

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 3951 of 2013**Order reserved on : 07/08/2023Order delivered on : 29/09/2023

- Kuljeet Singh Arora, S/o Late Shri Pratap Singh Arora, Aged About 70 Years, Retired Planning Officer, Office Of The District Education Officer, Janjgir, Distt. Janjgir-Champa C.G. R/o Teg Aanchal, Behind Panchvati Higher Secondary School, Near Old High Court Campus, Bilaspur, Civil And Revenue Distt. Bilaspur, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of School Education, New Mantralaya, Raipur Distt. Raipur, Chhattisgarh
2. The Secretary, Department Of School Education, New Mantralaya, Raipur, District : Raipur, Chhattisgarh
3. The Principal, Govt. Higher Secondary School, Gunderdehi, Thana And Tahsil Gunderdehi, District : Balod, Chhattisgarh

---- Respondents

For Petitioner.	:	Mr. R.S. Patel, Advocate.
For Respondents/State	:	Mr. Animesh Tiwari, Addl. Advocate General.

Hon'ble Smt. Justice Rajani Dubey**(CAV Order)**

1. The Petitioner has filed this petition under Article 226 of the Constitution of India being aggrieved by the order dated 28/30-04-2012 (Anneuxre P/1) issued by Respondent No.2, whereby the Petitioner had been deprived of his regular

salary from 09.09.1976 to 03.07.1978.

2. Brief facts of the case, as projected by the Petitioner, are that the Petitioner was working as confirmed employee on the post of Lecturer under the control of Respondent No.3 in Govt. Higher Secondary School, Gunderdehi, District Balod (C.G.). During the period from 09.09.1976 to 03.07.1978 (nearly 22 months), the Petitioner had been deprived of his regular salary without assigning any reason. By order dated 06.01.1988 (Annexure P/2), the arrears of such salary of aforesaid 22 months were paid to the Petitioner after lapse of 11 years. By order dated 26.06.1978 (Annexure P/3), the Respondent No.2 transferred the Petitioner on administrative ground from Gunderdehi/Balod to Baikunthpur/Surguja. In order to comply with the said transfer order, the Petitioner, prior to handing over the charge, moved an application (Annexure P/3) to the Respondent No.3 on 03.07.1978 for grant of Transfer Travelling Allowance for Rs.1,500/- and one month minimum salary Advance of Rs.440/- and handed over the charge to the senior Lecturer Mr. T.R. Sahu on 03.07.1978. In spite of paying the aforesaid advances, the Respondent No.2 arbitrarily rejected the application of the Petitioner and relieved the Petitioner by order dated 07.07.1978 (Annexure P/5) without making any payment. Being under the

financially precarious situation created by the Respondent No.3, the Petitioner could not proceed to Baikunthpur/Surguja to join his duties and remained held-up in Gunderdehi/Balod itself. The Petitioner continued reiterating his demand of the aforesaid advances to both Respondents No.2 and 3, which could finally materialize after a lapse of 8 years, 4 months and 29 days on the basis of application submitted on 03.07.1978 by the Petitioner in the office of Respondent No.3 and the amount of Rs.1940/- regarding aforesaid advances was paid to the Petitioner by Bank Draft dated 02.06.1987. Also it was assumed by the Respondent Nos. 2 & 3 that the relieving order dated 07.07.1978, which was previously issued by the Respondent No.3 was unruly and improperly served to the Petitioner which could stand onward nullified, and hence, after fulfilling the legitimate demand of aforesaid advances of the Petitioner, the Respondent No.3 re-issued afresh a Revised Second Relieving order on 08.07.1987 (Annexure P/6) to the Petitioner. On the strength of such Revised Second Relieving order dated 08.07.1987, the Petitioner could join his duties on 10.08.1987 at Baikunthpur/Surguja. In order to decide the above mentioned period of 8 years, 4 months and 29 days, on 07.03.1991 (Annexure P/9), without conducting any Departmental Enquiry the Respondent No.2

