

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12844 of 2001

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Panchu Ram, son of Late Ramkripal Ram, at present posted as Peon, Hon'ble High Court of Judicature, Patna

.... Petitioner/s

Versus

The Hon'ble High Court, Patna through the Registrar, Establishment

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Ajay Kumar Thakur
Mr. Nilesh Kumar
Mr. Pravin Kumar
Mr. RAGHUNANDAN KR. SINGH
Mr. Bimal Kumar

For the Respondent/s : AG (BIHAR)
Mr. Sanjeet Kumar

For the Hon'ble High Court: Mr. Piyush Lall

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
C.A.V. JUDGMENT
Date: 13-07-2018

The present writ petition has been filed for setting aside the order dated 08.03.2001 issued under the signature of the learned Registrar, Establishment, Patna by which it has been communicated to the petitioner that his suspension has been revoked with effect from 07.03.2001, however, he shall not be entitled for any further salary during the period of suspension except the subsistence allowance.

The learned counsel for the petitioner has submitted that on account of certain disputes, the petitioner was sent to custody by a police case bearing Kotwali P.S. Case No. 497 of 1999 dated 11.12.1999 lodged by his enemies, hence the petitioner was put under suspension with effect from 13.12.1999 vide order dated 24.05.2000. It is further submitted that the petitioner was released from custody



and thereafter the In-Charge Registrar (Establishment), Patna High Court, Patna had passed an order dated 21.12.2000, whereby and whereunder it was directed that the petitioner shall continue to be under suspension until a verdict of acquittal is recorded by the Court. The petitioner is stated to have been acquitted by a judgment dated 06.01.2001 passed by the learned trial court. It appears that the petitioner had then submitted his joining whereupon by the impugned order dated 08.03.2001, the order of suspension was revoked with effect from 07.03.2001 and the petitioner was reinstated on his post, however, with a condition that he would not be entitled to any further salary for the period of his suspension except the subsistence allowance already received by him. The learned counsel for the petitioner has submitted that since the petitioner has been acquitted, he should be paid the full salary for the period of suspension. It is further submitted that since withholding of salary is a punishment, the same could not have been inflicted upon the petitioner without initiating a departmental proceeding or without issuance of a show cause notice.

Per contra, the learned counsel for the respondents has submitted that Rule 99 of the Bihar Service Code provides that a government servant who is arrested on a criminal charge should be considered to be under suspension for the period he is in custody or undergoing imprisonment. Hence, the petitioner was put under



suspension under Rule 99 of the Bihar Service Code by an order dated 24.05.2000 and after the petitioner was granted bail, his suspension was continued under Rule 100 of the Bihar Service Code by an order dated 21.12.2000. It is submitted that Rule 99 of the Bihar Service Code further provides that an employee would be allowed to draw any pay and allowance for such period other than the subsistence allowance in accordance with Rule 96 of the Bihar Service Code. Rule 96 of the Bihar Service Code provides for the mode and manner of payment of subsistence allowance. Rule 97 of the Bihar Service Code reads as follows:-

“97. (1) When a Government servant who has been dismissed, removed or suspended, reinstated, the authority competent to order the reinstatement shall consider and make specific order-

(a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty, and

(b) whether or not the said period shall be treated as a period spent on duty.

[(2) Where the authority mentioned in sub-rule(1), is of the opinion that the Government servant has been fully exonerated, or in the case of suspension, that it was wholly unjustified, the Government servant shall be given full pay and allowance to which he would have been entitled has he not been dismissed, removed or suspended, as the case may be]

(3) In other cases, the Government servant shall be given such proportion of such pay and allowances as



such competent authority may prescribe;

Provided that the payment of allowances under clause (2) or clause (3) shall be subject to all other conditions under which such allowance are admissible

(4) In a case falling under clause (2) the period of absence from duty shall not be treated as a period spent on duty for all purposes.

[(5) In a case falling under clause the period of absence from duty shall not be treated as a period spent on duty, unless such competent authority specifically directs that it shall be so treated for any specified purpose;

Provided that if the Government servant so desires such authority may direct that the period of absence from duty shall be converted into leave of any kind due and admissible to the Government servant.].

It has been further submitted that the impugned order dated 08.03.2001 has been passed in terms of Rule 97(1) of the said Code because the first part of para no. 2 thereof is referable to Clause (a) of Rule 97(1) as it decides that the petitioner would not be entitled to further salary for the period of suspension and second part of para no. 2 is referable to Clause (b) of Rule 97(1) as it decides that the period of suspension of the petitioner would be counted as on duty for the purposes of other benefits including post retirement benefits. Not mentioning Rule 97(1) of the said Code in the impugned order does not vitiate it as it is a settled law that non mentioning of a statutory provision or even mentioning of a wrong statutory provision does not



vitate an order so long as the power exist under the statutory Rules. Reliance is placed on the judgment of the Hon'ble Supreme Court in the case of *Collector of Central Excise, Calcutta vs. Pradyumna Steel Ltd.* reported in (2003) 9 SCC 234) vide paras 2 and 3.

