

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1328 of 2014
In
Civil Writ Jurisdiction Case No. 4127 of 2014

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1. Chandradhan Sharma Son of Late Sheo Ratan Sharma,
Resident of Village- Ghari, P.S.- Nasriganj, District-
Rohtas (Sasaram)

.... Appellant

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna
2. The Principal Secretary, Department of Home, Bihar, Patna
3. The Director General of Police, Government of Bihar, Patna
4. The Inspector General of Police, Crime Investigation Department, Government of Bihar, Patna
5. The Deputy Inspector General of Police, Government of Bihar, Patna
6. The Superintendent of Police, Crime Investigation Department, Government of Bihar, Patna

.... Respondents

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Appearance :

For the Appellant : Mr. Manish Kumar, Advocate
For the Respondents : Mr. H. S. Sundaram, AC to SC 10

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI
AND
HONOURABLE MR. JUSTICE ADITYA KUMAR
TRIVEDI

CAV ORDER

(Per: HONOURABLE MR. JUSTICE I. A. ANSARI)

3 09-01-2015 When an employee, on being convicted under

Section 376 read with Section 34 of the Indian Penal Code

and sentenced to suffer rigorous imprisonment for a period

of ten years with a fine of Rs. 2000/- and, in default of

payment of fine, suffer simple imprisonment for a period of



one month, is *dismissed* from service, is it permissible, in exercise of extra-ordinary jurisdiction under Article 226 of the Constitution of India, to direct his *reinstatement* in service with payment of *back wages* merely because the employee's conviction has been *stayed* or *suspended*, in appeal, if the *stay* or *suspension* of conviction is subsequent to the order of *dismissal*, the ground of *dismissal* being that the employee's misconduct involved moral turpitude? This is the moot question, which the present appeal calls for an answer.

2. The material facts and various stages, which have led to the present appeal, may, in brief, be set out as under:

(i) When the appellant herein had been functioning, at Bhojpur Police Station, as a Havildar, an information, in writing, alleging commission of, *inter alia*, offence of *rape*, was lodged against the appellant and others by one Dr. Ram Ekbal Sharma, the case against the appellant and others being, in brief, thus:

(ii) In the night of 10th/11th January, 2000, at about 1:00 AM, while the informant, along with his wife and children, was watching television, he (the informant) heard someone moving at his courtyard. Out of curiosity, the informant opened the door of his house and saw, at the courtyard of his house, the appellant and some others,



who were armed with *lathis* and gun. The appellant and his associates caught hold of the informant and asked him to remain silent or else, he would be killed. The appellant and his associates looted house-hold articles, gold and silver ornaments, important documents relating to cases and also Krishi Vikash Patra from the house of the informant. The appellant and his associates, then, locked the informant and his children in a room and dragged his wife to a separate room located on the western side of his house. The appellant and his associates, then, subjected the informant's wife to gang rape. The motive, as disclosed, in the First Information Report, by the informant, was that the appellant and his associates had been pressurizing the informant to compromise a case, which had been filed by the wife of the informant, the case so lodged by the informant's wife being Bikramganj Police Station Case No. 151 of 1999.

(iii) Based on the information so lodged against the appellant and his associates, Bikramganj Police Station Case No. 10 of 2000, under Sections 376 and 395 read with Section 34 of the Indian Penal Code, was registered against the appellant and his associates and they were put on trial. The appellant, though a Government employee, withheld from his employer the information that he was an accused in a case of gang rape and had been facing trial.



(iv) By order, dated **20.12.2006**, passed in Sessions Trial No.365 of 2001/84 of 2001, learned Additional Sessions Judge-I, Rohtas at Sasaram, upon finding the appellant and his associates, guilty of gang rape, convicted them accordingly and by order, dated 22.02.2006, passed sentences against them.

(v) The appellant took, on **19.12.2006**, compensatory leave of one day, i.e., for **20.12.2006**, in order to appear in the Court of Sessions Judge, Sasaram, when the judgment was to be pronounced; but did not disclose to his employer that he was taking the leave in order to attain the pronouncement of the judgment in the case aforementioned.

