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**(2006) 09 JH CK 0062**  
**In the Jharkhand High Court**

Binod Kumar Singh

APPELLANT

Vs

Coal India Ltd., The Chairman cum Managing Director, Bharat  
Coking Coal Ltd. and The General Manager, Bharat Coking  
Coal Ltd.

RESPONDENT

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**Date of Decision :** 07-09-2006

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 120B, 302, 34, 420, 468

**Citation :** (2006) 4 JCR 508

**Hon'ble Judges :** Permod Kohli, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

Permod Kohli, J.—While working as Personnel Manager with the respondent-Company, petitioner was involved in a criminal case instituted by C.B.I, in the year 1984 under Sections 420, 468, 471 and 120B IPC on the allegation of some fraud and forgery in respect of grant of employment to some Class-III & IV employees in Bharat Coking Coal Ltd. It is alleged that petitioner was falsely implicated. On registration of a charge sheet, the case was presented before the Spl. Judicial Magistrate (C.B.L.) Dhanbad which was registered as RC case No. 3 & 9 of 1984/TR No. 4 of 1998. Petitioner along with others were convicted vide judgment dated 21.12.1998. Petitioner was awarded sentence of one year's R.I. On his conviction, he was served with a notice dated 10.2.1999 calling upon him to show cause as to why penalties under Rule 27 should not be imposed on him. Petitioner submitted a reply stating therein that he had preferred an appeal before the Appellate Court. In view of the conviction, respondent-Company passed an order dated 6.7.1999 for dismissal of the petitioner from the service under Rule 34.1 of Conduct, Discipline & Appeal Rules, 1978 of Coal India Ltd. Petitioner's appeal remained pending and he retired from service on 31.8.2002. After his retirement, the Appellate Court i.e. 5th Additional Sessions Judge, Dhanbad vide his judgment dated 1.10.2002 passed in Criminal Appeal No. 6 of 1999 preferred by the petitioner against his conviction acquitted the petitioner.

Appellate Court observed that petitioner's name did not figure in any of the F.I.Rs. as also returned the findings that no case has been established against the petitioner. On the basis of judgment of acquittal passed by the 5th Additional Sessions Judge, Dhanbad, petitioner preferred a representation seeking reinstatement, in the service from the date of his dismissal and all consequential benefits. His representation was not considered. Petitioner preferred W.P.(S) No. 1619 of 2004 before this Court which came to be disposed of vide order dated 24.3.2004 and the direction was issued to the Chairman cum Managing Director, BCCL, Dhanbad to dispose of the representation, if any, pending before him within a period of four weeks from the date of receipt of copy of order. Petitioner preferred representation dated 24.3.2004 asking for implementation of the judgment of the High Court. Petitioner's representation has been disposed of vide impugned communication dated 3.6.2004 and rejected the claim of the petitioner for back wages/salary for the period of conviction i.e. from 6.7.1999 to 31.8.2002. He has also been denied bonus for the same period as also Block LTC, Medical Bills for self and family and leave encashment for the aforesaid period, though, period was counted for the purpose of gratuity. Petitioner is aggrieved of aforesaid communication to the extent he has been denied back wages and other service benefits. Respondents have denied the service benefits relying upon the judgment of the Apex Court in case of Union of India (UOI) and Others Vs. Jaipal Singh, .

2. Petitioner has accordingly sought quashment of the impugned communication dated 3.6.2004, order of dismissal dated 6.7.1999 and with further directions for payment of his salary and all other service benefits up to the date of his retirement on 31.8.2002. Respondents have resisted the claim of the petitioner on the same ground as urged in the impugned communication.

3. Only ground that needs to be considered is whether the petitioner is entitled to salary and back wages after his acquittal by the Appellate Court for the period he was out of job on account of his dismissal vide dismissal order dated 6.7.1999 on his conviction. Learned counsel appearing for the respondents has placed reliance upon the judgment in case of Union of India v. Jaipal Singh (supra). This judgment is also the basis for denial of the claim of the petitioner as is evident from the impugned communication dated 3.6.2004. In the aforesaid judgment, an employee was convicted for an offence u/s 302 read with Section 34 of I.P.C. along with his brother and later acquitted by the Appellate Court. It is relevant to notice the observations of the Apex Court in the aforesaid judgment which reads as under:

On going through the same, we are in respectful agreement with the view taken in Ranchhodji Chaturji Thakore Vs. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar, (Gujarat) and another, . It prosecution, which ultimately resulted in acquittal of the person concerned was at the behest or by 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 convicting but are in consonance with reasonableness as well. Though exception taken to that part of the order directing re-instatement cannot be sustained and the respondent has to be re-instated, 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 advertent to all such relevant aspects and considerations. Consequently, the order of the High Court in so far as it directed payment of back wages are liable to be and is hereby set aside.

4. From the observations of the Hon"ble Supreme Court, it is evident that Court concurred with the earlier judgment of the Apex Court reported in Ranchhodji Chaturji Thakore Vs. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar, (Gujarat) and another, . In the aforesaid judgment also, the employee was involved for an offence u/s 302 read with Section 34 I.P.C. and convicted by the Sessions Court and later he was acquitted by the High Court, He claimed reinstatement and back wages. Hon"ble Supreme Court on consideration observed 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.

5. From perusal of both these judgments, it transpires that the distinguishable feature in two situations where an employee is entitled to back wages and where he has to be denied the back wages appears to be conviction not relatable with

his/her employment and conviction for an offence said to be committed during the course of or relating to the performance of duties and at the instance of the employer. In both the cases before the Apex Court the employee was involved in cases of murder etc. and convicted resulting in dismissal under service rules and later reinstated on acquittal. The offence of 302 committed by an employee has nothing to do with his service/employment that too if the allegations are unconnected with discharge of his duty as such an employee. Under these circumstances, it has been held by Hon''ble Supreme Court that the employer has been deprived of the benefit of the services of the employee not due to any fault of the employer and thus having not extracted any work from him is under no obligation to pay.

6. In the present case, the allegations against the petitioner had direct connection with his employment. He was accused of an act of fraud and forgery during the course of and in relation to his employment. Finally he was acquitted of the criminal charge. Final Court has exonerated the petitioner of all the allegations against him having not been established and his conviction set aside. Dismissal of the petitioner was only on account of his conviction for the aforesaid offence. Had there been no complaint of his misconduct during the course of his employment, there had been no proceedings against him. As a matter of fact, he was tried at the instance of the employer. The conviction and later dismissal had direct nexus with the employment. It was not an individual or independent act of the petitioner which deprived the employer of the benefit of his service rather employee was denied the benefit of his service on account of criminal proceedings initiated in relation to his employment/service. His dismissal being solely on account of conviction, he cannot, be denied the benefit of back wages and other service benefits on acquittal of the charges. Supreme Court has clearly indicated in *Ranchhodji Chaturji Thakore Vs. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar, (Gujarat)* and another, that every case has its own facts. The facts of the present case are different from both the cases referred to above where the employee was found not entitled to back wages.

7. In my considered view, the facts and circumstances of the present case are clearly distinguishable from the above two cases and in the present case denial of back wages and other service benefits to the petitioner by the impugned communication are not justified. Dismissal order of the petitioner and consequently impugned communication dated 3.6.2004 and the conditions contained therein except condition (3), (6) and (7) is quashed. Consequently, direction is issued to pay back wages and other service benefits indicated above to the petitioner including his consideration for promotion and if he is found eligible and fit for promotion, the benefit of promotion(s) be also allowed till the date of his retirement and his retiral benefits be also accordingly determined and paid.