

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2076 of 2009

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Vijayendra Kumar, son of late Ram Tapeswar Singh, resident of village Anandpur,
P.S.- Bihta, Dist.- Patna at present residing in House No. 4, Road No. 5, S. K.
Nagar, Patna. Petitioner

Versus

1. Food Corporation of India, 16-20, through Chairman-cum-Managing Director,
Barakhambha Lane, New Delhi.
 2. Executive Director (East Zone) Food Corporation of India 10-A, Middleton
Row, Kolkata-71.
 3. General Manager (Region) Food Corporation of India, Regional Office,
Arunachal Building Patna. Respondents
- =====

Appearance :

For the Petitioner/s : Mr. K. N. Choubey, Sr. Advocate
Mr. Mukesh Kumar-1, Advocate
Mr. Braj Nandan Tiwary, Advocate
Mr. Nalin Vilochan Tiwary, Advocate

For the Respondent/s : Mr. Prabhakar Tekriwal
Mr. Prabhat Kumar Verma
Mr. Dr.Mankeshwar Tiwari

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 16-09-2015

The petitioner seeks quashing of the order dated 05.01.2009 of General Manager (Region), Food Corporation of India rejecting his representation dated 21.07.2007 for payment of back wages subsequent to his acquittal and reinstatement in service.

2. The facts of the case in brief is as follows:

The petitioner joined as Assistant Grade III (Depot) on 16.01.1978 at district office Food Corporation of India (hereinafter referred to as 'the FCI'), Bhagalpur. He was given posting in the Godown. On joining, he detected misappropriation of wheat stock in the depot and reported the same to the Regional Office, which in



turn asked him to report the matter to the Central Bureau of Investigation (hereinafter referred to as 'the C.B.I.'). On the report of the petitioner, a case was registered by the CBI against the Depot Officer, Sri A. P. Singh, Sri N. P. Lall, AG II, Sri Sonelal Ram, Watchman and Sri K. M. Sukla, the contractor and ultimately they were also convicted by the C.B.I. Court.

(ii) Apprehending retaliations from some of the officers and staff, because of institution of C.B.I. case on his complaint, the petitioner sought his transfer from Bhagalpur and he was accordingly transferred to FSD, Khagaul in the month of March 1979. At FSD, Khagaul, the petitioner too detected large irregularities at FSD, Khagaul and again reported the matter to the Management.

(iii) It is the petitioner's case that as he repeatedly reported the bunglings in the Department, he became eyesore of both management as well as those, whom, he exposed. Consequently, he found himself roped in two criminal cases, bearing Special case no. 10/82 and 11/82 lodged by the CBI. The petitioner was convicted in both the cases by the Special judge, CBI, South Bihar and sentenced to one year Rigorous Imprisonment along with fine of Rs.10,000/-. Against conviction in Special Case no. 10 of 1982, the petitioner filed Cr. Appeal No. 119

of 1986, which was allowed and the impugned judgment of conviction and order of sentence were set aside by a Bench of this Court vide judgment dated 23.02.1998.

3. The petitioner too preferred appeal against the conviction in Special Case no. 11 of 1982 giving rise to Criminal Appeal no. 68 of 1989, which was dismissed. Being aggrieved, the petitioner moved the Hon'ble Apex Court giving rise to Cr. Appeal No. 1248 of 1999. The Hon'ble Apex Court vide judgment dated 24.11.2004 set aside the judgment of conviction passed by this Court and remitted the matter to the High Court for fresh consideration. On remand, a learned Single Judge of this Court allowed the appeal on 04.04.2005 and set aside the order of conviction and sentence dated 04.02.1989 passed by the Special Judge, CBI (South Bihar in Special Case No. 11 of 1982. It is relevant to state that while the matter was pending before this Court, the respondents compulsorily retired the petitioner on the ground that he was convicted in a criminal case.

4. After acquittal in both the cases, the petitioner filed a representation before the Zonal Manager, FCI as well as the General Manager, FCI, Patna for reinstatement and withdrawal of order of compulsory retirement. As nothing happened on his representation, the petitioner filed writ application bearing C.W.J.C.



