

(2010) 03 PAT CK 0021
In the Patna High Court

Sachidanand Rai		APPELLANT
	Vs	
The State of Bihar and Others		RESPONDENT

Date of Decision : 03-03-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 395, 412

Citation : (2010) 03 PAT CK 0021

Hon'ble Judges : Shiva Kirti Singh, J;C.M. Prasad, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard learned Counsel for the appellant and learned Counsel for the State and perused the order under appeal dated 17.8.2009 whereby the writ Court has dismissed writ petition preferred by the appellant bearing CWJC. No. 4142 of 2004.
2. It has been submitted on behalf of the appellant that delay of 14 to 16 years was not fatal for challenging the order of dismissal passed in the year 1988 and the appellate order passed in the year 1990 because ultimately, the appellant was acquitted in a criminal case u/s 395 and 412 of the IPC by the judgment dated 24.12.2003.
3. According to learned Counsel for the appellant, after the judgment of acquittal the authorities were bound to review their earlier orders and reinstate the appellant in service and since it was not done by them, the writ petition was filed immediately in the year 2004 itself.
4. No doubt, the writ Court has confined the deliberations mainly to hold that even if a criminal case in relation to dacoity and recovery of articles looted in dacoity was pending in a Court of Law, there was no legal bar in proceeding departmentally against the writ petitioner, a police constable on the basis of evidence of several witnesses to support the charge that he had suddenly disappeared from his duty after a sanha entry and it came to light that he was

involved in a serious criminal case. The writ Court has also confined itself mainly to delay because the appellant did not move any Court of Law against initiation or continuation of the departmental proceeding nor he challenged the order of dismissal from service or the appellate order passed in the year 1988 and on 7.6.1990 respectively.

5. We have gone through the judgment by a Single Judge of this Court in the case of Maniram Yadav v. Union of India reported in 2000 (1) PLJR 239 and we find that the facts in that case were entirely different inasmuch as in that case the dismissal order was based upon conviction in a criminal case alone and in that context it was held that after an acquittal at the appellate stage, the authorities had to review and recall the earlier order and if found necessary, they could decide to proceed afresh with a disciplinary proceeding. In this case, the order of dismissal is based upon materials adduced in course of disciplinary proceeding and enquiry in which witnesses were examined and those have been thoroughly discussed not only by the disciplinary authority in the order of dismissal but also in great details by the appellate authority which confirmed the order of dismissal.

6. Learned Counsel for the appellant next relied upon a judgment of the Apex Court in the case of Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and Anr. reported in (1993) 3 SCC 679. That deals with the issue as to whether during the pendency of a substantial criminal case the disciplinary authority has the power to proceed with departmental enquiry or not. That judgment has been noticed by the writ Court and relevant portion of the judgment has been extracted and on facts the writ Court has distinguished the judgment by highlighting that in the present case the petitioner was not in a position to explain either delay in preferring the writ petition or in pointing out any grave or fatal infirmity in the departmental proceeding. We also have applied our mind to the dismissal order as well as the appellate order and other relevant facts and we are of the view that here the disciplinary proceeding was not conducted ex-parte as in the case of Capt. M. Paul Anthony and the facts proved during the departmental proceeding by the witnesses, some of whom were not cross-examined, also do not permit us to interfere with the order of punishment. Moreover, we are in respectful agreement with the views of the writ Court that the order of dismissal as well as appellate order were accepted by the petitioner and were not challenged for a long period of 14 years. Pendency of the criminal case alone cannot justify such kind of acquiescence leading to inordinate delay.

7. Hence, for all the aforesaid reasons, we find no merit in the appeal, it is, accordingly dismissed but without any costs.