

**HIGH COURT OF CHHATTISGARH, BILASPUR****Order reserved on:24.06.2021****Order delivered on:09.07.2021****Writ Petition (S) No.994 of 2010**

Shankar Lal Soni (died) through LR's

1.A Krishna Soni Wd/o late Shankar Lal Soni, aged about 74 years, R/o Rajaswa Colony, Sarkanda, Police Station – Sarkanda, District – Bilaspur (CG)

---Petitioner

Versus

1. The State of Chhattisgarh, Through : the Secretary, Department of Food & Civil Supplies, D.K.S. Bhawan, Raipur (CG)
2. The Director, Food, Public Supplies & Consumer Protection Directorate, Chhattisgarh, at Raipur (CG)
3. The Collector (Food & Civil Supplies), Raipur, District-Raipur (CG)

---Respondents

For LR's of Petitioner : Mr.A.K.Prasad, Advocate
For Respondents/State : Mr.Ravi Bhagat, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. The writ petitioner while working as Assistant Food Inspector [who died during pendency of this writ petition] was placed under suspension on 10.3.1995 on registration of criminal case for offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter called as 'PC Act') and ultimately, he was convicted by the jurisdictional criminal Court for the aforesaid offences on 29.6.1996. In the meanwhile, the State Government on 5.11.1998 in exercise of power under Rule 19(i) of the Chhattisgarh Civil Services



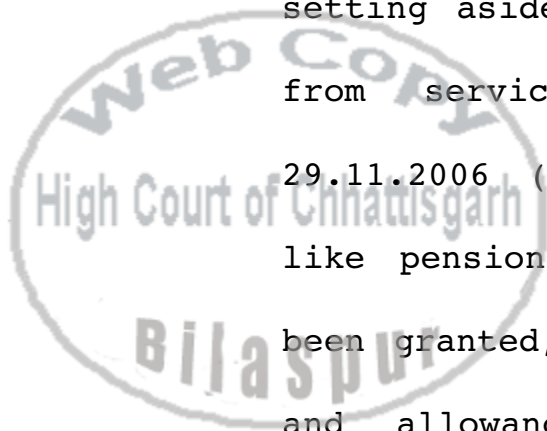
(Classification, Control & Appeal) Rules, 1966 (hereinafter called as 'the Rules of 1966') inflicted the petitioner with major penalty of dismissal from service under Rule 10 (ix) of the Rules of 1966. On an appeal being preferred before this Court, the petitioner was acquitted by this Court vide its judgment dated 18.7.2006 passed in Criminal Appeal No.1094/1996. It is the case of the petitioner that upon honourable acquittal from criminal charges he was superannuated from service w.e.f. 31.1.2003 and he was given all service benefits like pension, gratuity, leave encashment etc., except salary from 1.11.1994 i.e. the date of registration of criminal case till the date of his superannuation on 31.1.2003 and ultimately, by order dated 3.11.2010 (Annexure R-1), it has been held that on the principle of 'No Work No Pay', the writ petitioner would not be entitled for full pay and allowances for the aforesaid period. The aforesaid order has been called in question by writ petitioner in this writ petition.

2. Return has been filed by the respondents stating that the petitioner is not entitled for pay and allowances from 1.11.1994 to 31.1.2003 by the impugned order on the principle of 'No Work No Pay' and as such, the writ petition deserves to be dismissed.
3. Mr.A.K.Prasad, learned counsel appearing for legal



representative of the petitioner, would submit that since the petitioner upon his acquittal has been granted all service benefits and he retired from service w.e.f 31.1.2003 on attaining the age of superannuation by the order of the State Government, therefore, legal representative of the petitioner is also entitled for benefit of full pay and allowances from 1.11.1994 to 31.1.2003. He would further submit that though the petitioner has honourably been acquitted from criminal charges on 18.7.2006 and setting aside the order of dismissal, he has retired from service w.e.f. 31.1.2003 by order dated 29.11.2006 (Annexure P-4) and all service benefits like pension, gratuity, leave encashment etc., have been granted, therefore, he is entitled for full pay and allowances from 1.11.1994 to 31.1.2003 and invocation of principle of 'No Work No Pay' is unsustainable and bad in law and the order dated 3.11.2010 deserves to be set aside.

4. On the other hand, Mr.Ravi Bhagat, learned Deputy Government Advocate for the respondents, would submit that all service benefits have been granted, but since the petitioner did not work right from 1.11.1994 to 31.1.2003 he would not be entitled for benefit of full pay and allowances for that period on the principle of 'No Work No Pay' and principle of 'No Work No Pay' has

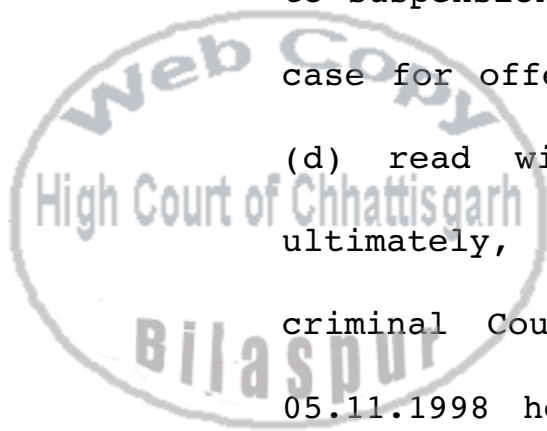




rightly been applied to the facts of the present case and as such, the writ petition deserves to be dismissed.

