

(2025) 03 OHC CK 1401

In the Orissa High Court

Case No : Writ Petition (C) No.5483 Of 2024

Akshaya Kumar Dash

APPELLANT

Vs

State Of Odisha & Ors Vs

RESPONDENT

Date of Decision : 17-03-2025

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 227
Evidence Act, 1872 — Section 154

Citation : (2025) 03 OHC CK 1401

Hon'ble Judges : A.K. Mohapatra, J

Bench : Single Bench

Advocate : Mihir Kanta Rath, M.R.Mohanty

Final Decision : Disposed Of

Judgement

A.K. Mohapatra, J.

1. By filing the present Writ Petition, the Petitioner has prayed for quashing of the impugned order dated 09.02.2024 under Annexure-9 to the Writ Petition and he has also prayed for a direction to the Opposite Party No.2 to reinstate the Petitioner in service within a stipulated period of time.

2. The present Petitioner who was serving as a Gram Panchayat Technical Assistant, (herein-after referred to as "GPTA" in short) was entangled in a criminal case, as a result of which, he was disengaged from service. In the meantime, the Petitioner faced a trial and he has been acquitted by the learned trial court. Since his prayer for reinstatement has been rejected by the Opposite Parties vide order dated 09.02.2024 under Annexure-9 to the Writ Petition, the Petitioner has approached this Court by filing a Writ Petition with a specific prayer to quash the impugned order and for a further direction to the Opposite Parties to reinstate the Petitioner in service.

3. The factual background leading to the filing of the present Writ Petition is as follows:

The Petitioner was initially appointed as GPTA on 22.08.2005 pursuant to Annexure-1. Thereafter, while discharging his duty as GPTA, he was arrested by the Vigilance Police on 19.08.2017 which resulted in a Vigilance P.S.Case being registered against the Petitioner. Thereafter, the Petitioner was released on bail on 30.08.2017. After his release on bail, the Petitioner was allowed to join in service on 01.09.2017. Consequently, on 20.09.2017, pursuant to the order under Annexure-2 to the Writ Petition, the Petitioner was disengaged from service as he was working on contractual basis.

4. Earlier, the Petitioner had approached this Court by filing W.P.(C) No.2252 of 2017 with a prayer to quash the order of disengagement dated 20.09.2017. A coordinate Bench of this Court vide judgment dated 10.12.2019 quashed the impugned order. However, learned coordinate Bench granted liberty to the Opposite Parties to take appropriate action as is deemed necessary in accordance with law against the present Petitioner. Pursuant to the order dated 10.12.2019 passed in the earlier Writ Petition, the Petitioner was re-engaged on 24.01.2020 under Annexure-4 to the Writ Petition. Finally, the Petitioner was again disengaged on 08.10.2020 under Annexure-5 to the Writ Petition.

5. In the meantime, the Petitioner faced trial in Vigilance Case bearing VGR Case No.13 of 2017 pending in the Court of the learned Special Judge, Vigilance, Baripada, Mayurbhanj. Finally, vide judgment dated 29.04.2023 of the learned Special Judge, Vigilance, Baripada at Mayurbhanj, the Petitioner was acquitted from all the charges, as is evident from the judgment of the trial court which has been annexed to the Writ Petition as Annexure-6.

6. After his acquittal in the Vigilance Case vide judgment dated 29.04.2023, the Petitioner approached the authorities to reinstate him in service. Since no action was taken, the Petitioner again approached this Court vide W.P.(C) No.28341 of 2020. This Bench, vide order dated 03.01.2024, disposed of the said Writ Petition by granting liberty to the Petitioner to approach the Opposite Party No.5, i.e. the Director, Panchayati Raj Department, Government of Odisha, Bhubaneswar with a further direction to Opposite Party No.5 to consider the case of the Petitioner by taking into consideration the fact that the Petitioner has already been acquitted in the vigilance case.

7. After disposal of the aforesaid Writ Petition, the Petitioner approached the Opposite Party No.2 by filing a representation on 11.01.2024. The Opposite Party No.2, vide its order dated 09.02.2024 under Annexure-9, rejected the prayer of the Petitioner for reinstatement in service as GPTA.

8. Mr.M.K.Rath, learned counsel for the Petitioner at the outset contended that in view of the judgment of the Hon'ble Supreme Court in Ram Lal vs. State of Rajasthan & Ors. reported in (2024) 1 SCC 175 if an employee is acquitted in a Vigilance case as a result of the prosecution having miserably failed to prove the charges, the employee shall be reinstated in service with all consequential benefits, including seniority etc. along with all financial benefits. Applying the

ratio decided in Ramlal's case (Supra) to the facts of the present case, the learned counsel for the Petitioner contended that the Petitioner has been acquitted from all the charges as the prosecution has failed to bring home the charges and, as such, the Petitioner is required to be reinstated in service as has been laid down by the Hon'ble Supreme Court in the aforesaid case. He further contended that the ratio laid down by the Hon'ble Supreme Court in the aforesaid case is squarely applicable to the facts of the present case.

