

Court No. - 34

Case :- WRIT - A No. - 11555 of 2021

Petitioner :- Anil Kumar Singh

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Vimal Chandra Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar,J.

1. Heard Sri Vimal Chandra Mishra, learned counsel for the petitioner and learned Additional Chief Standing Counsel for the State respondents.

2. Petitioner before this Court, who is working as a Routine Grade Clerk in the institution, namely Government Girls Inter College, Fatehpur, is aggrieved by the order dated 1st May, 2018, whereby petitioner's claim for regular payment of salary for the period he remained under suspension on account of involvement in a criminal case, has come to be rejected.

3. Briefly stated facts of the case are that petitioner while working as Routine Grade Clerk in the institution came to be implicated in connection with criminal offence registered as Case Crime No.- 177 of 2009 under Sections 396, 412, 201 & 120-B I.P.C., District - Fatehpur and remained in jail from 9th August, 2009 to 1st August, 2010 and then continued in detention from 1st August, 2010 on-wards until he was finally released pursuant to the judgment of the acquittal passed by the Sessions Court dated 30th January, 2016 in Sessions Trial No.- 606 of 2010, on 6th February, 2016. As a consequence to the implication of the petitioner in a criminal case and detention in jail, he had also been placed under

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suspension by the disciplinary authority vide order dated 5th October, 2009, however, no disciplinary proceeding was initiated ever against the petitioner and after his acquittal in the criminal case and consequentially being released from jail, he came and joined the institution pursuant to the order of reinstatement dated 4th October, 2016 revoking his suspension.

4. It is further submitted by learned counsel for the petitioner that since the respondents did not proceed to hold disciplinary inquiry by holding departmental proceedings against the petitioner and petitioner was simply placed under suspension on account of his detention in jail, upon his reinstatement with the revocation of suspension order, petitioner became entitled to salary for the period he remained under suspension. It is submitted that petitioner since has been finally acquitted in the criminal case then on the principle that petitioner has been restrained under a circumstances beyond his control and also there being order of suspension, from discharging his duties as a clerk in the institution, the respondents could not have denied payment of salary to the petitioner for the period in question. He further submits that order of reinstatement dated 4th October, 2016 clearly recorded that this order was being passed subject to any contrary order being passed in appeal against the acquittal and since no appeal to the best knowledge of the petitioner has been preferred against the acquittal inasmuch as the counter affidavit is also silent about the same, respondents are not justified in rejecting the claim of the petitioner for payment of salary for the period in question on the principle of 'no work no pay'. He submits that petitioner could not have worked on account of being under detention in jail which was beyond his control and so it was his legitimate expectation that as and when he would be released after grant of bail or acquittal, he would not

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only resume his duty as clerk but he would be compensated for the period he had remained under suspension for implication in the criminal case.

5. Learned counsel for the petitioner has also placed reliance upon a judgment of Supreme Court in the case of **Brahma Chandra Gupta v. Union of India, AIR 1984 SC 380**.

6. *Per contra*, learned Additional Chief Standing Counsel, defending the order impugned herein this petition, has sought to contend that the department cannot be blamed for petitioner not being permitted to discharge his duty as admittedly petitioner was under detention and as per the relevant service rules he was required to be placed under suspension. It is also sought to be urged that even though petitioner has been acquitted but every acquittal is not a honourable acquittal so as to make him entitled for the payment of salary for the period he had remained under a lawful detention. However, upon a pointed query being made as to whether the State respondents ever initiated any departmental inquiry against the petitioner, learned Additional Chief Standing Counsel could not give any satisfactory reply. He also could not deny that records do not reveal *factum* of any departmental inquiry except order of suspension.

7. Having heard learned counsel for the respective parties and their arguments raised across the bar and having perused the record, I find that petitioner was placed under suspension only on account of being under detention in jail for implication in a criminal case in the year 2009 in which ultimately he came to be acquitted in the year 2016. The order of suspension though was passed by the disciplinary authority but the suspension was not in contemplation of any inquiry as the order does not disclose that competent

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authority intended to hold disciplinary inquiry. So it should be taken as a suspension simpliciter for detention of the petitioner in jail. The department also did not proceed further in the matter and upon acquittal of the petitioner in a criminal case, he came to be reinstated under the order of reinstatement revoking his suspension. The order of reinstatement only records that reinstatement would abide by the result of the criminal appeal, if any filed. The respondents have not come out with any case that criminal appeal has been preferred against the order of acquittal.

8. The principle that has been argued before me by learned Additional Chief Standing Counsel that petitioner was not honourably acquitted would have carried weight provided the department had proceeded against the petitioner holding disciplinary proceeding.