5. I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

6. The petitioner while working as Government Servant in the capacity of Assistant Food Inspector was subjected to suspension on 10.3.1995 on registration of criminal case for offences punishable under Sections 7 & 13(1) (d) read with Section 13(2) of the PC Act and ultimately, he was convicted by the jurisdictional criminal Court on 29.6.1996. In the meanwhile, on 05.11.1998 he was dismissed from service under Rule 19(i) of the Rules of 1966 without holding departmental enquiry on the basis of his conviction on criminal charges and in an appeal preferred by the petitioner before this Court, this Court vide its judgment dated 18th July, 2006 acquitted the petitioner and thereafter, the State Government by order dated 29.11.2006 declared him to be retired from service w.e.f. 31.1.2003 and also admitted him the privilege of leave encashment, pension and gratuity, but when the petitioner made representation for payment of his full pay and allowances from 1.11.1994 to 31.1.2003





i.e. the date of retirement, ultimately, vide Annexure R-1 dated 3.11.2010 (Annexure R-1) the State Government declared that he is not entitled for full pay and allowances on the principle of 'No Work No Pay' during his period of suspension and dismissal from 1.11.1994 to 31.1.2003, which has sought to be questioned by the petitioner stating that he is entitled for full pay and allowances as per Rule 54 (1) & (2) of the Fundamental Rules, which the State Government has opposed holding that on the principle of 'No Work No Pay', the petitioner is not entitled for full pay and allowances for the period 1.11.1994 to 31.1.2003.

7. The question is, whether the principle of 'No Work No Pay' has correctly been applied by the State Government denying the petitioner full pay and allowances from 1.11.1994 to 31.1.2003 in light of sub-rule (2) of Rule 54 of the Fundamental Rules ?

8. In order to adjudicate the above-stated question, it would be appropriate to notice sub-rule (1), (2), (3), (6) & (7) of Rule 54 of the Fundamental Rules which is applicable to the Government servant for pay and allowances on his re-instatement, which states as under:-

"F.R.54. Pay and allowances on re-instatement.-
(1) When a Government servant who has been



dismissed, removed or compulsorily retired, is reinstated as a result of appeal or review or would have been so re-instated [but for his retirement on superannuation, while under suspension or not], the authority competent to order 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 including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be; and

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

(2) Where the authority competent to order re-instatement is of the opinion that the Government servant who had been dismissed, removed or compulsorily retired has been fully exonerated, the Government servant shall, subject to the provisions of sub-rule (6), be paid full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be:

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation [within 60 days from the date on which the communication in this regard is served on him] and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government servant shall, subject to the provisions of sub-rule (7), be paid for the period of such delay, only such amount not being the whole of such pay and allowances as it may determine.

(3) In a case falling under sub-rule (2), the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, shall be treated as a period spent on duty for all purposes.



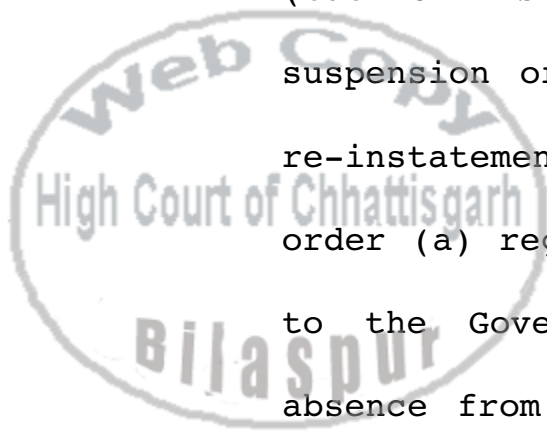


(6) The payment of allowances under sub-rule (2) or sub-rule (4), shall be subject to all other conditions under which such allowances are admissible.

(7) The amount determined under the proviso to sub-rule (2) or under sub-rule (4), shall not be less than the subsistence allowance and other allowances admissible under rule 53."

9. A focused glance of sub-rule (1) of Rule 54 of the Fundamental Rules would show that when a Government servant who has been dismissed, removed or compulsorily retired, is reinstated as a result of appeal or review or would have been so re-instated (but for his retirement on superannuation, while under suspension or not), the authority competent to order 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 including the period of suspension preceding his dismissal, removal or compulsory retirement and (b) whether or not the said period shall be treated as a period spent on duty.

