

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.C(OAC) No.916 of 2017

Jogendra Biswal

....

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

COROM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

08.07.2022

Order No

- 1.** This matter is taken up through Hybrid Mode.
- 2.** Heard Mr. D.R. Swain, learned counsel for Petitioner and Mr. Tripathy, learned counsel for the State-Opposite Parties.
- 3.** At the outset, Mr. Swain is permitted to correct the date of the order passed by the appellate authority in the brief in Court today.
- 4.** The Petitioner is aggrieved by the order of dismissal initially passed by the Opposite Party No.4 on 16.09.2004 in removing the petitioner from his service and confirmation of the same by the appellate authority-Opposite Party No.3 vide order dated 16.02.2017 under Annexure-19.
- 5.** It is submitted that the Petitioner while continuing as a Constable under Opposite Party No.4, he was proceeded with a disciplinary proceeding because of his implication in a criminal case in G.R. Case No.1313 of 1996.
- 6.** Mr. Swain, learned counsel for the Petitioner submitted that both the disciplinary proceeding and the criminal

proceeding were initiated for self-same charges. But in the disciplinary proceeding, the order of dismissal was passed on 16.09.2004 by the Opposite party No.4 by removing the Petitioner from his services.

7. It is submitted that vide judgment dated 8.8.2012, the Petitioner was acquitted from the charges and in another G.R. Case pending against him in G.R. Case No.385 of 1997, the Petitioner was also acquitted vide judgment dated 25.01.2016 under Annexure-2-Series.

8. It is submitted that the petitioner after being acquitted in both the cases preferred an appeal against the order of dismissal before the Opposite Party No.3 on 05.12.2016.

9. It is submitted that the appellate authority without proper appreciation of the grounds taken in the memo of appeal and the acquittal of the petitioner in the above noted two criminal cases, confirmed the order of dismissal vide impugned order dated 16.02.2017.

10. Mr. Swain, learned counsel for the Petitioner submitted that since the Petitioner has been acquitted in both the criminal cases and the disciplinary proceeding was initiated on self-same charges, in view of his acquittal, his prayer for reinstatement was required to be considered favorably by the Opposite Party No.3.

11. Mr. Tripathy, learned counsel for the State on the other hand submitted that not only the Petitioner was implicated in the criminal case and the disciplinary proceeding was also initiated on the self-same charges, but the Petitioner was also implicated in another G.R. Case. Therefore, the appellate authority has not committed any error in upholding the order of dismissal.

12. Since in the criminal proceeding initiated on self-same charges, the Petitioner has been acquitted, this Court while setting aside the order dated 16.09.2004 as well as the order dated 16.02.2017, directs the Opposite Party No.4 to reconsider the matter with regard to reinstatement of the Petitioner.

13. Mr. Swain in support of the claim also relied on a decision of this Court reported in **2014(1)ILR CTC-1070** as well as another decision of the Hon'ble Apex Court in the case of **Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. & Another.**

14. In view of such stand taken by the learned counsel for the Petitioner, this Court directs the Opposite Party No.4 to consider the prayer of the petitioner for his reinstatement taking into account the ratio decided by this Court as well as the Hon'ble Apex Court in the aforesaid cases. The entire exercise shall be completed within a period of three months from the date of receipt of this order.

It is observed that this Court has not expressed any opinion on the merits of the case.

15. Accordingly, the Writ Petition stands disposed of.

(Biraja Prasanna Satapathy)
Judge

Subrat