

(2001) 04 CAL CK 0012
In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction Original Side W.P. No. 2375 of 2000

Ram Deo Tiwari

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 18-04-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 311(2)
Penal Code, 1860 (IPC) — Section 120B, 218
Prevention of Corruption Act, 1988 — Section 5(1)(d), 5(2)
Railway Protection Force Rules, 1987 — Rule 161, 162.5, 47
Reserve Bank of India Service Regulation — Regulation 46(1)

Citation : (2001) 2 CALLT 147 : (2002) 92 FLR 362

Hon'ble Judges : Mohammad Habeeb Shams Ansari, J

Bench : Single Bench

Advocate : Mrs. Bharati Ghosh Dutta, for the Appellant; Mrs. Anwar Quarishi, for the Respondent

Judgement

M.H.S. Ansari, J.—The petitioner at the material time was serving as Sub Inspector, R.P.F and was placed under suspension by order dated 11th August, 1986 and thereafter dismissed from service on having been convicted u/s 120B and 218 of Indian Penal Code and u/s 5(2) read with section 5(1)(d) of the Prevention and Corruption Act in Special Case No.30 of 1971 whereby the petitioner was sentenced to under go RI for two years and one year under different provisions. The aforesaid action was taken by security order No. 198/86 dated 31st December, 1986.

2. The case of the petitioner is that he has been acquitted by the orders passed by the Patna High Court dated 13.12.1993 in Criminal Appeal No.51 of 1983. The petitioner submitted the copy of the judgment of the Patna High Court and asked for his reinstatement into service. Despite the petitioner having been called to meet various officers of the respondents, no action has been taken on the representation filed by the petitioner or upon the demand justice notice dated 26.2.99. The instant writ application has been filed praying for relief inter alia as

under :

"(b) A writ of and/or in the nature of Mandamus commanding the respondents to forbear from giving any effect or further effect to the purported dismissal order dated 31.12.86 annexure "P-1" to this application.

(c) A writ of and/or in the nature of Mandamus commanding the respondents to cancel, withdraw and/or rescind the purported dismissal order dated 31.12.86 being annexure P-1" considering the Judgment of Hon"ble High Court Patna, dated 13th December. 1993."

3. In the affidavit-in-opposition affirmed by the respondent No.3, it is stated that the RPF Rules, 1959 has since been repealed by RPF Rules, 1987 with the effect from 3.12.87. The affidavit-in-opposition is drafted in rather an unusual manner with the comments on certain provisions.

4. With respect to Rule 161, the relevant portion of the affidavit-in-opposition at page "7" thereof reads as under;

Quote: "161 : Special procedure in certain cases: Notwithstanding anything contained any where in these rules-

(i) Where any punishment is imposed on an enrolled member of the Force on the ground of conduct which has led to his conviction on a criminal charge; or

(ii) Where the authority competent to impose the punishment is satisfied for reasons to be recorded by it in writing that is not reasonably practicable to hold an inquiry in the manner provided in these rules;

(iii) Where the President is satisfied that in the interest of security of state and the maintenance of integrity in the Force. It is not expedient to hold any inquiry in the manner provided in these rules, the authority competent to impose the punishment may consider the circumstances of the case and make such orders thereon as it deems fit.

Comments

This rule lays down special procedure for imposition of punishment in certain cases, not dealt with anywhere in these rules.

Dispensing with inquiry, when justified-

The punishing authority has patently erred in dispensing with the enquiry contemplated by rule 47 of the R.P.F. Rules 1958. There was no evidence on record, which could establish that the enquiry was not reasonably practicable. The reasons given are based on surmises and conjectures and on incorrect facts regarding non-availability of the evidence during the course of enquiry. Therefore the order of removal is not sustainable in each case on the facts and circumstances involved in the case;" (Unquote)

5. With regard to the appeal and the orders passed thereon paragraph 11 of the

affidavit-in-opposition is unclear as to the stand of the respondents and for that reason, the said para is extracted as under;

"With reference to paragraph 20 of the said petition save that are matters of record no admission is made with regard thereto. It is stated that the contention of the petitioner in this paragraph is denied. The petitioner's petition before the Hon"ble High Court Patna in Criminal appeal No.51/ 83 allowed but no clear order of acquittal was passed, rather it was viewed by the appeal Court that he was entitled of benefit of doubt. Moreover, the result of the criminal appeal delivered by Hon"ble High Court/Patna on 13.12.93 and he relevancy with the DAR case."

6. The admitted position emerging from the above facts as noticed from the averments made in the writ application and the affidavit-in-opposition is that the petitioner was dismissed from service solely on account of his conviction in the criminal case. No departmental enquiry, however, was conducted against the petitioner. In terms of R.P.F. Rule 161, the order of dismissal was passed being security Order No. 198/86 dated 31st December. 1986. The said order itself states that ground of dismissal viz., that the petitioner was convicted by the criminal Court under various provisions of the IPC and Prevention of Corruption Act in Special Case No. 30/71.

