

STATE OF RAJASTHAN & ANR.

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v.

MANGAT LAL SIDANA

(Civil Appeal No. 2386 of 2022)

MARCH 23, 2022

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[K. M. JOSEPH AND HRISHIKESH ROY, JJ.]

Rajasthan Service Rules, 1951 – r.54 – Scope and purport of – Held: Whenever there is reinstatement in the circumstances attracting r.54, the authority is to pass a specific order relating to the pay and allowances to be paid and also as to whether the period of such absence is being treated as period spent on duty – Where the employee is not fully exonerated and therefore is governed by r.54(3), then the period of absence is not to be treated as duty unless the authority specifically directs that it shall be duty for any specified purpose – Further, proviso to r.54(5) contemplates that it is open to the Government to direct that the period of absence shall be converted into leave of any kind due and admissible for Government servant – In the present case, the respondents have not been fully exonerated as such – This would take their case outside the four walls of r.54(2) – Their suspension may not fall in the category of unjustified suspension – This would bring their cases within the scope of r.54(3) which means that the exact amount of pay and allowances to be paid is to be less than the full pay and allowances – However, this exercise can be done only after notice to the employee which was not done but, to remit it back for this purpose would be inequitable – On facts, the respondents be paid pay and allowances fixed at 50 % of the pay and allowances which they would have drawn for the period of their absence – Principles of Natural Justice – Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 – r.34 – Punjab Civil Services Rules – Service Law.

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Service Law – Rajasthan Service Rules, 1951 – r.54 – Principles of natural justice – Observance of – Held: The employee must be given an opportunity before any order is passed – Even u/ r. 54, the position is the same – Observance of principles of nature justice is of cardinal importance for the employee whose very life

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- A *will be at stake for he would on the one hand if he is heard get an opportunity to persuade the competent authority that his case would fall under r.54(2) and not under r.54(3) – Denial of opportunity can have very serious consequences.*

Partly allowing the appeals, the Court

- B **HELD: 1.1 Rule 54 is a provision which is a common provision in both the State services and also the Central services. The counter part in the Central Services is Rule 54 of the Rules. In fact, Rule 7.3(B) of the Punjab Civil Services Rules is a separate provision which deals with a person being placed under suspension and who is reinstated without there being a penalty imposed. Rule**
- C **54 with which this Court is concerned contemplates an amalgam of situations which deal with disciplinary proceedings culminating in dismissal, compulsory retirement and removal and it also deals with absence from duty on account of suspension. In other words, when an employee at the end of the disciplinary proceedings is**
- D **punished in terms thereof and as a result of the order passed is reinstated, then the competent authority is called upon to consider and pass specific order regarding the pay and allowances to be paid for the period for absence from duty. The Rule appears to separately contemplate the duty to provide for the pay and**
- E **allowances for the period of suspension ending with the date of retirement on superannuation as the case may be. In other words, the Rule in its application contemplates a situation wherein a Government servant being dismissed, removed, compulsory retired or suspended is reinstated. It also takes in a case where but for his retirement, he would have been reinstated while under**
- F **suspension. In both these cases, the duty of the competent authority is to pass the order within the contemplation of Rule 54(1)(a) and (b). This means that apart from dealing with pay and allowances, as to whether the period of absence is to be treated as duty must be dealt with. This flows from Rule 54(1)(b). The**
- G **manner in which the authority is to pass the order is regulated by subsequent provisions in Rule 54. Sub-rule 54(2) contemplates that the competent authority must examine the proceedings, apply its mind, and find whether it is a case where the Government servant at the end of the day has been fully exonerated. In the case of suspension where a person being under suspension is**
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reinstated, the duty lies on the competent authority to consider the question as to whether the suspension was justified or wholly unjustified. If the suspension was wholly unjustified, the Government servant would be entitled to be paid the full pay and dearness allowance which he was entitled to had he not been suspended. The same is the case of the Government servant visited with the penalty of dismissal, removal or compulsory retirement. If it is found that at the end of the day that the penalty was wholly unjustified in that, on merit it is found that the employee stands completely exonerated, he would be entitled to get full pay and dearness allowance. Rule 54(3) is the residuary clause. The provisions of Rule 54(2) and (3) are mutually exclusive. In other words, if an employee is not fully exonerated, he is to be given such proportion of the pay and allowances as the competent authority may prescribe. Sub-rule (4) of Rule 54 is relatable to sub-rule 54(1)(b). In other words, whenever there is re-instatement in the circumstances attracting Rule 54, the authority is to pass a specific order relating to the pay and allowances to be paid and also as to whether the period of such absence is being treated as period spent on duty. Both these aspects must be reflected in the order. [Paras 8, 9][773-D-H; 774-A-E]

