

(2015) 08 AHC CK 0131

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 12239 of 2003

Raj Narain

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 25-08-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 419, 420, 467

Citation : (2015) 10 ADJ 562 : (2016) 114 ALR 77 : (2015) 6 AWC 6454

Hon'ble Judges : Arun Tandon and Shashi Kant, JJ.

Bench : Division Bench

Advocate : W.H. Khan and J.H. Khan, for the Appellant; B.N. Singh and H.C. Dubey, for the Respondent

Final Decision : Disposed Off

Judgement

1. Heard learned counsel for the parties and perused the record. The Petitioner before this Court was employed as Sorting Assistant in Railway Mail Service. He was suspected to be involved in racket of payment of bogus heavy value money orders. An FIR was lodged. The criminal trial with reference to the first information report resulted in conviction of the petitioner for offences under Sections 419 , 420 , 467 , as per order of the Additional Chief Judicial Magistrate, Varanasi dated 29.1.1997 passed in Criminal Case No. 509 of 1996. Because of the conviction of the petitioner in the criminal case under Sections 419 , 420 , 467 I.P.C., the railways had no other option but to dismiss the petitioner from the service vide order dated 28.2.1997 in exercise of power under Rule-9(1) of Central Civil Services (Classification, Control and Appeal) Rules, 1965.

2. The petitioner, preferred an appeal against the order of conviction being Appeal No. 14 of 1997, which was finally allowed under judgment and order of the District and Sessions Judge, Varanasi dated 31.8.2001. The petitioner was not reinstated, he filed Original Application No. 907 of 2002 before the Central Administrative Tribunal. The original application was allowed vide order dated 11.12.2002 and in pursuance thereof he was reinstated.

3. There is no dispute with regard to the payment of salary and other allowances to the petitioner subsequent to reinstatement in terms of the order of the Tribunal referred to above on behalf of the petitioner-employee. He is however, not satisfied with the part of the order of the Tribunal whereunder the Tribunal has held that the petitioner will not be entitled to back wages i.e. for the period from the date of dismissal till the date of reinstatement. Challenging the order so passed, the petitioner has approached this Court.

4. On behalf of the petitioner, it is contended that once it has been found that the criminal offence as alleged against the petitioner was not made out and he has been acquitted by the criminal Court, he becomes entitled for full salary for the period, he was kept out of employment. It is submitted that the FIR was lodged by the employer and the entire proceeding had been taken at the behest of the employer.

5. Counsel for the petitioner in support of his plea has placed reliance upon the judgment of the Apex Court in the case of Tapash Kumar Paul Vs. BSNL and Another, , paragraphs-10, 11 and 12. He has also placed reliance upon the judgment of the Apex Court in the case of State of U.P. v. Charon Singh, JT 2015 (3) SC 344 , paragraph-16 as well as paragraph 18 of the said judgment. It is lastly stated that the Apex Court itself in the case of Union of India (UOI) and Others Vs. Jaipal Singh, , has explained that if the prosecution which ultimately resulted in acquittal of the employee concerned was at the behest of or by the department itself, perhaps different considerations may arise. He submits in the facts of the case the prosecution had been initiated at the behest of the employer and therefore, the judgment in the case of Ranchhodji Chaturji Thakore Vs. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar, (Gujarat) and another, , will not apply.

6. Counsel for the respondents however, with reference to the judgment of the Apex Court in the case of Ranchhodji Chaturji Thakore (supra) submits that the Supreme Court had made a distinction in the matter of payment of back wages in respect of employees who are proceeded departmentally and then dismissed from service vis-a-vis the employees, who are dismissed from service after convicting by the competent Court of law. The Supreme Court has held that the employer has no other option, but to dismiss an employee once he is held guilty of criminal offence. In these circumstances, the employer could not obtain the services of the employee concerned because of the law applicable, therefore, question of payment of back wages would not arise. He further submits that the judgment in the case of Ranchhodji Chaturji Thakore (supra) has been approved by the Supreme Court in the case of Union of India and others v. Jaipal Singh (supra).

