

(2012) 02 CHH CK 0079
In the Chhattisgarh High Court
Case No : W.A. No. 246 of 2010

Johan Panna

APPELLANT

Vs

State of C.G. and Others

RESPONDENT

Date of Decision : 08-02-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 325, 34, 352, 354

Citation : (2012) 2 CGBCLJ 59

Hon'ble Judges : Sunil Kumar Sinha, J;R.S. Sharma, J

Bench : Full Bench

Advocate : Uttam Pandey, for the Appellant; Kishore Bhaduri, Additional Advocate General for the State/Respondents 1 to 4, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Kumar Sinha, J.—This appeal is directed against the order dated 12th of April, 2010, passed in W.P. No. 425 of 2003. By the impugned order, the writ petition filed by the appellant was allowed in part and the appellant was reinstated in service without back wages. The facts, briefly stated, are as under-

The appellant was posted as Head Constable in Police Outpost, Dadhi Police Station Nawagarh, District Durg. The allegations are that on 05.11.1999, the appellant, after consuming liquor, entered into the house of one-Loknath Sahu, a local resident, and thereafter he tried to outrage the modesty of daughter of Loknath Sahu namely - Sitabai. For his alleged act, the appellant was prosecuted under Sections 456, 323, 352 85 354 IPC vide Criminal Case No. 230/1999 of the Court of Judicial Magistrate First Class, Bemetara, District Durg. The learned Magistrate, on conclusion of trial, acquitted the appellant of the above charges. A departmental inquiry was also initiated against the appellant, in which all the charges were found prove and a punishment of compulsory retirement was inflicted against the appellant by order dated 06.09.2001 (Annexure-P-1). Against the said order, the appellant preferred an appeal, which was dismissed by order dated 27.11.2001 (Annexure-P-2). There against, the appellant

preferred mercy appeal, which was also dismissed by order dated 23.04.2002 (Annexure-P-3). A second mercy appeal filed by the appellant was also dismissed by order dated 11.12.2002 (Annexure-P-4). The appellant thereafter, preferred writ petition. The writ petition was partly allowed. The Writ Court held that the findings recorded in the departmental enquiry on the basis of same witnesses contrary to the findings recorded in criminal Court were unjust and unfair. The appellant, therefore, was reinstated in service. About the back wages, the Writ Court held that since the appellant is an employee of Police Department which demands strict adherence to the rules and procedure more than any other department, he is not entitled to back wages.

2. Mr. Uttam Pandey, learned counsel appearing on behalf of the appellant, argued that the Writ Court erred in law in not awarding the back wages, even after quashing the order of punishment. The Writ Court ought to have awarded full back wages to the appellant as an essential consequence of the quashment of the punishment inflicted against the appellant.

3. On the other hand, Mr. Kishore Bhaduri, learned Additional Advocate General appearing on behalf of the State, opposed these arguments and supported the order passed by the Writ Court.

4. We have heard learned counsel for the parties at length and have also pursued the records of writ petition and writ appeal.

5. The State has not filed any appeal challenging the retirement of the appellant. Therefore the question which falls for consideration is only with respect to back wages.

6. In *Vijay Singh Vs. Union of India (UOI) and Others*, the appellant was Head Constable in Delhi Police. He was dismissed on 21.01.1998 and was out of service till the order passed by the Supreme Court i.e. 23rd of February, 2007. He was attaining the age of superannuation on 31.03.2012. The appellant has allegedly mis-conducted by making overwriting in case diary of a criminal case registered under Sections 325/34 IPC and he did not follow the procedure of enquiry. In Department Enquiry, he was found guilty and punishment of dismissal from service was imposed on the appellant. Though, the appellant was directed to be reinstated forthwith, but looking to the facts and circumstances of the case and the nature of mis-conduct alleged to have been committed by the appellant as a Police Officer and applying the principle of "no work no pay", it was held that he was not entitled to back wages from 21.01.1998 till reinstatement.

7. In *Union Territory, Chandigarh -Vs.- Brifmohan Kaur*, (2007) 11 SCC 488, the Supreme Court held that the principle of "no work no pay" has been laid down keeping in view the public interest that a Government servant who does not discharge his duty is not allowed pay and arrears at the cost of public exchequer.

8. In *Chairman-Cum-M.D., Coal India Ltd. and Others Vs. Ananta Saha and Others*, the Supreme Court observed vide para 49 that:-

49. The issue of entitlement of back wages has been considered by this Court time and again and consistently held that even after punishment imposed upon the employee is quashed by the Court or tribunal, the payment of back wages still remains discretionary. Power to grant back wages is to be exercised by the court/tribunal keeping in view the facts in their entirety as no straitjacket formula can be evolved, nor a rule of universal application can be laid for such cases. Even if the delinquent is reinstated, it would not automatically make him entitled to back wages as entitlement to get back wages is independent of reinstatement. The factual scenario and the principles of justice, equity and good conscience have to be kept in view by an appropriate authority/court or tribunal. In such matters, the approach of the Court or the tribunal should not be rigid or mechanical but flexible and realistic. (Vide U.P.S.R.T.C. Vs. Mitthu Singh, Secretary, Akola Taluka Education Society and Another Vs. Shivaji and Others, and M.D., Balasaheb Desai Sahakari S.K. Ltd. Vs. Kashinath Ganapati Kambale,

9. On the above decisions, it is clear that no straitjacket formula can be applied to all the cases for grant of back wages and back wages is to be granted keeping in view the entire facts and circumstances of a particular case, and nature of misconduct i.e. alleged, would always be a circumstance while considering the entitlement of back wages. The principle of "no work no pay" has been evolved in view of public interest that an employee who has not worked at all should not be paid arrears out of public money.

10. In the instant case, the appellant was a Head Constable. On the fateful day, he allegedly consumed liquor and after trace passing the house of a local resident, he tried to outrage the modesty of his daughter in drunken condition. Therefore, there were serious allegations against the appellant who was a member of disciplined force having trust of people of the locality where deployed.

11. Considering the facts and circumstances of the case in their entirety, we are of the view that the learned Single Judge was fully justified in not awarding back wages to the appellant. There is no substance in the appeal. The appeal, therefore, is liable to be dismissed and is hereby dismissed. No Cost.