
(2014) 01 JH CK 0046
In the Jharkhand High Court
Case No : W.P. (S) No. 1382 of 2013

Birlal Prasad

APPELLANT

Vs

The Steel Authority of India Ltd.

RESPONDENT

Date of Decision : 07-01-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 380

Citation : (2014) 2 JLJR 640

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Saurav Arun and Deepak Kumar Dubey, Advocate for the Appellant;
Rajiv Ranjan and Shresth Gautam, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

S. Chandrashekhar, J.—The petitioner has approached this Court challenging order dated 10.02.2011. The brief facts of the case are that, the petitioner was appointed on 08.06.1972 as Rigger and he superannuated from service with effect from 31.10.2012. On 04/05.03.1993, a First Information Report was registered u/s 380, 120B I.P.C. and on trial, the petitioner was convicted by order dated 20.03.2009. The appeal preferred by the petitioner has been allowed by order dated 04.10.2010 and thereafter, the petitioner was reinstated in service by order dated 10.02.2011 however, he has been denied the salary between the period 24.07.2009 and 10.02.2011. Aggrieved, the petitioner has approached this Court by filing the present writ petition.

2. A counter-affidavit has been filed stating as under,

6. That in reply to para 1(i) it is stated that the petitioner was reinstated on no work no pay basis vide O/O No. pers/W/SMS-IICCS/2011-216 dt. 10.2.2011. As such he was not entitled for any back wages and consequential benefits of any kind though his notional seniority in the existing grade and cluster has been retained for the purpose of basic calculation only and further it has not been

mentioned in the order to reinstate him with all back wages.

7. That in reply to para 1(ii) it is stated that notional promotion has been given vide O/O No. Pers/W/SMS/2011-1426 dt. 5.10.2011 as per company policy.

8. That in reply to para 1(iii) it is stated that as per the O/O No. Pers/W-SMS1/2011-1426 dt. 5.10.2011, petitioner was not entitled for payment of arrears for the period of dismissal i.e. from 24.7.2009 to 10.2.2011. As such, EL/HPL has not been considered. Payment of Ex-gratia bonus for the period of 2008-09 was not considered as during the payment of these, he was out of employment. He has availed both LLTC and LTC for the block year 1994-97 (15.7.94 to 20.05.94 and 10.10.97 to 21.10.97) whereas he was under suspension from 28.05.1995 to 28.08.1996.

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18. That in reply to para 9 it is stated that the notional promotion has been given vide O/O No. Pers/W/SMS1/2011-1426 dt. 5.10.11 as per company policy.

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23. That in reply to para 15 it is stated that the notional promotion has been given vide O/O No. Pers/WSMS1/2011-1426 dt. 5.10.2011 as per policy.

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27. That in reply to para 20 -1426 dt. 5.10.2011.

28. That in reply to para 21 it is stated that EL/HPL has been given for the period "of suspension vide it is stated that the revision benefits has been given vide O/O No. Pers/WSMS1/2011 O/O No. Pers/W/SMS1/IMF/1994-127 dt. 26.12.2012

29. That in reply to para 22 it is stated that payment of Ex-gratia I bonus for the period of 2008-09 was not considered as during the payment of these, he was out of employment.

30. That in reply to para 23 it is stated that he has availed both LLTC and LTC for the block years 1994-97 (15.5.94 to 20.05.94 and 10.10.97 to 21.10.97) whereas he was under suspension from 28.5.1995 to 28.08.1996.

3. Heard learned counsel appearing for the parties and perused the documents on record.

4. The learned counsel appearing for the petitioner submits that, the petitioner is entitled for reinstatement and back wages after his acquittal in the criminal case which has been denied to the petitioner by the impugned order dated

10.02.2011. He further submits that all other consequential benefits have also been denied to the petitioner and the claim of the petitioner in so far as the claim of monetary benefit for the period 24.07.2009 and 10.02.2011 is concerned, has not been given to the petitioner.

5. As against the above, the learned counsel appearing for the respondents submits that, after his acquittal in the criminal case, the petitioner has been reinstated in service and after his reinstatement, all other benefits which would accrue to the petitioner have been duly granted to the petitioner. The petitioner has been granted notional promotion and presently, he has been given the pay-scale which is existing today.

6. Having heard the learned counsel appearing for the parties, I find that the petitioner was dismissed from service on 24.07.2009 and he was acquitted by the appellate Court by order dated 04.10.2010 and therefore, I am of the considered opinion that the petitioner is entitled for grant of reinstatement and back wages from 04.10.2010 which admittedly, has not been given to the petitioner. The criminal case although, was not lodged at the instance of the employer, however, the petitioner has since been reinstated in service by the employer.

7. In K.C. Sareen Vs. C.B.I., Chandigarh, , the Hon''ble Supreme Court has observed as under:

14. We are fortified in holding so by two other decisions of this Court. One is Dy. Director of Collegiate Education (Admn.) v. S. Nagoor Meera. The following observations of this Court are apposite now: (SCC p. 381, para 9)

.....If, however, the accused government servant is acquitted on appeal or other proceeding, the order can always be revised and if the government servant is reinstated, he will be entitled to all the benefits to which he would have been entitled to had he continued in service.....

8. In Ranchhodji Chaturji Thakore Vs. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar, (Gujarat) and another, , the Hon''ble Supreme Court has held 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.

9. In Union of India (UOI) and Others Vs. Jaipal Singh, , the Hon"ble Supreme Court has held as under:

4.On going through the same, we are in respectful agreement with the view taken in Ranchhodji. If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest of or by the 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 convincing but are in consonance with reasonableness as well. Though exception taken to that part of the order directing reinstatement cannot be sustained and the respondent has to be reinstated 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 advertting to all such relevant aspects and considerations. Consequently, the order of the High Court insofar as it directed payment of back wages is liable to be and is hereby set aside.

5. The respondent will be entitled to back wages from the date of acquittal and except for the purpose of denying the respondent actual payment of back wages, that period also will be counted as period of service, without any break. The reinstatement, if not already done, in terms of the order of the High Court will be done within thirty days from today.

10. The learned counsel appearing for the respondents would next contend that it is not clear from the averments made in the writ petition that, the petitioner after his acquittal, had immediately approached the authority and whether there was any delay on the part of the petitioner and therefore, in this view of the matter, the petitioner can not be granted benefit of back wages from the date of acquittal. In view of the fact that no such plea has been taken in the counter-affidavit and the judgments of the Hon"ble Supreme Court which have been noticed hereinabove, I am unable to accept such contention raised on behalf of the respondents. I further find that, in so far as, the grant of promotion is concerned, in view of the categorical statement made in the counter-affidavit that,

the petitioner has been granted notional promotion, the benefit which was admissible to the petitioner has been granted by the respondents. In so far as, arrears of salary is concerned, the petitioner is entitled for arrears of salary with effect from 04.10.2010 to 10.02.2011. The prayer made by the petitioner at clause (iii) has been controverted by the respondents and it has been specifically stated by the respondents that, the petitioner had infact availed the benefit of LTC.

11. In the result, the impugned order dated 10.02.2011 is quashed in so far as, it relates to the grant of back wages to the petitioner. All other benefits which have been admitted by the respondents in the counter-affidavit should be given to the petitioner within a period of six weeks from today. The writ petition is partly allowed in the aforesaid terms.