

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8319 of 2016

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

.... Petitioner/s

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 (C), Government of Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nand Lal Kumar Singh, Adv.

Mr. Madhuri Lata, Adv.

For the Respondent/s : Mr. Ajay Kumar Rastogi, AAG 10

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 21-11-2016

Heard Mr. Nand Lal Kumar Singh, learned counsel for the petitioner and Mr. Ajay Kumar Rastogi, AAG 10 for the state.

With the consent of the parties, the writ petition has been considered with a view to its final disposal at the stage of admission itself.

The petitioner is aggrieved by the decision of the respondents as reflected from the file notings present at Annexure-1/E whereby the representation of the petitioner for reinstatement has been rejected.

Facts of the case briefly stated is that the petitioner holding the post of Hawaldar was involved in a criminal case arising from



Bikramganj P.S. Case No. 151 of 1999 registered for offences punishable under Section 376 of the Indian Penal Code. The matter went to trial in Sessions Trial No. 365 of 1984-2001 of 2001 and the petitioner along with other accused were convicted for the offence for a period of 10 years, vide judgment and order passed on 22.12.2006. It is in this view of the matter that the petitioner was dismissed from service on 8.2.2008. The petitioner filed a criminal appeal against the judgment and order of conviction giving rise to Cri. Appeal No. 152 of 2007 and a bench of this Court vide order dated 28.9.2011 stayed the conviction passed by the trial court against the petitioner, a copy of which order is present at Annexure-2. In view of the stay order passed by the appellate Bench of this Court the petitioner questioned the dismissal order in C.W.J.C.No.18003 of 2010 and which was heard and disposed of by a Bench of this Court on 18.11.2013 with a direction to the Inspector General of Police., C.I.D. Bihar to consider the case of the petitioner in view of the fact that he was nearing retirement. In view of the order so passed by this Court present at Annexure-3 that the matter was considered by the Inspector General of Police, C.I.D. and vide office order dated 10.2.2014 the prayer of the petitioner for reinstatement was rejected inter alia on grounds that the judgment and order of conviction was yet to be set aside by the Court. The petitioner again came before this Court in



C.W.J.C.No.4127 of 2014 questioning the decision of the Inspector General of Police rejecting the plea of reinstatement vide order passed on 10.2.2014 present at Annexure-1/D and which writ petition was dismissed by the writ Court. Feeling aggrieved, the petitioner preferred the Letters Patent Appeal giving rise to L.P.A.No.328 of 2014 and which Letters Patent Appeal was also dismissed and the order of the writ Court was affirmed. However, the Division Bench was pleased to grant liberty to the petitioner to move the departmental authorities for review of the punishment of dismissal in case he is acquitted by the appellate court in the pending criminal appeal. The observations of the division bench is present at paragraph 17 of the judgment, a copy of which is enclosed at Annexure-6/A and would be relevant for the purpose. For the sake of convenience it is being reproduced hereinbelow:

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)

In view of the liberty so granted, the petitioner represented before the authorities vide his representation present at Annexure-6 seeking a reinstatement from the date of dismissal and which has been rejected in the file notings present at Annexure-1/E. The petitioner feeling aggrieved is before this Court.

It would be relevant here that while the contest was pending consideration, the petitioner has superannuated with effect from 31.1.2015.

It is the argument of Mr. Kumar learned counsel for the petitioner that where the foundation for the dismissal itself stands removed, the consequences has to flow to the petitioner. Such argument is being contested by Mr. Rastogi learned AAG-10 to submit that even if the foundation stands removed and even if the



prayer of the petitioner for payment of the retiral benefits would require a consideration, he certainly is not entitled for back wages since the criminal charges levelled continued to be in force until the date of retirement of the petitioner. Learned counsel in reference to the opinion of the Supreme Court expressed in the case of **G.M. Tank vs. State of Gujarat reported in (2006) 5 SCC 446** more particularly paragraph 32 thereof submits that in similar circumstances, the Supreme Court has refused back wages to a delinquent who was involved in a criminal case and his acquittal took place post his retirement.

I have heard learned counsel for the parties and I have perused the records.

While the law as regarding dismissal on charges of conviction stands well settled and it is wholly within the domain of a disciplinary authority to come to a conclusion as to whether in the nature of the charges levelled against the delinquent, his retention in Government service is warranted or not. No fault can thus be found in the decision of the respondents to have rejected the plea for reinstatement of the petitioner vide order passed on 10.2.2014 in consideration of the fact that the conviction order passed by the trial Court was yet pending consideration in the criminal appeal. In fact, it is for this reason that the rejection order dated 10.2.2014 was also not interfered with by the



writ Court in C.W.J.C.No.4127 of 2014 preferred by the petitioner and the opinion of the writ Court also was affirmed by the Division Bench when the Letters Patent Appeal No. 1328 of 2014 was dismissed vide Annexure-6/A. Meaning thereby even when the conviction was stayed by the Bench hearing the criminal appeal of the petitioner and the plea of reinstatement was rejected by the respondents neither the writ Court nor the Division Bench found any fault in the decision of the respondents of not reinstating the petitioner in service. It is a matter of record that while the criminal appeal was decided in favour of the petitioner on 24.8.2015 vide Annexure-5, the petitioner had already superannuated on 31.1.2015.

In the aforesaid view of the matter, even though this Court would have no difficulty in ordering for the reinstatement of the petitioner in service with effect from the date of dismissal for the purpose of continuity in service which would be relevant for calculation of post retiral benefits but his prayer for back wages in the circumstances existing and in view of the judgment of the Supreme Court in **G.M. Tank** (supra), cannot be allowed. The petitioner would nonetheless be entitled to all post retirement benefits as found admissible.



In the circumstances discussed, the decision taken by the respondents present at Annexure-E to reject the prayer of the petitioner for reinstatement cannot be upheld and is accordingly quashed and set aside. The petitioner stands reinstated to his post with effect from 8.2.2008, however, in view of the position reflecting from the judgment of the **G.M. Tank** (supra) he is not be found entitled to back wages until his date of retirement but would be entitled to all his post retirement benefits by treating his entire period until his retirement i.e. 31.1.2015 as continuous and the concerned respondents are directed to calculate the post retirement benefits of the petitioner and make payment of the same to the petitioner within a period of 3 months from the date of receipt/production of a copy of the order.

The writ petition is allowed to the extent above.

(Jyoti Saran, J)

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