

(2018) 09 CHH CK 0203
In the Chhattisgarh High Court
Case No : Writ Petition S. NO. 3079 Of 2007

Manoj Upadhyaya

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision : 12-09-2018

Acts Referred:

Indian Penal Code, 1860 — Section 149, 201, 304, 330, 348
Chhattisgarh Civil Services (Classification, Control And Appeal) Rules, 1966 — Section
Rule 19(1)

Citation : (2018) 09 CHH CK 0203

Hon'ble Judges : P. Sam Koshy, J

Bench : Single Bench

Advocate : Anup Majumdar, Arvind Dubey

Final Decision : Disposed Of

Judgement

P. Sam Koshy, J

1. Challenge in the present writ petition is to the Annexure P-6, dated 1.5.2007 whereby the appeal preferred by the petitioner has been rejected

affirming the order of punishment of termination.

2. Initially, the services of the petitioner who was working as a Constable at Police Station Kawardha, District Kabirdham, were terminated vide order

dated 7/14.5.2005, Annexure P-1, by the Superintendent of Police, District Kabirdham. The plain perusal of the order of termination, dated

7/14.5.2005, Annexure P-1, would reveal that the services of the petitioner were terminated on account of the fact that he was convicted by the Trial

Court, Kawardha on 28.2.2005 for the offence punishable under Sections 304 (Part-II)/149, 330/149, 348/149 and 201 of the Indian Penal Code (for

short hereinafter referred to as, "I.P.C.").

3. Subsequent to the petitioner getting bail from the appellate Court, the order of termination was recalled by the Superintendent of Police i.e. the disciplinary authority. However, the respondent no.2 i.e. the Director General of Police invoking the provisions of Rule 19(1) of Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 as also the powers envisaged under the Police Regulation 238 had imposed the order of punishment of termination against the petitioner rejecting the appeal of the petitioner taking into consideration the conviction order which was there against the petitioner.

4. Pending the petition before this Court, there is a subsequent development which has transpired and that is the appeal which the petitioner had preferred against his conviction, i.e., Criminal Appeal No. 225 of 2005, stood finally decided on 1.8.2013 by this Court. Vide the said judgement, this Court partly allowed the said criminal appeal to the extent that the conviction of the petitioner for the offence punishable under sections 304 (Part-II)/149, 330/149, 348/149 of I.P.C. has been set aside and the petitioner stands acquitted from those offences. However, the conviction so far as the offence under Section 201 of I.P.C. is concerned, the same stands affirmed in the said criminal appeal by this Court.

5. Learned counsel for the petitioner at this juncture submits that in the light of the subsequent development where the petitioner has been acquitted of all the major offences which were alleged against him, the order of termination deserves a reconsideration.

6. Given the aforesaid facts and circumstances, this Court is also of the opinion that under the changed circumstances and also taking into consideration the fact that for the major offences since the petitioner has been acquitted, except for the offence under Section 201 of I.P.C., the order of punishment passed by the respondents needs a reconsideration and accordingly the matter stands remitted back to respondent no.2, the Director General of Police, Raipur, who had rejected the appeal of the respondents vide order dated 1.5.2007.

7. Let the appellate authority i.e. respondent no.2 take a fresh decision taking into consideration all the subsequent developments particularly the judgement passed in Criminal Appeal No. 225 of 2005 and thereafter take a fresh decision as to what orders have to be passed against the petitioner.

Let this exercise be completed within 90 days from today.

8. The writ petition accordingly stands disposed of with the aforesaid observations.