10. Sub-rule (2) of Rule 54 of the Fundamental Rules provides that where the authority competent to order re-instatement is of the opinion that the Government servant who had been dismissed, removed or compulsorily retired has been fully exonerated, the Government servant shall, subject to the provisions of sub-rule (6), be paid full pay and allowances to which

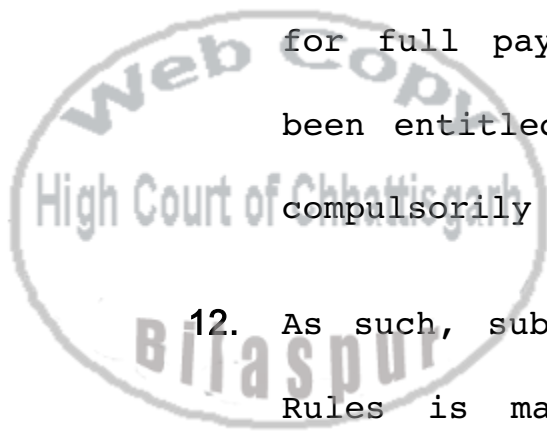




he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be.

11. Sub-rule (6) of Rule 54 states that the payment of allowances under sub-rule (2), shall be subject to all other conditions under which such allowances are admissible, as such, once the Government servant has been fully exonerated, the Government servant shall be subject to the provisions of sub-rule (6) is entitled for full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired.

12. As such, sub-rule (2) of Rule 54 of the Fundamental Rules is mandatory, but this rule is subject to proviso to sub-rule (2) of Rule 54, which provides that if the authority competent to order re-instatement is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may after giving him an opportunity to make his representation within 60 days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded





in writing, that the Government servant shall, subject to the provisions of sub-rule (7), be paid for the period of such delay, only such amount not being the whole of such pay and allowances as it may determine. However, sub-rule (7) of Rule 54 provides that the amount determined under the proviso to sub-rule (2) shall not be less than the subsistence allowance and other allowances admissible under rule 53, as such, sub-rule (2) of Rule 54 of the Fundamental Rules is mandatory in nature and once the Government servant who had been dismissed has been fully exonerated, he shall be entitled for full pay and allowances subject to proviso to sub-rule (2), but in any case, it shall not be less than subsistence allowance and other allowances payable under Rule 53.

13. Question of "full exoneration" comes into play only when the Government servant is dismissed, removed or compulsorily retired. Dismissal, removal or compulsory retirement may had been preceded by suspension. In this case, it is the case of the petitioner that he has been acquitted from criminal case honourably by this Court from all criminal charges, it must be held that he was "fully exonerated", therefore, he would be entitled for full pay and allowances by virtue of sub-rule (2) of Rule 54 of the Fundamental Rules.

14. An accused may be acquitted from criminal charges



levelled against him on any of these grounds:-

(1) When a criminal case is dismissed on technical ground.

(2) When the guilt of accused was not proved beyond reasonable ground.

(3) An accused may also be acquitted by Court holding that prosecution case is false and he has been falsely implicated.

15. In the considered opinion of this Court, only when the third category of the case mentioned hereinabove (para-14.3) it may be said that accused is 'fully exonerated' from criminal charges and in other two cases as the blame is not 'fully' removed from accused. As such, sub-rule (2) of Rule 54 of the Fundamental Rules would apply when the prosecution case is found to be false or the Government servant is found to have been falsely implicated though he is innocent.

16. The word 'fully exonerated' employed in sub-rule (2) of Rule 54 can be considered from another angle by holding that an accused is fully exonerated when he is honourably acquitted from criminal charges which the concerned accused person is charged.

17. In the Code of Criminal Procedure, 1973, or any other enactment the word 'acquittal' has not been defined. As per Stroud's Dictionary (5th Edition) acquittal has



been defined as under:-

ACQUITTAL. (1) '*To acquite him*' : *acquite* is compounded of *ad*, and the old verbe *quietare*, and signifieth in law to discharge, or keepe in quiet, and to see that the tenant be safely kept from any entries, or other molestation for any manner of service issuing out of the land to any lord that is above the mesne. And hereof commeth Acquittall, and *quietus est*, (that is) that he is discharged; and he that is discharged of a felony, etc., by judgment, is said to be acquitted of the felony, *acquietatus de feloniam*; and if he be drawne in question againe, he may plead *outerfoits acquite*" (Co. Litt. 100a).

(2) "The word 'acquittal' is *verbum equivocum*, and may in ordinary language be used to express either the verdict of a jury, or the formal judgment of the Court, that the prisoner go thereof without day" (*per* Tindal C.J., *Burgess v. Boetefeur*, 13 L.J.M.C. 126; see Cowel, *Acquittall*). Cp. CONVICTED.

