

**(2009) 12 AHC CK 0329****Allahabad High Court****Case No:** None

Chandra Singh Dhama

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

**Date of Decision:** Dec. 5, 2009**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 389

**Citation:** (2010) 2 AWC 1121**Hon'ble Judges:** Amreshwar Pratap Sahi, J**Bench:** Single Bench**Final Decision:** Disposed Of**Judgement**

@JUDGMENTTAG-ORDER

Amreshwar Pratap Sahi, J.

The prayer made is to consider the representation dated 5.10.2009 which has been filed before the District Inspector of Schools praying for release of certain benefits of the petitioner. The petitioner claims that he retired as a Class IV employee on 31.7.2007 and, therefore, he is entitled to his retiral benefits.

2. The petitioner, while in service, was convicted in a criminal case. The said conviction has been questioned by the petitioner in a criminal appeal before this Court which has been admitted on 3.8.2007 and the execution of sentence as against the petitioner has been suspended.

3. On the strength of the aforesaid position, learned Counsel for the petitioner contends that the petitioner was merely impleaded in a criminal case and once the sentence has been suspended by this Court, the natural legal consequence is that the petitioner should be presumed to be an innocent person and all his benefits should be released.

4. The position in law is that there is no power conferred u/s 389 of the Criminal Procedure Code to stay the conviction itself and it is only the execution of the sentence which can be suspended. The order dated 3.8.2007, a copy whereof is Annexure-2 to the writ petition, is in consonance with the provisions of Section 389, Cr.P.C.

5. The provision has been considered and explained in this regard in several cases and two latest decisions are that of Navjot Singh Sidhu Vs. State of Punjab and Another, and in the case of Sanjay Dutt Vs. State of Maharashtra Tr. CBI, Bombay, where the inherent power of the High Court under the Cr.P.C. has been acknowledged and it has been held that in rare cases such an order for compelling reasons can be passed whereby the conviction itself can be suspended. The High Court in the instant case has not exercised its inherent powers as above and has only suspended the execution of the sentence.

6. Keeping in view the said pronouncement and in the peculiar facts of this case, it will be open to the petitioner to approach the District Inspector of Schools, who shall examine the claim of the petitioner in the light of the aforesaid position of law and pass an appropriate order within 8 weeks from the date of production of a certified copy of this order before him.

7. With the aforesaid observations, the writ petition is disposed of.