

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

S.B.: HON'BLE MR. S. C. SHARMA, J

WRIT PETITION (S) NO. 6101 / 2003

SOMESHWAR SINGH

Vs.

STATE OF MP

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**O R D E R**

( 27/4/2011)

The petitioner before this Court has filed this present writ petition being aggrieved by his discontinuance from service and has also claimed regularisation.

The contention of the petitioner is that he was appointed at Indore as an extra-temporary warder on 19/8/1987 and was transferred to Barwani. An order was passed terminating the services of the petitioner on 22/3/90 on the ground that his services were no longer required and the petitioner being aggrieved by the order of termination has preferred an Original Application before the MP State Administrative Tribunal, Indore and the same was registered as OA No. 2011/90. The MP State Administrative Tribunal, Indore after hearing the parties at length has allowed the OA

and the termination order dated 22/3/90 was set aside by an order dated 17/2/94 and the respondents were directed to reinstate the petitioner with backwages. A misc. application was preferred for non-compliance of the order passed in OA NO. 2011/90 and as the petitioner was reinstated back in service the misc. application was disposed of on 14/9/98. The Division Bench of the MP State Administrative Tribunal, Indore has also granted a liberty to the petitioner to prefer a fresh OA claiming regularisation in the services of the State of MP. The petitioner's grievance is that after his reinstatement in the service in the year 1994, again an order was passed on 4/10/96 and the petitioner's services were put to an end by the respondents and the petitioner being aggrieved by the order of termination dated 4/10/96 submitted a representation and he was reinstated again by passing a fresh order on 27/3/97, thereafter he was placed under suspension on 27/3/97 and his suspension was finally revoked on 9/12/97. He was directed to report on duty by an order dated 24/3/98 and it was observed by an order dated 20<sup>th</sup> May, 1998 that the DE of the petitioner shall continue,

however, he shall not be under suspension. In spite of the aforesaid orders revoking suspension of the petitioner he was not permitted to join as an extra temporary warder and the petitioner has preferred another OA before the MP State Administrative Tribunal, Indore, the same was registered as OA NO. 1515/98. On abolition of the MP State Administrative Tribunal, Indore the matter was transferred to this court and renumbered as WP No. 6101/03. A reply has been filed in the matter and it has been stated in the reply that the DE is continuing against the petitioner and his name was considered by the Screening Committee for regularisation, however, he was not found fit for regularisation at the relevant point of time. Original record of the committee was also produced before this court and the minutes of the meeting dated 19/3/90 reveals that the petitioner was considered and not found fit for regularisation. The minutes also reveal that there were complaints against the petitioner and he was not found fit for regularisation. The minutes also reflects that on the basis of the report of Distt. Jail Barwani, the petitioner was not

found fit for regularisation. The petitioner has during the pendency of this litigation preferred an application for quashing of the DE pending against him and a reply has been filed in the matter. The reply is duly supported by an affidavit and in para 8 and 9 of the reply it has been stated that the DE is still pending and the petitioner has not appeared in the matter. Respondents have admitted the fact that they have not appointed any Enquiry Officer till date. Respondents have prayed for dismissal of the writ petition.

Heard learned counsel for the parties at length and perused the record.

In the present case the petitioner was appointed on 19/8/1987 and was terminated on 22/3/90. The MP State Administrative Tribunal, Indore in OA No. 2011/90 while allowing the OA of the applicant has observed as under :

The respondents clearly admitted that the applicants work and conduct both were not up to the mark. They enclosed copy of a complaint dt. 14.3.90 (Ann. P/3). The Superintendent of District Jail Barwani reported in it that he was involved in insulting the modesty of a girl on account of which the local people assaulted him and he sustained an injury on his head. The applicant filed rejoinder

enclosing the copy of First Information Report dt. 15.9.89 as (Ann.A/7) lodged by prosecutrix Sumanbai. According to her report one person by name Tannu made some gesture insulting her modesty. She retaliated and gave a push to him, said Tannu ribbed out a knife and assaulted her which hurt her left elbow at that point of time her brothers and applicant intervened and saved her from further assault. Tannu's companion Akbar and Sangramsingh caught hold of the applicant and assaulted him with a stick on his head as a result of which, the applicant started bleeding. The applicant also filed copies of statements of the prosecutrix (Ann.A/9), of his own (Ann. A/9), that of Radheshyam (Ann. A/10) and the statements of other witnesses as (Ann.A/11) and (A.12). From all these documents it is clear that the report of Superintendent Distt Jail accusing the applicant that he was himself involved in insulting her modesty is incorrect since it is based on misapprehension of facts. Had the applicant been given an opportunity, he could have demonstrated his innocence against the wild allegations affecting his character and future career.