18. According to Black's Law Dictionary (6th Edition)

'acquittal' in criminal law has been defined as under:-

Acquittal. *Contracts.* A release, absolution, or discharge from an obligation, liability, or engagement.

Criminal law. The legal and formal certification of the innocence of a person who has been charged with crime; a deliverance or setting free a person from a charge of guilt; finding of not guilty. Also, one legally acquitted by a judgment rendered otherwise than in pursuance of a verdict, as where he is discharged by a magistrate because of the insufficiency of the evidence, or the indictment is dismissed by the court of a *nol. Pros.* Entered. Or, it may occur even though the question of guilt or innocence has never been submitted to a jury, as where a defendant, having been held under an indictment or information, is discharged because not brought to trial within the time provided by statute.



Acquittals in fact are those which take place when the jury, upon trial, finds a verdict of not guilty.

Acquittals in law are those which take place by mere operation of law; as where a man has been charged merely as an accessory, and the principal has been acquitted.

19. Thus, acquittal means that a person is not guilty of a crime, with which he has been charged.

20. From the above-stated narration, it is *quite vivid* that the Code of Criminal Procedure 1973, speaks and contemplates only of acquittal and not as acquittal based on benefit of doubt and there is no difference between clean acquittal and honourable acquittal under the Code of Criminal Procedure, 1973. These concepts have been evolved and developed by courts of law by time and coined by judicial pronouncements.

21. Lord Williams J, for the first time in the matter of Rober Stuart Wauchope v. Emperor¹ observed *qua* honourably acquitted as under:-

"The expression "honourably acquitted" is one which is unknown to courts of justice. Apparently it is a form of order used in courts martial and other extra judicial tribunals. We said in our judgment that we accepted the explanation given by the appellant believed it to be true and considered that it ought to have been accepted by the Government authorities and by the magistrate., Further we decided that the appellant had not misappropriated the monies referred to in the charge. It is thus clear that the effect of our judgement was that the appellant was acquitted as fully and completely

1 (1934) 61 ILR Cal. 168



as it was possible for him to be acquitted. Presumably, this is equivalent to what Government authorities term "honourably acquitted".

22. The above-quoted passage was quoted with approval by their Lordships of the Supreme Court in the matter of State of Assam v. Raghava Rajgopalachari².

23. In R. P. Kapur v. Union of India³, it was held by their Lordships as under:-

"Even in case of acquittal, proceedings may follow where the acquittal is other than honourable."

24. In the matter of Management of Reserve Bank of India v. Bhopal Singh Panchal⁴, their Lordships of the Supreme Court have recognized the distinction between honourable acquittal and acquittal based on benefit of doubt as under:-

"13.....When the High Court acquitted the respondent-employee by its order of November 21, 1977 giving the benefit of doubt, the Bank rightly refused to reinstate him in service on the ground that it was not an honourable acquittal as required by Regulation 46(4).

15.It is only if such employee is acquitted of all blame and is treated by the competent authority as being on duty during the period of suspension that such employee is entitled to full pay and allowances for the said period....."

25. In the matter of Deputy Inspector General of Police v. S. Samuthiram⁵ the Supreme Court noticed its earlier

2 1972 S.L.R. 44

3 AIR 1964 SC 787

4 (1994) 1 SCC 541

5 (2013) 1 SCC 598

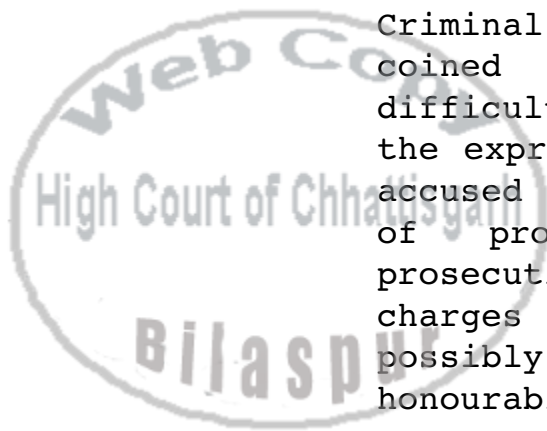


pronouncement in Bhopal Singh Panchal (supra) and pointed out distinction between honourable acquittal and technical acquittal as under:-

"24. The meaning of the expression "honourable acquittal" came up for consideration before this Court in *RBI v. Bhopal Singh Panchal* [(1994) 1 SCC 541 : 1994 SCC (L&S) 594 : (1994) 26 ATC 619] . In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions "honourable acquittal", "acquitted of blame", "fully exonerated" are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression "honourably acquitted". When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.

