

(2012) 03 AHC CK 0246

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 14080 of 2012

Sheo Nandan Sahai

APPELLANT

Vs

Senior Regional Manager, P.N.B. and Others

RESPONDENT

Date of Decision : 22-03-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 10A
Penal Code, 1860 (IPC) — Section 420, 468, 471, 477A

Citation : (2012) 5 ADJ 729 : (2012) 134 FLR 791

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : S. Pratap Singh, for the Appellant; D. Vais, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Arun Tandon, J.—Petitioner before this Court was employed in Panjab National Bank, Gorakhpur. He was convicted in an offence under Sections 420, 468, 471 read with Sections 468 and 477A of the Indian Penal Code by Competent Criminal Court of Justice in case No. 41/ 87 (R.C. No. 15/87) vide judgment of Special Judge of CBI dated 17.8.2002. The petitioner was removed from service without debarring him from fresh engagement under order dated 8.11.2002. Against the order of conviction, the petitioner filed Criminal Appeal No. 454 of 2002 before Patna High Court. The appeal of the petitioner has been allowed vide order dated 22nd July, 2010. In the meantime, petitioner filed writ petition No. 21764 of 2003 before this High Court against termination from service. Writ petition came to be considered before High Court on 17.5.2011. The High Court was informed that the petitioner has been acquitted of the criminal charges by the appellate Court and that his representation for reinstatement was pending. The High Court instead of interfering with the order of termination required the authority concerned to consider the representation of the petitioner for reinstatement.

2. In compliance of the aforesaid order of the High Court, matter was considered

by the Competent Authority of the Bank and on 8th January, 2011, the petitioner was reinstated with specific condition that he shall not be entitled to backwages and other benefits for the period commencing from the date of termination of service to till date of acquittal.

3. Petitioner made a representation for payment of backwages and other benefits for the period commencing from the date of termination till date of his acquittal.

4. The petitioner has been informed by means of the letter dated 24.1.2012 that such back wages cannot be paid to the petitioner in view of the specific conditions mentioned in the order of reinstatement dated 8th July, 2011.

5. The order of reinstatement dated 8th July, 2011 is not under challenge in the present writ petition.

6. The order dated 24.11.2012 only restates the decision taken under the order of reinstatement dated 8th July, 2011 which cannot be challenged without challenging the order dated 8.7.2011.

7. Be that it may even on merits this Court finds that issue raised in the present writ petition stands squarely answered against the petitioner under the judgment of the Hon"ble Supreme Court in the case of Union of India v. Jaipal Singh, 2003-Law (SC)-11-111, quoted below:

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 therefor does not constitute any declaration of law by this Court or constitute a binding precedent. Per contra, the decision relied upon for the appellant is one on merits and for reasons specifically recorded therefor and operates as a binding precedent as well. On going through the same, we are in respectful agreement with the view taken in Ranchhodji Chaturji Thakore Vs. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar, (Gujarat) and another, . If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest or by 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 convincing but are in consonance with reasonableness as well. Though exception taken to that part of the order directing reinstatement cannot be sustained and the respondent has to be reinstated, in service, for the reason that the earlier discharge was on account of those criminal proceedings and conviction only, the appellants are well within their rights to deny back wages to the respondent for the period he was not in service. The appellants cannot be made liable to pay for the period for which they could not avail of the services of the respondent. The

High Court, in our view, committed a grave error, in allowing back wages also, without advertng to all such relevant aspects and considerations. Consequently, the order of the High Court in so far as it directed payment of back wages are liable to be and is hereby set aside.

8. Counsel for the respondent however refers to the judgment of Hon''ble Supreme Court in the case of Hindustan Tin Works Private Ltd. v. Employees of Hindustan Tin Works Private Ltd., 1979 AIR SC 75, 1979 SCC 280 as also upon the judgment of the Hon''ble Supreme Court in the case of Hindustan Motors Ltd. Vs. Tapan Kumar Bhattacharya and Another, . The judgments relied upon the counsel for the petitioner are clearly distinguishable in the facts of the case. In the case of Hindustan Tin Works Pvt. Ltd. the issue of back wages, after the order of termination passed by the employers was found to be bad, was consideration by labour Court and it is with reference to the aforesaid facts that the Hon''ble Supreme Court held that 75% of the backwages would serve interest of justice.

9. Facts of the case of Hindustan Motor Ltd. clearly distinguishable, inasmuch the disciplinary action was taken by the employer. This action of employer was found to be bad by the labour Court and therefore while directing reinstatement, it was held 50 per cent of the back wages be paid to the workman concerned. Similarly the judgment in the case of Haryana Urban Development Authority v. Devi Dayal, 2002 (2) ESC 131, is distinguishable as interprets the provision of section 10A of the Industrial Dispute Act. In all three judgments the action of the management for terminating the services of the workman was bad. In the facts of the case in hand it has not been found by any Court of law that the termination of the service of the employee was bad. On the contrary from the judgment of Hon''ble Supreme Court in the case of Union of India v. Jaipal Singh (Supra) it would be clear that once the employee was convicted of an offence by a competent Court of law the employer is obliged to terminate his employment. Writ petition is therefore dismissed.