The aforesaid order reveals that the petitioner was reinstated with backwages and the aforesaid order also reveals that the petitioner was not at all involved in the criminal case as alleged by the Department before the MP State Administrative Tribunal, Indore. The petitioner was

thereafter reinstated on 29/3/94, however, fresh appointment order was issued reappointing the petitioner for 89 days. He was again terminated on 4/10/96 and reinstated on 27/3/97. He was suspended on 27/3/97 and suspension was finally revoked on 9/12/97. In the present case the petitioner has approached the MP State Administrative Tribunal, Indore as he was not permitted to join and is claiming regularisation and the matter has been finally transferred to this court on account of abolition of the Tribunal. It is needless to mention that initially the Writ Petition was allowed by this court and Writ Appeal preferred by the State Government ie., WA NO. 6101/03 was also disposed of directing reinstatement of the petitioner. Thereafter a review petition was preferred before the Division Bench and the order passed in Writ Appeal No. 343/06, State of M.P. & 2 Ors., Vs. Someshwar Singh was recalled relegating the Original Application (WP NO. 6101/03) back to square one. This court has carefully gone through the order dated 9/12/97 and the same reveals that the suspension of the petitioner was revoked , however, as stated by him he was not permitted to

join and in the year 1998 itself he has filed an Original Application before the Tribunal. Respondents in their return have admitted that the Departmental Enquiry is still pending against the petitioner and they shall be concluding the same in case petitioners cooperates and they shall consider the case of the petitioner for regularisation in accordance with law.

It is pertinent to note that earlier also an order was passed by this Court on 1/9/2010 directing reinstatement of the petitioner forthwith as extra temporary warder, however, backwages were not granted to him and therefore a writ appeal was preferred by the petitioner. The order of the Division Bench dt. 9/3/2011 passed in WA No. 451/2010 reveals that the petitioner was aggrieved in the matter as no backwages were granted to him. Backwages cannot be claimed as a matter of right as held by the apex court in the case of P.V.K. Distillery Limited Vs. Mahendra Ram (2009) 5 SCC 705. The apex court in the aforesaid case in para 15, 21, 25 and 27 has held as under :

**15.** The issue as raised in the matter of back wages has been dealt

with by the Labour Court in the manner as above having regard to the facts and circumstances of the matter in the issue, upon exercise of its discretion and obviously in a manner which cannot but be judicious in nature. There exists an obligation on the part of the High Court to record in the judgment, the reasoning before however denouncing a judgment of an inferior tribunal, in the absence of which, the judgment in our view cannot stand the scrutiny of otherwise being reasonable.

**21.** In *Hindustan Tin Works (P) Ltd. v. Employees* this Court has held that:

“9. ... The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid.”

It, therefore, does not lay down a law in absolute terms to the effect that the right to claim back wages must necessarily follow an order declaring that the termination of service is invalid in law.

**25.** In the instant case, the notice had been issued limiting the question to the payment of 50% of the total back wages. This does not mean that the respondent is not entitled to further relief. The point that his services were terminated in the year 1985 and since then the case is pending for the last two decades in different courts also has no relevance, since he had approached the court within a reasonable time. It is not his fault that the case is still



pending before the court. These grounds could not be held against him for denying the relief of back wages otherwise he would suffer double jeopardy of losing back wages and delay in getting the reinstatement for no fault of his. Therefore, it would have been more enlightening, had the High Court reasoned out as to why the appellant should reinstate the respondent with full employment benefits and should pay full back wages to him for nothing in return from him in terms of work, production, etc.

27. Although services of the respondent have been terminated unjustifiably and illegally, it itself does not create a right of reinstatement with full employment benefits and full back wages.

Keeping in view the judgment delivered by the apex court in the case of P.V.K. Distillery Limited Vs. Mahendra Ram (supra), this Court is of the considered opinion, that in the peculiar facts and circumstances of the case, the petitioner is not entitled for grant of backwages specially in view of the fact that he was working as a daily wager.

Resultantly, the writ petition is allowed with the following direction :

(a) The respondents are directed to reinstate the petitioner forthwith from

the date of receipt of certified copy of this order as an extra temporary warder.

(b) The respondents are further directed to conclude the Departmental Enquiry positively within a period of 6 months from the date of receipt of certified copy of this order.

(c) The respondents shall consider the case of the petitioner afresh for regularisation by holding a Screening Committee keeping in view the observations made in paragraph 2 of order dated 17/2/94 wherein the MP State Administrative Tribunal, Indore has held the complaint of the Superintendent of Distt. Jail, Barwani to be a false complaint and it is the same complaint on the basis of which he was not found fit for regularisation. Screening Committee shall consider the case of the petitioner from the date of his juniors were considered and were found fit for regularisation ie., w.e.f.28/6/90, and in case the petitioner is found fit for regularisation he shall be entitled for all consequential benefits except backwages.

Writ petition is allowed. No order as to costs.

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

SR