

(2008) 10 RAJ CK 0018
In the Rajasthan High Court

Ramveer Singh

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 23-10-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2009) 2 RLW 943

Hon'ble Judges : Raghuvendra S. Rathore, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Raghuvendra S. Rathore, J.—This writ petition is directed against the order of termination dated 30.5.1994 (Annexure 9). The petitioner has therefore prayed for quashing of the said and that he may be allowed to work on the post of agriculture supervisor, with all consequential benefits. Further, it is prayed that the respondents be directed to pay the petitioner salary from the date of joining till date, with interest.

2. The brief facts of the case are that the Directorate of Agriculture had issued advertisement for inviting application for the post of agriculture supervisor in Rajasthan Patrika dated 14.7.1993. In furtherance thereof, the petitioner being eligible in the terms of advertisement applied for the said post in aprescribed proforma. He had also annexed the registration certificate of the Employment Exchange, Bharatpur alongwith his application form.

3. The petitioner was then given appointment on the post of Agriculture Supervisor after his due selection, in the pay scale of 950-20-1200 vide order dated 15.9.1993 issued by the Director Agriculture. The petitioner was directed to be present in the office of Joint Director, Agriculture Extension, Udaipur. Thereafter he was posted at Agriculture Supervision Centre, Khokri, in Sub-District Salumber (Udaipur) vide order dated 30.9.1993. He was directed to give his attendance in the Office of Assistant Director Agriculture. The petitioner

joined his service in compliance of the posting order passed on 30.9.1993 and since then he had been working as Agriculture Supervisor at Khokri in District Udaipur.

4. It was after more than 6 months that the petitioner received a communications dated 13.4.1994 and 22.4.1994 directing him to give explanation in respect of the renewal of his registration with the Employment Exchange, Bharatpur. The petitioner submitted his explanation on 26.4.1994 stating that his registration with the Employment Exchange Office was renewed upto 24.7.1990. Thereafter, he got his registration renewed on 24.7.1990 upto 2.7.1993. Again the petitioner had gone to the Employment Exchange, Bharatpur on 12.7.1993 for the purpose of renewal as his registration which had expired on 2.7.1993. Shri Yogesh Jain an L.D.C. in the Office of Employment Exchange renewed the registration of the petitioner upto 12.7.1996, by putting his initials on the registration card. The, petitioner had given this explanation on 26.4.1994(Annexure 7) supported by an affidavit (Annexure 8). It may be noted that the petitioner had not been paid salary since the date of his appointment although he had worked as Agriculture Supervisor for more than 8 months continuously.

5. Subsequently, the petitioner received another communication dated 30.5.1994 informing him that his services are terminated u/s 23-A of the Rajasthan Service Rules, 1951, after the expiry of one month from the receipt of the said communication (Annexure 9). Being aggrieved of the said order of termination, the petitioner had filed the present writ petition praying for the reliefs as aforementioned.

6. It is also pertinent to note here that the criminal case against the petitioner, initiated by the department on 2.7.1994, had been concluded by the judgment passed by the learned Judicial Magistrate No. 4 Bharatpur on 26.3.2004, whereby the petitioner was acquitted on the ground that the prosecution has failed to prove its case, in respect of the charge levelled against him.

7. That the respondents have contested the writ petition by way of filing reply. It is stated in the reply that the registration certificate of the Employment Exchange of the petitioner had shown renewal dated as 12.7.1996. But when the respondents verified the fact about said renewal from the office of Deputy Regional Employment Officer Bharatpur, the same was found to be incorrect. Further, it is stated that the respondents received a letter dated 7.1.1994 from the office of Deputy Regional Employment Officer Bharatpur that the registration of the petitioner with the Employment Exchange had come to an end on October, 1990 due to its non-renewal. The respondents have stated in the reply that the petitioner was appointed on the post of Agriculture Supervisor on 15.9.1993 and in the appointment it was mentioned that if the certificate is found to be false then the services would be terminated. As regards salary, it has been stated in the reply that the petitioner was not paid the same because according to the order dated 30.9.1993 the appointee was to be paid salary after scrutiny of the

certificate etc. As the certificate of registration of the petitioner with the Employment Exchange was found to be incorrect, the petitioner was not paid the salary.

