

(2014) 02 AHC CK 0025

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 36075 of 2008

Siraj Khan (Constable 76 A.P.)

APPELLANT

Vs

Superintendent of Police and Others

RESPONDENT

Date of Decision : 07-02-2014

Acts Referred:

Constitution of India, 1950 — Article 311(2)
Penal Code, 1860 (IPC) — Section 302, 307, 34

Citation : (2014) 2 ADJ 436 : (2014) 4 ALJ 236

Hon'ble Judges : Rajesh Kumar Agrawal, J

Bench : Single Bench

Advocate : S.M. Nazar Bokhari, Advocate for the Appellant

Judgement

Rajes Kumar, J.—Heard Sri S.M. Nazar Bokhari, learned counsel for the petitioner and Ms. Suman Sirohi, learned Standing Counsel for the respondents.

By means of the present writ petition, the petitioner is challenging the order of the Superintendent of Police, Ballia dated 31.5.2008 by which he has declined the payment of salary for the period 20.1.1979 to 22.10.1989 and 23.10.1989 to 30.6.2007 during which he was under suspension/termination and had not worked, on the principle of no work no pay. The brief facts of the case are that the petitioner was posted as a Constable in the year 1978. On 27.10.1978, when he went his father-in-law, Abdul Hafiz's house, an incident of murder of two sons of Abdul Hafiz Khan took place. An FIR was lodged, which has been registered as case crime No. 84 of 1978, under Sections 302, 307 read with Section 34 IPC, State v. Abdul Hafiz and others, at Police Station Koraon, District Allahabad, on 27.10.1978 against the petitioner, his wife, his mother-in-law and his father-in-law. The petitioner was arrested. The petitioner was placed under suspension on 20.1.1979 by the Superintendent of Police, Ballia. In Sessions Trial No. 257 of 1980, the petitioner was convicted by the VII Additional Sessions Judge, Allahabad u/s 302 read with Section 34 IPC and Section 307 read with Section 34 IPC and was sent to imprisonment for life u/s 302 read with Section 34 IPC

and rigorous imprisonment for a period of three years u/s 307 read with Section 34 IPC.

2. The petitioner preferred Criminal Appeal No. 842 of 1981 against the judgment and order dated 18.4.1981. The Superintendent of Police, Ballia vide order dated 23.10.1989 terminated the service of the petitioner on the ground that he was convicted in Sessions Trial No. 257 of 1980. Subsequently, Criminal Appeal No. 842 of 1981 has been allowed and the petitioner was acquitted and his conviction and sentence was set aside by this Court vide judgment dated 27.2.2002. Against the judgment of this Court dated 27.2.2002, the State filed Criminal Appeal No. 431 of 2003 against the petitioner and his wife. The said appeal has been dismissed by the Apex Court vide judgment dated 7.7.2009.

3. After the acquittal, the petitioner moved an application on 1.5.2002 before the respondent No. 1 for his reinstatement on the post and when the said application has not been decided, the petitioner filed Civil Misc. Writ Petition No. 25919 of 2002, which has been disposed of vide order dated 7.5.2004 with the direction to the opposite party to decide the application. The respondent No. 1 rejected the representation vide order dated 29.7.2004 mainly on the ground that Criminal Appeal No. 431 of 2003 was pending before the Apex Court. Thereafter, the petitioner filed Civil Misc. Writ Petition No. 33844 of 2004 challenging the order dated 29.7.2004, which has been disposed of vide order dated 18.5.2006 with the following order and direction:

Heard learned counsel for the parties.

The only ground for placing the petitioner under suspension is a Criminal Case No. 84 of 1978, under Sections 302 and 307 registered at Police Station Koraon District Allahabad. It has been stated that by the counsel for the petitioner that in the said case he has been acquitted and there is no other ground for keeping the petitioner under suspension. Learned Standing Counsel submits that against the said acquittal order a criminal appeal has been filed which is being numbered as 431 of 2003 and is pending.

Since the petitioner's termination order is only on the ground of conviction in the criminal case from which he has been acquitted and further there is no stay in the pending criminal appeal and as such mere pendency of appeal will not debar him from reinstatement. It will be open for the authorities to take appropriate steps, if, they so desire by initiating department proceedings.

With these observation writ petition is disposed of finally.

