



2024:CGHC:48213-DB

**NAFR**

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**WA No. 828 of 2024**

- 1** - State Of Chhattisgarh Through The Secretary, Home Department (Police), Mahanadi Mantralaya, Naya Raipur, Post Office And Police Station Naya Raipur, District Raipur, Chhattisgarh. (Respondent No. 1)
- 2** - Director General Of Police, Police Head Quarter Sector 19, Naya Raipur, District Raipur, Chhattisgarh. (Respondent No. 2)
- 3** - Inspector General Of Police Bilaspur, District Bilaspur, Chhattisgarh. --- (Respondent No. 3)
- 4** - Superintendent Of Police Janjgir Champa District Janjgir Champa, Chhattisgarh. --- (Respondent No. 4)

**... Appellant**

**versus**

- 1** - Khushi Ram Sandilya (Dead) Through Lrs
- 1.1** - Savitri Sande W/o Late Khushi Ram Aged About 52 Years R/o Village Thakurdiya, P.S. Nawagarh, District Janjgir- Champa, Chhattisgarh.
- 1.2** - Kapil Kumar Sande S/o Late Khushi Ram Aged About 32 Years R/o Village Thakurdiya, P.S. Nawagarh, District Janjgir- Champa, Chhattisgarh.
- 1.3** - Usha Sande D/o Late Khushi Ram Aged About 34 Years R/o Village Thakurdiya, P.S. Nawagarh, District Janjgir- Champa, Chhattisgarh.
- 1.4** - Ranu Kumar Sande D/o Late Khushi Ram, Aged About 30 Years

R/o Village Thakurdiya, P.S. Nawagarh, District Janjgir- Champa, Chhattisgarh.

**1.5** - Neha Kumari Sande D/o Late Khushi Ram Aged About 30 Years  
R/o Village Thakurdiya, P.S. Nawagarh, District Janjgir- Champa, Chhattisgarh.

**1.6** - Marshal Sande S/o Late Khushi Ram Aged About 27 Years R/o Village Thakurdiya, P.S. Nawagarh, District Janjgir- Champa, Chhattisgarh.

**1.7** - Itihas Sande S/o Khushi Ram Aged About 24 Years R/o Village Thakurdiya, P.S. Nawagarh, District Janjgir- Champa, Chhattisgarh.

**... Respondents**

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For Petitioner(s) : Mr. Sangharsh Pandey, G.A.

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**Hon'ble Shri Ramesh Sinha, Chief Justice**

**Hon'ble Shri Amitendra Kishore Prasad, Judge**

**Judgment on Board**

**Per Ramesh Sinha, Chief Justice**

**09.12.2024**

1. Heard Mr. Sangharsh Pandey, learned Government Advocate for appellant / State on I.A. No.01/2024 is an application for condonation of delay of 53 days in filing the instant appeal.
2. For the reasons mentioned in the application I.A. No.01/2024 i.e. application for condonation of delay, the same is allowed and delay is condoned. With the consent of learned counsel for the parties, the appeal is heard finally.
3. The appellant has filed this writ appeal against the order dated

05/08/2024 passed by the learned Single Judge in Writ Petition (S). No. 860/2016 (***Khushi Ram Sandilya (dead) vs. State of Chhattisgarh and Another***) whereby the learned Single Judge has disposed of the writ petition filed by the writ petitioner / respondents herein with direction to the appellant / state to pay the back wages which accumulated to the deceased petitioner / legal heirs as of now within a period of three months.

