

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22100 of 2014

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Saroj Kumar Singh S/o - Late Ram Chandra Kumar resident of village -
Gokhale Nagar Bishnupur, P.S. - Balia, Distt. - Begusarai.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Deputy Inspector General of Police D.I.G. Purnea Division, Purnea,
Dist. - Purnea.
3. The Superintendent of Police, Purnea, Dist. - Purnea.
4. The Sub Divisional Police Officer, Bayasi, Dist. - Purnea.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mahendra Thakur, Adv.
For the Respondent/s : Mr. Ajit Pratap Singh, Sc15

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**CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH
SHARMA**

ORAL ORDER

- 2 12-12-2022 1. The petition is being preferred by the petitioner
praying for all consequential monetary benefits for the period
from 01.05.2006 to 19.01.2014 and other consequential reliefs.
2. The learned counsel for the petitioner submits that
against his dismissal, he had preferred a writ petition before this
Court bearing **C.W.J.C. No. 14000/2008** which was allowed on
10.12.2013. This Court set aside the termination and his position
prior to dismissal was restored. The petitioner was left free to
make representation with respect to his claims.
3. Learned counsel submits that accordingly the
petitioner filed a representation claiming salary for the period.
Respondents have dismissed the claim and treated the entire



period as extraordinary leave.

4. Learned counsel submits that there was no occasion to treat the period as extraordinary leave once this Court has directed restoration of his position prior to dismissal.

5. The counsel appearing for the State submits that the principle of no work no pay could be applied and therefore consequential monetary benefits were not required to be paid.

6. I have considered the submission. The principle of non payment of salary for the intervening period when a person is kept out of job on account of order of removal or dismissal from service and is reinstated by any Courts order will depend on the language and contents of the reinstatement order. It would be, therefore, useful to quote the order passed by the High Court which is as under:-

“The impugned order terminating the service of the petitioner is set aside. The position as standing prior to dismissal is restored. The petitioner would appear before the respondents as and when required. The petitioner would be at liberty to file representation before the respondents with respect of his claims.”

7. Restoring the position as it stood prior to dismissal would indicate that the person is required to be treated as if he was never dismissed from service. He therefore, would be



entitled to be treated continuously in service.

8. A look at the order passed by the High Court also shows that the petitioner was reinstated with restoration of service. So far as his guilt is concerned, the Court did not absolve him from the guilt and held him guilty of the one part of charge while for the other part of the charge the respondents were left free to take a decision on the quantum of punishment.

9. Keeping in view as above circumstances, claim for full salary for the intervening period is not made out. However, decision has to be taken after considering the entire order passed by the High Court. If any other punishment is awarded for one part of charge being proved then to that extent the pay and allowances would be reduced otherwise if the authorities choose not to pass any order of punishment, he would be entitled to the entire salary.

10. Somewhat similar view has been taken by the Apex Court in Jaipal Singh's case distinguishing two different aspects of punishment. If the punishment order has been passed which is found to be erroneous and the error is on the part of the Department, the Apex Court has observed that such a circumstance will have to be examined separately. It would be therefore useful to quote the order passed in **Union of India &**



Ors. Vs. Jaipal Singh held as under:-

“If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest of or by the department itself, perhaps different considerations may arise. On the other hand, if as a citizen the employee or a public servant got involved in a criminal case and if 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. Keeping in view above, the authorities are directed to take a comprehensive decision on the basis of the judgment passed by this Court dated 10.12.2013 and accordingly fix the petitioners pay and allowances for the entire intervening period. The exercise has to be completed positively within a period of two months from today.

(Sanjeev Prakash Sharma, J)

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Item No. 49

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