7. We have heard learned counsel for the parties and have examined the records of the case.

8. There is hardly any dispute on the facts between the parties.

9. So far as the judgments relied upon by the counsel for the petitioner in the cases of Union of India and others v. Jaipal Singh (supra), Tapash Kumar Paul v. BSNL and another (supra) and State of U.P. v. Charan Singh (supra), are concerned, we find that they deal with a dispute pertaining to the dismissal of an employee after departmental enquiry and the Apex Court in the said judgments has opined that unless there are exceptional circumstances, the normal award by Industrial Tribunal should be of reinstatement with back wages once the dismissal is found to be unjustified.

10. But these judgments in our opinion, will have no application in the case at hand in as much as the Apex Court in the case of Rannchhodji Chaturji Thakore (supra) has clearly made a distinction in the matter of dismissal of an employee because of conviction for a criminal offence vis-a-vis dismissal after departmental enquiry.

11. The Apex Court has held that where dismissal is a result of a conviction in a criminal case, then the employer is duty bound under law to dismiss the employee concerned and in that circumstance, the employer is denied the service of the employee concerned, therefore, the question of back wages could not be agitated. It has been explained that the question of back wages would be considered only if the respondents have taken action by way of disciplinary proceedings and the action was found to be unsustainable in law.

12. The facts of the present case are more alien to the facts in the case of Rannchhodji Chaturji Thakore (supra).

13. This takes the Court to the judgment in the case of Jaipal Singh (supra), the Apex Court has held that if conviction of the employee concerned was at the behest of employer different consideration may arise.

14. According to the petitioner, the observation made in the judgment that if the criminal proceeding ultimately resulted in acquittal of the employee concerned where included at the behest of the employer, perhaps different considerations may arise clearly applies to the facts of the present case in as much as the petitioner was required to undergo criminal trial in pursuance to a first information report by an employer. Once the employee has been acquitted of the criminal offence, the employer should bear the consequences and petitioner must be paid full salary for the period he was kept out of employment.

15. Sri Ashok Mehta, counsel for the employer submits that the Apex Court while making the observation that different consideration may prevail, had not laid down any such proposition that the employee would be entitled to full salary, if he is acquitted in the appeal in all cases where FIR was registered by the employer.

16. Having considered the judgments of the Apex Court in the case of Rannchhodji Chaturji Thakore (supra) and Union of India and others v. Jaipal Singh (supra), we find that although there is an observation passed by the Apex

Court that different considerations may result if the criminal case was instituted at the behest of the employer but what will be these considerations have not been spelled out in the said judgment of Jaipal Singh (supra).

17. We may record that unless and until it is established that the FIR was registered for mala fide intentions deliberate motive to keep the employee out of employment, there cannot be any difference in the considerations which follow in the matter of dismissal because of conviction in a criminal trial and ultimate acquittal thereof vis-a-vis a case where the FIR was registered by an independent person. The observations of the Supreme Court: in respect of different considerations need be examined, in light of the facts leading to the FIR.

18. In the facts of this case, there is hardly any pleading of mala fide against the employer in the matter of lodging of the FIR.

19. In our opinion, general principle as laid down in the case of Rannchhodji Chaturji Thakore (supra), that the employer has no other option but to dismiss the employee, if he is held guilty in criminal offence, because of which the employer is deprived of the service of the employer in view of statutory provision has to be applied in this case. The employer cannot be directed to pay back wages for the period, the employer was out of employment.

20. But we are conscious of the fact that the Apex Court in the case of Union of India and others v. Jaipal Singh (supra) has laid down that the the employee would be entitled to his back wages from the date he is acquitted of the criminal charges.

21. In view of the aforesaid, we hold that the petitioner would be entitled to his full back wages from the date of the order of the acquittal i.e. 30.8.2001. Therefore, the order of the Director in so far as it refuses back wages for the period between 30.8.2001 till date of reinstatement cannot be legal and is hereby quashed. The order of the Tribunal dated 11.12.2002 to that extent is set aside.

22. It is held that the petitioner would be entitled to back wages for the period commencing from 30.8.2001, till the date of reinstatement with all consequential benefits The amount in that regard may be computed within two months and be paid to the petitioner within a further period of two months. The writ petition is disposed of accordingly.