8. Learned Counsel for the petitioner has submitted that the services of the petitioner has been terminated illegally and on no fault of his. Further, it is submitted that the petitioner had given detail satisfactory explanation in his reply dated 26.4.1994 stating that he had gone to the office of Employment exchange and the clerk concerned in the office had made endorsement about renewal. On relying upon such endorsement and believing that his registration has been duly renewed, the petitioner had applied for the post of Agriculture Supervisor. He had also submitted the copy of the registration along with his application. According to the learned Counsel for the petitioner, the petitioner had acted in a bonafide manner by furnishing the copy of the registration certificate along with his application and he had not concealed any fact in this regard. The learned Counsel has also submitted that the criminal case initiated by the department itself, had been finalized during the pendency of this writ petition on 26.3.2004 whereby the petitioner has been acquitted of all the charges as the prosecution had failed to prove its case. Further, it is submitted by the Counsel that initially this Court had granted stay on 20.12.1995. But thereafter, on the application for vacation filed by the respondents, the said stay order was vacated on 28.2.1996. Accordingly, the Counsel for the petitioner has submitted that the petitioner having been acquitted in the criminal proceedings lodged by the respondent department and the impugned order of termination being illegally, the petitioner is entitled for his backwages.

9. The submissions made by the counsels for the rival parties as well as the material on record, have been carefully considered by this Court. In furtherance of the advertisement issued on 14.7.1993, the petitioner had submitted an application for the post of Agriculture Supervisor. The petitioner had submitted the copy of the certificate of registration with the Employment Exchange in compliance of the terms of advertisement. Clause 3 of the advertisement dated 14.7.1993 stated as under:

vkosnu fnukad 30-6-93 rd jktLFkku ds fdlh Hkh fu;kstu dk;kZy; esa iathd`r gksuk vko;"d gS A vkosnd vius vkosnu&i= ds lkFk fu;kstu dk;kZy; esa iathd`r jktLFkku uEcj fu;kstu dk;kZy; es iathd`r jktLFkku uEcj fu;kstu dk;kZy; dk uke izLrqr djsxsA iathdj.k ds vHkko esa izkFkZuk&i= fujLr dj fn;k tk;sxA

In other words, the condition of eligibility for an applicant was that he had to be registered with the Employment Exchange upto 30.6.1993. Further that he was to furnish with the application, the number of such registration. An application was liable to be rejected for want of registration upto the date specified.

10. In the instant case, as far as the registration of the petitioner with the Employment Exchange upto 30.6.1993 is concerned, there is no dispute about it. It is not the case of the respondents also that as on that date i.e. 30.6.1993, the

petitioner was not duly registered with the Employment Exchange. As a matter of fact, the respondents have terminated the services of the petitioner on the ground that the renewal of the registration of the petitioner after 2.7.1993 had not been found correct. The respondents are said to have been informed by the District Employment Exchange Office, Bharatpur on 7.1.1994 that the registration of the petitioner had been cancelled for want of renewal after 2nd July. The renewal on the registration card on 2.7.1993 and 12.7.1996 was not found to be correct, as per the record. The fact remains that so far as the registration of the petitioner with the Employment Exchange on 30.6.1993 is concerned, it was valid. The petitioner got his registration done with the Employment Exchange since 24.8.1987. Furthermore, the explanation given by the petitioner in his reply dated 26.4.1994 also appears to be plausible. The registration card of the petitioner did have the endorsement of renewal after 2.7.1993. The petitioner has also given details, including the name of the clerk who had made such endorsement on the registration card. The renewal is considered to be incorrect on the ground that there was no corresponding entry in the record of the Employment Exchange Office. It is no one's case that the petitioner was involved in making the endorsement of renewal by tempering or committing forgery. For all these reasons, I am of the considered opinion that the impugned order of termination issued by the respondents is erroneous and without basis for the simple reason that inter alia, as per the advertisement dated 14.7.1993, the question which was to be looked into was as to whether the petitioner was duly registered with the Employment Exchange as on 30.6.1993 or not.