instead of considering the entire period to be spent under the “exceptional circumstances” duly shouldered by the Respondent No.3 in the wake of revised second relieving order issued afresh by the Respondent No.3. The Respondent No.2 arbitrarily *suo-moto* lodged on the Petitioner that it was unauthorized absence from duties by the Petitioner, hence, a stigmatic order of Dies-Non dated 07.03.1991 was *suo-moto* mounted on the Petitioner and consequently, the Petitioner was deprived of the benefit of the senior pay-scale by order dated 14.05.1991 (Annexure P/10). Thereafter, the Petitioner being aggrieved by the above order, preferred a writ petition before this Court bearing W.P.(S) No.475/2005, whereby this Court, vide its order dated 30.08.2010 (Annexure P/11), allowed the writ petition and quashed both the orders dated 07.03.1991 and 14.05.1991 & remitted the matter to the Respondent No.2 for considering the case afresh strictly in accordance with law but the Respondent No.2 did not follow the command of this Court’s order and with a prejudiced mind, without observing the facts of the case, and in absence of any departmental enquiry alleged the Petitioner with a new charge of non-compliance of order to *suo-moto* level the principle of “no work no pay” had derived stigmatic order of Dies-Non on 30.04.2012, when the departmental enquiry

was must and mandatory in the issuance of order of Dies-Non such as in impugned order. Hence, this petition on the following relief(s) :-

“10.1. That, this Hon’ble Court may kindly be pleased to issue an appropriate writ and set-aside the impugned order dated 28/30.04.2012 (Annexure P/1) passed by the Respondent No.2.

10.2. That, this Hon’ble Court may kindly be pleased to issue a writ of mandamus and direct the Respondent authorities to pay the salary with all consequential benefits to Petitioner for the period of 03.07.1978 to 02.06.1987.

10.3 This Hon’ble Court may further be pleased to pass an appropriate order or issue writ as deemed fit under the facts and circumstances of the case.”

3. Learned counsel for the Petitioner submits that the action of the Respondent authorities is arbitrary, illegal and unconstitutional, which shows clearly the colorable exercise of power of the Respondent authorities. It is well settled law that principle of “no work no pay” does not apply where employer creates this situation in which the employee cannot work. The impugned order was passed after the severance of the relationship of master and servant between the Petitioner and Respondents, the Petitioner

cannot be deprived of his salary of the period, the Respondents are directed to pay the salary of the Petitioner for that period. Learned counsel further submits that the Respondent authorities have created such a situation, therefore, the Petitioner could not work for the period of 03.07.1978 to 02.06.1987 for which he has no fault, therefore, he is entitled for all benefits of the salary and all allowances. In support of his submission, learned counsel placed reliance on the decision of High Court of Madhya Pradesh Bench at Jabalpur and Gwalior in the matter of **Seeta charan Banwari Vs. M.P. Rajya Bhumi Vikas Nigam, Bhopal and Ors.** reported in **2003 (4) MPHT 232** and **Mahesh Kumar Shrivastava Vs. State of M.P. and Ors.** reported in **2007 (3) M.P.H.T.** respectively.

4. Learned counsel for Respondents/State submits that the Petitioner was absent from duty without notice, therefore, the period of absence not covered by grant of leave was treated dies-non in accordance with the Fundamental Rules Part I Rule 18 and Part II Rule 6. The impugned order dated 28.04.2012 is a well reasoned and speaking order applying all the relevant rules. Learned State counsel further submits that after the order passed by this Hon'ble Court in W.P.(S) No.475/05 dated 30.08.2010, the Petitioner was given an opportunity to present his case in person and the

order dated 28.04.2012 (Annexure P/1) has been passed in accordance with the Rules. Learned counsel also submits that the dies-non is not a minor or major penalty, therefore, does not come within the ambit of Departmental Enquiry as provided in the Chhattisgarh Civil Service (Classification, Control and Appeal) Rules, 1966. The Petitioner did not raise any ground in earlier writ petition, therefore, this petition is liable to be dismissed.