25. In *R.P. Kapur v. Union of India* [AIR 1964 SC 787] it was held that even in the case of acquittal, departmental proceedings may follow where the acquittal is other than honourable. In *State of Assam v. Raghava Rajgopalachari* [1972 SLR 44 (SC)] this Court quoted with approval the views expressed by Lord Williams, J. in *Robert Stuart Wauchope v. Emperor* [ILR (1934) 61 Cal 168] which is as follows: (*Raghava case* [1972 SLR 44 (SC)] , SLR p. 47, para 8)

"8. ... 'The expression "honourably acquitted" is one which is unknown to courts of justice. Apparently it is a form of order used in courts martial and other extrajudicial tribunals. We said in our judgment that we accepted the explanation given by the appellant, believed it to be true and considered that it ought to have been accepted by the government authorities and by the Magistrate. Further, we decided





that the appellant had not misappropriated the monies referred to in the charge. It is thus clear that the effect of our judgment was that the appellant was acquitted as fully and completely as it was possible for him to be acquitted. Presumably, this is equivalent to what government authorities term "honourably acquitted"." (Robert Stuart case [ILR (1934) 61 Cal 168] , ILR pp. 188-89)

26. Thereafter, the Supreme Court in the matter of Commissioner of Police, New Delhi v. Mehar Singh⁶

considering its earlier judgments held that when accused is acquitted after full consideration of prosecution and prosecution miserably fails to prove the charges levelled against the accused, it can be said that accused was honourably acquitted. Paragraph 25 of report states as under:-

"25. The expression "honourable acquittal" was considered by this Court in *S. Samuthiram [Inspector General of Police v. S. Samuthiram, (2013) 1 SCC 598 : (2013) 1 SCC (Cri) 566 : (2013) 1 SCC (L&S) 229]* . In that case this Court was concerned with a situation where disciplinary proceedings were initiated against a police officer. Criminal case was pending against him under Section 509 IPC and under Section 4 of the Eve-Teasing Act. He was acquitted in that case because of the non-examination of key witnesses. There was a serious flaw in the conduct of the criminal case. Two material witnesses turned hostile. Referring to the judgment of this Court in *RBI v. Bhopal Singh Panchal [(1994) 1 SCC 541 : 1994 SCC (L&S) 594 : (1994) 26 ATC 619]* , where in somewhat similar fact situation, this Court upheld a bank's action of refusing to reinstate an employee in service on the ground that in the criminal case he was acquitted by giving him benefit of doubt and, therefore, it was not an honourable acquittal, this Court held that the High Court was not justified in setting

6 (2013) 7 SCC 685



aside the punishment imposed in the departmental proceedings. This Court observed that the expressions "honourable acquittal", "acquitted of blame" and "fully exonerated" are unknown to the Criminal Procedure Code or the Penal Code. They are coined by judicial pronouncements. It is difficult to define what is meant by the expression "honourably acquitted". This Court expressed that when the accused is acquitted after full consideration of the prosecution case and the prosecution miserably fails to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted."

27. The Bombay High Court in the matter of Hafizuddin Inayatullah Kazi v. J. C. Agarwal and others⁷ defining the meaning of honourable acquittal held as under:-

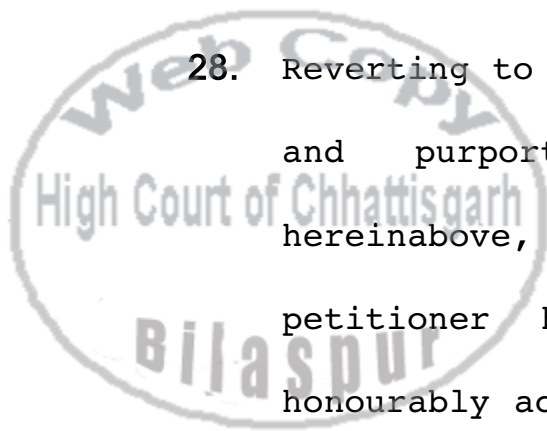
"8. It is very difficult to define what is the meaning of the words "honorable acquittal" In my view it will depend on the fact and circumstances of each case as to whether a person can be said to have been discharged or acquitted honourably or not. The Judgment of Supreme Court in *State of Assam v. Raghvan*, (1972) S.L.R. 344, is relied on by both the sides on the meaning of honourable acquittal as well as to show whether in the facts and circumstances of the present case petitioner can be said to have been honourably acquitted. At page 347 paragraph 8 a reference is made to a note and administrative instructions appearing under the rule similar to one applicable in this case, which seem to show that the words "honorably "meant, acquitted of or that the Government servant has been fully exonerated. According to the Supreme Court this meaning was supported by a judgment of Calcutta High Court in *Robert Stuart Wauchope v. Emperor*, I.L.R. 1934 Cal. 168.