(vi) The appellant did not, naturally, return to duty, as he was taken into custody, on **20.12.2006**, on being convicted in the case aforementioned and remained in judicial custody till **16.07.2010** inasmuch as he came to be released, on bail, on **16.07.2010** (i.e., almost after three and half years of the date of his conviction).

(vii) Before, however, the appellant was released on bail, Superintendent of Police (C), Crime Investigation Department, Bihar, Patna, by Office Order No. 171 of 2008, dated **08.02.2008**, *dismissed* the appellant from service on the ground that the appellant herein stood convicted of an offence involving moral

turpitude. It was also directed by the Superintendent of Police (C), Crime Investigation Department, Bihar, Patna, that no salary and/or allowances shall be payable to the appellant during the period, when the appellant remained in custody, i.e., from 20.01.2007 to 31.01.2008.

(viii) The appellant herein filed appeal before the Deputy Inspector General of Police (C), Crime Investigation Department, Bihar, Patna, who, by order, dated 04.09.2008, *rejected* the appeal of the appellant affirming the order of the Superintendent of Police (C), Crime Investigation Department, Bihar, Patna, *the dismissal of the appeal being before the appellant was released on bail and long before his conviction was stayed.*

(ix) The appellant, then, filed *appeal memorial* before the Inspector General of Police (C), Crime Investigation Department, Bihar, challenging the order of the Superintendent of Police (C), Crime Investigation Department, Bihar, Patna, and the Deputy Inspector General of Police (C), Crime Investigation Department, Bihar, Patna. The Inspector General of Police (C), Crime Investigation Department, Bihar, by order, dated **30.08.2011**, rejected the *appeal memorial*.

(x) In the meanwhile, however, the appellant had been released, on bail, on **16.07.2010**; but his conviction had not yet been suspended. After, however,

the appellant exhausted all his departmental avenues of *appeals* and *memorial*, his conviction came to be stayed by order, dated **28.09.2011**.

(xi) The appellant filed a writ petition, which gave rise to CWJC No. 18003 of 2010, challenging his *dismissal* from service on the ground that his conviction stood stayed.

(xii) By order, dated **18.11.2013**, a learned single Judge of this Court remanded the matter to Inspector General of Police (C), Crime Investigation Department, Bihar, for a fresh consideration on the *quantum of punishment* awarded to the appellant. The learned single Judge, on noticing the fact that the appellant was on the verge of retirement, directed the Inspector General of Police (C), Crime Investigation Department, Bihar, to complete the exercise, so directed, within three months of the receipt of a copy of the order.

(xiii) The relevant observations, made in the order, dated 18.11.2013, passed in CWJC No. 18003 of 2010, read as under:

"In terms of clause (a) to Proviso (2) to Article 311 of the Constitution the petitioner would have no right to be heard on proposed penalty. The respondents would be within their right to inflict punishment if an order of conviction



is there. The respondents would have equal responsibility to closely scrutinize the nature and extent of allegations and guilt so that the punishment be matching with gravity of offence. In such circumstances, the respondents would have equal responsibility to scrutinize whether the conduct of the petitioner warranted dismissal from service. In the facts and circumstances of the case, the matter is remanded to the I.G., CID, Bihar (respondent no.3) for fresh consideration on quantum of punishment, preferably within three months from the date of receipt of this order as the petitioner is on verge of retirement."

(xiv) Accepting the order, dated **18.11.2013**, passed in CWJC No. 18003 of 2010, the appellant filed a representation, along with a copy of the order, dated **18.11.2013**, aforementioned passed in CWJC No. 18003 of 2010, to the Inspector General of Police (C), Crime Investigation Department, Bihar, requesting therein to quash the order of *dismissal*, dated **08.02.2008**, and also to *reinstate* him in service.

(xv) The Inspector General of Police (C), Crime Investigation Department, Bihar, on considering the representation of the appellant, passed order, dated **10.02.2014**, declining to *reinstate* the appellant or to award him a comparatively less punishment, though the

appellant's conviction stood stayed in the criminal appeal, as indicated above, on **28.09.2011**.