4. When the aforesaid order has not been complied with, the petitioner filed Civil Misc. Contempt Petition No. 1504 of 2007 in which the following order has been passed:

Heard learned counsel for the applicant and perused the order.

In the circumstances of the case, it will be appropriate that the applicant

approaches the opposite-party, who may after taking into consideration the observation made in the judgment dated 18.5.2006 pass appropriate orders as expeditiously as possible preferably within three months from the date of production of the certified copy of this order before him.

Disposed of.

5. Thereafter, the petitioner was permitted to join his duty on 30.6.2007. The petitioner joined his duty. Disciplinary proceeding was initiated against the petitioner and the inquiry officer found that the petitioner had not done any Government duty from 20.1.1979 to 22.10.1989 when he remained under suspension and from 23.10.1989 to 30.6.2007 when he remained under termination due to his involvement in Case Crime No. 84 of 1978. Therefore, on the principle of no work no pay, he would not be entitled for salary for the period 20.1.1979 to 22.10.1989 and 23.10.1989 to 30.6.2007. The inquiry report is Annexure-7 to the writ petition. On receipt of the inquiry report, respondent No. 1 issued a show-cause notice dated 21.11.2007 asking the petitioner that why his salary for the period 20.1.1979 to 20.10.1989 and 23.10.1989 to 30.6.2007 may not be withheld on the principle of no work no pay. The petitioner filed reply dated 11.12.2007 and had taken the defence that the suspension and termination were not as a result of any wilful action on the part of the petitioner. The respondent No. 1 passed the impugned order dated 31.5.2008 and has declined the payment of salary during the period 20.1.1979 to 20.10.1989 and 23.10.1989 to 30.6.2007 on the principle of no work no pay, which is impugned in the present writ petition.

6. Learned counsel for the petitioner submitted that this Court in the criminal appeal and the Apex Court, in the appeal filed by the State, have, although found, that the petitioner alongwith his wife were present at the time of commission of crime, but there was no participation in commission of crime, by them. The acquittal of the petitioner was honourable on merit. He further submitted that for no fault on the part of the petitioner, he has been suspended and has been terminated from the service. The termination of service was merely on the ground that he was convicted by the trial Court without examining his conduct, which led to conviction and, therefore, he is entitled for the salary for the period during which he was suspended and for the period of termination. Reliance has been placed on the Division Bench decision of this Court in the case of Kailash Kumar Mishra Vs. U.P. State Public Services Tribunal and Others, , decision of the Apex Court in the case of State of Kerala and Others Vs. E.K. Bhaskaran Pillai, , the decision of the learned Single Judge in the case of Ratan Singh Vs. State of U.P. and Others, and the decision of the Apex Court in the case of The Deputy Inspector General of Police and Another Vs. S. Samuthiram, .

7. Learned Standing Counsel submitted that the petitioner has been suspended, as the petitioner was sent to jail by implication of law and his services have been terminated when he was convicted by the trial Court. Both, suspension and termination of the service of the petitioner were by implication of law. Rule 17(2)

of the U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 provides that a police officer shall be deemed to have been placed, or, as the case may be, continued to be placed, under suspension by an order of the appointing authority with effect from the date of his detention, if he is detained in custody, whether the detention is on Criminal Charge or otherwise, for a period exceeding forty eight hours and further with effect from the date of his conviction, if in the event of a conviction for an offence he is sentenced to a term of imprisonment exceeding forty eight hours and is not forthwith dismissed or removed consequent to such conviction. Proviso to Article 311(2) of the Constitution of India provides dismissal from service without any inquiry in case of conviction in a criminal case. It is submitted that this Court in Appeal as well as the Apex Court in Appeal found the presence of the petitioner at the time of commission of offence standing on one leg establishes the implied consent and participation in the offence. Although, in the criminal proceeding such charges could not be proved beyond doubt, therefore, the petitioner has been acquitted, but in disciplinary proceeding on the principle of preponderance of probability, the implied consent and participation in the crime is established. Thus, although the petitioner has been reinstated and permitted to join, but having regard to the entire facts and circumstances, on the principle of no work no pay, the petitioner is not entitled for salary for the period during which he remained suspended/terminated. Reliance has been placed on the decision of the Apex Court in the case of Baldev Singh Vs. Union of India (UOI) and Others, .