1.2 In the case where there is full exoneration, the rule-maker had made it clear that the period of absence is to be treated as duty for all purposes. However, the provisions of Rule 54(5) contemplate a situation where the employee is not fully exonerated and therefore is governed by Rule 54(3). Then the period of absence is not to be treated as duty unless the authority specifically directs that it shall be duty for any specified purpose. The proviso to Rule 54(5) contemplates that it is open to the Government to direct that the period of absence shall be converted into leave of any kind due and admissible for Government servant. This would appear to be the scope and purport of Rule 54. [Para 10][774-F-G]

1.3 This is a case where the respondents have not been fully exonerated as such. The proof of the same is to be found in the fact that they have been visited with a penalty as the disciplinary proceedings have admittedly culminated in the penalty being

- A passed which may be a minor penalty. The other aspect of the matter is about the observance of principles of natural justice. The employee must be given an opportunity before any order is passed. The matter is no longer *res integra*. [See *M. Gopalakrishna Naidu v. State of Madhya Pradesh AIR 1968 SC 240*]. It does not need reiteration that even under Rule 54, the position is the same. Observance of principles of nature justice is of cardinal importance for the employee whose very life will be at stake for he would on the one hand if he is heard get an opportunity to persuade the competent authority that his case would fall under Rule 54(2) and not under Rule 54(3). [Paras 11, 12][774-H; 775-A-C]

- 1.4 Learned Additional Advocate General appearing for the appellants would point out that in such circumstances, the course to be adopted would be to remit it back to the competent authority so that the competent authority may ensure that the respondents appear before the authorities and then the case is decided. In fact, the course adopted by this Court finally in *M. Gopalakrishna Naidu* was to remit the matter back to the competent authority to pass an order after hearing the employee. But then, learned counsel for the respondent would point out that the respondent is aged 76 and at this stage, remitting back the matter would be highly inequitable. In the leading case, this Court noticed, at the time of admission, this Court had passed an order of stay subject to payment of 50 per cent of the backwages. Denial of opportunity can have very serious consequences. In this case, the finding is that the principles of natural justice were not complied with. On this ground, the respondents would support the judgment. [Paras 12, 13][775-D-F; C-D]

- 1.5 The disciplinary proceedings against the respondents in both the cases have not culminated in a situation where it could be said that they have been completely exonerated. This would take their case outside the four walls of Rule 54(2) of the Rules. Their suspension may not fall in the category of unjustified suspension. This inevitably and necessarily would bring their cases within the scope of Rule 54(3). This would necessarily mean that the exact amount of pay and allowances to be paid is to be less than the full pay and allowances. However, this exercise can

be done only after notice to the employee. Admittedly, there is a failure by the appellants in this regard. But, at the same time, to remit it back for this purpose in our view would be inequitable. Hence this Court would rather adopt the middle path by directing that in the facts and circumstances of the case, the respondents be paid pay and allowances fixed at 50 per cent of the pay and allowances which they would have drawn for the period of their absence. Accordingly, the appeals are partly allowed. This Court directs that the respondents in both the cases will be paid the pay and allowances at 50 per cent of the amount which they would be entitled for the period in question. [Para 14][775-G-H; 776-A-B]

M. Gopalakrishna Naidu v. State of Madhya Pradesh
AIR 1968 SC 240 : [1968] 1 SCR 355 (12) – relied on.

Case Law Reference

[1968] 1 SCR 355	relied on	Para 12	D
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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2386 of 2022.

From the Judgment and Order dated 28.04.2016 of the High Court of Judicature for Rajasthan at Jodhpur in DB Civil Special Appeal (Writ) No. 493 of 2008.

With
Civil Appeal No. 2365 of 2022.

