

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5755 of 2003

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Manoj Kumar Singh son of Late Rameshwar Pd. Sinha, resident of Village Ganauli,
P.O. Masrak, District Saran.

.... Petitioner/s

Versus

1. Punjab National Bank through Chairman cum Managing Director, New Delhi, Bhikaji Kama Place, New Delhi.
2. Chairman cum Managing Director, Punjab National Bank, Bhikaji Kama Place, New Delhi.
3. Zonal Manager, Punjab National Bank, 'R' Block, Patna-1.
4. Senior Regional Manager, Punjab National Bank, Pankaj Market, Saraiyaganj, Muzaffarpur.
5. Manager, Punjab National Bank, Mirzapur, Saran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Uday Pratap Singh-1, Adv.

For the Respondent/s : Mr. Prashant Vedasen, Adv.

Mr. Subhash Chandra Bose, Adv.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

CAV JUDGMENT

Date: 20-03-2018

The petitioner, by way of the present writ petition, has prayed for release of salary and allowances as well as for regularization of his services w.e.f. 13.7.1999 to 24.6.2000 since he remained in judicial custody from 13.7.1999 to 24.6.2000.

2. The brief facts of the case are that the wife of the petitioner is said to have committed suicide on 6.7.1999 leading to lodging of Masrak P.S. U.D. Case No. 7 of 1999, whereafter the same was converted into a case of murder vide Masrak P.S. Case No. 152 of 1999 and the petitioner herein along with his family members was made accused in the said case for the offences under section 302 read



with Section 34/120B and 201 of the Indian Penal Code. The petitioner and his old mother were arrested in the night on 12.7.1999 and thereafter, the petitioner was released on bail by an order passed by this Court on 23.6.2000, whereafter the petitioner had submitted his joining before the Manager, Punjab National Bank, Murlipur, however, the petitioner was permitted to resume his duty only on 1.7.2000. The petitioner and other accused persons are said to have been acquitted of the false murder case with strong remarks against the police by a judgment dated 2.9.2002 passed by the learned A.D.J.- 5, Chapra. The petitioner had made available a copy of the judgment of acquittal to the respondent authorities, however, the period from 13.7.1999 to 30.6.2000 was not regularized. The petitioner had filed several representations before the respondents herein and pursuant thereof, the Manager, Branch Mirzapur by his letter dated 18.11.2002, Annexure-6 to the writ petition, had written that since the petitioner was in judicial custody for the aforesaid period, there is no question of payment of any salary for the said period.

3. The learned counsel for the petitioner has submitted that the petitioner herein had been falsely implicated in the aforementioned criminal case, hence he was precluded from attending his service during the period of his incarceration on account of no fault on his part. Thus, the petitioner is entitled for the salary for the



period he had remained in custody, especially in view of the fact that he was acquitted by the trial court i.e. the original court of criminal jurisdiction.

4. Per contra, the learned counsel for the respondents Bank has submitted that the petitioner is not entitled for the back wages for the period he had remained in custody on the principle of “no work no pay”. The learned counsel had further referred to the judgment reported in 2017(4) PLJR (SC) 320 (**P. Karupaiah (D) through RS. Vs. The General Manager, Thruuvalluvar Transport Corporation Ltd.**) to contend that upon reinstatement in service, the employee does not become entitled to claim back wages as of right under the order of reinstatement itself. At this juncture itself, it may be pointed out that the said judgment relied upon by the learned counsel for the respondents is besides the point and does not buttress the issue involved in the present case.

5. I have heard the learned counsel for the parties and before coming to the facts of the present case, it would be appropriate to delve upon the prevailing law on the subject matter. The first case which I would like to refer to is a judgment rendered by the Hon’ble Apex Court in the case of **Ranchhodji Chaturji Thakore vs. Superintending Engineer, Gujarat Electricity Board, Himmatnagar (Gujarat) & Anr.**) reported in 1996(11) SCC 603,



paragraph no. 3 whereof is reproduced herein below:-

“3. The reinstatement of the petitioner into the service has already been ordered by the High Court. The only question is whether he is entitled to back wages. It was his conduct of involving himself in the crime that was taken into account for his not being in service of the respondent. Consequent upon his acquittal, he is entitled to reinstatement for the reason that his service was terminated on the basis of the conviction by operation of proviso to the statutory rules applicable to the situation. The question of back wages would be considered only if the respondents have taken action by way of disciplinary proceedings and the action was found to be unsustainable in law and he was unlawfully prevented from discharging the duties. In that context, his conduct becomes relevant. Each case requires to be considered in its own backdrop. In this case, since the petitioner had involved himself in a crime, though he was later acquitted, he had disabled himself from rendering the service on account of conviction and incarceration in jail. Under these circumstances, the petitioner is not entitled to payment of back wages. The learned Single Judge and the Division Bench have not committed any error of law warranting interference.”

6. Another case is the case of Union of Indian and Ors. Vs. Jaipal Singh, reported in 2004 (1) SCC 121 wherein the Apex Court has observed that if an employee is dismissed from service on conviction and even if he is later on reinstated on acquittal in appeal, still he would not be entitled to back wages for the period of his absence, if the department was not responsible for keeping him behind the prison. It was further observed by the Hon'ble Apex Court that if the said prosecution was at the behest of the department, perhaps different conclusion may have arisen.

7. Having considered the rival submissions of the parties



as also the law laid down by the Hon'ble Apex Court on the subject matter, I am of the view that the only pertinent deciding factor for the purposes of granting or not granting the salary for the period of incarceration of the petitioner herein is as to whether the petitioner was in custody on account of a case lodged by the Bank i.e. the employer of the petitioner herein or by a private individual or for that matter anybody else. In the instant case, the petitioner was in custody from 13.7.1999 to 26.6.2000 on account of a case pertaining to the allegation of murder of his wife, not filed by the respondents or the Bank i.e. the employer of the petitioner herein, but by his in laws, hence the Bank had not disabled the petitioner from performing his duty. Therefore, in nutshell the position as in law as well as on fact is that the petitioner was involved in a crime, though he was later on acquitted and on account of the said criminal case, he had been incarcerated, thus, he had disabled himself from rendering his services for which the respondents were not in any manner responsible, since they had not filed the said case. Therefore, the respondents Bank cannot be fastened with their liability to make payments even for the pre-trial incarceration of the petitioner, which was in connection with a case with which it had no concern, hence the petitioner would not be entitled for the salary/ wages for the period he did not render his service on account of incarceration.



8. I find no merit in the present writ petition and the same is, accordingly, dismissed. However, without any order as to costs.

(Mohit Kumar Shah, J)

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