

(2015) 02 RAJ CK 0021
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4823/2012

Raj Kumar Sarsar

APPELLANT

Vs

Jodhpur Vidhyut Vitaran Nigam Ltd. and Others

RESPONDENT

Date of Decision : 02-02-2015

Acts Referred:

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

Citation : (2015) 02 RAJ CK 0021

Hon'ble Judges : Sandeep Mehta, J.

Bench : Single Bench

Advocate : Sanjay Nahar, for the Appellant; C.S. Kotwani and Pankaj Arora, Advocates for the Respondent

Final Decision : Allowed

Judgement

Sandeep Mehta, J.—By way of the instant writ petition, the petitioner has approached this Court assailing the validity and legality of the order (Annex. 5) dated 24.3.2007, order (Annex. 6) dated 18.12.2007 and order (Annex. 11) dated 22.7.2011 and for setting aside the order imposing penalty of censure on the petitioner and for claiming backwages from 4.9.2002 to 26.3.2007 with all consequential benefits.

2. Facts in brief are that the petitioner was given compassionate appointment in the respondent corporation on 21.3.1991 on the post of LDC. He was implicated in a criminal case for the offence under Section 302/34 IPC and was placed under suspension vide order dated 10.12.1998. He was arrested and tried in the said case. The trial court i.e. the Additional Sessions Judge No. 1, Sriganganagar by its judgment dated 9.6.1999 convicted the petitioner for the offence under Section 302 read with Section 34 of IPC by judgment dated 9.6.1999 and sentenced him to life imprisonment and a fine of Rs. 1000/-. The petitioner was also convicted for the offence under Section 323 IPC and a fine of Rs. 500/- was imposed on him. On the basis of this judgment, the Superintending Engineer of the corporation dismissed the petitioner from service of the corporation by order

dated 18.9.2000 with effect from the date of his conviction. The petitioner preferred an appeal against the said judgment of conviction in the High Court. The appeal preferred by the petitioner against his conviction was partly allowed by this Court on 4.9.2002 and the petitioner was acquitted of the charge under Section 302/34 IPC. However, his conviction and sentence of fine for the offence under Section 323 IPC was maintained. The petitioner submitted an application before the Superintending Engineer (O and M) alongwith the copy of the judgment dated 4.9.2002 and requested for being reinstated in service. The application filed by the petitioner seeking reinstatement was dismissed by order dated 6.12.2003. The petitioner preferred a writ petition being S.B. Civil Writ Petition No. 7004/2003 challenging this action of the authorities and the rejection of his representation and also praying for all consequential benefits. The said writ petition preferred by the petitioner came to be allowed by order dated 19.12.2006 and the court held that the conviction of the petitioner for the offence under Section 323 IPC was not for an offence involving moral turpitude. The petitioner was directed to file an appeal before the competent authority and the competent authority was directed to decide the appeal within a period of 60 days from the submission thereof. The petitioner preferred an appeal before the Chairman and Managing Director of the respondent corporation which was transferred to the Office of Zonal Chief Engineer (O and M-BZ), Jodhpur Discom, Bikaner. The appellate authority accepted the appeal preferred by the petitioner and by order dated 24.3.2007 directed the petitioner to be reinstated back in service with immediate effect. The petitioner rejoined service in the office of the Asstt. Engineer, Jodhpur Discom, Gharsana. A clarification order was issued on 18.12.2007 (Annex. 6) whereby the order dated 24.3.2007 passed by the appellate authority was clarified and notional pay fixation of the petitioner was directed. Accordingly, a consequential order came to be issued on 3.1.2008 from the office of Asstt. Engineer, Jodhpur Discom, Gharsana whereby notional pay fixation of the petitioner was done for the period between 28.3.1999 to 28.3.2007. The petitioner assailed the validity of the said fixation order dated 18.12.2007 by filing an appeal which was dismissed as being not maintainable. Being aggrieved, the petitioner preferred a writ petition being S.B. Civil Writ Petition No. 5243/2011 challenging the denial of backwages from the date of acquittal to the date of reinstatement and claiming consequential benefits. The prayer made by the petitioner was based on a judgment rendered by the Hon''ble Apex Court in the case of Jaipur Vidhyut Vitran Nigam Ltd. and Ors. Vs. Nathu Ram (Civil Appeal No. 7721/2009) decided on 23.11.2009 wherein in an identical situation, relying on the corporation's circular dated 3.9.1975 and Regulation 41, the Hon''ble Apex Court held in a similar set of facts and circumstances that the concerned employee was entitled to receive backwages. The Division Bench judgment passed in the employee's favour was upheld by the Hon''ble Supreme Court in the aforesaid case. The writ petition No. 5243/2011 preferred by the petitioner was disposed of on 26.5.2011 giving liberty to the petitioner to submit a fresh representation in light of the aforesaid judgment in Nathu Ram's case. Accordingly, the petitioner filed a fresh representation dated 14.6.2011 to the

respondents but the same was dismissed by communication dated 22.7.2011 and hence this writ petition.