9. In my view, therefore, though it is very difficult to define precisely what is meant by the words "honorably acquitted", it is safe to say that if an accused is acquitted or discharged because of some technicality not having been complied with or on the ground that



though there is some evidence against him, he must be acquitted by giving benefit of doubt, it may not amount to an honourable acquittal. However, if an accused is acquitted after full consideration of evidence because the prosecution had miserably failed to prove the charges it would amount to honourable acquittal. It is difficult to understand what more is required for honourable acquittal of the accused than acquittal of the accused on disbelieving the prosecution evidence in toto. In the present case, though there are some observations made at the end of the judgment by the High Court acquitting the petitioner which may appear to be ambiguous, if the judgment is read as a whole, there can be little doubt that the accused was acquitted not by giving benefit of doubt, in spite of there being some evidence against him but because the prosecution failed to prove the case against him."

28. Reverting to the facts of the case in light of meaning and purport of honourable acquittal noticed hereinabove, in order to consider whether the petitioner has been fully exonerated / he was honourably acquitted, a perusal of the judgment passed by this Court acquitting the petitioner would be necessary, which has been filed as Annexure P-2 along with this writ petition. In para-8 of the judgment, this Court held that the petitioner was an honest and upright officer and further pointing out the circumstances held that the petitioner therein was innocent. In para-15 this Court culled out the established fact in criminal case against the petitioner and it has clearly been recorded a finding that the petitioner was innocent and he had been trapped by thrusting the currency notes in hand of the





petitioner by deceitful means and he did not accept the currency notes which were thrust in his hand along with some papers by the complainant therein by deceitful means and thereby the Court proceeded to acquit the petitioner herein. Para-15 of the judgment passed in Criminal Appeal No. 1094/1996 states as under:-

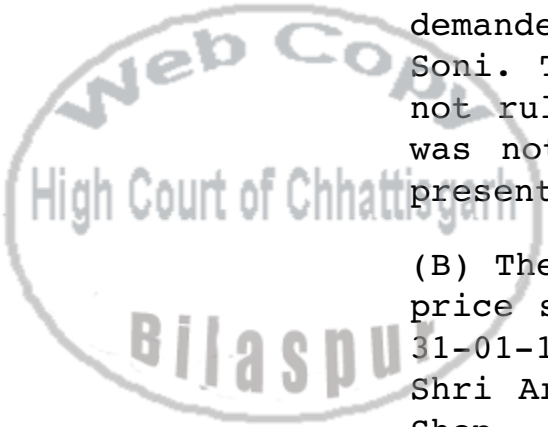
"15. Having thus considered the evidence led by the prosecution in its entirety with utmost circumspection, the following facts emerge:-

(A) There is no evidence to show that in between 25th or 26th January, 1992, the appellant had demanded a bride of Rs.500/- from Bajrang lal Soni. The testimony of P.K.Jagat DW-1 also does not rule out the possibility that the appellant was not in Korba on 26th January, 1992 but was present at Bilaspur.

(B) The appellant had already suspended the fair price shop of Bajrang lal Soni vide order dated 31-01-1992 and had placed it in charge of one Shri Arun Goswami, Incharge of Govt. Fair Price Shop. It is thus unnatural that the appellant would have accepted a bride of Rs.500/- from Bajrang lal Soni on 01-02-1992 for saving his shop from being suspended.

(C) On his first visit to the house of the appellant on 01-02-1992 Bajrang lal Soni was not successful since the appellant had asked him to come after an hour which goes to show that the appellant did not accept the bribe from Bajrang lal Soni, during his first visit.

(D) Bajrang lal Soni separated from the trap party at this juncture, went home and returned after an hour which does not rule out the possibility that during this time he had planned to deceitfully tempt the appellant to accept the bride money under the garb of some other document. He suppressed the truth of his unsuccessful first attempt by deposing falsely that wife of the appellant had asked him to come after some time.





(E) It emerges from the evidence that the alleged handing over of the bribe amount was after sunset while it was dark. It does not rule out the possibility that the appellant could not have seen what Bajrang lal Soni was handing over to him on the lawn of his house.

(F) The fact that till the arrival of trap party, currency notes were lying on the lawn and had not been pocketed by the appellant, proves the innocence of the appellant and renders his defence plausible.

(G) Criminal antecedents of Bajrang lal Soni and the fact that the appellant had already suspended his fair price shop due to serious irregularities committed by him coupled with the testimony of M.K.Qureshi D.W.-2 in para-4 does not rule out the possibility that Bajrang lal Soni had got the appellant trapped by deceitful means.

(H) The evidence led by the prosecution show that Inspector M.K.Tiwari PW-10 had, after the first visit of Bajrang lal Soni to the house of the appellant was not successful, ensured that he remained with the trap party. He permitted Bajrang lal Soni to leave the trap party. When Bajrang lal Soni returned after an hour, it was dark. At that time, it was not ensured by Inspector M.K.Tiwari PW-10 that five currency notes of Rs.100/- were not rapped in any other paper but had been exclusively kept in the pocket of Bajrang lal Soni. This also does not rule out the possibility that during dark hours Bajrang lal Soni had thrust the currency notes in the hands of the appellant by deceitful means.

