

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 19504 of 2015

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Birendra Kumar Son of Late Rajeshwar Mahto, Resident of Village- Maniarwa,
P.S.- Khajaulim District- Madhubani (Bihar).

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Co-operative, Government of Bihar, Patna.
2. The Principal Secretary, Cooperative Department, Government of Bihar, Patna.
3. The Deputy Secretary, Co-operative Department, Government of Bihar, Patna.
4. The Registrar, Cooperative Societies, Government of Bihar, Patna.
5. The Joint Secretary, Co-operative Societies, Government of Bihar, Patna.
6. The Additional Secretary, Co-operative Societies, Government of Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 11-05-2018

Heard learned counsel for the petitioner and State.

2. The petitioner has moved the Court for the following reliefs:

“That this is an application for issuance of appropriate writ, order or directions for quashing the Order passed by the Respondent No. 2 under Memo No. 1915 dated 15.06.2015 and also the Letter No. 2958 dated 25.08.2018 issued by the Respondent No. 3 by which the learned Respondent denied the back wages of the petitioner for the period from the date of dismissal on 16.09.2008 till the date of reinstatement i.e. on 06.01.2015 and further to allow his promotions, promotional benefits, full salary with increments etc. due to dismissal from service and further to allow any other consequential relief(s) for which the petitioner found entitled.”



3. The petitioner, while being in service and holding the post of Deputy Registrar in the Co-operative Department under the State Government was caught in a trap case while accepting bribe of Rs. 5,000/- on 24.07.1992, by the Vigilance Department, for which Special Case No. 64 of 1992, arising out of Vigilance P.S. Case No. 32 of 1992 was lodged against him. The petitioner was placed under suspension and departmental proceeding initiated. By judgment dated 20.12.1999, the petitioner was convicted and sentenced to undergo three years rigorous imprisonment and a fine of Rs. 10,000/- under Section 7 of The Prevention of Corruption Act, 1988. The petitioner preferred Criminal Appeal (S.J.) No. 11 of 2000 before this Court and during the pendency, he was released on bail. On 11.08.2001, the suspension of the petitioner was revoked till the disposal of the appeal filed by him. By order dated 16.09.2008, the petitioner was dismissed from service on the ground of conviction in the criminal case. Later, by judgment dated 07.08.2012 in the appeal, the petitioner was acquitted. On 02.11.2012, he represented before the Principal Secretary of the Co-operative Department for reinstatement in service. The petitioner had also preferred C.W.J.C. No. 4883 of 2013 for quashing the order of dismissal. By order dated 10.11.2014, the petitioner was directed to be reinstated within four weeks and with



further direction that representation for back wages be disposed off within the same period in accordance with law and the relevant rules. The petitioner, in terms of the order of the Court submitted his representation before the respondent no. 2 on 01.12.2014. By order dated 06.01.2015, he was reinstated and also joined on the same day. Subsequently, he superannuated from the department on 28.02.2015. On 05.05.2015, he submitted representation to respondent no. 2, seeking arrears of back wages and for not counting the period of dismissal as break in service. By order dated 15.06.2015, the respondent no. 2, rejected the claim of the petitioner for back wages. He again filed representation on 24.07.2015 on the ground that the decision of the Hon'ble Supreme Court relied by the authorities in denying him back wages had been misinterpreted and, thus, for making such payment to him, which was once again rejected by order dated 25.08.2015.

4. Learned counsel for the petitioner submitted that though he has a good case on merits for claiming the entire back wages, but he is limiting his prayer to the back wages, at least from the date he was acquitted by the appellate Court (High Court) in the criminal case. Learned counsel submitted that he would also rely on the decision of the Hon'ble Supreme Court in the case of **Union of India v. Jaipal Singh** reported as (2004) 1 SCC 121, on which the



authorities had relied, though, they have misinterpreted the said order.

5. Learned counsel for the State submitted that since it had preferred appeal before the Hon'ble Supreme Court, the date on which its appeal was dismissed by the Hon'ble Supreme Court, would technically be the date of acquittal.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds the claim of the petitioner is to be valid. Without going into the factual aspect of the matter, in view of the decision of the Hon'ble Supreme Court in the case of **Union of India v. Jaipal Singh** (supra), on which both the sides rely, the contention of learned counsel for the petitioner that the same has been wrongly interpreted by the authorities seems to be correct. In the order itself, it has been clearly held that the entitlement of the person before the Hon'ble Supreme Court for back wages would be from the date of acquittal. In the said case, the petitioner before the Hon'ble Supreme Court was the Union of India, whereas in the present case it was the State of Bihar. In the said case also the trial Court had convicted the person and he was acquitted by the High Court as is the case in the present writ petition. Further, the petitioner before the Supreme Court had also moved the High Court



for his reinstatement in a writ petition. The High Court had allowed the same with full back wages and consequential benefits. In that background, the Hon'ble Supreme Court had directed for reinstatement, if not already done, in terms of the order of the High Court but had modified the direction to pay back wages, which was restricted from the date of acquittal. In the present case, the interpretation by the authorities of the word 'acquittal' to mean the ultimate dismissal by the Supreme Court, is clearly erroneous and without any basis or justification. The petitioner stood acquitted by the judgment of the High Court dated 07.08.2012. This order of acquittal was not interfered with by the Hon'ble Supreme Court. Thus, clearly, the date of acquittal remains 07.08.2012 and not when the Hon'ble Supreme Court refused to interfere in the order of acquittal. Any other interpretation would be patently wrong and unfounded. Moreover, the principle of merger of the order of acquittal by the High Court with that of the order of dismissal of the appeal of the State by the Hon'ble Supreme Court is not applicable in the present case.

7. Thus, in view of the relief which learned counsel for the petitioner had restricted his prayer to before the Court and the judgment of the Hon'ble Supreme Court in the case of **Union of India v. Jaipal Singh** (supra), being relied upon by both the sides,



the Court clarifies the position that the date of acquittal referred would necessarily be 07.08.2012, in the present case. Accordingly, the petitioner is held entitled to payment of back wages from 07.08.2012. Necessary payment be made to him within two months from the date of production of a copy of this order before the respondent no. 2.

8. The writ petition stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

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