No. 1068 of 2002 for reinstatement and quashing of order of compulsory retirement. The learned Single Judge vide order dated 15.12.2006 quashed the order of compulsory retirement and remitted the matter to the disciplinary authority to reconsider the representation of the petitioner for reinstatement (Annexure-7). Consequent to the order dated 15.12.2006, the petitioner filed a number of representations before the concerned authorities to reinstate him with full pay and allowances with consequential benefits. On 14.02.2007, the respondent no.3, reinstated him without back wages with the rider that he must deposit the amount of gratuity, encashment of unutilized leave and C.P.F. amount along with interest at the rate of 12% per annum in the district office, F.C.I., Gaya within a period of 15 days.

5. Being aggrieved by the riders attached to the order of reinstatement, the petitioner again moved this Court being C.W.J.C. No. 2842 of 2007. This Court vide order dated 21.05.2007 observed that the petitioner has another 7 – 8 years of service and the respondents can always adjust the amount, received by way of retiral benefits from the wages of the petitioner, once he joined the organization. The learned Single Judge further observed that as these are matters of accounting and adjustments, the same cannot be utilized to prevent the entry of the petitioner into the



organization or his reinstatement. The conditions, as such was directed to be read down and modified. The respondents were directed to allow the petitioner to join at the place of posting, as per their own order dated 14.02.2007. This Court, however, left the matter with respect to denial of back wages open, with liberty to the petitioner to raise his grievance after giving his joining as per the prevalent rules.

6. The petitioner thereafter in terms of order dated 21.05.2007 (Annexure-9) filed representation before the Executive Director (East Zone), FCI, Zonal Office, Kolkata (respondent no.2) for grant of back wages from 29.12.2001, (the date of dismissal) to 24.05.2007 (the date of joining). The respondent no.3 vide its order dated 05.01.2009 rejected the representation of the petitioner.

7. It appears from the impugned order dated 05.01.2009 that the respondent no.3 had rejected the plea of back wages, relying upon judgment in case of Union of India & others Vs. Jaipal Singh, reported in (2004) 1 SCC 121. In the aforesaid case, the Hon'ble Apex Court held that if an employee/ public servant got involved in a criminal case, and if after initial conviction by the trial court, he is subsequently acquitted and the department cannot in any manner be found faulted with, for having kept him out of service, it would be well within its right to deny back wages, as law

obliges to keep him out of service, consequent to conviction.

8. Mr. P. K. Verma, learned counsel for the F.C.I. justifying the order passed by respondent no.3 refusing the back wages, has also relied upon a decision in case of Ranchhodji Chaturji Thakore Vs. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar (Gujarat) & Another, reported in (1996) 11 SCC 603. In the aforesaid case, the Hon'ble Apex Court observed that the question of back wages would be only considered if the respondents have taken action by way of disciplinary proceeding and the action was found to be unsustainable in law and the delinquent was unlawfully prevented from discharging the duties. Refusing to interfere with the order of the High Court rejecting the payer for back wages, the Hon'ble Apex Court observed that since the petitioner himself is involved in a crime, though later on acquitted, he had disabled himself from rendering the service on account of conviction and incarceration in jail under Section 302 read with 34 of the Indian Penal Code.

9. On the other hand, Mr. Kamal Nayan Choubey, learned counsel for the petitioner submits that the impugned order rejecting his request for reinstatement with back wages is in teeth of the Vigilance Manual, Fundamental Rules as well as the own FCI Staff Regulations, 1971 (Annexure-11 Series), more so as the petitioner

was acquitted on merit by the High Court.

10. I have heard the counsel for the parties. The issue whether one would be entitled to payment of back wages consequent to acquittal in a criminal case has been subject of consideration before the Hon'ble Apex Court in past. In case of Ranchhodji Chaturji Thakore (supra), the appellant Ranchhodji Chaturji Thakore was dismissed from service on the ground of his conviction under Section 302/34 of the Indian Penal Code by the trial court. However, as the appellant was subsequently acquitted, the learned Single Judge of Gujarat High Court directed for his reinstatement in service with continuity, but without back wages. Being aggrieved with denial of back wages, the appellant filed L.P.A., which too was dismissed.

11. The appellant then carried the appeal to the Hon'ble Apex Court. Affirming the order of the High Court, the Hon'ble Apex Court observed that: (i) the question of back wages would be considered only if the respondents have taken action by way of disciplinary proceeding, and only if such proceeding is found unsustainable in law, (ii) as the petitioner Ranchhodji Chaturji Thakore had involved himself in a criminal case, though he was later on acquitted, he had disabled himself from rendering the service on account of conviction and incarceration in jail. However,

the Hon'ble Apex Court observed at the same time that each case requires to be considered on its own background. The relevant extract of para. 3 of the decision is quoted herein below:

“3.....The question of back wages would be considered only if the respondents have taken action by way of disciplinary proceedings 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.....”

