

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.517 of 2015

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1. Upendra Singh S/o Late Ambika Singh resident of at and P.O. Bharbalia, P.S. Mabahi, District - East Champaran at Motihari

.... Petitioner/s

Versus

The State of Bihar & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar No.III, Adv.

For the Respondent/s : Mr. Firoz Ahmad, A.C. to AAG 12

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 15-11-2016

Heard Mr. Sunil Kumar learned counsel for the petitioner and

Mr. Firoz Ahmad A.C. to AAG 12 for the State.

The petitioner has questioned the order bearing Memo No.825 dated 11.2.2009 passed by the Superintendent of Police, Muzaffarpur whereby the petitioner has been dismissed from service. The petitioner was holding the post of Constable at the time of his dismissal. A copy of the order of dismissal is impugned at Annexure-1 to the writ petition.

The point raised by Mr. Sunil Kumar learned counsel for the petitioner to question the order of dismissal is that the main charge set up against the petitioner was his involvement in the criminal case arising from Bettiah Town P.S. Case No. 129 of 2001 registered for offences punishable under Sections 147, 148, 149, 323, 371, 436 and 452 of the Indian Penal Code and the provisions of the Schedule Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 as well as Section 27 of the Arms Act. He submits that the criminal case so

instituted against the petitioner has resulted in his acquittal as manifest from the judgment and order of the trial court present at Annexure-6 to the writ petition. It is the argument of Mr. Sunil Kumar that where the foundation for the allegation itself stood removed, the dismissal order resting thereupon also has to fall.

The argument of Mr. Kumar is contested by learned counsel for the State who submits that the petitioner was proceeded on twin charges i.e being involved in a criminal case as well as for unauthorized absence and thus even if he has been acquitted in the criminal case it does not absolve him from the charge of being unauthorisedly absent.

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

While the argument of Mr. Sunil Kumar learned counsel for the petitioner to the extent of the criminal case is correct but then the disciplinary proceedings was not entirely resting on the criminal case only, rather the unauthorized absence of the petitioner since 21.12.2012 until 22.8.2003, was also a substantive charge set up against the petitioner. Thus a mere acquittal of the petitioner in the criminal case ipso facto would not be sufficient for his exoneration from the departmental proceedings.

The situation for the petitioner is much worse. The petitioner had earlier questioned the order of dismissal passed by the disciplinary

authority impugned at Annexure-1 through C.W.J.C.No.7027 of 2010 and a Bench of this Court vide order passed on 24.10.2011 enclosed at Annexure-5 has upheld the order of dismissal taking note of the facts accompanying the dismissal. The judgment and order of the Bench present at Annexure-5 was never questioned by the petitioner before a superior forum and which has attained finality. Meaning thereby, the dismissal order has been confirmed by this Court on merits and which binds inter party.

In the aforementioned view of the matter, a mere acquittal of the petitioner in the criminal case cannot give him a cause of action to start a second innings to question the order of dismissal and the quest made by the petitioner through the present writ petition is bound to fall on two grounds namely:

(a) the judgment and order passed by this Court in the previous round of proceedings present at Annexure-5 has become final; and

(b) the order of dismissal impugned at Annexure-1 is not only resting on the criminal case rather the second charge set up against the petitioner regarding his unauthorized absence stands confirmed in the order of this Court present at Annexure-5.

In result, the writ petition is dismissed.

Bibhash/-

(Jyoti Saran, J)

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