

**HIGH COURT OF TRIPURA
AGARTALA**

WA No.67 of 2023

The State of Tripura & another

.....Appellant(s);

Versus

Sri Haripada Saha

.....Respondent(s).

For Appellant(s) : Mr. M. Debbarma, Addl. G.A.

For Respondent(s) : Mr. C.S. Sinha, Advocate.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE S.D. PURKAYASTHA**

Order

20/05/2024

Heard Mr. M. Debbarma, learned Additional Government Advocate for the appellants-State and Mr. C.S. Sinha, learned counsel for the writ petitioner/respondent herein.

2. The writ petitioner was discharged from service upon his conviction in a criminal proceeding under Section 354 of the IPC and Section 8 of the POCSO Act by the Court of Special Judge (POCSO), West Tripura, Agartala in Special (POCSO) 32 of 2017 vide judgment dated 12.04.2019. While in custody, he was discharged from service. He preferred the writ petition after being released seeking quashing of the order of discharge. The learned Writ Court vide impugned order dated 02.05.2023 has set aside the impugned order of discharge while granting liberty to the respondents to take steps in accordance with law as expeditiously as possible holding as under:

“Heard both sides and perused the evidence on record. The impugned order dated 24.09.2021 is violative of the principle of natural justice and also contrary to the proviso of Rule 19 of CCS(CCA) Rule, 1965 wherein it is mandated that notice needs to be given by the respondents before imposing a penalty for conviction against the petitioner. Since the respondents has passed the impugned order which is under challenge without issuing any notice, the same is held as violative of the principle of natural justice. Accordingly, the same is set aside and liberty is given to the respondents to take steps in accordance with law as expeditiously as possible.

With the above observation and direction, this present writ petition stands disposed of. Stay if any stands vacated and pending application(s), if any also stands closed.”

3. Mr. M. Debbarma, learned Additional Government Advocate for the appellants-State, submits that during the proceedings, petitioner was in custody. Therefore, the order of discharge was passed in his absence. He further submits that conviction for such a serious offence entails dismissal from service. However, he does not dispute that petitioner did not get an opportunity to represent as he was in custody. He also submits that in case this Court is inclined to uphold the impugned order, it may also be indicated that during the period till a fresh decision is taken, the order of the learned Writ Court setting aside the impugned order of discharge may not entail automatic reinstatement.

4. Mr. C.S. Sinha, learned counsel for the writ petitioner/respondent herein, submits that the impugned order of discharge was passed without any opportunity of hearing or notice to the petitioner since he was suffering conviction. However, if a fresh proceeding is conducted in terms of the relevant CCS (CCA) Rules, 1965, he would be able to defend himself. He however submits that if the order of discharge is set aside, logically petitioner should be reinstated in service pending outcome of the departmental inquiry.

5. We have heard learned counsel for the parties and gone through the relevant materials placed from record and also perused the impugned order.

As the canvas of facts referred to above reveal that the order of discharge was passed during the period when the petitioner was in custody, as such the requirement of following principles of natural justice and the procedure under CCS (CCA) Rules, 1965 apparently were not met. Petitioner

could not have defended himself as he was in custody during that period. Law does not compel anyone to do an impossible act. (*Lex non cogit ad impossibilia*) (see paragraph No. 6 of ***Raj Kumar Dey and Others versus Tarapada Dey and Others*** reported in (1987) 4 SCC 398).

6. However, we are of the considered view that following the ratio laid down by the Apex Court in the case of ***State of Uttar Pradesh and Others versus Rajit Singh*** reported in (2022) 15 SCC 254 at paragraph No. 12, the setting aside of the order of discharge could not lead to automatic reinstatement. But the appellant-employer shall ensure that proceeding for taking a fresh decision in the matter is undertaken within a reasonable time preferably 12(twelve) weeks from the date of receipt of copy of this order.

7. With the aforesaid modification in the impugned order, the instant appeal is disposed of. Pending application(s), if any, shall also stand disposed of.

(S.D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ

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