9. Learned counsel for the Petitioner, further referring to the judgment of this Court in the case of Smt. Nirmala Sahoo vs. State of Odisha & others in W.P.(C) No.25947 of 2022 disposed of on 24.03.2023, contended that this Court has quashed the impugned order by declaring the termination of service as bad and illegal. Further, a direction was given to the Opposite parties to reinstate the Petitioner in service with benefit of continuity in service from the date of termination to the date of his reinstatement at par with her batch mate, however, without any financial benefits. Similarly, learned counsel for the Petitioner also contended that the ratio decided in the case of Smt. Nirmala Sahoo's case (supra) is clearly applicable to the facts of the present case. He further contended that the Opposite Parties have failed to apply the ratio of the aforesaid two judgments to the facts of the present case, as a result, the Petitioner has been seriously prejudiced.

10. Additionally, Mr.Rath, learned counsel for the Petitioner would further argue that two of the employees, who had been disengaged along with the Petitioner and were involved in a similar case, were subsequently acquitted by the learned trial court. However, the aforesaid two employees have been reinstated in service in the meantime. Learned counsel for the Petitioner at this juncture contended that the conduct of the Opposite Parties in reinstating the two similarly placed employees while rejecting the prayer of the Petitioner, who stands in a similar footing amounts to gross discrimination. Therefore, the same is violative of principles enshrined in Articles 14 & 16 of the Constitution of India. In such view of the matter, learned counsel for the Petitioner submitted that the Opposite Parties be directed to reinstate the Petitioner in service, as has been done in the case of two similarly situated employees who were reinstated after their acquittal in a criminal case by the trial court.

11. Learned Additional Government Advocate on the other hand, referring to the Counter Affidavit filed on behalf of Opposite Party Nos. 1 & 2, submitted that the Opposite Parties have not committed any illegality in rejecting the prayer of the Petitioner for reinstatement in service vide order dated 09.02.2024 under Annexure-9. To justify the conduct of the Opposite Parties in rejecting the prayer for reinstatement of the Petitioner, learned counsel for the State argued that although the Petitioner was acquitted in the vigilance case bearing VGR Case No.13 of 2017, the judgment dated 29.04.2023 does not clearly indicate that the Petitioner has been honourably acquitted. He further submitted that that Petitioner has been given the benefit of doubt by the trial court while acquitting

the Petitioner. In the aforesaid factual background, learned counsel for the State contended that the ratio laid down by the Hon'ble Supreme Court in Ram Lal's case and by this Court in Smt.Nirmala Sahoo's case cannot be applied to the facts of the Petitioner's case.

12. Learned Additional Government Advocate further contended that after the judgment dated 29.04.2023 was passed by the learned trial court in VGR Case No.13 of 2017, the Petitioner approached this Court by filing W.P.(C) No.28341 of 2020, which was disposed of on 03.01.2024. Pursuant to the direction of this Court dated 03.01.2024 the Opposite Parties considered the case of the Petitioner in terms of the judgment of the Hon'ble Supreme Court as well as of this Court. On such consideration, the Opposite Parties found that the ratio laid down by the Hon'ble Supreme Court as well as this Court in the aforesaid two judgments is not applicable to the facts of the present case. Accordingly, the prayer of the Petitioner for reinstatement in service, after acquittal in the criminal case, was rejected by the Opposite Parties vide order dated 09.02.2024. In such view of the matter, learned Additional Government Advocate submitted that the Opposite Parties have not committed any illegality which would call for any interference of this Court in the present Writ Petition.

13. In course of his argument, learned Additional Government Advocate has laid much emphasis on the fact that the Petitioner is a contractual employee and was working as GPTA under MGNREGS scheme. Employments under the aforesaid scheme are subject to the terms and conditions of agreement/contract executed by the hiring agency and they are not governed under the OCS(CCA) Rules, 1962. Further, referring to the agreement, learned counsel for the State contended that Paragraph-9 of the said agreement envisages that in case of a prima facie evidence of serious lapse on the part of any GPTA and on being implicated in a criminal/vigilance case, the Opposite Parties have the power and authority to immediately disengage the GPTA.

14. In reply to the Petitioner's specific assertions that similarly situated two employees have already been reinstated in service, learned counsel for the Petitioner further referred to the doctrine of negative equality. In the aforesaid context, learned Additional Government Advocate contended that in law there is no such principle of negative equality. He further contended that the concept of negative equality does not come within the purview of Article 14 of the Constitution of India. In the aforesaid context, he also referred to the judgment of the Hon'ble Supreme Court in the matter of State of Odisha & anr. V Anup Kumar Senapati & anr reported in 2019(12) Scale 387 and R. Muthu Kumar vs. Chairman & M.D., Tangeco, 2022 reported in 2022 live Law S.C. 140. By referring to the aforesaid judgment, learned Additional Government Advocate resisted the prayer of the Petitioner for reinstatement in service.