5. Heard learned counsel for the parties and perused the material available on record.
6. It is not disputed in this case that the Petitioner was transferred to Baikunthpur and the Respondent authorities did not extended his transfer benefit and re-issued fresh order on 02.06.1987. This Court, vide order dated 30.08.2010, in W.P.(S) No.475/2005 filed by the Petitioner, observed in paras 5 and 6 as under :-

“5. Apparently, before passing the order dated 07.03.1991 (Annexure P-1) treating the period from 3.7.1978 to 2.6.1987 as dies non and thereafter another consequential order dated 14.5.1991 (Annexure P-3) withdrawing the benefits of the higher pay scale from the Petitioner, no opportunity of hearing has been afforded to the Petitioner enabling him to explain his case. Though absence from duty and regularization of the same as leave with or without pay would be the

consequential act of absent, declaration that action was unauthorized leads not only to declaring the period as "dies-non" but also entails other consequences like loss of seniority, non inclusion of the period of qualifying service for pension, revision of pay scale and others. It therefore involved civil consequences and not mere grant of refusal of leave. The principles of natural justice and fair hearing therefore obliged the Respondents to afford an opportunity of hearing to the Petitioner before coming to the conclusion that the absence was unauthorized warranting declaration of the period of absence as "dies-non".

6. Accordingly the petition is allowed. Impugned orders dated 7. 3.1991 (Annexure P-1) passed by Respondent No.1 and order dated 14.5.1991 (Annexure P-3) are quashed. The matter is remitted to the State Government for being re-considered and decided afresh strictly in accordance with law as early as possible preferably within a period of six months from the date of receipt of copy of this order after affording due opportunity to the Petitioner of being heard."

7. The Petitioner, in compliance to the aforesaid order of this Court's, filed a representation on 14.12.2011 before the Respondents authorities, who in turn, passed the impugned order dated 28-30/04/2012 (Annexure P/1). The relevant

portion of order in para 8 and 9 are extracted herein below,
which reads thus :-

“8.....किसी सुविधा को उपलब्धता के आधार पर दिया जा सकता है या देने से इंकार भी किया जा सकता है। इंकार करने की दशा में शासकीय सेवक द्वारा यह नहीं कहा जा सकता, कि उक्त सुविधा नहीं मिली, इसलिए वह सेवा नहीं दे सकता। इसके अतिरिक्त उक्त नियम के अवलोकन से यह भी पाया जाता है, कि शासकीय प्रयोजन के लिये किये गये यात्रा के लिये किये गये व्यय का दावा प्राप्त करना शासकीय सेवक का अधिकार है, जिसे देने से इंकार नहीं किया जा सकता। ऐसी स्थिति में श्री अरोरा के समक्ष यह विकल्प था, कि यदि उन्हें गुण्डरदेही से यात्रा अग्रिम नहीं दिया गया, तो वे बैकुण्ठपुर में कार्यभार ग्रहण कर वहां से यात्रा व्यय के दावा प्रस्तुत कर दावा प्राप्त करते, जो कि उनका अधिकार था, लेकिन उनके द्वारा ऐसा न कर इसे कार्य नहीं करने के लिये आधार बनाया गया है, जो कदाचरण होकर न केवल गलत है, कि यह मनमानी, निरंकुशता तथा अनुशासनहीनता है। ऐसी स्थिति में यह पाया जाता है, कि प्राचार्य गुण्डरदेही या बैकुण्ठपुर के द्वारा श्री अरोरा को यात्रा अग्रिम न देकर ऐसी कोई स्थिति पैदा नहीं की गई, कि वह कार्य न करें या उसके अधिकारों को क्षति हुई हो। अतः श्री अरोरा का यह तर्क भी मान्य होना नहीं पाया जाता है।

9. ऊपर दर्शित कारणों से श्री अरोरा का पुनर्विचार अभ्यावेदन निराधार होना पाया है। श्री अरोरा ने पूर्व में अपने अभ्यावेदन में इन्हीं तथ्यों को पेश किया था, जिसके आधार पर विचाराधीन आदेश के माध्यम से प्रश्नाधीन अवधि को डाईज नान मान्य किया गया है। उनके द्वारा अपने पुनर्विचार अभ्यावेदन में पूर्व में प्रस्तुत तथ्यों को ही दुहराया गया है तथा उससे भिन्न कोई भी नया तथ्य प्रस्तुत नहीं किया है। अतः श्री अरोरा का पुनर्विचार अभ्यावेदन विचारोपरान्त अमान्य कर निरस्त किया जाता है।”

