

S/L 78
27.06.2024
Court. No. 551
Sourav

WPA 3875 of 2022
Sri. Dhananjay Tiwari
Vs.
Union of India & Ors.

Mr. Achin Kumar Majumder

...for the petitioner.

Mr. Kalyan Kumar Chakraborty

...for the Union of India.

1. The affidavit-of-service as filed today on behalf of the Union of India and its officials is taken on record.
2. By filing the instant writ petition, the writ petitioner has prayed for issuance of writ of mandamus directing the respondents to treat the entire period of his suspension i.e., from May 10, 2011 to September 27, 2019 as 'on duty' with further prayers to disburse the arrears salary for the said period, for issuance of writ of mandamus to grant the benefit of promotion with effect from February 2, 2018 with all consequential benefits, for issuance of writ of mandamus directing the respondents to disburse the retiral benefits considering him that he retired from the rank of Inspector with effect from February 2, 2018 and also for issuance of writ of certiorari for quashing the order dated 06.05.2021 as passed by the respondent no. 3/authority.
3. Admittedly, the writ petitioner was a Sub-Inspector of RPF and at the material time, he was posted at Narkeldanga Reserved Line, RPF post, Eastern Railway. In the year 2011, the writ petitioner came to be involved in a criminal case and he was taken into

custody and in consequence thereof, the writ petitioner was placed on suspension vide office order dated May 10, 2011.

4. In course of hearing, learned advocate for the writ petitioner at the very outset draws attention of this Court to Annexure P-2 to the writ petition i.e. from Page No. 31 to Page No. 86. It is submitted that in the said criminal case charge-sheet was submitted against the present petitioner along with other accused persons and, thereafter, before the learned trial court, Sessions Trial No. 236 of 2011 and Criminal Case No. 159 of 2011 proceeded analogously and on conclusion of the same, the present petitioner was acquitted from the charges under Sections 302/307/34/504/506 IPC, Section 7 of K.I.L.A Amendment Act and Sections 3/25 of the Arms Act in connection with the aforesaid two criminal trial.
5. Drawing attention to Page Nos. 92, 98 and 101 of the writ petition, it is argued on behalf the writ petitioner that after acquittal from the aforesaid two criminal cases, the writ petitioner was directed to report for duty which he duly complied with.
6. It is further submitted on behalf of the writ petitioner that from Page No. 88 of the writ petition, it would reveal that a selection process was held for filling up the vacant post of Inspector/RPF over zonal railways wherein the present writ petitioner was found to be successful and his name appeared in Serial No. 13 of the list of successful candidates who have been

recommended for provisional empanelment to the rank of Inspector.

7. Drawing attention to Page No. 103, 105 and 107, it is further contended on behalf of the writ petitioner that since the writ petitioner was not given promotion to the rank of Inspector even after his selection for the said post, the writ petitioner made successive representation before the respondent authorities and those have been duly forwarded with a favourable note by the company commander of the writ petitioner but in vain. Drawing further attention to Page Nos. 113 to 116 i.e. the order dated 06.05.2021 as passed by the respondent no. 3 which is the subject matter of challenge in the instant writ petition, it is argued by the learned advocate for the writ petitioner that the respondent no. 3 on a flimsy ground decided not to consider the representation of the writ petitioner for which the writ petitioner who has now retired from service, has been deprived of his due promotional benefits as well as retiral benefits.
8. While impugning the order dated 06.05.2021, it is submitted by the learned advocate for the writ petitioner that in the said order, the respondent no. 3 though found that the present writ petitioner was acquitted from the aforesaid two criminal cases but according to the said authority, such acquittal is conditional and not honourable. It is thus, contended that the respondent no. 3 authority has failed to visualize the true implication of acquittal in a criminal

case especially when no departmental and/or disciplinary proceeding was initiated against the writ petitioner while he was in service.

9. It is thus submitted that the order dated 06.05.2021 as passed by the respondent no. 3/authority is baseless, coercive, harassing and not in accordance with law and thus, the same may be set aside and appropriate relief/reliefs may be granted to the writ petitioner as per prayers of the writ petitioner.
10. Per contra, learned advocate for the respondent authorities submits before this Court that the respondent authorities have rightly found that the acquittal of the present writ petitioner from the aforesaid two criminal cases are not based on merit and on the contrary, such acquittal is on account of benefit of doubt as given by the said trial court in the aforesaid two criminal proceedings. It is further submitted that considering the graveness of charges of the said two criminal trials and the finding of the learned trial court in the judgment, it cannot be said that the acquittal of the writ petitioner is an honourable acquittal as held by the Hon'ble Supreme Court in different cases which have been mentioned in the order dated 06.05.2021 which is impugned before this Court.
11. It is further submitted that the writ petitioner is not entitled to any relief as sought for since during the period of his leave, he voluntarily involved himself in a criminal proceeding and, therefore, he cannot be

permitted to take advantage of his own wrong. Learned advocate for the respondent authorities thus submits that it is a fit case for dismissal of the instant writ petition.