(xvi) Aggrieved by the order, dated 10.02.2014, passed by the Inspector General of Police (C), Crime Investigation Department, Bihar, the appellant, again, made an application, under Article 226 of the Constitution of India, which gave rise to CWJC No. 4127 of 2014. By order, dated 21.08.2014, a learned single Judge of this Court has refused to interfere with the orders passed by the respondents herein and dismissed the writ petition. The observations, appearing in the order, dated 21.08.2014, passed in CWJC No. 4127 of 2014, read as follows:

"It would not be out of place to mention here that against the order of termination, as contained in Annexure-1, the petitioner had moved earlier before this Court in C.W.J.C. No. 18003 of 2010, which was finally disposed of by order dated 18.11.2013 (Annexure-3) passed by a Bench of this Court While disposing of the aforesaid writ petition filed on behalf of the petitioner, this Court did not interfere with the impugned order of termination passed against the petitioner. However, the order passed on memorial filed on behalf of the petitioner was directed for fresh consideration on quantum of punishment within a period of three

months.

Evidently, in the light of the aforesaid remand order, fresh order has been passed on 10.02.2014, which has been brought on record as Annexure-1/D. In view of the undisputed facts that the petitioner has been convicted for charge under Section 376 of the Indian Penal Code, which certainly involves the moral turpitude and in view of the provisions contained in Article 311(2) second proviso (a) of the Constitution of India, this Court does not find any good ground to interfere with the orders impugned.

In the result, the writ petition has to fail and is, accordingly, dismissed."

3. Aggrieved by the order, dated 21.08.2014, aforementioned, whereby his writ petition has been dismissed, the writ petitioner has preferred this appeal.

4. We have heard Mr. Manish Kumar, learned Counsel for the appellant, and Mr. H. S. Sundaram, learned Assistant Counsel to Standing Counsel No. 10, for the respondents.

5. While considering the present appeal, the material aspect, which cannot be ignored, is that the appellant withheld the information from his employer that he had been arrested in a case of *rape* nor did he inform his employer that he was being tried on a charge of, *inter alia, rape*. The appellant also withheld the information,



while taking leave for **20.12.2006**, that he was, in fact, required to appear in the trial Court, because the judgment was to be pronounced. The appellant having been convicted, on **20.12.2006**, did not return to duty and remained in judicial custody till **16.07.2010**, i.e. almost three-and-a-half years.

6. Before, however, the appellant was released on bail, on **16.07.2010**, he already stood dismissed, on **08.02.2008**, on the ground of his having been convicted of an offence involving moral turpitude.

7. The fact that the appellant stood convicted of an offence involving moral turpitude on the date of dismissal, i.e. **08.02.2008**, is not in dispute nor is it in dispute that the statutory appeal against his dismissal from service stood rejected on **04.09.2008**. Even on the date of dismissal of his appeal on **04.09.2008**, the appellant was in custody and neither his conviction had been *stayed* nor was the sentence passed against him had been *suspended* inasmuch as he came to be released on bail as late as on **16.07.2010**. The *appeal memorial*, therefore, which the appellant had preferred, was to be considered with reference to the date of his dismissal, i.e. **08.02.2008**, and at best, the date of dismissal of appeal, i.e. **04.09.2008**.

8. Before, of course, the appellant's *appeal*



memorial stood rejected on **30.08.2011**, his conviction had come to be stayed on **28.09.2011**, but he had not been acquitted. The fact, however, remains that his *dismissal* from service and rejection of his appeal against his *dismissal* was at a time, when the appellant had not even been released on bail. On rejection of his *appeal memorial*, the appellant came to this Court with a writ petition, namely, CWJC No. 18003 of 2010 and a learned single Judge of this Court remanded the matter, on **18.11.2013**, for fresh consideration to the Inspector General of Police (C), Crime Investigation Department, Bihar, merely for the purpose of '*reconsideration*' of *quantum of punishment* awarded to the appellant.