8. The Petitioner filed rejoinder to the reply of

respondents/State, wherein it has been specifically stated that the petitioner is willing to attend the duty and he never remained absent from discharging duties. He continued to present himself in the office of Gunderdehi and in the office of Joint Director of Education, Durg to enroll his attendance, however, none of the offices allowed the Petitioner to register the presence on the pretext of effectivity of first relieving order dated 07.07.1978 and the Petitioner was always treated as relieved-person from Gunderdehi but in wake of Revised-Second-Relieving-Order issued afresh, itself speaks the former enforcement of the First relieving order was illegal and unruly and on is basis the act of the debarring the Petitioner to register his presence was an arbitrary handling with the situation. It is pertinent to mention here that the said contention of the Petitioner has not been rebutted by the Respondents/State by filing any additional return/reply.

9. In **Seeta Charan** (supra), it has been held by High Court of M.P. in para 5 and 6, which are as under :-

“5. The learned Counsel for both the sides have been heard. The only ground on which the salary for the period from 4-12-1987 to 15-9-1996 is beign not paid to the Petitioner is that he did not work during this period. The contention of the Nigam cannot be accepted. The Petitioner could not work during this period

because of the stay order which was obtained from this Court by the Respondents. The principle of “no work no pay” does not apply where employer creates the situation in which the employee can not work. The Supreme Court has held in Union of India Vs. K.V. Jankiraman, AIR 1991 SC 2010 that the normal rule of “no work no pay” is not applicable to such cases where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him.

6. In view of the above legal position the Petitioner can not be deprived of his salary for the period mentioned above. He could not work because the Respondents obtained stay order from this Court. No order was passed by the Respondents depriving the Petitioner of the salary for the period mentioned above when the order of imposing penalty of “censure” was passed after de novo departmental enquiry. The impugned order has been passed after the severance of the relationship of master and servant between the Petitioner and the Respondents. This is also the reason for quashing the impugned order. “

10. Further, High Court of Madhya Pradesh at Jabalpur in the matter of **Mahesh** Kumar (supra) observed in para 10 as

under :-

“10. The learned Single Judge of this Court held in the case of Dr. Anil Kumar Varma Vs. State of Madhya Pradesh and others (supra), as under with regard to dies non :-

“2. Annexure A-1, dated 12-05-1997 is impugned order in this petition. On going through this order, it is gathered that the period in between 8-8-1990 to 22-3-1993 has been treated as dies-non. The order of dies-non is stigmatic in nature for simple reason that the said period would not be counted in the entire service period of an employee and that period would be counted a break in service and for that period salary is also not being paid to the delinquent employee. If a stigmatic order is being passed, holding a departmental enquiry is pre-supposed. Admittedly no departmental enquiry is being conducted in the present case and, therefore, the impugned order cannot be allowed remain stand and the same is hereby quashed.”

11. Hon'ble Supreme Court in the matter of **Union of India Vs. K.V. Jankiraman** reported in **AIR 1991 SC 2010** also held that the normal rule of “no work no pay” is not applicable to such cases where the employee although he is willing to work is kept away from work by the authorities for no fault of his.

12. Thus, it is crystal clear from the aforesaid facts and circumstances of the case that the Respondents authorities again issued fresh order and it has not been disputed by the Respondents/State that before passing this order, no Departmental Enquiry was initiated against the Petitioner, as such, the Petitioner is held entitled for his salary with all consequential benefits.
13. In the result, the petition is allowed and the impugned order dated 28/30-04-2012 (Annexure P/1) is set aside. The Respondent authorities are directed to pay the salary to the Petitioner for the period from 03.07.1978 to 02.06.1987 with all consequential benefits within four months from the date of this order.

Sd/-

(Rajani Dubey)

Judge