3. I have heard arguments advanced by the learned counsel for the parties and have gone through the material available on record.

4. The Circular dated 3.9.1975 and the Regulation No. 41 on the basis whereof the Hon'ble Apex Court decided the controversy in Nathu Ram's favour have a material bearing on the case at hand and are quoted hereinbelow for the sake of convenience:-

"Circular dated 3.9.1975:-

Sub: Action to be taken in cases where Board's employees are convicted on a criminal charge by a competent court of law. The following procedure should be adopted in a case of conviction of a Board's employee by a Court of Law on a criminal charge:

(i) ...

(ii) ...

(iii) If an appeal/revision against the conviction succeeds and Board's employee is acquitted, the order of dismissal, removal or compulsory retirement based on his conviction which no longer stands, becomes liable to be set aside. A copy of the judgment of the appellate Court should be immediately procured and got examined with a view to decide whether despite the acquittal, the facts and circumstances of the case are such as to call for the departmental enquiry against the Board's employee on the basis of the allegation on which he was previously convicted. If it is decided that a departmental enquiry should be held, formal orders should be made:

(1) setting aside the order of dismissal, removal or compulsory retirement, and

(2) ordering such a departmental enquiry. Such an order should also state that under Regulation No. 9 of the RSEB (CC and A) Regulations 1962, the Board's employee is deemed to be under suspension with effect from the date of the dismissal/removal/compulsory retirement (A Standard Form-II is enclosed). In case where neither of the aforesaid course is allowed, a formal order should be made setting aside the previous orders of dismissal, removal and compulsory retirement and reinstating him in service (A Standard Form No. III for such an order is enclosed). The period between the date of dismissal etc. and the date on which he resumes duty should be dealt with under Regulation No. 41 of the Rajasthan State Electricity Board Employees Service Regulations and in doing so he should be deemed to be entitled to full pay and allowances for the period from the date of his acquittal to the date of his reinstatement, such period being counted for duty for all purposes and for the period from the date of dismissal to the date of acquittal, he should not be allowed pay and allowances less than what would have been admissible to him had he remained under suspension.

While issuing orders for dismissal, it should be borne in mind that the order is issued by the authority competent to inflict major penalty against that person."

Regulation 41:-

"Re-instatement after suspension, removal or dismissal: When an employee who has been dismissed, removed or suspended is reinstated, the authority competent to order the reinstatement shall consider and make a specified order:

1. (a) Regarding the pay and allowance to be paid to the employee for the period of his absence from duty, and

(b) Whether or not the said period shall be treated as a period spent on duty.

(c) Whether or not the suspension, removal or dismissal was wholly unjustifiable.

2. Where such competent authority holds that the employee has been fully exonerated or in the case of suspension that it was wholly unjustified, the employee shall be given the full pay and dearness allowance to which he would have been entitled had he not been dismissed, removed or suspended, as the case may be."

5. It is not in dispute that the petitioner was acquitted of the charge under Section 302 IPC and the appellate authority while passing the order dated 24.3.2007 directed his reinstatement in service imposing upon him a penalty of censure on the ground of his conviction for the minor offence under Section 323 IPC. This Court whilst deciding the earlier writ petition No. 7004/2003 preferred by the petitioner observed that the offence under Section 323 IPC is not an offence of moral turpitude. The Regulation 41 of the corporation and the circular of 1975 which have been reproduced hereinabove and the interpretation thereof as made by the Hon"ble Apex Court is reproduced hereinbelow:-

"The Circular also clearly says that in doing so, the employee should be deemed to be entitled to full pay and allowances for the period from the date of his acquittal to the date of his reinstatement." 6. The authority whilst passing the order (Annex. 11) dated 22.7.2011 refusing backwages mentioned that the petitioner had not been acquitted entirely of the criminal charges and thus, the facts of the case are distinguishable from Nathu Ram's case. Suffice it to say that the punishment of fine awarded to the petitioner for the offence under Section 323 IPC had already been considered insufficient for denying reinstatement. Otherwise also, the offence under Section 323 IPC is not an offence of moral turpitude. Thus, in view of the language of the circular of 1975 and since the petitioner has been reinstated in pursuance of his acquittal from the charge under Section 302 IPC, the authority was not justified in denying backwages to the petitioner from the date of his acquittal.

7. Accordingly, the writ petition deserves to be and is hereby allowed and the respondent authorities are directed to make payment of backwages and consequential benefits to the petitioner from the date of his acquittal till the date

of his reinstatement.

8. No order as to costs.