12. On perusal of the entire materials as placed before this Court and after hearing the learned advocates for the contending parties, it appears to this Court that for some reasons or other, the writ petitioner was involved in a criminal proceeding under Section 302/307/504/506/34 IPC, under Section 7 of the KI.LA Amendment Act and under Section 30 of the Arms Act for which he had to face two criminal trials conjointly before the trial court.
13. This Court has occasion to go through the judgment as passed by the said Additional Sessions Judge in connection with the aforesaid two criminal trials. It appears to this Court that in the said two criminal trials, 12 prosecution witnesses have been examined and cross-examined and the accused persons including the present petitioner were examined under Section 313 of the Code of Criminal Procedure. From the judgment of the said two criminal trials as has been annexed to the instant writ petition, it appears to this Court that the learned Additional Sessions Judge duly considered and weighed the evidence of the prosecution witnesses; both oral and documentary and, therefore, came to a logical conclusion of the said two trials wherein the said Additional Sessions Judge found some accused persons guilty of the charges as

framed against them while the other accused persons including the present writ petitioner were acquitted from the charges as framed against them.

14. It further appears to this Court that in the said two criminal trials none of the prosecution witnesses have turned hostile and/or it was not the case of the prosecution of the said two criminal trials that some material charge-sheeted witnesses could not be examined.
15. Keeping in mind the fate of the said two criminal trials and the mode of finding as recorded by the said Additional Sessions Judge, if I look to the order under challenge dated 06.05.2021, I find that it is the finding of the respondent no. 3 authority that the writ petitioner was not fully exonerated from the said two criminal trials and, therefore, it is the view of the respondent no. 3/authority that the acquittal of the writ petitioner is not an honourable one.
16. In considered view of this Court, the respondent no. 3/authority while passing the order under challenge dated 06.05.2021 had either misconstrued or misinterpreted the provision of the Code of Criminal Procedure relating to passing of a judgment of a criminal trial after recording of evidence both oral and documentary. This Court has every reason to believe that the respondent no. 3 was under total misconception in construing the meaning and purport of acquittal from a criminal trial within the meaning of

Section 255(1) of the Cr.P.C. which is distinguishable from the provision of Section 227 of the Cr.P.C.

17. This Court thus finds that the finding of the respondent no. 3/authority in this regard is faulty and is liable to be set aside and/or quashed.
18. Coming to the next aspect of this case, this Court considers that when the writ petitioner was acquitted from the aforesaid two criminal trials and when he was allowed to join his duty, the respondent no. 3/authority is duty bound to hold the period of suspension of the writ petitioner as a period 'on duty' and, therefore, the respondent authorities were not right in deducting the legitimate dues of the writ petitioner for the said period i.e. from May 10, 2011 to September 27, 2019.
19. This Court further considers that when the writ petitioner was recommended for promotion, his acquittal from the aforesaid two criminal cases cannot be held to be a bar in giving effect such promotion in absence of any adverse finding of disciplinary authority especially when it is nobody's case that on account of the alleged involvement of the writ petitioner in a criminal activity, a departmental/disciplinary proceeding was initiated against him wherein he has been arrayed as delinquent and was found to be guilty in such procedure.

20. In view of the discussion made hereinabove, the instant writ petition being **WPA 3875 of 2022** succeeds.
21. Consequently, the order being Memo No. Sr. DSC /S / SUSP/03 /2011 /2011 dated 06.05.2021 as passed by the respondent no. 3/authority is hereby set aside. Consequently, the respondent authorities are hereby directed to treat the period of suspension of the writ petitioner i.e., from May 10, 2011 to September 27, 2019 as “on duty” and, therefore, the respondents are directed to disburse the arrears of salary in favour of the writ petitioner positively within two months from the date of communication of this order.
22. It is further directed that the respondent authorities shall treat the present writ petitioner was promoted to the rank of Inspector with effect from February 2, 2018 and, thereafter, he superannuated from his service on June 30, 2021 as Inspector of RPF and, therefore, his all retiral benefits and pensionary benefits are to be calculated accordingly and those are also to be disbursed within two months from the date of communication of this order.
23. It is, however, made clear that the writ petitioner’s prayer for grant of interest is, however, considered and rejected.
24. Accordingly, the instant writ petition being **WPA 3875 of 2022** along with all interim applications are disposed of.

25. Urgent photostat certified copy of this order, if applied for be given to the parties, upon compliance of necessary formalities.

(Partha Sarathi Sen, J.)