(I) The testimony of R.C.Shrivastava PW-6 clearly shows that trap party had entered the premises only after Bajrang lal Soni come out. The fact that despite this currency notes had not been pocketed by the appellant and were seen lying on the lawn proves the innocence of the appellant.

(J) In the aforesaid facts and circumstances, the presumption under Section-20(2) of the Act against the appellant stands wholly rebutted and it becomes plausible that the appellant did not accept the currency notes which were thrust in his hand along with some paper by Bajrang lal Soni by deceitful means and he had immediately



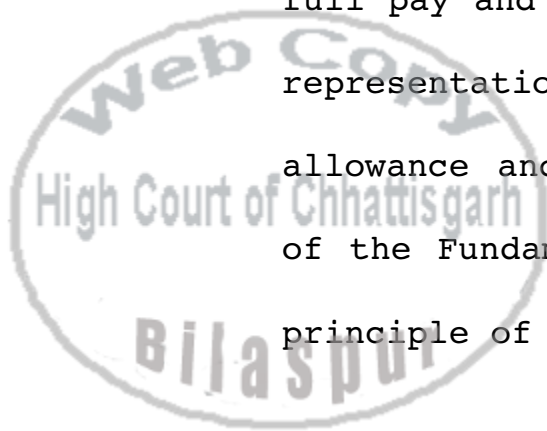


pushed the notes on the ground with his hands."

29. The aforesaid facts would clearly show that the petitioner was an honest officer and he has been trapped by deceitful means. As such, it can be safely concluded that the petitioner was honourably acquitted from criminal charges and that is reason why the State Government on the basis of order of acquittal, superannuated the petitioner by order dated 29.11.2006 w.e.f. 31.1.2003 and granted him all service benefits of leave encashment, pension, gratuity etc. except full pay and allowances, but when the petitioner made representation for making payment of suspension allowance and full back wages in terms of Rule 54(2) of the Fundamental Rules, it has been denied applying principle of 'No Work NO Pay'.

30. The Fundamental Rules specially sub-rule (2) of Rule 54 clearly entitles the Government servant for full pay and allowances in case of full exoneration, then question would be whether the State Government is justified in denying full pay and allowances to the petitioner invoking the principle of 'No Work No Pay' for the period 1.11.1994 to 31.1.2003 ?

31. The principle of 'No Work No Pay' is based upon a fundamental concept in a Law of Contract of Employment namely wages and salary are paid by the employer in consideration of work / service rendered by the





employee. 'No Work No Pay' principle has been laid down keeping in view public interest that a Government servant who does not discharge his duty is not allowed pay and arrears at the cost of public exchequer. (See Union Territory, Chandigarh v. Brijmohan Kaur⁸).

32. The Supreme Court in the matter of State of Bihar and others v. Kripa Nand Singh and another⁹ has observed that 'No Work No Pay' is the rule and 'No Work Yet Pay' is the exception. It was pointed out that exception would apply only when employee is compelled (compulsory waiting period) not to attend his duty without any violation or without any fault on his part.

33. The Supreme Court in the matter of State of Uttar Pradesh and others v. Madhav Prasad Sahrma¹⁰ has held that principle of 'No Work No Pay' cannot be applied as a rule of thumb. Full back wages in certain circumstances may be justified particularly when promotion is wrongly denied.

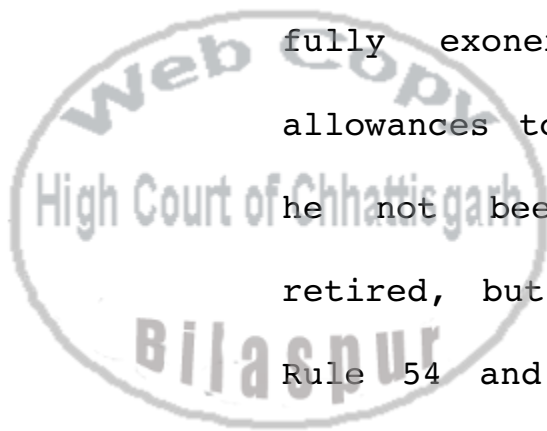
34. Similarly, in the matter of Commissioner, Karnataka Housing Board v. C. Muddaiah¹¹ the Supreme Court has reiterated that principle of 'No Work No Pay' is not absolute in a given case, if it is that the person was

8 (2007) 11 SCC 488
9 (2014) 14 SCC 375
10 (2011) 2 SCC 212
11 (2007) 7 SCC 689



willing to work but he was illegally and unlawfully not allowed to do so, the Court may in the circumstances, direct the authority to grant him all benefits considering "as if he had worked".

