

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12372 of 2017

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Md. Zakaullah Khan, S/o Late Habibullah Khan, R/o Mohalla- Samanpura,
P.S.- Shashtrinagar, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Director General of Police, Bihar, Patna.
2. The Deputy Inspector General of Police, Bihar Military Police, Central Range, Patna.
3. The Commandant, Bihar Military Police- 14, Patna.
4. The Reserve Officer, Bihar Military Police- 14, Patna.
5. The Accounts Officer, Bihar Military Police- 14, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shailesh Kumar
For the Respondent/s : Mr. P.K. Verma - Aag3

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
CAV JUDGMENT

Date : 18-05-2018

The petitioner by way of the present writ petition has sought for quashing of part of Memo No. 2911 dated 15.10.2013 whereby and whereunder the departmental proceeding has been consigned with an observation that no amount shall be paid to the petitioner for the suspension period. It has further been prayed to issue directions to the respondents to pay the full salary.

2. The brief facts of the case are that the petitioner was Head Constable Driver in Transport Section of Bihar Military Police- 14, Patna and retired on 30.09.2013. On 03.08.2010, Shastrinagar P.S. No. 282 of 2010, under Sections 302/34 of the Indian Penal Code and Section 27 of the Arms Act, was



instituted against six accused persons including the petitioner herein whereafter the petitioner was arrested on 03.08.2010 and was released on bail on 17.05.2011. Thereafter, the petitioner is said to have submitted his joining on 18.05.2011 and the order of suspension was then recalled on 23.05.2011 with a direction to hold a departmental proceeding against the petitioner herein. The departmental proceeding was held against the petitioner herein, however, no charges could be proved against the petitioner herein, hence, the departmental proceeding was consigned with an observation that the petitioner shall not be entitled for any additional payment during the period of suspension.

3. It is a matter of record that the petitioner has been acquitted and discharged from the liabilities of his bail bond after a full-fledged trial by a judgment dated 18.11.2014 passed in Sessions Trial No. 870 of 2012 by the Additional and District Judge, III, Patna. Thereafter, the petitioner had requested the respondents to grant full salary for the period of suspension as well as the benefit of M.A.C.P. with effect from 01.01.2009 and in fact, the petitioner was also granted the benefits of A.C.P. / M.A.C.P.

4. The learned counsel for the petitioner has argued that



since the petitioner was falsely implicated in the criminal case, which is apparent from the fact that he has stood acquitted in the said criminal case, the petitioner is entitled to payment of the entire salary for the period of suspension. The learned counsel has relied upon an order passed by the Hon'ble Supreme Court, reported in **(1996) 1 SCC 296 (State of Punjab and others Vs. Shambhu Nath Singla and others)** to contend that the petitioner is entitled to full salary and allowances for the period of suspension after being discharged by the criminal court. The learned counsel has also relied upon a judgment dated 2.05.2011 passed in L.P.A. No. 721 of 2010 to contend that Rules 99 and 100 of the Bihar Service Code squarely covers the present case. At this juncture itself, it must be clarified that the said judgment dated 02.05.2011, passed by the learned Division Bench has categorically stated that Rules 99 and 100 would not be applicable in view of the factual situation of the said case, which is no different from the present case, hence, Rules 99 and 100 of the Bihar Service Code would consequently be also not applicable in the present case for the same reasons as mentioned in the said judgment dated 02.05.2011.

5. I have heard the learned counsel for the parties and perused the materials on record.



6. It is apparent from the records that the petitioner alongwith other persons was made accused for intentionally committing murder of one Isteyak Khan and accordingly, Shastrinagar P.S. Case No. 282 of 2010 was registered against the petitioner and others under Sections 302/34 of the Indian Penal Code and Section 27 of the Arms Act. It appears that the petitioner has been acquitted by a judgment dated 18.11.2014 passed by the learned Additional District and Sessions Judge-III, Patna on the ground that main witnesses (three out of four) had been declared hostile during the course of the trial and the only other remaining witness i.e. the Investigating Officer of the case was not found to be of any value, by the trial court since obviously, he was not the eye-witness of the said case.

7. In any view of the matter, the fact remains that the said criminal case was not lodged against the petitioner by the department but it was on account of his personal dispute, hence, the department was in no way responsible for preventing the petitioner from rendering his services whereas on the contrary the petitioner was prevented from rendering services on account of his incarceration due to the aforesaid criminal case, not lodged by the department, but lodged on account of personal rivalry of the petitioner herein.



8. Now, coming to the arguments advanced by the learned counsel for the petitioner, firstly, it is stated that the order of the Hon'ble Apex Court, reported in ***(1996) 1 SCC 296 (State of Punjab and others Vs. Shambhu Nath Singla and others)*** is merely an order, having no precedential value, and does not lay down any law so as to warrant any consideration for the purposes of adjudication of the present case. Nonetheless, the leading case on the issue involved in the present case is the one rendered by the Hon'ble Apex Court, reported in ***(1996) 11 SCC 603 (Ranchhodji Chaturji Thakore Versus Superintendent Engineer, Gujarat Electricity Board, Himmatnagar (Gujarat) and Another)***, paragraph No. 3 whereof is reproduced hereinbelow:-

“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”.

9. The aforesaid issue has again been considered by the Hon’ble Apex Court in the case of ***Krishnakant Raghunath Bibhavnekar vs. State of Maharastra 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”.

10. 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 noway 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 therefor 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 advertent 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”.



11. Therefore, this Court is of the considered view that in view of the law settled by the Hon'ble Apex Court, 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 and the petitioner's incarceration inasmuch as the petitioner was involved in a criminal case pertaining to his own family affairs 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 on account of him being in jail custody. This aspect of the matter has also been considered by this Hon'ble Court in a judgment reported in **2015 (4) PLJR 770**.

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

(Mohit Kumar Shah, J)

ajay gupta/-

AFR/NAFR	NAFR
CAV DATE	08.05.2018
Uploading Date	18.05.2018
Transmission Date	

