

THE HIGH COURT OF MADHYA PRADESH, JABALPUR

| | |
|---------------------------------------|---|
| Writ Petition No. | 15544 of 2021 |
| Parties Name: | Suresh Kumar Kurve Vs. The State of Madhya Pradesh and others |
| Bench Constituted | Hon'ble Shri Justice Vishal Dhagat |
| Whether approved for reporting | Yes |
| Name of Advocates for parties | For Petitioner:- Shri Akash Choudhary, learned counsel. For respondents/State: Shri Anvesh Shrivastava, learned Panel Lawyer. |
| Law laid down | 1. Non-grant of increment during period of suspension does not amount to penalty as increments are paid for period spent on duty in a time-scale. During suspension delinquent employee is not on duty, therefore, non-grant of increment during suspension will not amount to penalty. 2. Obiter is not binding but ratio decidendi have binding precedent. |
| Significant paragraph numbers | 6 and 9. |

(O R D E R)
06/09/2021

Petitioner has filed this petition challenging part of order dated 16.05.2019 by which decision in respect of period of suspension and benefits to be granted during such period is kept in abeyance till decision in pending criminal case against petitioner is taken on its merit.

2. Counsel appearing for petitioner relied on Rules 24 and 54-B (1) of Fundamental Rules which are quoted as under:-

"24. An increment shall ordinarily be drawn as a matter of course unless it is withheld.

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 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."

3. On strength of aforesaid Fundamental Rules, counsel for petitioner submitted that there is no provision to withhold the increments during period of suspension as same would amount to penalty without there being any decision on the guilt of an employee.

4. Counsel appearing for petitioner relied on order passed by Single Bench of this Court in *W.P. No.12077/2011, Harpal Singh Bundela Vs. State of M.P.* reported in *2012 SCC Online MP 6887*. In said judgment this Court made observation that stoppage of increment only because of suspension is not correct. There are instructions that if an employee is appointed in a pay scale, the increment of pay is not to be stopped as the same is also a penalty. If increment of pay is released, the subsistence allowance is always revised on release of increments of pay. This being so, it was not justified on the part of respondents to withhold the increments of pay of the petitioner because of the pending departmental enquiry. Respondents will further look into the claim for

release of increments of pay of the petitioner as has been observed herein above within aforesaid time and will also pass appropriate orders on the same.

5. Heard the counsel appearing for petitioner and State Government.

6. Observations made by Court in a judgment or order is not binding on Court. Reason for the decision and findings of Court on an issue is binding precedent. Observation by Court is made on the ground that there is delay in departmental enquiry and therefore respondents therein was directed to conclude departmental enquiry and observation was made to look into the claim for release of increments of pay of petitioner. Statute relied upon or the reason for holding non-grant of increments during suspension amounts to penalty is not mentioned in order dated 24.08.2012 in case of Harpal Singh Bundela (supra).

7. As per Fundamental Rule 26, period spent on duty will be counted for grant of increment. Fundamental Rule 26 (a) reads as under:-

(a) All duty in a post on a time-scale counts for increment in that time-scale.

8. Fundamental Rule 54-B(6) provides that where suspension is revoked pending finalisation of disciplinary or court proceedings, any order passed under sub-rule (1) before conclusion of proceedings, against the Government servant, shall be reviewed on its own motion after the conclusion of proceedings by the authority mentioned in sub-

rule (1) who shall make an order according to provisions of sub-rule (3) or sub rule (5) as the case may be.

9. After going through aforesaid Fundamental Rules, it is clear that increments under the Service Rules are drawn on the basis of period spent on duty. The period spent on suspension is not a period spent on duty, unless it is so ordered by competent authority. Therefore suspension order effects in postponing the date of annual increment of the suspended employee. In view of same, suspended employee is not entitled to get subsistence allowance based on annual increments, which, but for suspension, would have been drawn.

10. In view of above, action of respondents in not granting increments to petitioner is not violative of Fundamental Rules 24 and 54-B(1) and impugned order only postpones decision on period of suspension till conclusion of criminal proceedings. No prejudice is caused to petitioner if decision regarding his allowance is to be taken after conclusion of trial. None of the rights of petitioner are taken away and non-grant of increment during period of suspension does not amount to penalty. Postponing decision regarding period of suspension to be treated on duty or otherwise is not penalty as petitioner during suspension is not on duty and increments are granted for period spent on duty.

11. Resultantly, writ petition is **dismissed**.

(Vishal Dhagat)

Judge

sp/-