

(2015) 08 PAT CK 0011

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 22214 of 2013

Bachchi Devi

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 03-08-2015

Acts Referred:

Citation : (2015) 08 PAT CK 0011

Hon'ble Judges : N.P. Singh, J; Nilu Agrawal, J

Bench : Division Bench

Advocate : Vivekanand Prasad Singh, for the Appellant; Anshuman Singh and Sriram Krishna, Advocates for the Respondent

Final Decision : Dismissed

Judgement

N.P. Singh, J—The petitioner is the widow of the employee who had unsuccessfully moved the Central Administrative Tribunal, Patna Bench, Patna (hereinafter in short referred to as the "Tribunal") against the punishment in the disciplinary proceedings whereby 10% of his pension, 1/3rd of gratuity and salary of two years, being the period of suspension, has been ordered to be withheld.

2. Learned counsel for the petitioner raises a singular issue of law that for the same incident a criminal case was also instituted which resulted in acquittal, therefore, the disciplinary proceedings should be quashed. Reliance has been placed in the case of Capt. M. Paul Anthony v. Bharat Gold Mines Limited and another since reported in (1993) 3 Supreme Court Cases 679.

3. We have heard learned counsels and with their consent, this writ petition is being disposed of at this stage itself.

4. The charge against the petitioner i.e. the petitioner's husband, who was the employee, is that first he had deceitfully marked attendance in such a way that either on the next day or on the same day he could, in spite of his absence, interpolate the same to show his presence. When this was discovered by his

Senior Accountant in the Bihar Regiment who protested, he was beaten up by the petitioner. Basically for the two charges, the Senior Accountant also lodged a criminal case. Both the proceedings proceeded. In the departmental proceedings, the petitioner was found guilty. He, ultimately, challenged the said proceedings and the punishment order before the Tribunal, without success. Thus, the order of the disciplinary authority and the order of punishment attained finality. Subsequently, in the criminal trial, the petitioner was acquitted.

5. We have gone through the judgment. It is not a clean acquittal but the trial Court has held that the prosecution has failed to establish the charge beyond reasonable doubt. Upon this acquittal being recorded, the petitioner moved the authorities on the ground that the charges not having been proved in the criminal trial, the disciplinary proceedings must now be held to have failed, accordingly, his full pension, gratuity and pay be restored. This was not acceded to by the authorities and he unsuccessfully challenged the same before the Tribunal once again and hence the writ petition.

6. Mr. Vivekanand Prasad Singh, learned counsel appearing in support of the writ petition, relied upon the judgment in the case of Capt. M. Paul Anthony (*supra*). We have gone through the judgment of the Apex Court which clearly noted that the criminal court clearly held that the prosecution had failed to establish the charges and hence he was acquitted. It makes a world of difference where that is the finding of the criminal court, and, finding in the present case, benefit of doubt is given to the accused. It is well settled that in criminal proceedings, the Court proceeds on basis of proof beyond reasonable doubt but, in a disciplinary proceedings, the disciplinary authority has to decide on preponderance of evidence. The two are different and more of them not on the same evidence. The two authorities could reasonably come to opposite conclusions. To our mind, the recent judgment of the Apex Court in the case of *The Divisional Controller, KSRTC Vs. M.G. Vittal Rao*, (2011) 13 JT 247 : (2012) 1 LLJ 320 : (2012) LLR 8 : (2011) 13 SCALE 33 : (2012) 1 SCC 442 : (2012) 1 SLJ 155 is a complete answer whereby the judgment in the case of Capt. M. Paul Anthony (*supra*) relied by the learned counsel for the petitioner has been duly considered.

7. In view of the aforesaid, we are not inclined to interfere with the order of the Tribunal and exercise our judicial review jurisdiction.

8. Thus, this writ application is dismissed.