

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

S.B.: Hon. Mr. S. C. Sharma, J

WRIT PETITION NO. 8586/ 2010 (S)

Mahesh Chandra Raghuwanshi

Vs.

State of MP & another

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**[ O R D E R ]**  
( 26/11/2010)

The petitioner before this Court has filed this present petition claiming backwages for the period he was out of service. The contention of the petitioner is that he is serving on the post of Asstt. Sub Inspector in the Home Department of the State of MP and a charge sheet was issued for receiving / demanding illegal gratification. The petitioner has further stated that an enquiry was held an order was passed reverting the petitioner and the same order subjected to judicial scrutiny before the M.P. State Administrative Tribunal. The Original Application preferred by the petitioner ie., OA No. 438/92 was allowed on 22/4/94 quashing the order cancelling the promotion. The petitioner has further stated that thereafter a dismissal order was passed on 8/11/93 and again an Original Application was preferred before the Tribunal and the same was transferred to

this court after abolition of the MP State Administrative Tribunal. This court while passing order dt. 19/1/05 has dismissed WP NO. 4236/03. Petitioner has thereafter preferred a writ appeal and the Division Bench of this Court in WA no. 253/06 has allowed the writ appeal vide judgment dt. 18/3/09, meaning, thereby, the petitioner was reinstated back in service. Petitioners grievance is that a liberty was granted to the respondents to hold a fresh enquiry and thereafter the respondents after holding a fresh enquiry have exonerated the petitioner vide order dt. 29/4/10. The petitioner's grievance is that backwages have not been paid to him for the period he was out of service. He has prayed for quashing of order dt. 5/7/10 (Annexure P/6) and has prayed for grant of backwages. Learned Government appearing in the matter has vehemently argued before this court that the petitioner was reinstated back in service by virtue of order passed in WA No. 253/06 dt. 18/3/09 and this court in para 14 has held that the petitioner will not be entitled for backwages and therefore keeping in view the judgment delivered by this court in WA No. 253/06 they have not granted backwages to the petitioner.

Heard learned counsel for the parties at length and perused

the record.

The petitioner was reinstated back in service by the respondents on 2/5/09 as the order of dismissal was set aside by this court vide order dt. 18/3/09 passed in WA NO. 253//06. The respondents were granted liberty to proceed with the departmental enquiry afresh. The respondents have conducted departmental enquiry and the petitioner was exonerated vide order dt. 29/4/10. The impugned order reflects that the petitioner will not be entitled for backwages nor for promotion. This court has carefully gone through the earlier order passed by the Division Bench of this court and para 13, 14, 15 and 16 reads as under :

13. In the present matter, undisputedly, the incident dated 3/1/1992 has nothing to do with the incident dated 6/1/1992. The joint enquiry against the interest of the present appellant was absolutely illegal. The enquiry, the enquiry report, the punishment, dismissal of appeals and the dismissal of the petition are set aside. The petitioner, if has still not reached the age of superannuation shall be reinstated immediately.

14. It is, however, made clear that the petitioner would not be entitled to back wages because we are setting aside the order of dismissal on a technical ground.

15. We reserve liberty in favour of the State Government to proceed with the enquiry afresh if it is advised that looking to the alleged misconduct / misdemeanour of the petitioner, the petitioner deserves to be punished in a departmental enquiry.

16. The appeal is allowed. There shall be no order as to costs.

The Division Bench of this court has held that the petitioner will not be entitled for backwages. A liberty was also granted to the State to proceed ahead with the enquiry afresh and the order nowhere reflects that the question of grant of backwages was to be decided afresh after conclusion of the second departmental enquiry. This court is of the considered opinion that once a Division Bench of this court in para 4 of the earlier order not granted backwages to the petitioner, the question of granting the same to the petitioner in the peculiar facts and circumstances of the case does not arise. However, the petitioner is certainly entitled for notional fixation of salary as well as for proper fixation of seniority by treating him in service during the period he was out of service. The impugned order to the extent it denies the petitioner's seniority and further promotion based upon the notional seniority is certainly bad in law. Petition is disposed of with a direction to the respondents to

assign proper seniority to the petitioner by treating him as a Sub Inspector of the year 1991 and in case juniors of the petitioner have been promoted to the next higher post, the respondent shall hold a review DPC for considering the petitioner for promotion to the next higher post. Respondents in case the petitioner is found fit for promotion to the next higher post shall grant him notional promotion, notional fixation of salary and also seniority. However, he will not be entitled for backwages while granting a notional promotion. With the aforesaid writ petition stands disposed of. No order as to costs. Cc as per Rules.

(S. C. Sharma)  
J U D G E