12. Again in similar circumstances, a matter related to payment of back wages came for consideration in case of Union of India and others Vs. Jaipal Singh (supra). In the aforesaid case, the respondent Jaipal Singh was convicted under Section 302 read with Section 34 Indian Penal Code. In appeal, the High Court returned the verdict of acquittal. As despite acquittal, the appellant was not reinstated and not paid the back wages, he moved the High Court, which allowed the writ petition and directed reinstatement of the employee with full back wages for the period of custody. Being aggrieved, the Union of India, filed appeal before the Hon'ble Supreme Court. Relying upon the judgment in case of Ranchhodji Chaturji Thakore (supra), counsel for the Union of India submitted that the High Court ought not to have reinstated the respondent with back wages, as the department cannot be blamed for the criminal



case, which was filed by a private individual and therefore it cannot be saddled with the liability of back wages for the period when he was out of service during/after conviction. The Hon'ble Apex Court after considering the case of Ranchhodji Chaturji Thakore (supra), observed that if an employee or a public servant got involved in a criminal case and after initial conviction by the trial court gets acquittal on an appeal, and the department cannot in any manner be found faulted for having kept out of service, the employer would be within their right to deny back wages for the period, he was not in service. However, in the same paragraph, the Hon'ble Apex Court observed that if the prosecution, which ultimately resulted in acquittal of the person concerned, was at the behest of or by the department itself, perhaps different consideration may arise. The relevant extract of paragraph 4 of the order passed in case of Union of India & Others Vs. Jail Pal Singh is quoted herein below for easy reference:

“4.....On going through the same, we are in respectful agreement with the view taken in Ranchhodji. If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest of or by the 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 if 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.....”

13. The law, which emerges from the conjoint reading of the two decisions in case of Union of India & Others Vs. Jaipal Singh (supra) and Ranchhodji Chaturji Thakore (supra), is as follows:

(a) Where a person is convicted of a criminal crime and subsequently acquitted and the prosecution was not at the behest of the employer, the employee concerned would be within its right to deny the back wages.

(b) The employer cannot be made liable to pay for the period for which they could not avail the services of the employer, if the department cannot in any manner be faulted with for having kept him out of service.

(c) If an employee was initially convicted and subsequently acquitted and the prosecution was at the behest of the employer, then in such cases different considerations may arise, which may include payment of back wages,

(d) There cannot be any strait jacket formula with respect to payment of back wages in case of subsequent acquittal after initial conviction and each cases would be required to be considered in its own backdrop.



14. In the instant case, I find that the petitioner was prosecuted in a CBI case for his alleged misconduct as an official/employee of the FCI. The F.C.I. accorded sanction for his prosecution. The prosecution had examined as many as 31 witnesses and quite a number of these witnesses were employees/officials of F.C.I. As such, it is difficult to accept the contention of the respondents that the prosecution was not at the behest of the organization or that the petitioner did not remain out of the service, on the action of the respondents.

15. Besides this, I find that the Vigilance Manual and the Rule of department, namely, Rule 8 (a) of F.C.I. Staff Regulations, 1971 enjoins upon the Department to make payment of full pay and allowances other than conveyance allowances, in case the suspension or the action taken against or in case the employee is to be reinstated in service. Rule 8(a) is quoted herein below for easy reference:

“8. When the suspension of an employee is held to be unjustified or not wholly justified; or when an employee has been dismissed or suspended is reinstated, the disciplinary, appellate or reviewing authority, as the case may be, whose decision shall be final, may grant to him for the period of his absence from duty:

(a) if he is honourably acquitted, the full pay and

allowances other than conveyance allowance to which he would have been entitled, if he had not been dismissed or suspended, less the subsistence grant;”

16. It is relevant to state here that on remand of the matter from the Hon’ble Supreme Court vide judgment dated 24.11.2004, the learned Single Judge of this Court acquitted the petitioner on merit vide judgment dated 04.04.2005, as contained in Annexure-6.

17. In view of the principles noticed on the issue in foregoing paragraphs, as well as the own FCI Regulations, 1971, particularly Rule 8 (a), I hold that the petitioner has made out a case for payment of back wages for the period, he remained out of job, and I direct accordingly but without any interest.

18. This application stands allowed to the extent mentioned above.

(Samarendra Pratap Singh, J.)

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