7. Rule 161 of RPF Rules is one such Rule providing for termination of service of employees involved in criminal case without holding enquiry. The rule 161 thus provides a special procedure to meet specified contingency.

8. In Hari Pada Khan Vs. Union of India and others, , the Supreme Court held that the Rule providing for termination of services of employees involved in criminal cases without holding enquiry subject to result of criminal trial is not violative of Articles 14 and 21 of the Constitution. Reference was made to the case of Commissioner of Income Tax, Ernakulam, Kerala Vs. Official Liquidator, Palai Central Bank Ltd., (In Liquidation), wherein the apex Court up held the validity of such Rule subject to principles of natural justice.

9. The Supreme Court in Deputy Director of Collegiate Education (Admn.), Madras v. S. Nagoor Meera, reported in AIR 1995 SC, though in a different context held as under;

"The Tribunal seems to be of the opinion that until the appeal against the conviction is disposed of, action under clause (a) of the second proviso to Article 311(2) is not permissible. We see no basis or Justification for the said view. The more appropriate course in all such cases is to take action under clause (a) of the second proviso of Article 311(2) once a Government servant is convicted of a criminal charge and not to wait for the appeal or revision, as the case may be. If, however, the Government servant-accused is acquitted on appeal or other proceeding, the order can always be revised and if the Government servant is reinstated, he will be entitled to all the benefits to which he would have been entitled to had he continued in service. The other course suggested, viz., to wait

till the appeal, revision and other remedies are over, would not be advisable since it would mean continuing in service a person who has been convicted of a serious offence by a criminal Court....."

10. It is evident that the petitioner was dismissed from service under RPF Rule 161. No departmental enquiry was conducted. The respondent No.3 in his comments, quoted supra, in the affidavit-in-opposition has noticed that the punishing authority erred in dispensing with the enquiry contemplated by Rule 47 of RPF Rules 1959 corresponding to Rule 161 of RPF Rules, 1987. Be that as it may, the fact remains that the dismissal order was one based upon conviction by criminal Court and in terms of Rule 47 corresponding to Rule 161 of the extent rules. It was competent for the respondent authorities to invoke the provisions of RPF Rule 47 (Old) and pass order of dismissal based upon the conviction order passed by the Court.

11. The grievance of the petitioner in the case on hand, however, is as regards the inaction on the part of the respondent authorities with respect to reinstatement of the petitioner into service consequent upon his acquittal by the Appeal Court.

12. The Appeal was allowed by order dated 13.12.1993 being Crl. Appeal No.51 of 1983 by High Court of Patna and since 15.12.1993, petitioner states that his request for review of the dismissal order, re-instatement into service and monetary benefits have not been considered nor any orders have been passed in relation thereto despite several representations made by the petitioner in that behalf.

13. It was contended on behalf of the respondents that the order of acquittal by the Appellate Court is based upon benefit of doubt and is not an honorable acquittal and, therefore, the petitioner is not entitled to any relief much less as prayed for.

14. The aforesaid contention has to be considered in the light of RPF Rule 162.5 which is extracted hereunder:

"162.5: Proceedings in case discharge:--

When an enrolled member of the Force is prosecuted before a Court but discharged for insufficiency of evidence or on any technical ground or by giving him the benefit of doubt, the disciplinary authority shall examine the possibility of instituting departmental proceedings after an objective consideration of all the facts and circumstances of the case and may take such action as deemed appropriate."

15. Thus, it will be seen that by RPF Rule 162.5 power has been conferred upon the disciplinary authority to examine the possibility of instituting departmental proceedings in case of an enrolled member of the Force who was prosecuted before a Court but was discharged for Insufficiency of evidence or by giving him the benefit of doubt.

16. Merely, because the petitioner has upon being given the benefit of doubt been acquitted by the Appellate Court, the power of the disciplinary authority in terms of RPF Rule 162.5 is not taken away nor its discretion in any way fettered.

17. However, as the petitioner was dismissed from service on the ground of his conviction by the criminal Court, the petitioner would have to be reinstated consequent upon the order of acquittal passed by the Appellate Court before any action as contemplated under RPF Rule 162.5 is initiated against the petitioner. Unless, the petitioner is in service, the question of any departmental proceedings against him does not arise.

18. In the Instant case, the respondents have taken no action despite several representations made in that behalf by the petitioner for reinstatement consequent upon the orders dated 13.12.93 passed by the Appellate Court nor any valid reasons have been assigned for such inaction on the part of the respondent authorities in their affidavit-in-opposition. More than 7 years have since elapsed from the date of the Judgment of the Appellate Court dated 13.12.93.

