
(1967) 09 PAT CK 0019
In the Patna High Court
Case No : A.F.A.D. No. 877 of 1965

Banta Singh	Vs	APPELLANT
National Coal Development Corporation and Another		RESPONDENT

Date of Decision : 26-09-1967

Acts Referred:

Constitution of India, 1950 — Article 20(2), 311

Citation : AIR 1968 Patna 300 : (1968) 17 FLR 287 : (1969) 1 LLJ 664

Hon'ble Judges : H. Mahapatra, J

Bench : Single Bench

Advocate : Radha Raman, for the Appellant; Lal Narayan Sinha and Bindabashini Pd. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

H. Mahapatra, J.—Plaintiff is the appellant. He brought a suit for the following reliefs:

- (1) That the order of dismissal passed by the defendant be set aside and he be reinstated in his job.
- (2) That the plaintiff be paid his salary from the date of suspension to the date of the re-instatement.
- (3) That the costs of the suit be awarded.
- (4) Any other relief or reliefs to which the plaintiff is found entitled.

2. The basis of his suit was that he was in the employment of National Coal Development Corporation as helper of a Joy driver. On account of theft of an electric motor he was an accused in criminal trial in 1958 and was suspended from service from the 7th March, 1960. Criminal case ended in acquittal in his favour on the 29th August, 1960, but subsequent to that, there was a departmental enquiry, in which he was found guilty and was ordered to be dismissed on the 20th November 1960. Several defences were taken to resist his

suit. One of them was that the suit was not maintainable. The findings of the courts below have been against the plaintiff to the effect that he was not a permanent employee and not a civil servant. The departmental enquiry was justified and was not illegal and he had been given opportunities to defend himself in that enquiry. Ultimately, the suit had to be dismissed and that decree has been upheld by the first court of appeal. Hence the present appeal by the plaintiff

3. Learned counsel raises mainly two contentions in support of the appeal. He urged that after acquittal by a competent criminal court of the plaintiff of the charge of theft u/s 379 and also of the offence u/s 411 of the Indian Penal Code, it was not open to the department to hold, subsequent to that acquittal, the departmental enquiry on identical charges and record a finding against him and dismiss him thereupon. The charge sheet in the departmental enquiry is exhibit "A". There is no doubt that the charges that were framed against the plaintiff in the departmental enquiry were the same as was the Subject matter of the criminal trial against him, where he was acquitted. In support of this contention learned counsel relied upon a case reported in Shaik Kasim Vs. The Superintendent of Post Offices, Chingleput Dn. and Another, . That decision was based- upon another earlier case of the Madras High Court reported in Jerome D'Silva Vs. The Regional Transport Authority, South Kanara and Another, , Jerome D'Silva v. Regional Transport Authority South Canara. In the latter case it was laid down that a quasijudicial Tribunal like the Regional Transport Authority or the Appellate Tribunal therefrom cannot ignore the findings and orders of competent Criminal courts in respect of an offence when the Tribunal proceeds to take any action on the basis of the commission of that offence. As primarily the criminal courts of the land are entrusted with the enquiry into offence, it is desirable that the findings and orders of the criminal courts should be treated as conclusive in proceeding? before quasi-judicial Tribunal? like Transport Authorities under the Motor Vehicles Act. If there is a conviction by a competent criminal court, that would furnish conclusive ground for any penal action by the Transport Authorities. Equally if the criminal prosecution ended in a discharge or acquittal of the accused and that evpnt happened before the order of the Road Transport Tribunal, then such Tribunal would not have the power to go behind the final order of a competent criminal court.

4. The above dictum can hardly be doubted on principle. In answer to this contention learned counsel appearing for the defendant urged that the judgment of the criminal trial was not admissible in evidence and the findings of that court will not be evidence in the trial before the civil court in the suit. It is true that the findings of the criminal court will not be binding in a civil trial, but here the question is different: whether that finding will be binding on the department for the purpose of instituting a departmental enquiry after the decision in the criminal case is the point for consideration. Sometimes both the criminal trial and departmental enquiry go on. There is no bar against that. But if a departmental enquiry is withheld till the decision of the criminal trial, then that decision should

be taken into account and cannot be over-ridden by continuing the departmental enquiry thereafter on the identical charges. Furthermore, if a departmental enquiry is not at all launched but a criminal case is instituted and that ends in acquittal of the accused, it will not be proper for the department again to proceed on the same charges. The judgment in the criminal trial in the present case was certainly admissible in the Civil Court under the Evidence Act for the purpose that there was a criminal case of identical charge and it ended in acquittal of the accused. The other findings or the evidence led in the criminal trial are irrelevant, but the conclusion of the trial is admissible in evidence. In that view and following the principle laid down in the case mentioned above of the Madras High Court, I am inclined to accept the contention of learned counsel for the appellant that the departmental enquiry on the charges of the identical nature in the criminal trial, was not justified.

Learned counsel for the respondent relied upon a case reported in J.L. Toppo Vs. Tata Locomotive and Engineering Company Ltd., , J. L. Toppo v. Tata Locomotive and Engineering Co. Ltd. But the facts are clearly distinguishable. There was a conviction in the criminal trial but it was set aside in appeal by giving benefit of doubt to the accused but not disturbing the findings in regard to the negligence of the accused. On the basis of the finding that the employee was guilty of culpable neglect of duty, was held liable to be dismissed under the Industrial Employment (Standing Orders) Act and that was upheld. In the present case the acquittal was not on account of benefit of doubt nor there was any finding about the accused's guilt. Therefore this decision cannot be of any assistance to the defendant.

5. Though the appellant succeeds in the above contention, he has serious difficulty to meet in this appeal. In the suit he had asked for three reliefs which I have already quoted. He did not ask for any decree for compensation. He did not ask for any sum of money to be decreed to him. Even if we take the word "salary" used in his relief portion in the sense of compensation, it cannot be said that he asked for any definite sum of money by that way. In the first prayer he asked for declaration and for reinstatement. It is well settled that the civil court cannot grant any such relief against the master, because that will be a matter of contract of personal service and the provision u/s 21(1)(b) of the Specific Relief Act will be a bar to that. The other part of the first relief of the plaintiff will be only the declaration that the order of dismissal was wrong. At the most he would succeed to that extent But a suit for a mere declaration without asking for other relief to which the plaintiff is entitled as a consequence thereto is not maintainable under the provision of Section 42 of the Specific Relief Act (old) (the corresponding section in the new Act (47 of 1963) is 34). This is a serious hurdle for the plaintiff-appellant. Learned counsel appearing for the defendant respondent drew my attention to the cases reported in S.B. Dutt Vs. University of Delhi, ; 1962 BLJR 519: AIR 1962 Pat 542, Dr. Parmanand v. District Board, Patna and a recent decision of this Court in S A. No. 746 of 1965. D/- 16-8-1967 (Pat). In all these cases the bar against mere declaratory suit within the meaning

of Section 42 of Specific Relief Act (Old) was considered. I am afraid the plaintiff is faced with that bar in the present suit. He had valued his suit at Rs. 960 for the purpose of court-fee and jurisdiction but he had not asked for a decree for relief, either by way of salary, or compensation. He is not entitled to a decree for reinstatement, even though the order of dismissal was wrong, and therefore he cannot be entitled to a decree for any salary But he could have been entitled to compensation or damages. Unfortunately he did not ask for It His suit, therefore, will be barred by Section 42 (Proviso) of the Specific Relief Act (Old). In that view of the matter the appeal cannot succeed.

6. The result is that the appeal is dismissed. But in the circumstances of the case there will be no order as to costs in this Court.