9. Situated thus, it becomes crystal clear that the conclusions, arrived at by the disciplinary as well as the appellate authority, to the effect that the appellant had committed *misconduct*, was not interfered with by the learned single Judge. In other words, the appellant was not exonerated by the order, dated **18.11.2013**, passed in C.W.J.C. No.18003 of 2010. What was directed by the order, dated **18.11.2013**, aforementioned was merely '*reconsideration*' of the *quantum of punishment* awarded to the appellant. As against the order, dated **18.11.2013**, passed in CWJC No. 18003 of 2010, the writ petitioner-appellant did not prefer any appeal.

10. The order, therefore, passed, on **18.11.2013**, in CWJC No.18003 of 2010, — not interfering with the finding that the appellant had committed *misconduct* — attained finality.

11. What was, therefore, required to be considered by the authority concerned, in the light of the order, dated **18.11.2013**, passed in C.W.J.C. No.18003 of 2010, was the *quantum of punishment* imposed upon the appellant. On reconsideration of the *quantum of punishment*, pursuant to the order, dated **18.11.2013**, aforementioned, passed in C.W.J.C. No.18003 of 2010, the authority concerned found no reason to interfere with the appellant's *dismissal* from service and, hence, the appellant's request was rejected. This rejection cannot be said to be bad in law merely because the appellant stood acquitted before the order rejecting his representation, pursuant to the order, dated **18.11.2013**, passed in CWJC No. 18003 of 2010, was considered and decided by the authority concerned.

12. Acquittal of a Government employee, subsequent to his order of *dismissal*, on the ground that he was found involved in an offence of moral turpitude, cannot be said to be bad in law inasmuch as on the date of the *dismissal*, i.e., **08.02.2008**, the appellant stood convicted under Section 376 read with Section 34 of the

Indian Penal Code.

13. What needs to be borne in mind, while considering the present appeal, is that Clause (2) of Article 311 of the Constitution of India declares that no person, who is a member of the civil service of the Union or all Indian service or a civil service of a State or holds a civil post under the Union of a State, shall be dismissed, removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a responsible opportunity of being heard in respect of those charges.

14. To the general rule, which Clause (2) of Article 311 of the Constitution of India so lays down, the second proviso to Clause (2) of Article 311 of the Constitution of India carves out three exceptions. These exceptions have been embodied in Clauses (a), (b) and (c) to the second proviso of Article 311(2). To the case at hand, it is Clause (a) of the second proviso, which is relevant. Clause (a) of Article 311(2) of the Constitution of India reads, "*where a person is dismissed or remove or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge*".

15. A bare reading of Clause (a) shows that what becomes relevant, in order to attract Clause (a), is the conduct, which has led to the conviction on a criminal

charge. Clause (a), as pointed out in **Deputy Director of Collegiate Education (Administration), Madras v. Nagoor Meera (AIR 1995 SC 1364)**,—which learned Counsel for the appellant has relied upon—does not speak of the quantum of punishment awarded. As long as the conviction remains in force, there is no impediment in dismissing an employee covered by Article 311(2) of the Constitution of India if his conduct has led to his conviction on a charge of *rape*.

16. Specifically dealing with the question as to whether it is permissible to *dismiss* an employee if his appeal is pending against his conviction, the Supreme Court, in **Nagoor Meera** (supra), has clearly laid down that there is no basis or justification in taking the view that until the appeal against conviction is disposed of, action, under Clause (a) of second proviso to Article 311 of the Constitution of India, is not permissible. In fact, setting at rest any controversy on this aspect of law, the Supreme Court has held, in **Nagoor Meera** (supra), at paragraph 9, as follows :

"9. xxx xxx xxx
xxx xxx xxx

It should be remembered that the action under Clause (a) of the second proviso to Article 311(2) will be taken only where the conduct which has led to his conviction is such that it

deserves any of the three major punishments mentioned in Article 311(2). As held by this Court in *Shankardass v. Union of India* [1985] 2 S.C.R. 358:

Clause (a) of the second proviso to Article 311(2) of the Constitution confers on the government the power to dismiss a person from service "on the ground of conduct which has led to his conviction on a criminal charge". But that power like every other power has to be exercised fairly, justly and reasonably. Surely, the Constitution does not contemplate that a government servant, who is convicted for parking his scooter in a no-parking area should be dismissed from service. He may, perhaps, not be entitled to be heard on the question of penalty since Clause (a) of the second proviso to Article 311(2) makes the provisions of that article inapplicable, when a penalty is to be imposed on a Government servant on the ground of conduct, which has led to his conviction on a criminal charge. But the right to impose a penalty carries with it the duty to act justly.