Dr. Manish Singhvi, Sr. Adv., Arpit Parkash, Sandeep Kumar Jha, Advs. for the Appellants.

Ajay Choudhary, Ms. Archana Pathak Dave, Prateek Kasliwal, Avnish Dave, Ms. Vanya Gupta, Kumar Prashant, Advs. for the Respondents.

The Judgment of the Court was delivered by

K. M. JOSEPH, J.

Leave granted.

Since both the appeals raise common issues, we dispose of the same by a common judgment.

- A (1) We take the appeal arising out of SLP (C)No. 32112 of 2016 as the leading case, i.e. Civil Appeal No. 2386 of 2022. The respondent herein was employed with the appellants and working in the cadre of Assistant Engineer. Disciplinary proceedings was taken against the respondent. Apparently, in contemplation of the disciplinary proceedings, the respondent was placed under suspension by an order in the year 1981. In the case of the respondent in the leading case, proceedings culminated in penalty of compulsory retirement. The respondent filed a civil suit. The civil Court granted relief by which the appellants were directed to consider the matter afresh. Fresh consideration resulted in the respondent being visited with the penalty of withholding of three grade increments with cumulative effect. The respondent carried the matter further in the departmental proceedings. Suffice is to say that in exercise of the power under Rule 34 of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958, an order came to be passed substituting the penalty with penalty of censure. Thereafter, further proceedings were taken within the meaning of Rule 54 of the the Rajasthan Service Rules, 1951 (hereinafter referred to as 'Rules' for brevity).

This proceeding resulted in the impugned order which was finally impugned in the writ petition which has given rise to the present appeal.

- E (2) The substance of the order in the leading case is as follows:

- F The period of absence from duty which comprises of the period of suspension in which the first respondent was placed was treated as duty only for the purpose of pension. It is further ordered that no amount other than subsistence allowance shall be payable. This triggered filing of the writ petition by the respondent. The learned Single Judge allowed the writ petition and the following is the operative portion of the order:

- G "Accordingly, this petition for writ is allowed. The order dated 3.9.2001 to the extent it treats the period during which the petitioner was out of employment as a consequent to an order of compulsory retirement as "disa-non" and also denies payment of full wages for the period he remained under suspension is declared illegal and, therefore, the same is quashed. The petitioner declared entitled for full wages for the period he remained under suspension. The respondents are further directed to consider candidature of the petitioner afresh for the purpose of promotion to the post of Assistant Engineer against the vacancies of the year 1978-79. In
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the event the petitioner is found suitable for promotion against the A
vacancies of the year 1978-79, the promotion be recorded to him
as such with all other consequential benefits.

No order to costs.”

The appeal carried by the appellants was unsuccessful. B

(3) The respondent in other case also came to be initially visited
with penalty of withdrawal of increments. He also obtained relief in the
form of substituting of the penalty with the penalty of censure. He also
filed a writ petition feeling aggrieved by the order passed purporting to
be under Rule 54 of the Rules. The learned Single Judge in his case C
followed the judgment in the case of Mangat Lal Sidana (the leading
case) and granted relief which was sought on similar lines. The appeal
filed by the appellants in this case was also unsuccessful. Hence the
appeals.

(4) We have heard Dr. Manish Sighvi, learned Additional Advocate
General, Ms. Archana Pathak Dave, learned counsel for the respondent D
in SLP (C)No. 32112/2016 and have also heard Mr. Ajay Choudhary,
the learned counsel appointed as *Amicus Curiae* finding that the
respondent in SLP (C)No. 30740/2017 did not put in appearance.

(5) The principal bone of contention appears to arise from the
true purport of Rule 54 of the Rules. E

According to Dr. Manish Singhvi, learned Additional Advocate
General appearing for the appellants, Rule 54 contemplates giving of full
benefits by way of pay and allowances in a case where the employee
who has been reinstated was actually the victim of harassment, in that it
was found by the disciplinary authority that he was completely blameless F
and what is more, he stands completely exonerated. If an employee is
not fully exonerated, the case would have to be dealt with under sub-
rule (3) of Rule 54. This means that the employee would not be entitled
to the award of full pay and allowances which he would have otherwise
drawn. The case at hand before us, according to the learned Additional
Advocate General appearing for the appellants, is to be decided with G
reference to Rule 54(3). According to him, the High Court has erred in
not noticing that at the end of the day, the respondents in both cases
have not been fully exonerated. On the other hand, disciplinary proceedings
have admittedly attained finality in the form of penalty being imposed on
them. The penalty may be a minor penalty but what is relevant is whether H

A the employee was fully exonerated within the meaning of Rule 54(2). It is his submission that they were not fully exonerated and, therefore, the very foundation of the judgment of the High Court is flawed.

