

“1. Heard Shri Akash Khare, learned counsel for the petitioner, learned Standing Counsel for the respondent No.1-State and Shri Abhishek Srivastava, learned counsel for the respondents No.2 and 3.

2. The petitioner is aggrieved by the order dated 23.04.2020 declining to pay arrears of salary to the petitioner for the period commencing from 23.01.2015 to 18.12.2018. The impugned order records that the petitioner was imprisoned from 23.01.2015 to 18.12.2018 after a criminal case was registered against him under Section 13(1)(b) read with Section 13(1) of the Prevention of Corruption Act, 1988. The F.I.R. was filed by one S.S. Chaudhary, Superintendent of Police, Anti Corruption Department against the petitioner on the complaint received from a private electricity consumer. The salary has been refused on the application of the principle of “no work no pay”.

3. Briefly put the prosecution case in the F.I.R. was that the petitioner had demanded bribes for electricity connection from a consumer. The petitioner was thereafter confined to jail from 23.01.2015 to 18.12.2018 during the course of the trial. The petitioner did not discharge his duties for the aforesaid period of three years. Admittedly, the criminal case was not instituted at the behest of the respondent-corporation. The respondent-corporation who is the employer of the petitioner did not create any hindrance nor prevented the petitioner from working on his post. No departmental proceedings were taken out against the petitioner by the respondent-corporation/his employer in the said case.

4. The question that arises for consideration is that whether the petitioner who was absent from duties for the

aforesaid period of almost three years and had rendered no work during the said period is entitled to backwages and arrears and whether the principle of “no work no pay” is liable to be relaxed in the instant case.

5. The principle of “no work no pay” is a salutary principle of general application in service jurisprudence. The principle is excepted only in rare instances like in the event an employer prevents an employee from discharging his duties or creates impediments in regard thereof.

6. The discussion has the benefit of authorities in point. The Supreme Court in **Reserve Bank of India v. Bhopal Singh Panchal** was faced with the issue of grant of backwages to absentee who was not kept from his duties by his employer, and held as under:

"We have already pointed out the effect of the relevant provisions of Regulations 39, 46 and 47. The said regulations read together, leave no manner of doubt that in case of an employee who is arrested for an offence, as in the present case, his period of absence from duty is to be treated as not being beyond circumstances under his control. In such circumstances, when he is treated as being under suspension during the said period, he is entitled to subsistence allowance. However, the subsistence allowance paid to him is liable to be adjusted against his pay and allowances if at all he is held to be entitled to them by the competent authority. The competent authority while deciding whether an employee who is suspended in such circumstances is entitled to his pay and allowances or not and to what extent, if any, and whether the period is to be treated as on duty or on leave, has to take into

consideration the circumstances of each case. 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. In other words, the Regulations vest the power exclusively in the Bank to treat the period of such suspension on duty or on leave or otherwise. The power thus vested cannot be validly challenged. During this period, the employee renders no work. He is absent for reasons of his own involvement in the misconduct and the Bank is in no way responsible for keeping him away from his duties. The Bank, therefore, cannot be saddled with the liability to pay him his salary and allowances for the period. That will be against the principle of 'no work, no pay' and positively inequitable to those who have to work and earn their pay. As it is, even during such period, the employee earns subsistence allowance by virtue of the Regulations. In the circumstances, the Bank's power in that behalf is unassailable." (emphasis supplied)

7. The claim of backwages made by an employee who was involved in a crime in which he was later acquitted was denied by the Supreme Court in **Ranchhodji Chaturji Thakore v. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar (Gujarat) and another**² by holding:

"3. The reinstatement of the petitioner into the service has already been ordered by the High Court. The only question is: whether he is entitled to back wages? It was his conduct of involving himself in the crime that was taken into account for his not being in service of the respondent. Consequent upon his acquittal,

he is entitled to reinstatement for the reason that his service was terminated on the basis of the conviction by operation of proviso to the statutory rules applicable to the situation. The question of back wages would be considered only if the respondents have taken action by way of disciplinary proceeding and the action was found to be unsustainable in law and he was unlawfully prevented from discharging the duties. In that context, his conduct becomes relevant. Each case requires to be considered in its own backdrops. In this case, since the petitioner had involved himself in a crime, though he was later acquitted, he had disabled himself from rendering the service on account of conviction and incarceration in jail. Under these circumstances, the petitioner is not entitled to payment of back wages. The learned single judge and the Division Bench have not committed any error of law warranting interference."

8. In **Union of India and others v. Jaipal Singh**³ the Supreme Court relying on the law laid down in **Ranchhodji Chaturji Thakore (supra)** declined to grant backwages to an employee who was reinstated in service after acquittal on the footing that the criminal case was not at the behest of the department:

"4. On a careful consideration of the matter and the materials on record, including the judgment and orders brought to our notice, we are of the view that it is well accepted that an order rejecting a special leave petition at the threshold without detailed reasons therefore does not constitute any declaration of law by this Court or constitute a binding precedent. Per contra, the decision relied upon for the appellant is one on merits and for reasons specifically recorded therefore and operates as a binding precedent as well. On going

through the same, we are in respectful agreement with the view taken in [1996] 11 SCC 603 (supra). If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest or by department itself, perhaps different considerations may arise. On the other hand, if as a citizen the employee or a public servant got involved in a criminal case and it after initial conviction by the trial court, he gets acquittal on appeal subsequently, the department cannot in any manner be found fault with for having kept him out of service, since the law obliges, a person convicted of an offence to be so kept out and not to be retained in service. Consequently, the reasons given in the decision relied upon, for the appellants are not only convincing but are in consonance with reasonableness as well. Though exception taken to that part of the order directing re-instatement cannot be sustained and the respondent has to be re-instated, in service, for the reason that the earlier discharge was on account of those criminal proceedings and conviction only, the appellants are well within their rights to deny back wages to the respondent for the period he was not in service. The appellants cannot be made liable to pay for the period for which they could not avail of the services of the respondent. The High Court, in our view, committed a grave error, in allowing back wages also, without advertng to all such relevant aspects and considerations. Consequently, the order of the High Court in so far as it directed payment of back wages are liable to be and is hereby set aside.”

9. The judgement relied upon by the learned counsel for the petitioner in **Raj Narain v. Union of India and others**⁴ was rendered in the factual context where the departmental enquiry was initiated against the concerned employee who was also

imprisoned on account of pendency of a criminal case. The petitioner in that case was suspended in contemplation of disciplinary proceedings. Later departmental enquiry proceedings were dropped. In that factual context the backwages for the period of suspension were claimed and were granted. **Raj Narain (supra)** is distinguishable on facts and not applicable to this case.

10. Similarly, the judgement rendered by the learned Single Judge in **Anil Kumar Singh v. State of U.P. and 4 others**⁵ squarely based on the law laid down by the Supreme Court in **Raj Narain (supra)** and hence is of no assistance to the petitioner.

11. In the wake of the facts found in the preceding part of the judgement and position of law discussed above relaxation of the principle of “no work no pay” cannot be countenanced in this case. In fact granting backwages in the teeth of the principle of “no work no pay” will lead to unjust enrichment of the petitioner and unfair loss to the State exchequer. The petitioner does not have any lawful entitlement to any backwages during the period of his imprisonment.

12. Accordingly, the prayer for grant of backwages is rejected.

13. There is no infirmity in the impugned order dated 23.04.2020 to that extent.

14. However, the petitioner shall be entitled to continuity in service for the aforesaid period for purposes of pension.

15. With the aforesaid directions, the writ petition is finally disposed of.”