

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.322 of 2020

In
Civil Writ Jurisdiction Case No.13042 of 2018

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Bhagwan Ram S/o Late Narsingh Ram, R/o Vill.- Dullahpur, P.O.-
Harnathpur, P.S.- Mohania, District - Kaimur, Pin - 821109.

... .. Appellant

Versus

1. The State of Bihar through the Chief Secretary, Patna.
2. The Principal Secretary, Department of Education, Government of Bihar, Patna.
3. The Director, Primary Education Department, Government of Bihar, New Secretariat (Bikas Bhawan), Patna.
4. The District Magistrate-Cum-Collector, Kaimur at Bhabhua.
5. The Regional Deputy Director, of Education, Patna Division, Patna.
6. District Education Officer, kaimur
7. District Programme officer (Establishment), Kaimur.
8. The Deputy Collector Establishment-Cum-Nodal Officer, Kaimur (Bhabhua).
9. The Sub- Divisional Education Officer, Bhabhua.
10. The Accountant General, Bihar, Birchand Patel Path, Patna.

... .. Respondents

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Appearance :

For the Appellant	:	Mr. Kumar Brijnandan, Advocate
	:	Dr. Pratyush Kumar, Advocate
For the Respondents	:	Mr. Priyadarshi Matri Sharan, AC to AAG-15

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CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE RUDRA PRAKASH MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 19-12-2023

The present appeal has been filed by the appellant under Clause X of the Letters Patent of Patna High Court Rules against oral Judgment dated 27.02.2020 rendered by learned Single Judge in Civil Writ Jurisdiction Case No. 13042 of 2018.



2.) The factual matrix of the case is as under :-

2.1) The present appellant is the original writ petitioner who filed the caption writ petition before this Court in which the writ petitioner had stated that he joined as Government Teacher in Primary School, Dumrawan, Aghoura, Shahabad on 21.06.1971. It is further stated that thereafter on 22.05.1978, FIR bearing Mohania P.S. Case No. 8 of 1978, was lodged for the offence punishable under Section 302 of the Indian Penal Code against the petitioner and others and thereafter the petitioner was suspended *vide* order dated 29.05.1978 from his duty on account of which he is being held an accused in the aforesaid FIR. It is further stated that the learned 4th Addl. Sessions Judge, Rohtas at Sasaram, *vide* order dated 18.12.1987 convicted the accused persons including the petitioner for the offences punishable under Sections 302 read with 34 of the Indian Penal Code in Sessions Trial No. 1467 of 1979 arising out of Mohania P.S. Case No. 8 of 1978. The petitioner, therefore, preferred Cr. Appeal No. 28 of 1988 against the said judgment and order before the High Court. Thereafter, it is stated that *vide* orders dated 12.06.1998 and 29.06.1998, the petitioner was dismissed from service on account of the conviction of the petitioner in the aforesaid criminal case. Petitioner, therefore, challenged the order of dismissal by filing C.W.J.C. No.



1974 of 1999 which was disposed of by the learned Single Judge of this Hon'ble Court *vide* order dated 25.04.2000. Petitioner has further stated that he would have superannuated from service on 28.02.2003 if he had not been dismissed earlier on 29.06.1998 on account of his conviction in the aforesaid criminal case.

2.2) It is stated that this Court *vide* order dated 24.08.2007, dismissed the Criminal Appeal No. 28 of 1988 preferred by the petitioner and thereby confirmed the conviction and sentence awarded by the concerned trial court to the petitioner. Petitioner, therefore, challenged the said order by filing Cr. Appeal Nos. 493-494 of 2008 before the Hon'ble Supreme Court. It is also stated that the Hon'ble Supreme Court *vide* order dated 16.02.2017 set aside the conviction and sentence of the petitioner and acquitted him. Petitioner, therefore, made a representation dated 24.07.2017 before the concerned Respondent Authority and prayed that he may be paid full back wages as well as all the terminal benefits on account of the order of acquittal passed by the Hon'ble Supreme Court. Again, similar type of representation was made to the concerned Respondent Authority. However, no reply was given by the Respondents and, therefore, the petitioner referred the caption petition before this Court. The learned Single *vide* order dated



27.02.2020 dismissed the said petition and, therefore, the petitioner has preferred the present appeal.

3.) Heard Mr. Kumar Brijnandan assisted by Dr. Pratyush Kumar, learned Advocate for the appellant and Mr. Priyadarshi Matri Sharan, learned AC to AAG-15 for the Respondent-State.