(6) *Per contra*, learned counsel for the respondent in the leading case, Ms. Archana Pathak Dave, would point out that the judgment of the High Court must be upheld on another ground which is that before passing the impugned order purporting to be under Rule 54 of the Rules, no notice was issued to the respondents. Support is laid on the judgments of this Court. She further points out that having regard to the nature of the penalty which has been imposed which is a minor penalty and the findings which have been entered into, the impugned judgment is only to be supported. Learned *Amicus Curiae*, in other case, with reference to Rule 54, makes his submission on the effect of Rule 54 to be that Rule 54 contemplates that on exoneration, employee is entitled to full pay and allowances.

Whereas, in the other case, the case would have been wherein the employee may not be getting full pay and allowances.

(7) Rule 54 of the Rules reads as follows:

54. Re-instatement—

(1) When a Government servant who has been dismissed, removed, compulsorily retired or suspended is re-instated or would have been re-instated but for his retirement on superannuation while under suspension, the authority competent to order the re-instatement shall consider and make a specific order:—

(a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty or for the period of suspension ending with the date of his retirement on superannuation as the case may be; and

(b) Whether or not the said period shall be treated as a period spent on duty.

(2) Where such competent authority holds that the Government Servant has been fully exonerated or, in the case of suspension that it was wholly unjustified, the Government servant shall be given the full pay and dearness allowance to which he would have been entitled had he not been dismissed, removed or compulsorily retired as a penalty or suspended, as the case may be.

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(3) In other cases, the Government servant shall be given such proportion of such pay and dearness allowance as such competent authority may prescribe. A

(4) In a case falling under clause (2) the period of absence from duty shall be treated as a period spent on duty for all purposes.

(5) In a case falling under clause (3) the period of absence from duty shall not be treated as a period on duty unless such authority specifically directs that it shall be so treated for any specified purpose: B

Provided that if the Government so desires, such authority may direct that the period of absence from duty shall be converted into leave of any kind due and admissible to the Government servant. C

(8) Rule 54 is a provision which is a common provision in both the State services and also the Central services. The counter part in the Central Services is Rule 54 of the Rules. In fact, Rule 7.3(B) of the Punjab Civil Services Rules is a separate provision which deals with a person being placed under suspension and who is reinstated without there being a penalty imposed. D

(9) Rule 54 with which we are concerned contemplates an amalgam of situations which deal with disciplinary proceedings culminating in dismissal, compulsory retirement and removal and it also deals with absence from duty on account of suspension. In other words, when an employee at the end of the disciplinary proceedings is punished in terms thereof and as a result of the order passed is reinstated, then the competent authority is called upon to consider and pass specific order regarding the pay and allowances to be paid for the period for absence from duty. The Rule appears to separately contemplate the duty to provide for the pay and allowances for the period of suspension ending with the date of retirement on superannuation as the case may be. In other words, the Rule in its application contemplates a situation wherein a Government servant being dismissed, removed, compulsory retired or suspended is reinstated. It also takes in a case where but for his retirement, he would have been reinstated while under suspension. In both these cases, the duty of the competent authority is to pass the order within the contemplation of Rule 54(1)(a) and (b). This means that apart from dealing with pay and allowances, as to whether the period of E
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- A absence is to be treated as duty must be dealt with. This flows from Rule 54(1)(b). The manner in which the authority is to pass the order is regulated by subsequent provisions in Rule 54. Sub-rule 54(2) contemplates that the competent authority must examine the proceedings, apply its mind, and find whether it is a case where the Government servant at the end of the day has been fully exonerated. In the case of
- B suspension where a person being under suspension is reinstated, the duty lies on the competent authority to consider the question as to whether the suspension was justified or wholly unjustified. If the suspension was wholly unjustified, the Government servant would be entitled to be paid the full pay and dearness allowance which he was entitled to had he not
- C been suspended. The same is the case of the Government servant visited with the penalty of dismissal, removal or compulsory retirement. If it is found that at the end of the day that the penalty was wholly unjustified in that, on merit it is found that the employee stands completely exonerated, he would be entitled to get full pay and dearness allowance. Rule 54(3) is the residuary clause. The provisions of Rule 54(2) and (3) are mutually
- D exclusive. In other words, if an employee is not fully exonerated, he is to be given such proportion of the pay and allowances as the competent authority may prescribe. Sub-rule (4) of Rule 54 is relatable to sub-rule 54(1)(b). In other words, whenever there is re-instatement in the circumstances attracting Rule 54, the authority is to pass a specific order
- E relating to the pay and allowances to be paid and also as to whether the period of such absence is being treated as period spent on duty. Both these aspects must be reflected in the order.