4. Brief facts are that the original petitioner i.e. Khushi Ram Sandilya filed writ petition bearing W.P. (S) No. 860/2016 before this Hon'ble Court challenging the partial part of order dated 18/12/2015 by which while reinstating the writ petitioner in service by imposing minor punishment of reduction of pay to minimum pay scale for one year, it was held that the writ petitioner is not entitled for back wages for the period from 31/01/2006 to 22/12/2015 on the basis of principle of "No work No Pay". During the pendency of the writ petition, the original writ petitioner died and after his death, his legal heirs had prosecuted the writ petition before this Hon'ble Court. The case of the writ petitioner before the learned Single Judge was that, the writ petitioner was posted as a Treasury a Guard at Janjgir-Champa by the S.P. Bilaspur He remained absent from his duties without prior information from 09/01/2005 to 02/02/2005 leading to preliminary inquiry on 18/03/2005 and regular departmental enquiry on 14/06/2005. The writ petitioner was placed under suspension and the SP, Janjgir Champa inflicted

penalty of removal against him on 30/01/2006 against which he preferred an appeal before the Inspector General of Police, which also dismissed. Thereafter, the mercy appeal was filed before the Director General of Police, which too was dismissed. Being aggrieved against the order of removal, order of affirmation and dismissal of mercy appeal, he filed W.P. (S) No. 338/2010 which was allowed vide order dated 08/12/2015 and by setting aside the aforesaid orders, it was held by the Hon'ble Court that the unauthorized absence for 15 days was shockingly disproportionate and accordingly set aside the same and remitted the case back to the disciplinary authority i.e. SP, Janjgir Champa. In compliance of the order passed by the Hon'ble Court, by the order dated 18/12/2015 the SP, Janjgir Champa reinstated the writ petitioner in service after imposing minor punishment of one year of minimum pay scale in the service and it was further held that the writ petitioner is not entitled for back wages for the period from 31/01/2006 to 22/12/2015 on the basis of principles of "No work no Pay". The writ petition filed by the writ petitioner was contested the appellants by filing a detailed return to the said writ petition. It was categorically submitted on behalf of the appellants /State that the punishment by the disciplinary authority is commensurate to the misconduct committed and the past track record of the writ petitioner would also show that he was punished for absence in the duty. It is further submitted that after the order of the High Court, his case was sympathetically considered and fresh order of

punishment has been passed. The learned Single Judge passed the order dated 05/08/2024 and while disposing of the writ petition, it was held that since the writ petitioner was already punished with a reduction of pay scale for one year, further withholding of the back wages on 'no work no pay' would be a twin punishment and cannot be sustained and by setting aside the part of the order of not grant of back wages, it was held and directed the respondents therein to pay the back wages which accumulated to the deceased petitioner/legal heirs as of now within a period of three months. Being aggrieved by the said order, the appellants herein have preferred this present appeal.

5. Learned counsel for the appellant submits that the impugned order passed by the learned Single Judge is completely illegal, erroneous and contrary to the law and hence is liable to be set-aside. He further submits that the learned Single Judge failed to appreciate the fact that it is statutorily settled that leave cannot be claimed as a matter of right. Further, sanctioning leave without pay is not one of the punishments prescribed under the CG. Civil Services (Classification, Control and Appeal) Rules, 1966, though and under what circumstances, the leave has been sanctioned without pay, is a different aspect. The present is not a case where the punishment with a twin punishment of reducing of minimum pay scale on the principles of 'no work no pay' has been imposed, therefore, denial of back wages on the principle of no work no pay

could not be termed as double jeopardy. Also, in terms of the Fundamental Rule 54A (1) & (2), the original petitioner was not entitled to grant of back wages as claimed especially in view of the fact that this Hon'ble Court in the earlier round of litigation i.e. W.P. (S) No. 338/2010, did not direct the payment of back wages and in that view of the matter, the writ petitioners also lost their right to challenge the decision of the authority on the point of back wages or the decision of not granting the back wages on the principle of "*No Work No Pay*". Later, the learned Single Judge failed to appreciate the fact that the doctrine of double jeopardy as enshrined under Article 20(2) of the Constitution of India has no application in the event of there being only one punishment awarded to the delinquent employee under the rules on charges being proved during the course of disciplinary enquiry. In the instant case, though the punishment of reduction of pay to the minimum pay scale for a period of one year has been awarded upon the writ petitioner which is one of the punishments prescribed in Rule 10 of the C.G. Civil Services (Classification, Control and Appeal) Rules, 1966, but, since the period from 31/01/2006 to 22/12/2015 during which the writ petitioner was out of service, has been allowed without pay and the same is not any of the punishments as prescribed in the Rules 1966, therefore, denial of back wages while sanctioning the leave cannot be termed as further punishment / double jeopardy.