4.) Learned Advocate for the appellant assailed the impugned order passed by the learned Single Judge by contending that the appellant was dismissed from service only on account of order of conviction and sentence passed by the concerned trial court against him. However, when the Hon'ble Supreme Court has quashed and set aside the order of conviction and sentence and thereby acquitted the petitioner, the Respondent Authority was duty-bound to reinstate the petitioner with full back wages. However, as the petitioner had already attained the age of superannuation in the year 2003, the learned Single Judge ought to have given all the retiral benefits to the petitioner including the back wages. However, the learned Single Judge has committed an error while dismissing the writ petition filed by the petitioner. At this stage, it is pointed out that during the pendency of the petition, the petitioner has expired and, therefore, now his widow is pursuing the present proceedings. At this stage, learned Advocate for the appellant would submit that in the present case the petitioner was



dismissed from service only on account of order of conviction and sentence rendered by the concerned trial court against him and no departmental inquiry was conducted against the petitioner for the alleged misconduct and illegality committed by the petitioner and, therefore, when the petitioner has been acquitted by the Hon'ble Supreme Court, the Respondent Authority ought to have granted all the retiral benefits including the back wages of the petitioner. Learned Advocate for the appellant has placed reliance upon following decisions rendered by the Hon'ble Supreme Court :-

(i) ***Divisional Controller, Karnataka State Road Transport Corporation Versus M.G. Vittal Rao***, reported in (2012) 1 Supreme Court Cases 442

(ii) ***Deputy Inspector General of Police and Another Versus S. Samuthiram*** reported in (2013) 1 Supreme Court Cases 598

(iii) ***Ranchhodji Chaturji Thakore Versus Superintendent Engineer, Gujarat Electricity Board, Himmatnagar (Gujarat) and Another*** reported in (1996) 11 Supreme Court Cases 603

(iv) ***Union of India and Others Versus Jaipal Singh***, reported in (2004) 1 SCC 121

(v) ***Allahabad Bank and Others Versus Krishan Pal Singh***, reported in 2021 SCC OnLine SC 751



5) On the other hand, learned Advocate appearing for the Respondent has vehemently opposed the present appeal. It is mainly contented that the petitioner has worked for a period of only 7 years and from 1978 after registration of the FIR under Section 302 of the Indian Penal Code, order of suspension was passed against him. It is submitted that petitioner remained under suspension and thereafter in the year 1987 the trial court has passed an order of conviction and sentence against the petitioner, as a result of which, he was dismissed from service in the year 1998. It is further submitted that thereafter petitioner attained the age of superannuation in the year 2003. At that time the Criminal Appeal filed by him against the judgment and order of conviction and sentence was pending before this Court. It is also submitted that thereafter in the year 2007 this Court dismissed the appeal preferred by the petitioner. At this stage, it is also pointed out that the Hon'ble Supreme Court has set aside the order of conviction and sentence in the year 2017 only. In the meantime, petitioner had already attained the age of superannuation and, therefore, there is no question of passing an order of reinstatement as prayed for by the petitioner. It is also submitted that as the petitioner has not worked during all these years and since the order of acquittal has been passed by the Hon'ble Supreme Court only in the year 2017,



the petitioner is not entitled to get the back wages as prayed for by him. Learned Advocate, thereafter, submitted that the Hon'ble Supreme Court has acquitted the petitioner by giving benefit of doubt and, therefore, also he is not entitled to get consequential retiral benefits. It is also pointed out by learned Advocate for the Respondent that the learned Single Judge has clarified in paragraph '22' of the impugned order that if the petitioner before the order of dismissal has completed the qualifying period of service for grant of pension, in that situation the case of the petitioner may be considered by the respondents for grant of pensionary benefits or any other benefits in the nature of post-retiral benefits, if otherwise is admissible, then the order of dismissal will not come in the way of the Respondent granting those benefits. Learned Advocate, therefore, urged that this Court may not interfere with the impugned order passed by the learned Single Judge and the present appeal be dismissed.

6.) We have considered the submissions canvassed by the learned Advocates appearing for the parties. We have also perused the materials placed on record and the decisions upon which the reliance is placed. It emerges from the record that the petitioner was appointed as a Government Teacher on 21.06.1971 in Primary School. On 22.05.1978, an FIR was lodged against the petitioner



and others for the offence punishable under Section 302 of the Indian Penal Code. As a result of the said registration of the FIR, he was suspended on 29.05.1978 and thereafter on 18.12.1987, the concerned trial court convicted the petitioner for the offence punishable under Sections 302 read with 34 of the Indian Penal Code against which the petitioner has preferred Criminal Appeal before this Court. During the pendency of the said appeal the service of the petitioner was terminated on 29.06.1998 and thereafter on 24.08.2007, this Court dismissed the Criminal Appeal preferred by the petitioner thereby confirming the judgment and order of conviction and sentence rendered by the concerned trial court. It is also revealed from the record that against the said order of dismissal of the appeal, the petitioner preferred Cr. Appeal Nos. 493-494 of 2008 before the Hon'ble Supreme Court and the Hon'ble Supreme Court *vide* order dated 16.02.2017 set aside the order of conviction and sentence and acquitted the petitioner. The Hon'ble Supreme Court has observed “ *On perusal of the evidence we find that in present case over implication is not ruled out, they have not been assigned any particular role in the assault on the deceased. Having regard to entirety of material on record, they are entitled to benefit of doubt*”.