Lastly, reliance has been placed on the judgment rendered by the Hon'ble Apex Court passed in the case of **Ranchhodji Chaturji Thakore vs. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar (Gujarat) & ors.** reported in (1996) 11 SCC 603 to submit that since the petitioner had involved himself in a crime, though he was later acquitted, he has 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.

Relying on the aforesaid judgment of the *Ranchhodji Chaturji Thakore* (supra) it has been further submitted that the petitioner is not entitled for any salary, apart from the subsistence allowance paid to him on account of his incarceration as well as on account of the mandatory provisions laid down in Rule 100 of the Bihar Service Code as well as on account of the conduct of the petitioner vis-a-vis the allegation levelled against him for the offences punishable under Section 377 of the Indian Penal Code, thus the petitioner has disentitled himself from grant of any additional salary apart from the suspension allowance for the period of suspension.



Since the respondents did not have any role to play either in the petitioner's incarceration or the pendency of a criminal case, hence the State cannot be saddled with the burden of paying salary for the period the petitioner had not worked.

I have heard the learned counsel for the parties and gone through the materials on record. At this stage, it would be relevant to reproduce paragraph no. 3 of the judgment reported in **(1996)11 SCC 603 (Ranchhodji Chaturji Thakore vs. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar (Gujarat) & ors)** 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 his own backdrops. 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”.

The aforesaid issue has again been considered by the Hon'ble Apex Court in the case of **Krishnakant Raghunath Bibhavnekar vs. State of Maharashtra and Ors., reported in (1997) 3 SCC 636**, paragraph Nos. 3 and 4 whereof are reproduced hereinbelow:-

“3. The appellant while working as compositor in the Government of India Printing Press, was charged for offences punishable, inter alia, under [Section 409](#) of IPC. Pending trial, he was kept under suspension and was paid subsistence allowance. After his acquittal, the appellant was reinstated but the respondents did not grant the consequential benefits to him. Consequently, the appellant approached the Administrative Tribunal. The Tribunal by the impugned order dated 27-4-1995 in OA No. 40 of 1992, dismissed the application. Thus, this appeal by special leave.
4. Mr. Ranjit Kumar, learned counsel for the appellant, contends that under Rule 72(3) of the Maharashtra civil services (Joining Time, foreign Services, and Payment during Suspension, dismissal and Removal) Rules, 1991 (for short “the Rules”), the Rules cannot be applied to the appellant nor would the



respondents be justified in treating the period of suspension of appellant, as the period of suspension, as not being warranted under the Rules. We find no force in the contention. It is true that when a government servant is acquitted of offences, he would be entitled to reinstatement. But the question is whether he would be entitled to all consequential benefits including the pensionary benefits treating the suspension period as duty period, as contended by Shri Ranjit Kumar? The object of sanction of law behind prosecution is to put an end to crime against the society and laws thereby intends to restore social order and stability. The purpose of prosecution of a public servant is to maintain discipline in service, integrity, honesty and truthful conduct in performance of public duty or for modulation of his conduct to further the efficiency in public service. The Constitution has given full faith and credit to public acts. Conduct of a public servant has to be an open book; corrupt would be known to everyone. The reputation would gain notoriety. Though legal evidence may be insufficient to bring home the guilt beyond doubt or foolproof. The act of reinstatement sends ripples among the people in the office/locality and sows wrong signals for degeneration of morality, integrity and rightful conduct and efficient performance of public duty. The constitutional animation of public faith and credit given to public acts would be undermined. Every act or the



conduct of a public servant should be to effectuate the public purpose and constitutional objective. Public servant renders himself accountable to the public. The very cause for suspension of the petitioner and taking punitive action against him was his conduct that led to his prosecution for the offences under [the Indian Penal Code](#). If the conduct alleged is the foundation for prosecution, though it may end in acquittal on appreciation or lack of sufficient evidence, the question emerges whether the Government servant prosecuted for commission of defalcation of public funds and fabrication of the records, though culminated into acquittal, is entitled to be reinstated with consequential benefits. In our considered view, this grant of consequential benefits with all back wages etc. cannot be as a matter of course. We think that it would be deleterious to the maintenance of the discipline if a person suspended on valid considerations is given full back wages as a matter of course on his acquittal. Two courses are open to the disciplinary authority, viz., it may enquire into the misconduct unless, the selfsame conduct was subject of charge and on trial the acquittal was recorded on a positive finding that the accused did not commit the offence at all; but acquittal is not on benefit of doubt given. Appropriate action may be taken thereon. Even otherwise, the authority may, on reinstatement after following the principle of natural justice, pass appropriate order including treating