6. The learned counsel for the appellant further submits that the issue involved in the present case has already been settled by the Hon'ble Supreme Court in the matter of "**State of Uttar Pradesh and others Vs. Madhav Prasad Sharma**" reported in (2011) 2 SCC 212. In light of the said judgment, no right accrued in favour of the writ petitioners justifying issuance of writ in their favour.
7. We have heard learned counsel for the appellant and perused the impugned order and other documents appended with writ appeal.
8. From perusal of the impugned order, it transpires that the learned Single Judge while disposing of the writ petition has observed as follows:-

*"7. In a earlier round of litigation in Writ Petition (S) No.338/2010 this court by an order dated 8/12/2015 has set aside the removal and remitted back the case primarily on the principle that it was shockingly disproportionate to dismiss the petitioner from service for the reason that the petitioner was only found absent for 15 days and the matter was remitted back for fresh consideration. After the case was remitted back again a fresh order was passed though reinstatement was made by an order dated 18th December, 2015 but it followed with the departmental enquiry. Subsequently, the documents would show that departmental enquiry was carried out and the orders were passed which have been reproduced herein before. The comparative evaluation of the judgment and the order passed subsequent to it, it appears that still the issue of*

*proportionality continued and it appears that the judgment which was passed by this court which set out the boundaries were again over reached. It is trite that the spirit of the order to be looked into and when the High Court in its order specifically observed that the punishment imposed was shockingly disproportionate and ambition expressed. However, again imposing a punishment with a twin punishment of reducing of minimum pay scale coupled with the principles of 'no work no pay' would bring back the crisis to make the earlier observation completely porous.*

*8. The Supreme Court has categorically time and again has observed that the High Court would not sit as an appellate authority but if the punishment is shockingly disproportionate and shocks the conscience of the court, then in such case, the court can step in and cannot turn blind eye. The original petitioner who subsequently breathed his last and now represented by the legal heirs would show that for absence of 15 days he was removed from the service and having underwent a litigation, when the order of reinstatement was passed the head wind continued to resist to have domino effect. Even reading of the punishment order would show that when the punishment order itself was set aside then in such case it was not because of the fault of the petitioner but he was restrained to work for the reason that his services were terminated which was subsequently was set aside by the order of the High court. As of now it appears that even the subsequent order do not stand the conscience of the court and since the petitioner was already punished with a*



*reduction of pay scale for one year, further withholding of the back wages on 'no work no pay' would be a twin punishment and cannot be sustained. Accordingly that part of the order of not grant of back wages is set aside. The respondents are directed to pay the back wages which accumulated to the deceased petitioner/legal heirs as of now within a period of three months”*

9. Considering the submissions made by the learned counsel appearing for the parties and upon perusing the impugned order, we notice that the same has been rendered by the learned Single Judge with cogent and justifiable reasons. Further, the case of ***Madhav Prasad Sharma (Supra)*** relief upon by the learned counsel for the appellant is not applicable in the present case as the facts of the present case are distinguishable to the case referred by the counsel for the appellant. In an intra-court appeal, no interference is usually warranted unless palpable infirmities are noticed on a plain reading of the impugned order. In the facts and circumstances of the instant case, on a plain reading of order, we do not notice any such palpable infirmities or perversities, as such we are not inclined to interfere with the impugned order.
10. Accordingly, the writ appeal being devoid of merit is liable to be and is hereby **dismissed**. No cost(s).

Sd/-

**(Amitendra Kishore Prasad)**  
**Judge**

Sd/-

**(Ramesh Sinha)**  
**Chief Justice**

**Manpreet**