

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**W.P.S. NO. 3079 OF 2007**

Manoj Upadhyaya, S/o Shiva Kumar Upadhyaya, aged about 36 years, R/o Village- Lakhasar, P.S. Harri, District Bilaspur (CG)

... Petitioner**versus**

1. State of Chhattisgarh, through: the Secretary, Home Department, D.K.S. Bhawan, Mantralaya, Raipur, (CG)
2. Director General of Police, Police Head Quarter Raipur, Raipur (CG)
3. Inspector General of Police, Raipur Circle, District Raipur (CG)
4. Superintendent of Police, Kabirdham, District Kawardha (CG)

... Respondents

For Petitioner	:	Mr. Anup Majumdar, Advocate.
For Respondents	:	Mr. Arvind Dubey, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****12/09/2018**

1. Challenge in the present writ petition is to the Annexure P-6, dated 1.5.2007 whereby the appeal preferred by the petitioner has been rejected affirming the order of punishment of termination.

2. Initially, the services of the petitioner who was working as a Constable at Police Station Kawardha, District Kabirdham, were terminated vide order dated 7/14.5.2005, Annexure P-1, by the Superintendent of Police, District Kabirdham. The plain perusal of the order of termination, dated 7/14.5.2005, Annexure P-1, would reveal that the services of the petitioner were terminated on account of the fact that he was convicted by the Trial Court, Kawardha on 28.2.2005 for the offence punishable under Sections 304 (Part-II)/149, 330/149, 348/149 and 201 of the Indian Penal Code (for short hereinafter referred to as, "I.P.C.").

3. Subsequent to the petitioner getting bail from the appellate Court, the order of termination was recalled by the Superintendent of Police i.e. the disciplinary authority. However, the respondent no.2 i.e. the Director General of Police invoking the provisions of Rule 19(1) of Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 as also the powers envisaged under the Police Regulation 238 had imposed the order of

punishment of termination against the petitioner rejecting the appeal of the petitioner taking into consideration the conviction order which was there against the petitioner.

4. Pending the petition before this Court, there is a subsequent development which has transpired and that is the appeal which the petitioner had preferred against his conviction, i.e., Criminal Appeal No. 225 of 2005, stood finally decided on 1.8.2013 by this Court. Vide the said judgement, this Court partly allowed the said criminal appeal to the extent that the conviction of the petitioner for the offence punishable under sections 304 (Part-II)/149, 330/149, 348/149 of I.P.C. has been set aside and the petitioner stands acquitted from those offences. However, the conviction so far as the offence under Section 201 of I.P.C. is concerned, the same stands affirmed in the said criminal appeal by this Court.

5. Learned counsel for the petitioner at this juncture submits that in the light of the subsequent development where the petitioner has been acquitted of all the major offences which were alleged against him, the order of termination deserves a reconsideration.

6. Given the aforesaid facts and circumstances, this Court is also of the opinion that under the changed circumstances and also taking into consideration the fact that for the major offences since the petitioner has been acquitted, except for the offence under Section 201 of I.P.C., the order of punishment passed by the respondents needs a reconsideration and accordingly the matter stands remitted back to respondent no.2, the Director General of Police, Raipur, who had rejected the appeal of the respondents vide order dated 1.5.2007.

7. Let the appellate authority i.e. respondent no.2 take a fresh decision taking into consideration all the subsequent developments particularly the judgement passed in Criminal Appeal No. 225 of 2005 and thereafter take a

fresh decision as to what orders have to be passed against the petitioner.

Let this exercise be completed within 90 days from today.

8. The writ petition accordingly stands disposed of with the aforesaid observations.

**Sd/-
(P. Sam Koshy)
Judge**

/sharad/