to be considered on duties, but for the period for which he could not work because of remaining in jail due to registration of criminal case and conviction, the petitioner has been denied back wages on the principle of no work no pay. The judgment cited by the learned counsel for the petitioner in the case of *R.P. Upadhyaya* (supra) would not render any assistance to the petitioner in the facts of the present case because in the said case, the employee was acquitted by the trial Court itself and, therefore, the Court granted back-wages in the case of acquittal of the employee.

8) The judgment passed by the Division Bench in the case of *Shankar Lal Sahu* (supra) also does not render any assistance to the petitioner because that was a case relating to the deprivation of promotion of the petitioner because of the pendency of the departmental inquiry. The Division Bench after relying the judgment passed in the case of *Union of India vs. K.V. Jankiraman, AIR 1991 SC 2010* held that no work no pay is not applicable in the case when an employee could not be promoted because of pending disciplinary action against him in which he is exonerated later on and promoted retrospectively from the date on which he was entitled. The other judgment placed by the learned counsel for the petitioner in the case of *Mohd. Sharif Khan* (supra), the Division Bench considered the rejection of the representation of the employee for reinstatement on the ground of his acquittal in criminal case which was on technical ground. The Court held that in criminal jurisprudence, there is no difference between “clean acquittal”, “honourable acquittal” or “acquittal based on giving benefit of doubt”. The employee was dismissed from service without conducting departmental inquiry. He was dismissed due to conviction in a criminal case and he was held entitled for reinstatement in service. In the said case, question for consideration of the back wages was not under consideration.

9) In the present case, the only question for consideration is whether the petitioner is entitled to back wages. The Apex Court in the case of *Ranchhodji Chaturji Thakore vs. Gujarat Electricity Board*

(1996) 11 SCC 603 held that 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.

10) The aforesaid judgment has been followed by the Apex Court in a subsequent judgment passed in the case of *Union of India vs. Jaipal Singh (2004) 1 SCC 121*. The Court held that 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.

11) In the case of *Baldev Singh vs. Union of India (2005) 8 SCC 747*, the Apex Court held that the employee was not in actual service for the period he was in custody. Merely because there has been an acquittal does not automatically entitle him to get salary for period concerned. This is more so, on the logic of no work no pay. It is to be noted that the appellant was terminated from service because of the conviction. Effect of the same does not get diluted because of subsequent acquittal for the purpose of counting service.

12) A Division Bench of this Court in the case of *Anoop Kumar Shrivastava vs. State of MP (2002) 3 MPLJ 218* held that the claim of the petitioner for payment of salary from the date of dismissal to the date of acquittal is not tenable. The obligation for payment of salary by

employer to employee is based on services rendered by the employee to the employer. The employee is not entitled to the salary when he fails to render service to the employer on principle of “no work no pay”. But where the employer is responsible for the employee not being able to render the services, the employer may be, in the given facts of the case, directed to pay salary for the period in question. But where he is not responsible for bringing about the situation when employee cannot render service, the obligation of employer to pay the wages is not there. The Division Bench followed the principle laid down by the Apex Court in the case of *Ranchhodji Chaturji Thakore's* case (supra).

In view of the enunciation of the law laid down by the Apex Court in the case of *Ranchhodji Chaturji Thakore's* case (supra) followed in subsequent judgments, I do not find any illegality in the order passed by the respondents rejecting the claim of the petitioner for grant of back wages.

Accordingly, the writ petition is dismissed.

No order as to costs.

(VIJAY KUMAR SHUKLA)
JUDGE