(Emphasis is supplied)

17. In the case at hand, the conduct, which led to the dismissal of the appellant on conviction, was in respect of the offence of rape, which involves moral turpitude. If a person is convicted on the charge of rape, it may be treated as inadvisable and against public interest to retain such a person in service. If and when, however, he succeeds in appeal, as the appellant has succeeded in



the appeal against his conviction, the matter can be reviewed on the representation of the appellant. No such review petition has, however, been filed till date by the appellant. While reviewing the appellant's *dismissal* from service, the disciplinary authority has to ensure that no prejudice is caused to the appellant. To put it a little differently and in order to make the position explicit, we hold that if the appellant applies for a review of his penalty of *dismissal* from service on the ground that his conviction has been set aside, it would remain open to the disciplinary authority to take necessary action in accordance with law. The observations, made in the case of **Nagoor Meera** (supra), in this regard, at paragraph 10, being relevant, is reproduced below.

10. What is really relevant thus is the conduct of the government servant, which has led to his conviction on a criminal charge. Now, in this case, the respondent has been found guilty of corruption by a criminal court. Until the said conviction is set aside by the appellate or other higher court, it may not be advisable to retain such person in service. As stated above, if he succeeds in appeal or other proceeding, the matter can always be reviewed in such a manner that he suffers no prejudice.

(Emphasis is added)

18. In the case of **Trikha Ram v. V. K. Seth**



and another, reported in **1987 Supp. SCC 39**, the Supreme Court has, referring to the case of **Union of India v. Tulsiram Patel**, reported in **(1985) 3 SCC 398**, clarified that a person, who was convicted of a criminal offence, need not be heard by disciplinary authority before imposing penalty.

19. From the decision in **Tulsiram Patel** (supra), what emerges is that where a disciplinary authority comes to know that a government servant has been convicted on a criminal charge, it must consider whether his conduct, which has led to his conviction, was such as to warrant imposition of a penalty and, if so, what that penalty should be and, for this purpose, it will have to peruse the judgment of the criminal court and consider all the facts and circumstances of the case. This, however, has to be done by it *ex parte* and by itself. Once the disciplinary authority reaches the conclusion that the government servant's conduct was such as to require his dismissal or removal from service or reduction in rank, the authority concerned must decide which of these three penalties should be imposed on him. This too, the disciplinary authority has to do by itself and without hearing the concerned government servant by reason of the exclusionary effect of the second proviso. The disciplinary authority must, however, bear in mind that a



conviction on a criminal charge does not automatically entail dismissal, removal or reduction in rank of a concerned government servant. Having decided which of these three penalties is required to be imposed, the disciplinary authority has to pass the requisite order. A government servant, who is aggrieved by the penalty imposed, can agitate in appeal, revision or review, as the case may be, that the penalty was too severe or excessive and not warranted by the facts and circumstances of the case. If he fails in all the departmental remedies and still wants to pursue the matter, he can invoke the court's power of judicial review subject to the court permitting it. Where the court finds that the penalty imposed by the impugned order is arbitrary or grossly excessive or out of all proportion to the offence committed or not warranted by the facts and circumstances of the case or the requirements of that particular government service, the court will also strike down the impugned order.

20. What surfaces from the discussion held, as a whole, is that appellant's *dismissal* from service, following his conviction on a charge of rape, was not, in the facts and circumstances of the present case, bad in law and we find, therefore, no reasons to interfere with the conclusion reached, or the decision arrived at, by the learned single Judge.

21. In the result and for the reasons discussed above, this appeal fails and the same shall accordingly stand dismissed.

(I. A. Ansari, J.)

A. K. Trivedi, J.:

(Aditya Kumar Trivedi, J.)

Prabhakar Anand/
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