

CWP No.2969 of 2014

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In the High Court of Punjab and Haryana at Chandigarh.

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Date of Decision: 16.02.2016.

Satish Kumar

...Petitioner

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Rao D.S. Nirban, Advocate,
for the petitioner.

Mr. Rajiv Singh Sihag, Advocate,
for the respondents.

SABINA, J.

Petitioner has filed this petition under Article 226 of the constitution of India seeking a writ in the nature of certiorari challenging the orders dated 09.12.2011 (Annexure P-2), 21.10.2013 (Annexure P-8) and 03.12.2013 (Annexure P-9).

Case of the petitioner, in brief, was that he was appointed as a Constable with respondent No.4 vide order dated 09.09.2011 (Annexure P-1). However, petitioner was arrested on 03.12.2011 in FIR No.270 dated 24.10.2011, registered at Police Station Sadar Narnaul, under Sections 302/120-B of the Indian Penal Code, 1860 ('IPC' in short).

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Petitioner was not named in the FIR but was later charge-sheeted under Section 120-B IPC on the basis of the disclosure statement allegedly suffered by his co-accused Roshan Devi. Services of the petitioner were terminated on 09.12.2011 on account of his involvement in the criminal case. Petitioner and his co-accused were acquitted by the trial Court vide order dated 05.01.2013. Thereafter, petitioner submitted representation to the respondents that he be reinstated in service. However, the said representation moved by the petitioner was not decided by the respondents. Hence, petitioner filed CWP No.17047 of 2013 in this Court. The said writ petition was disposed of by this Court vide order dated 07.08.2013 directing the respondent No.3 (in the present case) to dispose of the representation within two months. In compliance of the said order, respondent No.3 has passed the order dated 21.10.2013 (Annexure P-8). Appeal filed by the petitioner was declined vide order dated 03.12.2013 (Annexure P-9) on the ground that after the passing of the order dated 21.10.2013 no further departmental remedy was available to the petitioner. Hence, the present petition by the petitioner.

Learned counsel for the petitioner has submitted that services of the petitioner were terminated on account of his involvement in the criminal case. However, petitioner had

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been acquitted in the criminal case and was liable to be reinstated. In support of his arguments learned counsel has placed reliance on **“Shashi Kumar Vs. Uttri Haryana Bijli Vitran Nigam and another 2005(1) SCT 576** wherein, it was held as under:-

“A perusal of the order passed by the respondents removing the petitioner from services shows that the respondents had passed the same basing it purely on the conviction of the petitioner. The order states that in view of the conviction, the petitioner is removed from service on account of conduct which led to his conviction. Excepting for the aforesaid sentence, the order does not elude to any circumstances which could be belated to the conduct of the petitioner leading to the conviction. Therefore, in our opinion, the impugned order is liable to be quashed on this short ground as it has been passed, without taking into consideration the relevant material. In any event, the petitioner having been acquitted in appeal, the justification of the order of removal no longer existed. The High Court has ordered the acquittal of the petitioner after threadbare examination of the evidence. It has been noticed that the complainant, Puran Singh PW-8 was the owner of 8-1/2 killas of land situated in Village Jundla. He

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further stated that about two years prior to the recording of the statement in Court on 05.08.1997, he had gone to the office of Vigilance Department and reported against Haryana State Electricity Board Office Natha Ram for demanding Rs. 7,500/-. This amount had been demanded for installation of new transformer as old transformer was overloaded and his tubewell meter was not functioning properly. He also stated that he had earlier paid Rs. 3,200/- to Natha Ram. He further stated that Junior Engineer of his feeder was Sukhbir Singh Malik. He then categorically stated that he did not know Shashi Kumar, the petitioner. It was also stated by him that the petitioner never remained Junior Engineer of his feeder. He never demanded any amount from him nor he paid any amount to him. This witness was declared hostile, but nothing useful emerged from his cross-examination. In fact in the cross-examination, he further admitted that there was a scuffle among HSEB employees and the police employees. He reiterated that he did not pay any amount to the petitioner. Therefore, the High Court concluded that according to the statement of the complainant, the petitioner did not know the complainant nor did the petitioner demand any amount

