

THE HIGH COURT OF TRIPURA
AGARTALA
WP(C)404 of 2012

Shri Dharendra Debbarma,
son of Shri Jyoti Mohan Debbarma
a resident of Badurtali, Krishnanagar
P.O. Agartala, P.S. West Agartala
District : West Tripura

.....Petitioners

- V e r s u s -

1. The State of Tripura,
through the Secretary to the
Government of Tripura
Public Works Department
Civil Secretariat, P.O. Kunjaban
West Tripura-799006

2. The Secretary to the
Government of Tripura,
Public Works Department
Civil Secretariat, P.O. Kunjaban
West Tripura-799006

3. The Chief Engineer
Public Works Department (R & B),
Government of Tripura
Capital Complex, P.O. Kunjaban
West Tripura-799006

.....Respondents

BEFORE

THE HON,BLE MR. JUSTICE S. TALAPATRA

For the petitioner : Mr. S.M. Chakraborty, Senior Advocate

For the respondents : Mr. A. Ghosh, Advocate

Date of judgment & Order : 05.10.2015

Whether fit for reporting : No

JUDGMENT & ORDER

Heard Mr. S.M. Chakraborty, learned senior counsel assisted by Ms. D. Das, learned counsel appearing for the petitioner as well as Mr. A. Ghosh, learned counsel appearing for the respondents.

2. By means of this writ petition, the petitioner has prayed for release of his back wages for the period of suspension as well as for the period when he was incapacitated by the order of dismissal.

3. Facts are mostly admitted. The petitioner while working in the Sub-Divisional Office, PWD at Ambassa was implicated in a criminal case and was arrested. As consequence whereof, he was placed under suspension by an order dated 12.06.2003, Annexure-1 to the writ petition with effect from 18.04.2003 in terms of the provisions of Rule 10(2) of CCA (CC & S) Rules, 1965. The petitioner was charge sheeted and he was tried for committing offence punishable under sections 302/201 of the IPC. The petitioner was convicted by the trial court on 30.03.2006 and sentenced to suffer life imprisonment. The said order dated 30.03.2006 delivered in the Sessions Trial No. 190 (WT/A) of 2004 was challenged by the petitioner by filing an appeal being Criminal Appeal No.39 of 2006 in the Gauhati High Court which exercised jurisdiction at the relevant point of time over the State of Tripura. The said appeal was allowed by the judgment and order dated 28.07.2010 on acquitting the petitioner from the charge, as the charge,

according to the high court could not be substantiated beyond reasonable doubt. It is also not in dispute that when the petitioner was convicted by the judgment dated 30.06.2006, he was dismissed from the service by the order dated 30.03.2007. The said order of the high court was challenged by the state by filing a special leave petition to appeal being SLP(C) No.2455 of 2011 (arising from criminal appeal No.39 of 2006) but that appeal was dismissed by the supreme court by their order dated 14.02.2011. As a result, the said order of dismissal dated 30.03.2007 was revoked by the Chief Engineer, PWD (R&B), Tripura, Agartala, the respondent No.3 by his order dated 08.11.2011, Annexure -6 to the writ petition. By the said order dated 08.11.2011 the order of suspension dated 12.06.2003 was as well revoked with immediate effect. Despite several representations, the petitioner was not favoured with the release of his back wages for the period of suspension and the period under the order of dismissal. Hence, the petitioner has filed this writ petition.

4. Mr. Chakraborty, learned senior counsel appearing for the petitioner has submitted that despite a demand notice issued to the respondents they did not make any consideration for releasing the back wage of the petitioner. However, from the records it appears that by the memorandum dated 03.01.2012 Annexure-4 to the writ petition, the petitioner was asked to show cause why the period of suspension couched with the

period under the order of dismissal shall not be treated as not on duty. Later on, by the order dated 24.02.2012, Annexure-9 to the writ petition, the competent authority, the respondent No.3, has decided as under:

"1. The absence shall be treated as 'Non Duty'.

2. The petitioner will not be entitled for any further pay & allowances for the absence period.

3. That the past service rendered by the petitioner before dismissal/suspension etc. will not be forfeited.

4. A seniority position in service shall be ranked as usual above to your junior.

5. That your pay & allowances shall be paid as per normal rules treating the out of service period as 'Non Duty' and w.e.f. the date of your actual joining to the post based on the reinstatement order.'

5. Mr. Ghosh learned counsel has fairly submitted that the period has been decided to be treated as not on duty. The order dated 24.02.2012 suffers from assigning reasons in terms of FR-54. While appreciating the fairness of Mr. Ghosh, learned counsel for the respondents, a reference may be made to FR-54, which provides how to consider the period of dismissal and the period of suspension in order to decide the entitlements of the officer. Since the competent authority, the respondent No.3 did not consider the purport and interplay of FR-54 as regards the entitlements of the petitioner including the back wages the respondents are directed to reconsider the entitlements of the

petitioner as to back wages for the period of suspension and the order of dismissal in terms of FR-54 within a period of 2 (two) months from the day of receipt of this judgment and order which shall be placed by the petitioner to the respondent No.3.

6. In the light of the above, the order dated 21.07.2012 is set aside and quashed.

With the said observation and direction, this writ petition is allowed to the extent as indicated above.

There shall be no order as to costs.

JUDGE

Sabyasachi.B