

(2015) 01 JH CK 0120
In the Jharkhand High Court
Case No : WP(S) No. 743 of 2009

Haricharan Mahto

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 15-01-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 149, 302, 323, 324, 34

Citation : (2015) 2 JLJR 198

Hon'ble Judges : S.N. Prasad, J

Bench : Single Bench

Advocate : Ahalya Mahato, for the Appellant; Purendu Sharan and Kumar Rahul, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Sujit Narayan Prasad, J.

1. Petitioner has challenged the order dated 17.7.2008 passed by the Deputy Commissioner, West Singhbhum at Chaibasa, whereby and whereunder the order of termination dated 18.6.2005 has been directed to be remained applicable. Heard the parties and perused the documents on record.

2. It has been submitted on behalf of petitioner that the petitioner was implicated in a case registered for the offence under Sections 149, 323 and 302 of I.P.C. in which he has been convicted.

3. Against the order of conviction, an appeal had been preferred by the petitioner being Cr. Appeal No. 104 of 1991 (R) by which this Hon''ble Court had been pleased to set aside the order of conviction passed under Section 302 read with Section 149 of Indian Penal Code and instead finding him guilty under Section 324 read with Section 34 of Indian Penal Code for causing injury to Jugeshwar Mahato with a fine of Rs. 50,000/- to deposit before the Trial Court. Further submission has been made that other convicts namely, Subodh Kumar Das and Mithilesh Kumar Das, who had been acquitted in criminal appeal No. 163 of 1988

setting aside the order of conviction under Section 302 read with Section 149 of the Indian Penal Code finding them guilty under Section 323 but after acquittal the Deputy Commissioner, Chaibasa reinstated Subodh Kumar Das and Mithilesh Kumar Das in service at Jagannathpur Block. The petitioner thereafter has made representation before the Deputy Commissioner, Chaibasa for giving the same treatment, but the claim of the petitioner has been rejected vide order dated 17.7.2008.

4. On the other hand, learned counsel for the respondents has submitted that the petitioner has been convicted by the Trial Court for the offence under Section 302 read with Section 149 of the Indian Penal Code but however, in the appeal the conviction under Section 302 read with Section 149 of Indian Penal Code has been set aside finding the petitioner guilty for the offence under Section 324 read with Section 34 of Indian Penal Code with a direction to pay Rs. 50,000/-. The claim of petitioner had been rejected for his reinstatement in service on the basis of Rules 167 and 170 of the Board's Miscellaneous Rules. The admitted facts is that the petitioner has been found guilty in a criminal case in connection with Sessions Trial No. 250 of 1985 for the offence committed under Section 302 read with Section 34 of the Indian Penal Code and Section 324 read with Section 34 of the Indian Penal Code.

5. Petitioner along with others had preferred criminal appeal before this Hon'ble Court being Cr. Appeal No. 104 of 1991, the Division Bench of this Court has been pleased to set aside the order of conviction against the petitioners under Section 302 read with Section 149 of the Indian Penal Code and found them guilty under Section 324 read with Section 34 of the Indian Penal Code directing them to pay a fine of Rs. 50,000/- to be deposited in the trial court.

6. Petitioner has not challenged the judgment rendered by the Division Bench in Cr. Appeal No. 104 of 1991. The order of conviction under Section 324 read with Section 34 of the Indian Penal Code has attained finality.

7. Petitioner made representation before the authorities for reinstating him in service on the ground that he has not been guilty for the offence under Section 302, the authorities have discussed the matter at length while passing the impugned order dated 17.7.2008 and thereafter, rejected the claim of petitioner for his reinstatement on the basis of provision of (s/c--Rules?) 167 and 170 of the Board's Miscellaneous Rules.

8. It is hereby necessary to see the provision of (sic--Rules?) 167 and 170 of the Board's Miscellaneous Rules. The provision as contained in (sic--Rule?) 167 says that the final order in a case in which an officer has been prosecuted should issue as soon as the judicial proceedings have concluded without waiting for the result of an appeal, if any, in a higher Court of law. Further, Rule 170 speaks with respect to inapplicability of provision of Rule 166 which provides for providing an opportunity of being heard to be given to an employee before the order of dismissal but where a person has been dismissed or removed or reduced in rank

on the ground of conduct which has led conviction of criminal charge, there is no need to follow the procedure given under Section (sic--Rule?) 166 of the Board's Miscellaneous Rules.

9. The admitted position is that the petitioner has been convicted in a criminal case and the order of punishment has attained finality.

10. The contention of the petitioner that since he has not been guilty under Section 302 read with Section 149 of Indian Penal Code, and as such he is entitled to be reinstated in service, is not acceptable in view of the fact that the petitioner has been convicted for the offence under Section 324 of Indian Penal Code.

11. It is immaterial to see the gravity of the offence rather the moot question which is that as to whether an employee convicted in a criminal case, can be permitted to remain in service or not. The moment the Government employees are found guilty for the offence punishable under any Penal Code, the same will amount to misconduct. A person who is held guilty for a criminal case is said to have committed misconduct and such person cannot be retained in service. In view of provision of Bihar Government Servant's Conduct Rules, 1976 in which it has been provided that conviction in a criminal case will be misconduct and an employee who is convicted in criminal case will be treated to be unbecoming of a Government Servant. Rule 3(1) of Bihar Government Servant's Conduct Rules, 1976 is quoted hereinbelow:--

3. General.--(1) Every Government Servant shall at all times--

(i) maintain absolute integrity;

(ii) maintain devotion to duty, and

(iii) do nothing which is unbecoming of Government Servant.

12. So far as the contention made by the learned counsel for the petitioner that the other convicted persons, who have been acquitted from the Section 302 of Indian Penal Code, have been retained in service, on this ground, no relief can be granted to the petitioner because if any illegality has been done by the authorities, the principle of equity cannot be applicable. In that view of the matter, I find no interference with the order passed on 17.7.2008. Hence, this writ petition, being devoid of merit, is dismissed.