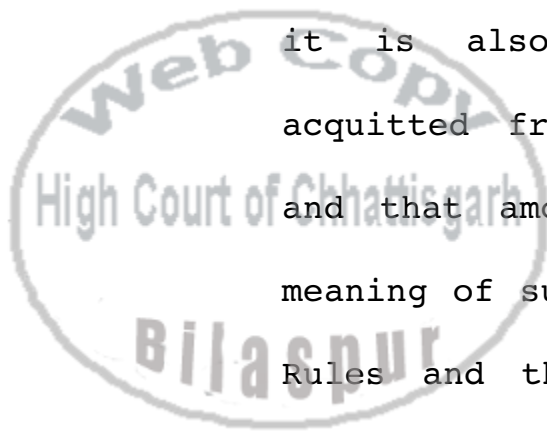
35. In the considered opinion of this Court, the principle of 'No Work No Pay' would not be applicable where the rule expressly direct otherwise like sub-rule (2) of Rule 54 of the Fundamental Rules, which clearly provides that the Government servant who had been dismissed, removed or compulsorily retired has been fully exonerated, shall be paid full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired, but subject to proviso to sub-rule (2) of Rule 54 and if the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, but in that case also, the amount determined under proviso to sub-rule (2) shall not be less than the subsistence allowance and other allowances admissible under Rule 53, as such, when the rule expressly provides for grant of full pay and allowances on full exoneration of the Government servant from punishment/criminal charges, the principle of 'No Work No Pay' would have no application and said principle of 'No Work No Pay'





would not override sub-rule (2) of Rule 54 of the the Fundamental Rules which provides full pay and allowances on full exoneration.

36. Coming to the facts of the instant case in light of aforesaid legal analysis, though the original petitioner has been honourably acquitted from criminal charges by this Court and it has been clearly stated by this Court while acquitting the petitioner that he is an honest officer, he is innocent and he has been trapped in criminal case by deceitful means, as such, it is also established that he was honourably acquitted from criminal cases levelled against him and that amounts to "fully exoneration" within the meaning of sub-rule (2) of Rule 54 of the Fundamental Rules and therefore, by virtue of said Rules, the petitioner is entitled for full pay and allowances from 1.11.1994 to 31.1.2003 as the authority competent to order re-instatement did not say that the petitioner was responsible for delay in termination of the proceedings, as such, proviso to sub-rule (2) of Rule 54 of the Fundamental Rules would not be applicable, on the other hand, the authority competent to direct re-instatement while considering under sub-rule (1) of Rule 54 held that on account of principle of 'No Work No Pay he is not entitled for full pay and allowances from 1.4.1994 to 31.1.2003, which the





authority could not have directed in view of mandatory provisions contained in sub-rule (2) of Rule 54 of the Fundamental Rules. Two options were available to the authority competent to direct re-instatement on the petitioner's full exoneration from criminal charges either firstly to pay full pay and allowances in terms of sub-rule (2) of Rule 54 or secondly in case according to him proviso to sub-rule (2) of Rule 54 is applicable, then he would be entitled for amount not less than the subsistence allowance and other allowances admissible under Rule 53 and no third option of invoking principle of 'No Work No Pay' was available to the authority competent to direct reinstatement to the petitioner in teeth of sub-rule (2) of Rule 54 of the Fundamental Rules, as such, the State Government is absolutely unjustified in holding that the petitioner is not entitled for pay and allowances from 1.11.1994 to 31.1.2003 on the principle of 'NO Work No Pay', which is absolutely without jurisdiction and without authority of law and it is held that the petitioner is entitled for full pay and allowances as per sub-rule (2) of Rule 54 as it is not the case of the State Government that he was responsible for any delay in which proviso to sub-rule (2) of Rule 54 can be applied.

37. Consequently, the impugned order dated 3.11.2010 is



hereby set-aside. The State Government is directed to grant full pay and allowances to legal representative of the petitioner i.e. from 1.11.1994 to 31.1.2003 along with 9% interest from the date of entitlement till the date of payment within 45 days from the date of receipt of a copy of this order. Legal representative of the writ petitioner will also be entitled for cost quantified ₹10,000/-.

38. The writ petition is allowed to the extent sketched herein-above.



Sd/-

(Sanjay K. Agrawal)
Judge

**HIGH COURT OF CHHATTISGARH AT BILASPUR****Writ Petition (S) No.994 of 2010****Petitioner**

Shankar Lal Soni (died)
through LR's

Versus**Respondents**

The State of Chhattisgarh
and others

(Head-note)

(English)

The principle of 'No Work No Pay' would have no application as sub-rule (2) of Rule 54 of the Fundamental Rules is mandatory and the Government servant is entitled for full pay and allowances on "full exoneration" from criminal charges.

(हिन्दी)

काम नहीं तो वेतन नहीं का सिद्धांत लागू नहीं होगा, क्योंकि मूलभूत नियम 54 का उप-नियम (2) आज्ञापक है तथा शासकीय सेवक आपराधिक आरोपों से "पूर्ण रुप से मुक्त" हो जाने पर संपूर्ण वेतन एवं भत्ते प्राप्त करने का हकदार है।