
(2010) 09 AHC CK 0581
In the Allahabad High Court
Case No : C.M.W.P. No. 16544 of 2007

Jitendra Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 21-09-2010

Acts Referred:

Citation : (2010) 6 AWC 6424

Hon'ble Judges : Amreshwar Pratap Sahi, J

Bench : Single Bench

Advocate : Hemendra Kumar, for the Appellant; C.S.C., for the Respondent

Final Decision : Allowed

Judgement

Amreshwar Pratap Sahi, J.—Heard Sri Hemendra Kumar learned Counsel for the Petitioner and the learned standing counsel for the Respondents.

2. This writ petition has been filed by a Police Constable who was dismissed from service on account of alleged charges of extortion and corruption and the appeal filed against the dismissal order has also been rejected by the appellate authority on 7.7.2006.

3. The Petitioner alongwith one other constable was accused in a criminal case grounded on the same set of facts which are presently involved. With regard to the same incident, the criminal case proceeded and both the accused have been acquitted vide judgment of the trial court dated 31.1.2007. Learned Counsel for the Petitioner submits that the other co-accused Sudesh Kumar had filed a writ petition which was dismissed on the ground of alternative remedy before the Public Services Tribunal and the claim petition before the the Tribunal has been allowed vide order dated 15.1.2007 pursuant where to the said co-accused has been reinstated in service.

4. A supplementary affidavit has been filed to that effect.

5. Learned Counsel for the Petitioner further submits that in the disciplinary

proceedings the complainant Sanjeev Dhar appeared and upon a query raised by the Inquiry Officer as to whether the Petitioner and the other co-accused were the same policemen who were named by him, the complainant categorically stated that he does not recognise either the Petitioner or the other co-accused. The same position existed during the criminal trial and accordingly the Petitioner and the other co-accused were acquitted by the trial court. Learned Counsel for the Petitioner submits that the same evidence adduced on the same set of facts was available to the disciplinary authority as such, there was no occasion for the authority to have found the Petitioner to be guilty for the charges which have been levelled against him by the Department.

6. Learned standing counsel was granted time on 29.3.2007 to file a counter affidavit. Thereafter time was again granted on 16.7.2010 but till date no counter affidavit has been filed.

7. In view of the aforesaid position, there is no option but to proceed on the basis of the averments contained in the writ petition and the supplementary affidavit. It is settled law that on the same set of facts when a Judicial pronouncement has been made then the said Judicial pronouncement would prevail over the findings of the disciplinary authority. In such a situation and in view of the additional facts that the co-accused has already been reinstated in service after his claim petition was allowed the case of the Petitioner does not stand on any different footing to deny the said relief.

8. Accordingly in view of the aforesaid position as emerges on the pleadings on record the impugned orders dated 7.7.2006 and 10.1.2007 are unsustainable. They are hereby quashed.

9. The writ petition is allowed. The Petitioner shall be reinstated in service with all consequential benefits on the same terms as Sudesh Kumar.