

(2013) 04 JH CK 0067
In the Jharkhand High Court
Case No : WP (S) No. 3182 of 2005

Saheb Singh @ Saheb Prasad Singh	APPELLANT
Vs	
The State of Jharkhand and Others	RESPONDENT

Date of Decision : 18-04-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 364, 415

Citation : (2013) 2 JLJR 560

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : K.K. Singh and Suresh Kumar, for the Appellant; Saket Upadhyay, for the Respondent

Final Decision : Allowed

Judgement

S. Chandrashekhar, J.—The petitioner has moved this Court seeking direction upon the respondents for payment" of arrears of salary for the period between 17.6.1987 to 10.12.2003 and for grant of all consequential benefits. The petitioner was appointed as Constable in Jharkhand Armed Police on 12.6.1975. A case being Deoghar P.S. Case No. 115/85 was registered under Sections 415 and 364 of Indian Penal Code against the petitioner and two other persons on the allegation that on 22.7.1985 they had kidnapped two persons from Deoghar market. A departmental proceeding was initiated against the petitioner and finally by order dated 27.10.1986 a punishment of stoppage of two annual increment was passed. The said order dated 27.10.1986 was reviewed by the Director General of Police, Bihar and by order dated 14.6.1987, an order of dismissal from service of the petitioner was passed. In the meantime the petitioner was acquitted in the criminal case by order dated 9.7.1998, however, he was not permitted to join service. The petitioner moved the High Court in CWJC No. 11459 of 1998 challenging the order of dismissal dated 14.6.1987 which was allowed on 17.2.2003 and the matter was remanded for reconsideration in accordance with law. On 1.11.2003 the Deputy Inspector

General of Police, Jharkhand ordered reinstatement of the petitioner in service. Subsequently, by order dated 8.4.2004 it was ordered that during the period of dismissal, the petitioner would not be paid his salary etc. on the principle of "no work no pay".

2. A counter-affidavit has been filed justifying the stand that during the period the petitioner was dismissed from service, he is not entitled for the salary etc.

3. Heard learned counsel for the parties at length and perused the documents on record.

4. The learned counsel appearing for the petitioner has submitted that the order of dismissal from service passed against the petitioner was arbitrary and illegal and it has been quashed by the Hon"ble High Court on 17.2.2003. The petitioner was dismissed from service only on the ground of pendency of criminal case against him and he has been acquitted in the said criminal case and therefore, full back wages is the natural consequence of reinstatement of the petitioner in service.

5. On the other hand Mr. Saket Upadhyay, learned counsel appearing for the respondents tried to justify the stand taken in the counter-affidavit. He has further submitted that the judgment of the Hon"ble Supreme Court in *Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Others*, wherein it was observed that full back wages is normal rule in the cases where the workmen has been illegally terminated from service/has been reconsidered by the Hon"ble Supreme Court in *U.P. State Brassware Corpn. Ltd. and Another Vs. Uday Narain Pandey*, .

6. I find that in *"M/s. Hindustan Tin Works Private Limited vs. The Employees of M/s. Hindustan Tin Works Private and Others"* (supra) also the Hon"ble Supreme Court itself has directed payment of 75% back wages only and that too in two equal installments. In *"U.P. State Brassware Corpn. Ltd. and Another vs. Uday Narain Pandey"*, (supra), it has been-observed:--

27. In *Hindustan Tin Works. (P) Ltd. vs. Employees* this Court merely held that the relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It, therefore, does not lay down a law in absolute terms to the effect that the right to claim back wages must necessarily follow an order declaring that the termination of service is invalid "in law.

7. In *J.K. Synthetics Ltd. Vs. K.P. Agrawal and Another*, , the Hon"ble Supreme Court had once again an occasion to consider the plea that where the order of dismissal or removal is set aside, the employee is entitled to full back wages as a matter of course. After considering the judgment in *"M/s. Hindustan Tin Works Pvt. Ltd. vs. The Employees of M/s. Hindustan Tin Works Pvt. Ltd. and Others."* (supra) and other cases, the Hon"ble Supreme Court has held as under:--

17. There is also a misconception that whenever reinstatement is directed, "continuity of service" and "consequential benefits" should follow, as a matter of course. The disastrous effect of granting several promotions as a "consequential benefit" to a person who has not worked for 10 to 15 years and who does not have the benefit of necessary experience for discharging the higher duties and functions of promotional posts, is seldom visualized while granting consequential benefits automatically. Whenever courts or tribunals direct reinstatement, they should apply their judicial mind to the facts and circumstances to decide whether "continuity of service" and/or "consequential benefits" should also be directed. We may in this behalf refer to the decisions of this Court in A.P. SRTC vs. S. Narsagoud, A.P. SRTC vs. Abdul Kareem and Rajasthan SRTC vs. Shyam Bihari Lal Gupta.

8. I find that there are cases in which the Court has not awarded the benefit of back wages at all. In Manager (Now Regional Director) R.B.I. Vs. Gopinath Sharma and Another, , the Hon''ble Supreme Court has held the order passed by the High Court granting back wages to an employee who was engaged on daily Wages, not sustainable.

9. In State of Uttar Pradesh and Others Vs. Ram Daras Yadav, , the Hon''ble Supreme Court when faced with a situation in which it was difficult to examine the veracity of the allegation as there was no definite conclusion recorded in the domestic enquiry, interfered with the punishment of dismissal and awarded 50% back wages to the employee.

10. In Hindustan Motors Ltd. Vs. Tapan Kumar Bhattacharya and Another, when it was found by the Hon''ble Supreme Court that award of full back wages was made on the assumption that quashment of dismissal order should be followed by reinstatement with full back wages as a matter of course, instead of remanding the case which was 22 long years old, reduced the quantum of back wages to 50%.

11. It is not in dispute that the petitioner was proceeded against in the departmental inquiry only on the ground of registration of a criminal case in which he has been finally acquitted. The petitioner has been reinstated in service but denied back-wages for the intervening period after his dismissal from service on the principle of "no work no pay". I am of the view that the principle of "no work no pay" cannot be applied in each and every case without having regard to the facts and circumstances of the case. In the present case the petitioner has suffered due to order of dismissal from service which was ultimately recalled by the department itself. Therefore, the ground taken for denying the petitioner the back-wages is not justified. However, I find that there is no averment in the writ petition that during the period between 17.6.1987 and 10.12.2003, the petitioner was not gainfully employed. To a pointed query raised by the Court, learned counsel appearing for the petitioner has fairly submitted that such a stand has not been taken by the petitioner. I am of the opinion that it would meet the ends of justice if the petitioner is granted 50% back wages for the

period between 17.6.1987 to 10.12.2003. The writ petition is allowed in the aforesaid terms.