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from him. Even the trap witness PW-2 in the cross-examination admitted that he was an employee of the Vigilance Department, Karnal. He had remained posted as a peon for the last 10 to 15 years at Karnal. He further admitted that he had joined 3-4 raids with the Vigilance Officer. Therefore, the High Court came to the conclusion that PW-2 was not an independent witness as he was under the control of DSP (Vigilance). The High Court relied on a judgment of the Supreme Court in the case of ***State of Madhya Pradesh v. J.B. Singh, 2000 Crl.L.J. 4591*** wherein it has been held that an offence under the Prevention of Corruption Act would not be established unless there is evidence to prove the act of demand of illegal gratification. Relying on the aforesaid ratio of law, the petitioner has been acquitted. In such circumstances, it can hardly be said that the acquittal of the petitioner is not honourable.”

Learned counsel has further placed reliance on

“Bam Bahadur Thapa Vs. United Commercial Bank 2003

(3)RSJ 703 wherein, it was held as under:-

“A reading of the aforesaid paras makes it clear that one of the witnesses states nothing against the petitioner and the other two witnesses did not turn up for cross-

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examination and thus the deposition cannot be relied upon. A bare reading of the judgment makes it clear that it is a case of clean acquittal and not of a benefit of doubt. The question of acquittal on benefit of doubt would only arise if analysis of the evidence the Court gives the benefit of doubt in view of the two views possible.”

Learned counsel has further placed reliance on

“Shiv Kumar Goel Vs. State of Haryana & Another 2007

(1)SCT 739 wherein, it was held as under:-

“It is true that in para 12, learned Special Judge has observed that the benefit of doubt was being given to the petitioner but the discussion in para 9 leaves no manner of doubt that the petitioner has been acquitted on merit because he was neither imputed a statement of demanding money on behalf of Executive Engineer Sh. J.C. Mittal nor any such allegation was mentioned in the complaint Ex.PB. Even none of the witnesses has stated so. The kingpin of the whole crime appears to be the Executive Engineer Sh. J.C. Mittal who was not even sent for trial by the police. Therefore, it cannot be concluded that the petitioner has been merely given a benefit of doubt. In fact the prosecution had failed to satisfy the requirements of Section 7 of the

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Prevention of Corruption Act, 1988, by proving the allegations in material particular. The requirement of substantive law has not been satisfied and in such a situation it cannot be accepted that the petitioner has been acquitted by giving him benefit of doubt.”

Learned counsel for the respondents, on the other hand, has opposed the petition and has submitted that petitioner could not be reinstated in service as he was involved in a serious criminal offence. Petitioner had been acquitted by the Court by giving him benefit of doubt.

Facts in the present case are not in dispute. Admittedly, petitioner was working with the respondents as a Constable and his services were terminated on account of his involvement in a murder case. Petitioner has been acquitted by the Criminal Court vide judgment dated 05.01.2013 (Annexure P-3). A perusal of Annexure P-3 reveals that PW-1 Abhey Singh father of the deceased and PW-2-Devender cousin brother of the deceased had not supported the prosecution case during trial. PW-4 and PW-11 witnesses qua recovery had also not supported the prosecution case during trial. There was no material on record to connect the petitioner with the offence of murder in question. Although, the criminal Court while ordering the acquittal of the

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petitioner has held that he was being acquitted by giving him benefit of doubt but it is a case of clean acquittal as the material witnesses had failed to support the prosecution version. The services of the petitioner were terminated on account of his involvement in the criminal case. Since the petitioner had been acquitted in the criminal case, he was liable to be reinstated in service with all consequential benefits.

Accordingly, the impugned orders dated 09.12.2011 (Annexure P-2), 21.10.2013 (Annexure P-8) are set aside. Respondents are directed to reinstate the petitioner in service with full back-wages w.e.f. 16.01.2013 onwards i.e. the date of submission of the representation by the petitioner.

February 16, 2016
kapil

(SABINA)
JUDGE