- (10) In the case where there is full exoneration, the rule-maker had made it clear that the period of absence is to be treated as duty for
- F all purposes. However, the provisions of Rule 54(5) contemplate a situation where the employee is not fully exonerated and therefore is governed by Rule 54(3). Then the period of absence is not to be treated as duty unless the authority specifically directs that it shall be duty for any specified purpose. The proviso to Rule 54(5) contemplates that it is open to the Government to direct that the period of absence shall be converted into
- G leave of any kind due and admissible for Government servant. This would appear to be the scope and purport of Rule 54.

(11) We have seen the order passed in the leading case.

- This is a case where the respondents have not been fully
- H exonerated as such. The proof of the same is to be found in the fact that

they have been visited with a penalty as the disciplinary proceedings have admittedly culminated in the penalty being passed which may be a minor penalty. A

(12) The other aspect of the matter is about the observance of principles of natural justice. The employee must be given an opportunity before any order is passed. The matter is no longer *res integra*. [See *M. Gopalakrishna Naiduv. State of Madhya Pradesh* AIR 1968 SC 240]. It does not need reiteration that even under Rule 54, the position is the same. Observance of principles of nature justice is of cardinal importance for the employee whose very life will be at stake for he would on the one hand if he is heard get an opportunity to persuade the competent authority that his case would fall under Rule 54(2) and not under Rule 54(3). Denial of opportunity can have very serious consequences. In this case, the finding is that the principles of natural justice were not complied with. On this ground, the respondents would support the judgment. B C

(13) Dr. Manish Singhvi, learned Additional Advocate General appearing for the appellants would point out that in such circumstances, the course to be adopted would be to remit it back to the competent authority so that the competent authority may ensure that the respondents appear before the authorities and then the case is decided. In fact, we find that the course adopted by this Court finally in *M. Gopalakrishna Naidu* (supra) was to remit the matter back to the competent authority to pass an order after hearing the employee. But then, learned counsel for the respondent would point out that the respondent is aged 76 and at this stage, remitting back the matter would be highly inequitable. In the leading case, we notice, at the time of admission, this Court had passed an order of stay subject to payment of 50 per cent of the backwages. D E F

(14) Having heard the learned counsel for the parties, we are of the view that the following conclusions can be arrived at.

The disciplinary proceedings against the respondents in both the cases have not culminated in a situation where it could be said that they have been completely exonerated. This would take their case outside the four walls of Rule 54(2) of the Rules. Their suspension may not fall in the category of unjustified suspension. This inevitably and necessarily would bring their cases within the scope of Rule 54(3). This would necessarily mean that the exact amount of pay and allowances to be paid is to be less than the full pay and allowances. However, this exercise G H

A can be done only after notice to the employee. Admittedly, there is a failure by the appellants in this regard. But, at the same time, to remit it back for this purpose in our view would be inequitable. Hence we would rather adopt the middle path by directing that in the facts and circumstances of the case, the respondents be paid pay and allowances fixed at 50 per cent of the pay and allowances which they would have drawn for the period of their absence. Accordingly, the appeals are partly allowed. We direct that the respondents in both the cases will be paid the pay and allowances at 50 per cent of the amount which they would be entitled for the period in question.

C The appeals are allowed as above. No orders as to costs.

Divya Pandey
(Assisted by : Deepak Panwar, LCRA)

Appeals partly allowed.