9. While the petitioner preferred an appeal against the order impugned, I find that appellate authority to have relied upon certain reports of authorities of education department especially Finance and Accounts Officer that petitioner since was reinstated subject to the appeal being preferred against the acquittal which was a conditional reinstatement, so no question of payment of arrears of salary would have arisen but I find that upon a fact being brought to its notice that no such criminal appeal was preferred, even the appellate authority has rejected the claim of the petitioner for salary on the same ground which was taken earlier by the Joint Director of Education.

10. In the absence of any departmental proceeding being drawn, the only conclusion that can be drawn is that petitioner was restrained from discharging duties on account of his detention in

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jail in connection with a criminal case a circumstance to be taken as beyond his control and his innocence ultimately being proved by way of acquittal in the said criminal case, he should not be penalized.

11. The principle of 'no work no pay' could have been attracted if petitioner had enjoyed bail in criminal case and had been merely kept under suspension but this is not the case either. Petitioner remained in detention until he was acquitted. There was no question of petitioner giving any certificate that he was not gainfully employed anywhere during the period he was under suspension. One must draw difference between an under-trial on bail and convicted person in jail.

12. In the judgment cited by learned counsel for the petitioner I find that the some observations regarding payment of salary for the period during the employee was under detention, but there was a decree of trial court which is not a case here. In principle petitioner might have been simply acquitted but petitioner was not responsible in any manner for not discharging his duties in the department.

13. There is nothing in the counter affidavit to demonstrate that even otherwise the conduct of the petitioner has not been good and fair while discharging his official duties. The averments raised in the counter affidavit are quite sketchy as they only refer to the criminal case and detention of petitioner in jail.

14. On the backwages to the petitioner for the period he remained suspended due to detention in jail and upon his reinstatement by revoking his suspension for acquittal in the criminal case, I find support of my view in an authority of Supreme Court in the case of **Raj Narain v. Union of India and others (2019) 5 SCC 809** in

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which an identical issue was dealt with. In the said case even though departmental inquiry was set up but was later on dropped and upon acquittal the employee was reinstated revoking his suspension order. Vide paragraphs 7 and 8 the Court held thus:-

"7. The point that remains to be considered is whether the appellant is entitled to payment of full wages between 1979 and 1987. The appellant was placed under suspension on 23-10-1979 and his suspension was revoked on 21-10-1987. An interesting development took place during the interregnum by which the disciplinary proceedings were dropped on 21-3-1983. It is clear from the record that the appellant was the one who was seeking postponement of the departmental enquiry in view of the pendency of criminal case. The order of suspension was in contemplation of disciplinary proceedings. By virtue of the disciplinary proceedings being dropped, the appellant becomes entitled to claim full salary for the period from the date of his suspension till the date of closure of the departmental enquiry. Thereafter, the respondents took four years to reinstate him by revoking his suspension. The order of suspension dated 23-10-1979 came to an end on 21-3-1983 which is the date on which disciplinary proceedings were dropped. The appellant ought to have been reinstated immediately thereafter unless a fresh order was passed, placing him under suspension during the pendency of the criminal trial which did not happen. Ultimately, the appellant was reinstated by an order dated 21-10-1987 by revocation of the order of suspension. Though, technically, the learned Additional Solicitor General is right in submitting that the impugned judgment does not even refer to the IA, we are not inclined to remit the matter to the High Court at this stage for fresh consideration of this point. We hold that the appellant is entitled for full wages from 23-10-1979 to 21-10-1987 after adjustment of the amounts already paid towards subsistence allowance.

8. For the reasons mentioned above, we approve the judgment of the High Court by holding that the appellant shall be entitled for back wages only from the date of acquittal on 31-8-2001, till the date of his reinstatement on 20-1-2003. Further, the appellant shall be entitled to full salary from 23-10-1979 to 21-10-1987."

15. I find petitioner's case to be on a much better footing as he was only suspended for detention in jail without there being any inquiry in contemplation and his suspension was revoked immediately upon his acquittal in the criminal case and no appeal was preferred against the judgment of acquittal.

16. In view of the above, therefore, the Court is of the considered view that respondents are not justified in denying salary to the petitioner applying the principle of 'no work no pay'.

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17. Accordingly, writ petition succeeds and is allowed. The order passed by the Joint Director of Education, Prayagraj Region, Prayagraj dated 1st May, 2018 and also the order passed by the Additional Director of Education (Basic) dated 28th January, 2020 are hereby quashed.

18. Respondents are directed to make payment of arrears of salary to the petitioner for the period petitioner has remained under suspension i.e. from 19th August, 2009 to 6th February, 2016 within a period of 30 days from the date of production of certified copy of this order.

Order Date :- 13.3.2024

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