

THE HIGH COURT OF TRIPURA
AGARTALA

WP(C) No.78 of 2012

Sri Puspa Mohan Jamatia,
S/O Late Jagat Guru Jamatia
resident of Sungrung Bari,
P.O- South Maharani,
Udaipur, P.S- Radhakishorpur,
District-South Tripura.

.....Petitioner.

- Vs -

1. The State of Tripura,
Represented by the Secretary-
Cum-Commissioner,
Department of Health,
Government of Tripura,
Capital Complex, (Nehru Complex),
P.O- Gurkhabasti, Agartala,
District - Tripura West.

2. The Director of Health Service
Department of Health,
Government of Tripura,
Capital Complex, (Nehru Complex)
P.O-Gurkhabasti, Agartala,
District - Tripura West.

.....Respondents.

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner : Mr. Sekhar Dutta, Advocate.

For the respondents : Mr. B. Dutta, State Counsel.

Date of hearing & delivery
of Judgment & Order : **17.8.2015.**

Whether fit for reporting : **No.**

JUDGMENT & ORDER (ORAL)

By means of this writ petition, the petitioner has prayed that the order dated 17th December, 2004 dismissing him from service be set aside.

2. The undisputed facts are that the petitioner was serving as General Duty Attendant (GDA) at Maharani Public Health Centre under the Chief Medical Officer (South), Udaipur, South Tripura. He was charged with having committed offences punishable under Sections 364 and 302 read with Section 201 of IPC. The learned Sessions Judge, South Tripura, Udaipur vide judgment dated 9th January, 2003 convicted the petitioner under all the three Sections and sentenced him to various terms of imprisonment.

3. After the judgment was passed by the learned Sessions Judge, the Director of Health Services passed the order terminating the services of the petitioner on 17th December, 2004 which reads as follows:

**“GOVERNMENT OF TRIPURA
DIRECTORATE OF HEALTH SERVICES**

No.F.2 (1556)-MS/ESTT-IV/88, Dated 17th December, 2004

ORDER

WHEREAS Shri Puspa Mohan Jamatia, S/O- Jagat Guru Jamatia while serving in the post of G.D.A at Moharani PHC under the Chief Medical Officer (South), Udaipur, South Tripura has been convicted on a criminal charge in a Judgment passed by the Session Judge, south Tripura, Udaipur on 9.1.2003 under the following sections:-

- 1. Sentenced to undergone rigorous imprisonment for 10 (ten) years and also to pay fine of Rs.5000/- in**

default to undergo further imprisonment for 6 (six) months for the offence committed by Shri Jamatia U/S 364 IPC.

2. Sentenced to undergo rigorous imprisonment for a 7 (seven) years and also to pay fine of Rs.2000/- in default to undergo further imprisonment for 3 (three) months for the offence communicated by Shri Jamatia U/S 201 IPC.

3. Life imprisonment and also to pay fine of Rs.5000/- in default to undergo further imprisonment for 6(six) months for the offence committed Shri Jamatia U/S 302 IPC.

AND WHEREAS it is considered that the conduct of the said Shri Puspa Mohan Jamatia, GDA which has led to his conviction on a criminal case is such as to render his further retention in the public service undesirable;

NOW, THEREFORE, in exercise of the powers conferred by Rule 19(i) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, the undersigned hereby dismisses the said Shri Puspa Mohan Jamatia, GDA from service with immediate effect.

**Sd/- Illegible
(Dr. N. Das)
Director of Health Services
Government of Tripura
Agartala."**

A bare perusal of this order shows that other than relying upon the order passed in the Sessions trial no other material was before the disciplinary authority. It would also be pertinent to mention that even when this order was passed no notice was issued to the petitioner before passing the order and the petitioner was not heard even on the issue of the penalty to be imposed.

4. Be that as it may, the petitioner filed Crl. A (J) No.87 of 2009 which was decided by the Agartala Bench of the Gauhati High Court, on 8th August, 2011 and the petitioner has now been acquitted by giving him the benefit of doubt. The relevant portion of the judgment reads as follows:

“18. In view of above, we are of the opinion that the appellant is to be released providing him the benefit of doubt, as he is entitled to. Accordingly, the judgment and order, dated 08.01.2003 and order of sentence, dated 09.01.2003, passed by the learned Sessions Judge, South Tripura, Udaipur, in Sessions Trial Case No. 29(ST/U)2002, is set aside.

19. In the result, the appeal is allowed. The appellant shall be released forthwith, if he is not connected with any other offence for which his detention is called for.”

Resultantly, there is no order of conviction against the petitioner. Therefore, the very basis of the order of termination of his services has ceased to exist. After the judgment was passed by the Appellate Court learned counsel for the petitioner sent notice demanding his reinstatement in service but the petitioner has not been reinstated in service.

5. The stand of the respondents is that disciplinary proceedings are different from criminal proceedings and disciplinary proceedings can carry on even after the criminal proceedings end in favour of the employee. There is no quarrel with this proposition but we are clearly of the view that this proposition is not applicable to the facts and circumstances of this case. In the present case, there were no separate disciplinary proceedings except for passing an order of termination. The termination order is based only upon the judgment of the learned Sessions Judge convicting the petitioner. Since the petitioner now stands acquitted, he cannot be denied the benefit of reinstatement.

6. We, therefore, allow the writ petition and direct that the petitioner shall be reinstated in service. He shall be deemed to be in

service for all intents and purposes i.e. for fixing his seniority, pay etc. However, he shall be entitled to claim the arrears of pay only w.e.f. 8th August, 2011, i.e. the date when he was acquitted by the High Court. The petitioner be reinstated in service latest by 30th November, 2015 and all monetary benefits due and payable to him be paid latest by 29th February, 2016 failing which the State shall be liable to pay interest on the monetary benefits @ 9% per annum.

With the aforesaid observations and directions, the instant writ petition is disposed of.

JUDGE

CHIEF JUSTICE

Satabdi