11. Coming to another aspect of the present case, that is, the interim relief granted by the High Court, it would be suffice to say that the High Court had issued the interim order in favour of the petitioner on 20.12.1995 in the term that operation of the order issued by non-petitioner No. 2 on 30.5.1994 was to be stayed. Therefore, on the application filed by the respondents for vacating the stay order and the High Court had passed an order on 28.2.1996, whereby the application under Article 226(3) was allowed and the ad interim stay order was vacated.

12. The question with regard to the back wages where a person was dismissed from services on account of his conviction by a criminal Court for his involvement in an offence u/s 302/34 IPC and thereafter he was reinstated after acquittal came up for consideration before the Hon"ble Supreme Court in the case of Ranchhodji Chaturji Thakore Vs. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar, (Gujarat) and another, It was held therein that the question of backwages would be considered only if an action by way of disciplinary proceedings has been taken against a person and the action was found to be unsustainable in law and he was unlawfully prevented from the discharging the duties. The Hon"ble Supreme Court in para 3 laid down as under:

3. The only question is whether he is entitled to back wages. It was his conduct

of involving himself in the crime that was taken into account for his riot being in service of the respondent. Consequent upon his acquittal, he is entitled to reinstatement for the reason that his service was terminated on the basis of the conviction by operation of proviso to the statutory rules applicable to the situation. 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 he was unlawfully prevented from discharging the duties. In that context, his conduct becomes relevant.

13. In a later case of Union of India (UOI) and Others Vs. Jaipal Singh, , the Apex Court reiterated and clarified the principles laid down in Ranchhodji Chaturji Thakore"s case as follows:

4. On a careful consideration of the matter and the materials on record, including the judgment and orders brought to our notice, we are of the view that it is well accepted that an order rejecting a SLP at the threshold without detailed reasons therefore does not constitute any declaration of law by this Court or constitute a binding precedent. Per contra, the decision relied upon by the appellant is one on merits and for reasons specifically recorded therefore it operates as a binding precedent as well. On going through the same, we are in respectful agreement with the view taken in Ranchhodji. If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest of or by the department itself, perhaps different considerations may arise. On the other hand, if as a citizen the employee or a public servant got involved in a criminal case and if after initial conviction by the trial Court, he gets acquittal on appeal subsequently, the department cannot in any manner be found fault with for having kept him out of service, since the law obliges a person convicted of an offence to be so kept out and not to be retained in service. Consequently, the reasons given in the decision relied upon, for the appellants are not only convicting but are in consonance with reasonableness as well.

14. In view of the aforesaid principles of law laid down by the Apex Court, a government servant is entitled to reinstatement only on acquittal in a criminal case because his service was terminated on account of the conviction. But back wages is to be considered when the department takes action by way of a disciplinary proceedings and the action was found to be unsustainable in law and the person was unlawfully prevented from discharging the duties.

15. For the reasons given hereinabove, I am of the considered opinion that the impugned order dated 30.5.1994 passed by the respondents is illegal, erroneous and not at all justified. The said order had been passed by the respondents because the renewal endorsement from 2.7.1993, on the registration card of the Employment Exchange was not found to be correct as per the record of the Employment Exchange Office. But the date for consideration in respect of the registration with the Employment Exchange as notified in the advertisement, was 30.6.1993 and undisputably on that date the petitioner, was duly registered with the Employment Exchange. It is not the case of the respondents that the entries

of the subsequent renewal in that card was at the behest of the petitioner so as to consider his conduct. Even otherwise, the criminal case initiated by the respondent-department in respect of the renewal has also been concluded in favour of the petitioner as the prosecution had failed to prove its case. In such view of the matter, the petitioner is entitled not only for reinstatement but also backwages. This Court had initially granted a stay order and the same was vacated at the behest of the respondents. Therefore, as per the principles of law laid down by the Apex Court, the petitioner was unlawfully prevented from discharging duties since 30.5.1994 on account of the action taken by the respondents, including the criminal proceedings, which were found unsustainable in law.

16. Consequently, this writ petition succeeds and U is accordingly allowed. The order of termination dated 30.5.1994 (Annexure 9) is hereby quashed. The respondents are directed to reinstate the petitioner in service. The service of the petitioner would be counted to be continued without any break, with all consequential benefits. The petitioner would also be entitled to his salary for the period since the date of initially joining the service, upto his reinstatement. There shall be no order as to cost.