suspension period as period of not on duty, (and on payment of subsistence allowance etc.) Rules 72(3), 72 (5) and 72 (7) of the Rules give a discretion to the disciplinary authority. Rule 72 also applies, as the action was taken after the acquittal by which date rule was in force. Therefore, when the suspension period was treated to be a suspension pending the trial and even after acquittal, he was reinstated into service, he would not be entitled to the consequential benefits, As a consequence, he would not be entitled to the benefits of nine increments as stated in para 6 of the additional affidavit. He is also not entitled to be treated as on duty from the date of suspension till the date of the acquittal for purpose of computation of pensionary benefits etc. The appellant is also not entitled to any other consequential benefits as enumerated in paragraphs 5 and 6 of the additional affidavit”.

The aforesaid view of the Hon’ble Apex Court in the case ***Ranchhodji Chaturji Thakore*** (Supra) was again reiterated in the case of ***Union of India and Ors. vs. Jaipal Singh, reported in (2004) 1 SCC 121***, paragraph Nos. 3, 4 and 5 whereof are reproduced hereinbelow:-

“3. Heard Mr. Raju Ramachandran, learned Additional Solicitor General appearing for the appellants, who placed strong reliance upon the decision of this Court in *Ranchhodji Chaturji Thakore v. Supdt. Engineer, Gujarat Electricity Board* wherein this Court, in a case identical to the facts of the present case, has chosen to



order only reinstatement but denied back wages on the ground that the department was in no way concerned with the criminal case and, therefore, cannot be saddled with liability also for back wages for the period when he was out of service during/after conviction suffered by the respondent in the criminal case. Per contra, Mr. Ranbir Singh Yadav, learned counsel for the respondent sought to place reliance upon an order of this Court dismissing the special leave petition filed summarily against the judgment of the very same High Court dated 19.07.2001 in CWP No. 10201 of 2000. The learned counsel for the respondent, by inviting our attention to the judgment of the High Court in that case contended that on the facts the case on hand was also similar to the case considered therein but this Court dismissed the special leave petition when the relief granted for reinstatement and back wages was contested by the authorities before this Court.

4. On a careful consideration of the matter and the materials on record, including the judgment and orders brought to our notice, we are of the view that it is well accepted that an order rejecting a special leave petition at the threshold without detailed reasons therefor does not constitute any declaration of law by this Court or constitute a binding precedent. Per contra, the decision relied upon by the appellant is one on merits and for reasons specifically recorded therefore it operates as a binding precedent as well. On going through the same, we are in respectful agreement with the view taken in Ranchhodji. If



prosecution, which ultimately resulted in acquittal of the person concerned was at the behest or by department itself, perhaps different consideration may arise. On the other hand, if as a citizen the employee or a public servant got involved in a criminal case and it after initial conviction by the trial court, he gets acquittal on appeal subsequently, the department cannot in any manner be found fault with for having kept him out of service, since the law obliges a person convicted of an offence to be so kept out and not to be retained in service. Consequently, the reasons given in the decision relied upon, for the appellants are not only convincing but are in consonance with reasonableness as well. Though exception taken to that part of the order directing reinstatement cannot be sustained and the respondent has to be reinstated in service, for the reason that the earlier discharge was on account of those criminal proceedings and conviction only, the appellants are well within their rights to deny back wages to the respondent for the period he was not in service. The appellants cannot be made liable to pay for the period for which they could not avail of the services of the respondent. The High Court, in our view, committed a grave error, in allowing back wages also, without adverting to all such relevant aspects and considerations. Consequently, the order of the High Court insofar as it directed payment of back wages is liable to be and is hereby set aside.

5. The respondent will be entitled to back wages from the date of



acquittal and except for the purpose of denying the respondent actual payment of back wages, that period also will be counted as period of service, without any break. The reinstatement, if not already done, in terms of the order of the High Court will be done within thirty days from today”.

Having regard to the facts and circumstances of the case and in view of the law settled by the Hon’ble Apex Court, I am of the view that no salary can be paid to the petitioner herein for the period he was in jail custody or even for the period of suspension on account of the pending criminal case inasmuch as the petitioner was involved in a criminal case, not initiated at the behest of the respondents, in which the respondents did not have any role to play, hence the State Government cannot be saddled with the burden of paying salary for the period the petitioner had not worked. This aspect of the matter has also been considered by this Court in a judgment reported in **2015(4) PLJR 770**.

For the reasons mentioned hereinabove, no relief can be granted to the petitioner, hence the present writ petition is dismissed.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	
CAV DATE	22.06.2018
Uploading Date	13.07.2018
Transmission Date	