7.) Thus, from the aforesaid events it is revealed that the Hon'ble Supreme Court has acquitted the petitioner by giving benefit of doubt while passing the order dated 16.02.2017. It is not in dispute that in the meantime, petitioner had already attained the age of superannuation on 28.02.2003. It is further revealed from the record that the service of the petitioner was terminated only on the ground that petitioner is convicted for the offence punishable under Section 302 of the Indian Penal Code by the concerned trial court. It is not in dispute that for the said alleged illegality and misconduct committed by the petitioner, no independent departmental inquiry was conducted against him.

8.) At this stage, we would like to refer the decisions upon which the reliance is placed:-

(i) ***Divisional Controller, Karnataka State Road Transport Corporation Versus M.G. Vittal Rao (supra)***, the Hon'ble Supreme Court has observed in paragraph '11' as under :-

11.) "The question of considering reinstatement after decision of acquittal or discharge by a competent criminal court arises only and only if the dismissal from services was based on conviction by the criminal court in view of the provisions of Article 311(2)(b) [sic Article 311(2) second proviso (a)] [Ed. : Article 311(2) second proviso (a) reads as follows: "[Art. 311(2)] shall



not apply — (a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge;”.]] of the Constitution of India, or analogous provisions in the statutory rules applicable in a case. In a case where enquiry has been held independently of the criminal proceedings, acquittal in a criminal court is of no help. The law is otherwise. Even if a person stood acquitted by a criminal court, domestic enquiry can be held, the reason being that the standard of proof required in a domestic enquiry and that in a criminal case are altogether different. In a criminal case, standard of proof required is beyond reasonable doubt while in a domestic enquiry it is the preponderance of probabilities that constitutes the test to be applied.”

From the aforesaid decision it can be said that in a case where enquiry has been held independently of the criminal proceedings, acquittal in a criminal court is of no help. Even if a person stood acquitted by a criminal court, domestic enquiry can be held, the reason being that the standard of proof required in a domestic enquiry and that in a criminal case are altogether different.



(ii) ***Deputy Inspector General of Police and Another Versus S. Samuthiram (supra)***, the Hon'ble Supreme Court has observed in paragraph '10' as under :-

“10. Shri C. Paramasivam, learned counsel appearing for the appellant, submitted that the High Court was not justified in interfering with disciplinary proceedings and setting aside the order of dismissal of the respondent. The learned counsel submitted that the High Court overlooked the fact that the standard of proof in a domestic enquiry and criminal enquiry is different. The mere acquittal by the criminal court does not entitle the delinquent for exoneration in the disciplinary proceedings. The learned counsel also submitted that the case in hand is not where punishment of dismissal was imposed on the basis of conviction in a criminal trial and only in such situation, acquittal by a court in a criminal trial would have some relevance. Further, it was also pointed out that, in the instant case, the respondent was not honourably acquitted by the criminal court, but was acquitted since the complainant turned hostile.”



From the aforesaid decision it can be said that mere acquittal by the Criminal Court does not entitle delinquent for exoneration in the disciplinary proceedings.

(iii) ***Ranchhodji Chaturji Thakore Versus Superintendent Engineer, Gujarat Electricity Board, Himmatnagar (Gujarat) and Another (supra)***, the Hon'ble Supreme Court has observed in paragraph '3' as under:-

“3. The reinstatement of the petitioner into the service has already been ordered by the High Court. The only question is whether he is entitled to back wages. It was his conduct of involving himself in the crime that was taken into account for his not being in service of the respondent. Consequent upon his acquittal, he is entitled to reinstatement for the reason that his service was terminated on the basis of the conviction by operation of proviso to the statutory rules applicable to the situation. The question of back wages would be considered only if the respondents have taken action by way of disciplinary proceedings and the action was found to be unsustainable in law and he was unlawfully prevented from discharging the duties. In that context, his conduct becomes relevant. Each case requires to be considered in its own backdrop. In this case, since the



petitioner had involved himself in a crime, though he was later acquitted, he had disabled himself from rendering the service on account of conviction and incarceration in jail. Under these circumstances, the petitioner is not entitled to payment of back wages. The learned Single Judge and the Division Bench have not committed any error of law warranting interference.”

