

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 1553 of 2011

Kushal Singh Nayak S/o Shri Shobha Singh Nayak, aged about 52 years,
R/o Village Mardum Distt. Bastar, Chhattisgarh.

---Petitioner(s)

Versus

- 1.** State of Chhattisgarh Through Secretary, Forest Department DKS Bhawan, Raipur, District Raipur (CG).
- 2.** Chief Conservator of Forest, Raipur, District Raipur (CG).
- 3.** Conservator of Forest, Jagdalpur, District Bastar (CG).
- 4.** Divisional Forest Officer, Forest Division Bastar, Jagdalpur, District Bastar (CG).

---Respondents

For Petitioner	:	Shri Manoj Paranjpe, Advocate.
For State	:	Shri Sudip Agrawal, Dy. Advocate General.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

22.06.2020

- 1.** The present writ petition has been filed seeking quashment of the order dated 05.03.2011 (Annexure P/1) passed by the Respondent No.4 whereby the representation in the light of the petitioner being acquitted in a Criminal Appeal setting aside his conviction has been rejected.
- 2.** Facts of the case in brief is that the petitioner was working under the respondents on the post of Forest Guard. He stood convicted in a criminal case for the offence punishable under the provisions of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short, the Act, 1989) vide judgment dated 11.07.2003. The said judgment of conviction was subjected to challenge before the High Court vide Criminal Appeal No.812 of 2003.
- 3.** It is necessary at this juncture to mention that pursuant to his conviction from the Trial Court, the petitioner was issued with an order of ***“dismissal from service”*** for being convicted. The order of dismissal from service

was without enquiry and it was on the sole ground of the petitioner being convicted in the criminal case for the offence under the Act, 1989.

4. The Criminal Appeal No.812 of 2003 finally stood decided on 31.01.2011 and the criminal appeal stood allowed and the petitioner was acquitted from the charges leveled against him. Thereafter, the petitioner approached the authorities by way of a representation for reconsidering the order of dismissal of service which was subsequently modified to compulsory retirement, which stands rejected vide the impugned order dated 05.03.2011 under challenge in the present writ petition.
5. The contention of the petitioner is that once when the main ground for the authorities in punishing the petitioner being that of conviction and the conviction order no longer being in existence on account of the judgment of acquittal in Criminal Appeal No.812 of 2003, the position should roll back as it stood prior to the date of punishment imposed by the disciplinary authority.
6. The counsel for the State opposing the petition submits that the order of dismissal from service was subjected to challenge by the petitioner in a Writ Petition i.e. WP No.2899 of 2003 which was allowed and disposed of on 28.02.2006 and the order of dismissal from service was modified and converted into one that of compulsory retirement. Therefore, the order of dismissal from service already having been modified into an order of compulsory retirement and that too at the instance of a judgment passed by this court in WP No.2899 of 2003, there is no further scope of interference for this court.
7. The State counsel further submits that the judgment of this court in WP No.2899 of 2003 has already been acted upon by the respondents and it

has since been complied with also is a ground for refusal of interference to the relief sought for by the petitioner.

- 8.** Having heard the contentions put forth on either side, the admitted factual matrix as it stands is that, the petitioner undoubtedly was an employee under the respondents working as Forest Guard. The petitioner was convicted in a criminal case for the offence punishable under the Act, 1989 on 11.07.2003. Against the conviction, the petitioner had preferred a Criminal Appeal i.e. Criminal Appeal No.812 of 2003. Meanwhile, the petitioner was dismissed from service only on the ground of his getting convicted. The Petitioner had filed WP No.2899 of 2003 challenging the dismissal order pending the Criminal Appeal and this court allowed the Writ Petition on 28.02.2006. While allowing the writ petition, the High Court had modified the order of dismissal from service into one of compulsory retirement which has certainly attained finality and has also been complied with.
- 9.** However, there is a subsequent development, inasmuch as, the Criminal Appeal that the petitioner has preferred i.e. Criminal Appeal No.812 of 2003 stood decided by this court vide judgment dated 31.01.2011. The High Court allowed the Criminal Appeal and set aside the judgment of conviction and acquitted the petitioner of the charges that were levelled against him.
- 10.** In view of the judgment of acquittal or the allowing of the Criminal Appeal, the status of the petitioner stands restored to the extent that there is no order of conviction existing against the petitioner. The order of conviction gets automatically wiped off on his getting acquitted in the Criminal Appeal.

11. As a natural consequence, what also stands established is the fact that the very basis or the foundation on which the first order of dismissal from service which was subsequently converted into an order of compulsory retirement also gets wiped out, as there was no enquiry conducted by the department and it was only an order of punishment based upon the conviction which no longer is in existence.
12. At this juncture it would be relevant to refer to the judgment of Supreme Court in case of **Basanti Prasad Vs. Bihar School Chairman, Bihar School Examination Board & Others**, 2009 (6)SCC 791 wherein in paragraph 28 it has been observed as under :

“28. Since, the punishment imposed was based on an order of conviction and since the same is set aside by an order passed by a superior forum and that order having become final for various reasons, including the death of the appellant's husband, as natural corollary, the request of the appellant requires to be redressed by the employer and since that was done, a writ court ought to have come exercised its extraordinary jurisdiction by commanding the respondents to redress the grievance of the appellant without resorting to a hypertechnical approach. In view of the above, the order passed by the respondents terminating the services of the appellant requires to be set aside and we do so.”
13. So far as the judgment of this Court passed in WP No.2899 of 2003 is concerned, this court is of the opinion that the said judgment was on the position as it stood prior to the Criminal Appeal being decided and which was only questioning the order of punishment in the backdrop of the existence of the order of conviction. Whereas, now the very basis and foundation for the petitioner being inflicted with the order of punishment getting wiped out, as a natural consequence or corollary, the respondents ought to have reviewed their decision of issuance of punishment and should have restored the status of the petitioner as it existed prior to the

date of the original order of punishment passed on 29.07.2003 being passed. The outcome of WP No.2899 of 2003 therefore would not have any bearing on the claim of the petitioner in the light of the acquittal that he has received from the High Court in Criminal Appeal No.812.

- 14.** The writ petition therefore deserves to be and is accordingly allowed. The respondents are directed to reconsider the order of punishment of compulsory retirement inflicted upon the petitioner and an appropriate order be passed treating him to have been taken back in service on the status that he was enjoying prior to 29.07.2003 and he should be treated in service till he attained the age of superannuation. Further all his retiral dues be also accordingly calculated and released to him after adjusting the payments that have been made to the petitioner in between.
- 15.** Considering the fact that the writ petition that we are deciding itself is of the year, 2011, it is expected that the respondents shall conclude the entire proceedings within an outer limit of four months starting from the date of receipt of copy of this order.
- 16.** The writ petition accordingly stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

inder