

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 3965 of 2016

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Sheo Nandan Singh, Son of Late Banarsi Singh, resident of Village - Singhchak, P.S. - Chanan, District - Lakhisarai at presently residing at Babu Tola, Amarpur, Road, P.S. Banka, District Banka

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Rural Works Department, Government of Bihar, Patna
2. The Principal Secretary, Rural Works Department, Government of Bihar, Patna.
3. The Principal Secretary, Road Construction Department, Government of Bihar, Patna.
4. The Secretary, General Administration, Government of Bihar, Patna.
5. The Secretary, Rural Works Department, Government of Bihar, Patna.
6. The Joint Secretary, Rural Works Department, Government of Bihar, Patna.
7. The Special Secretary, Rural Works Department, Government of Bihar, Patna.
8. The Deputy Secretary, Rural Works Department, Government of Bihar, Patna.
9. The Engineer -in- Chief -cum- Additional Commissioner, -cum- Special Secretary, Road Construction Department, Government of Bihar, Patna
10. The Secretary, Road Construction Department, Government of Bihar, Patna.
11. The Joint Secretary, Road Construction Department, Government of Bihar, Patna.
12. The Deputy Development Commissioner, (DDC), Munger.
13. The Block Development Officer, Lakhisarai Block District-Lakhisarai.
14. The Bihar Public Service Commission, (BPSC), Bailey Road, Patna through its Secretary.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr Rajendra Narain, Sr Advocate with Mr Rajiv Kumar Singh, Advocate
For the S t a t e	:	Mr Amaresh Kumar Sinha, AC to GA I
For B P S C	:	Mr Sanjay Pandey, Advocate

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 02-05-2019

Heard learned Senior Counsel for the petitioner as also the learned counsel for the State.

2 Writ petition was filed for quashing the Notification dated 31.12.2015 issued by the Secretary, Rural Works Department, Government of Bihar, Patna whereby and whereunder the petitioner has been dismissed from service as Junior Engineer in the Rural Works Department upon his conviction dated 21.12.2010 in the two criminal trials arising out of Vigilance Police Station Case No 29 of 1986 and 30 of 1986 for the offences under Sections 420, 467, 468, 471, 409, 477A and 120B of Indian Penal Code read with Section 5 (2) of the Prevention of Corruption Act. Prosecution was at the instance of persons stranger to the Department and vigilance cases were lodged alleging that the petitioner, along with others, had indulged in financial embezzlement of public money while implementing the scheme of the Government for digging wells on private land of the marginalized family of the society.

3 During pendency of the instant proceedings, the two convictions of the petitioner have been set aside by the High Court, in the proceedings arising out of Cr Appeal (SJ) No 53 of



2011 and Cr Appeal (SJ) No 71 of 2011. On 02.08.2017 and 13.02.2019, High Court has set aside the findings of the trial Court in Cr Appeal (SJ) No 53 of 2011 and Cr Appeal (SJ) No 71 of 2011 respectively and has allowed the appeals of the petitioner.

4 Petitioner, in the meantime, has retired on 31.01.2017. He has communicated his acquittal to the respondent-authorities on 18.02.2019 seeking benefit of pension as well as back wages for the period he has been out of service owing to the order of dismissal dated 31.12.2015 based on the conviction in the two criminal cases on the same date that is 21.12.2010.

5 The issue being canvassed today by the learned Senior Counsel appearing for the petitioner is that the petitioner, in view of his acquittal by the Appellate Court in the said two cases, is entitled to consequential benefits of back wages from 31.12.2015 till his date of superannuation, i e, 31.01.2017 and for the arrears of pension for the said period, apart from current pension at the admissible rate. The learned Senior Counsel has placed reliance on a recent decision of the Apex Court in the case of *Raj Narain -Versus- Union of India & Others* rendered in *Civil Appeal No 3339 of 2019* arising out of *SLP (Civil) No 100 of 2016*. He submits that the Apex Court, after considering the earlier judgment in the case of *Ramchhodji Chaturji Thakore*



-Versus- Superintending Engineer, Gujarat Electricity Board & Another, reported in (1996) 11 Supreme Court Cases 603 as well as judgment in the case of *Union of India & Others -Versus- Jaipal Singh*, reported in (2004) 1 Supreme Court Cases 121 has held that where the prosecution is at the instance of the Department itself and is attended with mala fide and fictitious intent then the employee concerned, who has been kept away from service on the basis of conviction, in such circumstances, would be entitled to back wages. Referring to the findings of the Criminal Court, the learned Senior Counsel has submitted that from the tenor and tone of the judgment passed in the criminal appeal, it is apparent that the prosecution against the petitioner was lacking bona fide and that the same was mala fide and fictitious.

6 The learned State Counsel, on the other hand, has rightly submitted that considering the earlier two judgments in the cases of *Ramchhodji Chaturji Thakore (supra)* and in the case of *Jaipal Singh (supra)*, matter has finally been considered by the Apex Court. Mere fact that prosecution is at the instance of the Department would have no bearing on the entitlement of back wages. The Apex Court has clearly held that it is only where the proceedings by the Department are mala fide or with fictitious intent that the petitioner may be entitled to the back wages.



7 The issue, therefore, arises whether the prosecution in the instant case is mala fide or with fictitious intent. Learned Senior Counsel has strenuously urged that the tone and tenure of the order passed in the criminal appeal is a clear indication of the mala fide and fictitious prosecution to which the petitioner has been subjected.

8 This Court, however, is of the opinion that the finding whether prosecution was malicious or with fictitious intent was required to be recorded in the order of acquittal in clear and explicit terms. Admittedly, there is no such findings in the two orders passed in Cr Appeal (SJ) No 53 of 2011 and Cr Appeal (SJ) No 71 of 2011 wherein the petitioner has finally been acquitted. The issue whether the prosecution was malicious or with fictitious intent could only have been gathered on going into the entire circumstances based on evidence in the criminal trial. This Court is of the opinion that, this Court exercising jurisdiction under Article 226 of the Constitution of India having regard to the circumstances in the instant case, cannot arrive at a conclusion regarding prosecution against the petitioner being malicious.

9 Other aspect, which has rightly been highlighted by the learned counsel for the State, is that finding of malicious prosecution against the accused would give rise to a criminal



liability on the persons who have lodged the prosecution against the petitioner. The said persons who have directed lodging of the two criminal cases are not before this Court.

10 For the reasons indicated herein above, this Court would hold that the petitioner cannot be granted the benefits of back wages or any arrears for the period after his dismissal on account of conviction with effect from 31.12.2015 till his acquittal on 13.02.2019.

11 Petitioner has brought the fact of his acquittal to the notice of the authorities on 18.02.2019. In the circumstances, this Court would hold that the petitioner would be entitled to the benefits on account of pension from 18.02.2019 itself. The respondents should expeditiously make available the said benefits to the petitioner having regard to his acquittal in the two criminal cases which form the basis of his dismissal.

12 Writ petition is disposed of with the aforesaid directions and observations.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	27.05.2019
Transmission Date	NA