19. In the circumstances, the Court is left with no option but to direct the respondents to reinstate the petitioner into service within 30.4.2001. For the said reason, the order of dismissal dated 31st December, 1986 being Security Order No. 198/86 be and is hereby quashed and set aside. The petitioner shall be deemed to be in service for all purposes including the retrial benefits. However, as regards the claim for back wages are concerned, the petitioner is not entitled to the same for the entire period for the reasons hereafter appearing.

20. In the AIR 1994 552 (SC) the Supreme Court considered the relevant provisions of the regulations in that case which dealt with employee's absence from duty when he arrested on criminal charge. Sub-regulation (1) of Regulation 46 was analyzed by the Court in that case which suggested that when an employee is absent from duty on account of arrest for debt or criminal charge or is detained in pursuance of any process of law, he may be considered as under suspension from the date of his arrest or his detention till such date as the competent authority may direct in that behalf. After the analyzing the said regulations, the Supreme Court held as under;

"It is only if such employee is acquitted of all blame and is treated by the competent authority as being on duty during the period of suspension that such employee, is entitled to full pay and allowances for the said period. In other words, the regulations vest the power exclusively in the Bank to treat the period of such suspension on duty or on leave or otherwise. The power thus vested cannot be validly challenged. During this period, the employee renders no work. He is absent for reasons of his own involvement in the misconduct and the Bank is in no way responsible for keeping him away from his duties. The Bank, therefore, cannot be saddled with the liability to pay him his salary and allowances for the period. That will be against the principle of "no work, no pay"

and positively inequitable to those who have to work and earn their pay. As it is, even during such period, the employee earns subsistence allowance by virtue of the Regulations. In the circumstances, the Bank's power in that behalf is unassailable."

21. From the said judgment, it will appear that the principle of "no work no pay" was applied for disentitling an employee who is absent for reasons of his own involvement in the misconduct and when the employer is in no way responsible for keeping him away from his duty.

22. In *Ranchhodji Chaturji Thakore v. The Superintending Engineer, Gujarat Electricity Board, Himmatnagar, Gujarat & Ann 1997 (1) SC 152*, it has been laid down 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 and the employee was unlawfully prevented from discharging the duties. In case, where an employee has involved himself in a crime, though he was later acquitted, it was held that;

"he had disabled himself from rendering the service on account of conviction and incarceration in jail, under these circumstances, the petitioner is not entitled to payment of back wages."

23. In the light of the above Judgments of the Supreme Court and applying the ratio thereof to the case on hand, it will be apparent that the instant case is not one where the petitioner has been exonerated and reinstated pursuant to any disciplinary proceedings. The petitioner was convicted on charges of criminal offence. He was later acquitted by the Appellate Court. The respondent cannot be said to be in any way connected with the prosecution launched against the petitioner or his subsequent conviction. The absence of the petitioner no doubt was based upon the order of dismissal, which was passed based upon the conviction order passed by the Criminal Court. The absence of the petitioner, however, during the said period was for reasons of his own involvement in the criminal case. The petitioner had thus disabled himself from rendering service and not for any reasons attributable to the respondents. The petitioner cannot, therefore, as of right claim to be entitled to full pay and allowances for the said period nor can the respondents be saddled with the liability to pay him his salary and allowances for that period.

24. The order of acquittal was passed by the Appellate Court on 13.12.1993 in Criminal Appeal No.51 of 1983. No action was taken thereafter by the respondent authorities despite representations having been made in that behalf by the petitioner. Also, there is delay on the part of the petitioner in Institution of the present proceeding. The Instant writ petition was filed only on 2nd September 2000 being the date on which the affidavit was affirmed. Admittedly, the petitioner has not worked in the post till date, as he was not reinstated.

25. According, the petitioner shall be entitled to be paid and the respondents shall pay to the petitioner 75% (seventy five per cent) of the salary and

allowances calculated on the basis of last pay drawn by the petitioner as and by way of back wages from the date of the filing of the Instant writ application that is to say from September, 2000 to April 30, 2001. However, time is granted for payment of the said arrears of salary by three months from date.

26. This order, however, shall not preclude the respondent/disciplinary authority from initiating such action as may be open to them in law against the petitioner under RPF Rules. if the petitioner is aggrieved by any such action. It will be open to question the same in accordance with the law.

27. In the result, the writ application is allowed and the impugned order dated 31st December 1986 being Security Order No. 198/86 be and is hereby quashed and set aside.

28. It is directed that the petitioner shall be deemed to be in service continuously for all purposes except for back wages.

29. In so far as back wages are concerned, the petitioner shall be entitled to be paid 75% salary and allowances as per the salary and wages last drawn by him for the period from September 2000 to April 30, 2001. The time for payment of such arrears is granted by three months from date hereof.

There shall, however, be no order as to costs.

Let urgent Xerox certified copy of this judgment and order be furnished to the parties, if applied for, on priority basis.

30. Application allowed