

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.638 of 2016
IN
Civil Writ Jurisdiction Case No. 2076 of 2009**

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General Manager (Region), Food Corporation Of India, Regional Office,
Arunachal Building , Patna.

.... Appellant/s

Versus

1. Vijayendra Kumar, Son of late RamTapeshwar Singh, Resident of Village-
Anandpur, PS- Bihta, District-Patna , at Present residing in House No. 4 Road, No.
5, S.K. Nagar, Patna.Respondent 1st Party
2. Food Corporation Of India, through Chairman-cum-Managing Director,
Barakhambha Lane New Delhi.
3. The Executive Director(East Zone), Food Corportion Of India, 10-A, Middle
Row, Kolkata-71

.... Respondent/s 2nd Party

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Appearance :

For the Appellant/s	:	Mr. P K Verma, Sr Advocate Mr. Mankeshwar Tiwari
For the Respondent/s	:	Mr. P K Shahi, Sr. Advocate Mr. Mukesh Kumar

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 06-10-2017

Seeking exception to an order dated 16.09.2015 passed by
the learned Writ Court in CWJC No.2076 of 2009 granting back
wages to the petitioner after his acquittal in a criminal case, this
appeal has been filed by the employer-Food Corporation of India
(hereinafter referred to as FCI).

Facts in brief goes to show that petitioner was working in
the Food Corporation of India at Depot Bhagalpur. While he was



posted in the godown it is reported that the Central Bureau of Investigation (CBI, in short) registered a case against the Depot Officer, Sri A P Singh, Sri N P Lall, AG II, Sri Sonelal Ram, Watchman, and Sri K M Shukla, the contractor and the petitioner in the matter of transfer and misappropriation of fertilizers and wheat stock belonging to the FCI. The petitioner and others were prosecuted in Special Case No. 10/82 and 11/82. As far as the present petitioner is concerned, he was convicted and sentenced to one year rigorous imprisonment along with a fine of Rs.10,000/-. On a criminal appeal being filed by him in the High Court initially the same was dismissed. The matter thereafter went to the Supreme Court as Criminal Appeal No. 1248 of 1999. The Supreme Court remitted the matter back to the High Court for fresh consideration and thereafter the appeal filed by the appellant was allowed on 04.04.2005. He was acquitted of all the charges levelled against him.

After his acquittal, the petitioner was reinstated but when back wages were not paid to him, the writ petition in question was filed. The petition having been allowed by a learned Single Bench this appeal by the employer-FCI only on the ground that once the petitioner himself was responsible for his prosecution in the criminal case no back wages can be granted to him.

Mr. P K Verma, learned Senior Counsel appearing for the



appellant-FCI invited out attention to the following judgments in support of his contention to say that in the facts and circumstances of the case back wages cannot be granted to the respondent:-

- (i) **Union of India vs. Jaipal Singh**
(2004) SCC 121
- (ii) **Ranchhodji Chaturji Thakore vs Supdt.**
Engineer, Gujarat Electricity Board
(1996) 11 SCC 603
- (iii) **SBI vs. Md. Addul Rahim**
(2013)11 SCC 67

On the contrary, learned counsel for the respondent relied upon the same judgment, particularly the judgment in the case of **Jaipal Singh** (supra) and argued that when the prosecution was at the instance of the Department and when the Department itself was instrumental in prosecution of the petitioner then on his acquittal he is entitled for his entire back wages.

We have considered the rival contentions and find that the certain principles were carved out by the Writ Court on the basis of the judgments relied upon during the course of hearing.

The learned Writ Court took note of the judgments and in paragraph -13 of its judgment dated 16.09.2015 has crystallized the principles in the following manner:-

“13. The law which emerge from the conjoint reading of the two decisions in case of **Union of India v.**



Jaipal Singh (supra) and **Ranchhodji Chaturji Thakore** (supra), is as follows:-

- (a) Where a person is convicted of a criminal crime and subsequently acquitted and the prosecution was not at the behest of the employer, the employee concerned within its right to deny the back wages.
- (b) The employer cannot be made liable to pay for the period for which they could not avail the services of the employer, if the department cannot in any manner be faulted with for having kept him out of service.
- (c) If an employee was initially convicted and subsequently acquitted and the prosecution was at the behest of the employer, then in such case different considerations may arise, which may include payment of back wages.
- (d) There cannot be any straight jacket formula with respect to payment of back wages in case of subsequent acquittal after initial conviction and each case would be required to be considered in its own backdrop

In our considered view, the learned Writ Court has not committed any error in doing so. This is a case, where the Corporation was instrumental in prosecution of the employee, the permission for



prosecution was granted vide Ext.3 available in the record of the trial court signed by the Regional Manager of the FCI one Shri Faridi and when it is clear that the prosecution was at the instance of the FCI who would be the complainant for the acts of omission and commission done by the respondent employee in the discharge of his duties with the Corporation, then on his acquittal in the absence of a departmental enquiry being conducted he shall be entitled for back wages and the learned Writ Court has not committed any error in allowing the writ petition.

If we analyze the cases brought to our notice it would be seen that in all the cases where back wages were denied, the reason for denial is primarily on the fact that the employee himself was responsible for his involvement in the criminal case and neither the employer nor the contract of service with the employer was in any way related to the prosecution of the employee. In the case of **Ranchhodji Chaturji** (supra), the employee was involved in a proceeding itself resulting in his conviction in an offence under Section 302/34 IPC. Similarly, in the case of **Md. Abdul Rahim** (supra), also the employee was involved in an offence under Section 498, IPC and in the case of **Jaipal Singh** (supra), also the employee was involved in a case pertaining to offence under Section 302, IPC arising out of a private dispute unconnected with his employment with



the employer.

It was because of all these factual aspects of the matter that in the case of **Ranchhodji Chaturji** (supra), that the Hon'ble Supreme Court held that the question of back wages has to be considered and each case requires to be considered in its own backdrop. The judgment in the case of **Ranchhodji Chaturji** (supra) as also in the case of **Jaipal Singh** (supra) after considering the entire materials the principles carved out by the Hon'ble Supreme Court is that if prosecution which ultimately resulted in acquittal was at the behest of the order by the Department itself, the consideration has to be different. On the other hand, if the citizen, the employee, or a public servant got involved in a criminal case which has got nothing to do with an employment, the Department cannot be in any manner faulted with having kept him out of service. This principle clearly shows that if the conviction and involvement in the criminal case was on the behest of the departmental authorities and if this action of the departmental authorities prevented the employee from discharging his duties, then on his acquittal he is entitled for back wages, otherwise not. That being the principle of law as made out on a conjoint reading of the judgments we find no case for making any indulgence into the matter.

We find no error in the order of the learned Writ Court.



The appeal stands therefore dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

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