15. Finally, learned Additional Government Advocate contended that the employees who have been acquitted in a criminal/vigilance case have no vested right to be reinstated in service. In the aforesaid factual background, Additional

Standing counsel for the State contended that the prayer of the Petitioner for reinstatement in service is not supported by any valid reason. As such, the Writ Petition at the instance of the Petitioner is devoid of merit and the same should be dismissed.

16. Heard Mr.M.K.Rath, learned counsel for the Petitioner as well as Mr.M.R.Mohanty, learned Additional Government Advocate for the State. Perused the pleadings of the respective parties as well as the materials placed before this Court for consideration at the time of final hearing of the Writ Petition.

17. On a careful analysis of the pleadings of the respective parties, further keeping in view the prayer made in the present Writ Petition, this Court is required to examine the issue as to whether the Petitioner has any right to be reinstated in service after his acquittal in a vigilance case, particularly in view of the judgment in the case of Ram Lal (Supra) as well as Smt.Nirmala Sahoo's case (supra)?. The second issue which requires adjudication by this Court is as to whether the reinstatement of the two similarly situated employees will come under the concept of negative equality while considering the case of the Petitioner for reinstatement in service after his acquittal in the vigilance case ?.

18. On a careful analysis of the submissions made by the learned counsels from both sides, this Court observes that with regard to the factual aspect of the present case, there is hardly any dispute between the both sides. Most of the factual aspects of the matters are admitted by both the sides. The only dispute that remains between both sides is with regard to the judgment rendered by the trial court in VGR Case No.13 of 2017 dated 29.04.2023 under Annexure-6 to the Writ Petition and the interpretation of such judgment keeping in view the law laid down by the Hon'ble Supreme Court in Ram Lal's case (supra) and by this Court in Smt. Nirmala Sahoo's case (supra). On a closer scrutiny of the judgment, dated 29.04.2023 passed by the learned trial court under Annexure-6 to the Writ Petition, this Court observes that the trial court has formulated three major points for determination in the trial. The same are quoted below:

"i) Whether on 19.08.2017 or before the accused was employed as Gram Panchayat Technical Assistant of Arapara G.P. in the district of Mayurbhanj and as such, was a public servant /

ii) Whether on 19.08.2017 at about 2.05 P.M., the accused demanded a sum of Rs.10,000/- as illegal gratification from the complainant abusing his position as public servant to process the file for release of first running bill worth Rs.4,50,000/- in respect of construction of P.E.O.-cum-V.L.W. quarters at Arapata G.P. ? and

iii) Whether the accused accepted the aforesaid tainted money voluntarily from complainant knowing it to be bribe other than legal remuneration as a motive or reward for doing his official acts ?"

While answering the aforesaid points in its judgment, learned trial court has

discussed the evidence of the witnesses. Further, the learned trial court has correctly observed that in a case of this nature, the Prosecution is required to establish the demand of bribe, which is the foundation for the entire allegation made in the F.I.R. Moreover, such demand of bribe is required to be proved conclusively to bring home the charges levelled against the present Petitioner.

19. Learned trial court has made a detailed discussion of evidences of different witnesses and inconsistencies in evidence of P.Ws.2 & 3. In doing so, learned trial court has also found discrepancies with regard to place of trap as has been indicated in Paragraph-29 of the judgment and it has been indicated that there is an inconstancy as to whether the place of the trap is residence of the accused or residential house of P.W.3. Moreover, the learned trial court has also observed that there has been a material omission on the part of P.W.2, who has failed to disclose that he has heard the conversation between P.W.3 and the accused and overseen the transaction of money taking place between them. Thus, P.W.2, being a material witness and having failed to disclose certain material aspects in his chief evidence, particularly the failure to mention the place of trap in the chief evidence of P.W.2, learned trial court has observed that the prosecution should have proceeded to confront the witnesses with regard to the aforesaid fact under section 154 of the Evidence Act. However, the Prosecution did not do so, leaving the prosecution case in the hand of only P.W.2.

20. The learned trial court has also referred to the evidence of P.W.3 and expressed its shock over the manner in which the P.W.3 has conducted himself during his examination. Specifically, a reference has been made to the categorical outburst of the P.W.3 that the accused has never demanded any money on any occasion and that the PEO and the accused had to pay Rs.20,000/- for the work executed by him. Moreover, there are also discrepancies with regard to acceptance of money by the accused and the manner in which the same was accepted and kept in his pocket, which does not tally with the evidence-in-chief of P.W.3. Therefore, learned trial court has come to a conclusion that the examination of P.Ws. 2 & 3 does not inspire confidence of the learned trial court in their version to arrive at an irresistible conclusion that the money was demanded by the accused and accepted from the complainant as bribe.