From the aforesaid observation made by the Hon’ble Supreme Court it can be said that each case requires to be considered in its own backdrop and question of back wages would be considered only if the respondents have taken action by way of disciplinary proceedings and the action was found to be unsustainable in law and he was unlawfully prevented from discharging the duty. In the aforesaid case, the Hon’ble Supreme Court has specifically observed that petitioner had involved himself in a crime. Though he was later acquitted, he has disabled himself from rendering the service on account of conviction and incarceration in jail and, therefore, he is not entitled to payment of back wages.

(iv) ***Union of India and Others Versus Jaipal Singh (supra)***, the Hon’ble Supreme Court has observed in paragraphs ‘4’ and ‘5’ as under:-



“4. On a careful consideration of the matter and the materials on record, including the judgment and orders brought to our notice, we are of the view that it is well accepted that an order rejecting a special leave petition at the threshold without detailed reasons therefor does not constitute any declaration of law by this Court or constitute a binding precedent. Per contra, the decision relied upon by the appellant is one on merits and for reasons specifically recorded therefor it operates as a binding precedent as well. On going through the same, we are in respectful agreement with the view taken in Ranchhodji [(1996) 11 SCC 603 : 1997 SCC (L&S) 491] . 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 adverting 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.”

From the aforesaid observation made by the Hon’ble Supreme Court it can be said that the employer is within his rights to deny back wages to the employee for the period he was not in service and employer cannot be made liable to pay for the period for which they could not avail of the services of the employee. In the said case, the Hon’ble Supreme Court has granted back wages from the date of acquittal.

(v) *Allahabad Bank and Others Versus Krishan Pal Singh (supra)*, the Hon’ble Supreme Court has observed in paragraph ‘8’ as under:-

“8. The directions issued by the High Court of Allahabad for reinstatement were stayed by this Court on 23.08.2019. During the pendency of these proceedings, the respondent - workman had attained age of superannuation. Though, there was strong suspicion, there was no acceptable evidence on record for dismissal of the workman. However, as the workman has worked only for a period of about six years and he has already attained the age of superannuation, it is a fit case for modification of the relief granted by



the High Court. The reinstatement with full back wages is not automatic in every case, where termination/dismissal is found to be not in accordance with procedure prescribed under law. Considering that the respondent was in effective service of the Bank only for about six years and he is out of service since 1991, and in the meantime, respondent had attained age of superannuation, we deem it appropriate that ends of justice would be met by awarding lump sum monetary compensation. We accordingly direct payment of lump sum compensation of Rs. 15 lakhs to the respondent, within a period of eight weeks from today. Failing to pay the same within the aforesaid period, the respondent is entitled for interest @ 6% per annum, till payment.”

Thus, in the aforesaid case when the employee has worked for only a period of six years and as he was out of service since 1991, and in the meantime, he had attained the age of superannuation, the Hon’ble Supreme Court has directed for payment of lumpsum compensation.

9) Keeping in view the aforesaid decisions rendered by the Hon’ble Supreme Court, if the facts as discussed hereinabove are examined, it can be said that when the Respondent Authority has



dismissed the petitioner only on account of order of conviction and sentence passed by the concerned trial court against the petitioner without holding departmental inquiry and when the Hon'ble Supreme Court has passed an order of acquittal of the petitioner the question with regard to giving benefit of doubt or an honourable acquittal will not arise in the facts of the present case. Further, when the petitioner had attained the age of superannuation in February 2003, the time when the order of conviction was in force, and when the order of acquittal has been passed in the year 2017, there is no question of passing an order of reinstatement of the petitioner and that too during the pendency of the present proceedings when the petitioner has already expired.

10) It is pertinent to note that admittedly, the order of acquittal has been passed by the Hon'ble Supreme Court in the year 2017 only and when the petitioner has not worked after 29.06.1998, the date on which the petitioner was dismissed from service till the date of his superannuation i.e., on 28.02.2003, the back wages cannot be awarded to the petitioner.

11) However, in the facts and circumstances of the present case when the Respondent has failed to conduct the independent departmental inquiry against the petitioner for the alleged misconduct or illegality i.e., his being involved in the criminal



case for the offence punishable under Section 302 of the Indian Penal Code and the order of dismissal has been passed simply relying upon the order of conviction rendered by the concerned trial court and when the said order of conviction is set aside by the Hon’ble Supreme Court in the year 2017 and petitioner has been acquitted, we are of the view that the order of dismissal is required to be quashed and set aside. Accordingly, the same is quashed and set aside. As the order of dismissal is set aside, the petitioner is entitled to get all the retiral benefits except the back wages as observed hereinabove.

12.) In view of the aforesaid discussion, the present appeal is partly allowed and impugned order passed by the learned Single Judge is set aside. As the order of dismissal is set aside, the petitioner is entitled to get all the retiral benefits except the back wages as observed hereinabove.

(Vipul M. Pancholi, J)

(Rudra Prakash Mishra, J)

GKS/-

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