21. Additionally, learned trial court while discussing the evidence of the I.O. has also mentioned in Paragraph-36 of the judgment that on 04.03.2017 the bill has already been prepared following measurement and check measurement of the work undertaken by the P.E.O. Further he has observed that the testimony of P.W.4 supports the contention of the accused to the extent that, he has stated in his examination that on 06.03.2017 a sum of Rs.6,00,000/- was withdrawn from the joint account standing in the name of P.W.4 and the Sarpanch and by that date, construction work of the PEO quarters had already been completed. He has also observed that by the time, the trap was laid on 04.03.2017 the measurement and check measurement had already been done by the GPTA and

the AEE had passed the bill of Rs.4,37, 216/-. On the basis of the critical evidence of the prosecution witnesses, the learned trial court has categorically disbelieved that there was any demand of bribe on the part of the accused.

22. Finally, in paragraph-42 of the judgment, learned trial court has categorically observed that on the basis of the materials placed on record, the prosecution case has failed to advance any clinching evidence so as to firmly establish the prosecution case on the touchstone of the legal provisions of the P.C.Act.. Accordingly, the trial Court has held that the prosecution has failed to prove the demand of illegal gratification, and as such, he has delivered the judgment of acquittal with the observation that it is wholly unsafe to record a conviction against the accused and accordingly, he has given the benefit of doubt to the Petitioner.

23. After going through the judgment of the trial court, on an analysis of the issues that have been considered while delivering the judgment of acquittal, this Court is of the considered view that the learned trial court has held that the accused is entitled to the benefit of doubt which is an effect of the prosecution having miserably failed to establish the case as per the standard laid down under the provisions of P.C.Act.

24. On a careful reading and analysis of the trial court judgment, it appears that the Prosecution has failed to prove the basic and foundational requirement of demand of bribe. Thus, the entire case of the prosecution case is bound to fall on that ground. Therefore, this Court has no hesitation to come to a conclusion that the trial court has deliberately used the word " benefit of doubt which was extended to the Petitioner". However, this Court is convinced that the judgment of the trial court delivered in the case of the Petitioner under Annexure-6 is a case of clean acquittal judgment. Therefore, this Court has no hesitation in coming to the conclusion that the present case falls within the ratio laid down by the Hon'ble Supreme Court in the case of Ram Lal (supra) and by this Court in Smt.Nirmala Sahoo's case (supra).

25. Next with regard to the ground taken by the learned State counsel that there is no concept of negative equality under Article-14 of the Constitution of India, this Court observes that there is no dispute with regard to the aforesaid position of law, which is evident from the judgment referred to by the learned counsel for the State. In the present case, the concept of negative equality would not come into play, inasmuch as, the concept of negative equality stands on a different set of facts than the present case. In the present case, the Petitioner has pleaded that similarly situated persons who were entangled in a criminal case and consequent upon their acquittal in such case, they have been reinstated in service. Nevertheless, mere reinstatement of some of the accused persons in service cannot itself confer any right for reinstatement of the Petitioner in service. To succeed in his attempt to get reinstatement in service, the Petitioner has to satisfy this Court that the parameter/criteria laid down in the aforesaid two judgments of the Hon'ble Supreme Court as well as this Court have been

well satisfied in the present case. On a careful analysis of the judgment of the trial court, this Court is of the considered view that the case of the Petitioner can very well be considered by applying the ratio laid down in Ram Lal's case and Smt.Nirmala Sahoo's case.

26. In view of the aforesaid analysis of the factual position of the present case, this Court is of the considered view that the Opposite Parties should have considered the case of the Petitioner for his reinstatement in service after his acquittal in the Vigilance case pursuant to the judgment under Annexure-6 to the Writ Petition. Having failed to do so, the Opposite parties have committed an illegality and as such, the order dated 09.02.2024 under Annexure-9, whereby the prayer of the Petitioner for reinstatement in service was rejected, is unsustainable in law and the same is hereby quashed. Further, while disposing of the Writ Petition, the Opposite Parties are directed to reinstate the Petitioner in service in terms of the aforesaid two judgments within eight weeks from the date of communication of a copy of this judgments by the Petitioner. However, it is further made clear that since the Petitioner was engaged on contractual basis and after his disengagement he has not worked from the date of his disengagement till the time he is reinstated pursuant to the direction by this Court, the Petitioner is not entitled to claim arrear salary/wages. However, the period of disengagement shall be taken into consideration for the purpose of continuity in service while considering the other service benefits of the Petitioner.

27. Accordingly, the Wit Petition is disposed of. However, there shall be no order as to costs.

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