8. I have considered rival submissions and perused the records.

9. It is settled principle of law that merely because the employee is acquitted in a criminal proceeding, he is entitled to be reinstated in service.

The Apex Court in the case of Deputy Inspector General of Police and another v. S. Samuthiram (supra) has held as follows:

This Court in Southern Railway Officers Assn. and Another Vs. Union of India (UOI) and Others, , held that acquittal in a criminal case by itself cannot be a ground for interfering with an order of punishment imposed by the disciplinary authority. The Court reiterated that the order of dismissal can be passed even if the delinquent officer had been acquitted of the criminal charge.

In The Managing Director State Bank of Hyderabad and Another Vs. P. Kata Rao, this Court held that there cannot be any doubt whatsoever that the jurisdiction of the superior Courts in interfering with the finding of fact arrived at by the enquiry officer is limited and that the High Court would also ordinarily not interfere with the quantum of punishment and there cannot be any doubt or dispute that only because the delinquent employee who was also facing a criminal charge stands acquitted, the same, by itself, would not debar the disciplinary authority in initiating a fresh departmental proceeding and/or where the departmental proceedings had already been initiated, to continue therewith. In that judgment, this Court further held as follows: (SCC p. 662, para 20).

20. The legal principle enunciated to the effect that on the same set of facts the delinquent shall not be proceeded in a departmental proceedings and in a criminal case simultaneously, has, however, been deviated from. The dicta of this Court in *Capt. M. Paul Anthony v. Bharat Gold Mines Ltd.*, however remains unshaken although the applicability thereof had been found to be dependent on the fact situation obtaining in each case.

In *The Divisional Controller, KSRTC Vs. M.G. Vittal Rao*, , the Apex Court after a detailed survey of various judgments rendered by this Court on the issue with regard to the effect of criminal proceedings on the departmental enquiry, held that the disciplinary authority imposing the punishment of dismissal from service cannot be held to be disproportionate or non-commensurate to the delinquency.

The Apex Court further held as follows:

As we have already indicated, in the absence of any provision in the service rules for reinstatement, if an employee is honourably acquitted by a criminal Court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal Court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that that the strict burden of proof required to establish guilt in a criminal Court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile, etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The Court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say that in the instant case, the respondent was honourably acquitted by the criminal Court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so.

10. In the case of *Baldev Singh v. Union of India and others* (supra), the Apex Court has held as follows:

As the factual position noted clearly indicates, the appellant was not in actual for the period he was in custody. Merely because there has been an acquittal does not automatically entitle him to get salary for the period concerned. This is more so, on the logic of no work no pay. It is to be noted that the appellant was terminated from service because of the conviction. Effect of the same does not get diluted because of subsequent acquittal for the purpose of counting service. The aforesaid position was clearly stated in *Ranchhodji Chaturji Thakore Vs. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar, (Gujarat)* and another, .

11. Now let me examine the decisions cited by the learned counsel for the petitioner. In the case of *Kailash Kumar Mishra v. State Public Services Tribunal (Supra)*, the punishment order has been set aside on the ground that the enquiry report has been submitted without giving proper opportunity, as contemplated under the Rules. The termination order has been set aside and the petitioner has been reinstated with all the consequential benefits. However, on the entire facts and circumstances, the Court has allowed 50% of the salary and the allowances from the date of termination till the date of reinstatement.

12. In the case of *State of Kerala and others v. E.K. Bhaskaran Pillai (Supra)*, though the juniors to the writ-petitioner were appointed, but the writ-petitioner was denied promotion. The Apex Court, while setting the controversy at rest, allowed the writ-petitioner promotion with retrospective effect from 15.6.1972, but not allowed promotion in terms of arrears of salary. On this back ground, the Apex Court has observed as follows:

.....We have considered the decisions cited on behalf of both the sides. So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered. Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to grant full back wages or 50 per cent of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the matter when the person is superseded and he has challenged the same before Court or Tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, in that case the Court may grant sometime full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors. However, it is very difficult to set down any hard and fast rule. The principle "no work no pay" cannot be accepted as a rule of thumb. There are exceptions where Courts have granted monetary benefits also.

13. In the case of *Ratan Singh v. State of U.P. and others (Supra)*, the petitioner was convicted in a criminal case and later on acquitted. His services have been terminated mechanically, without considering the conduct which led to conviction. The Court, on the facts and circumstances, has set aside the termination order with all the consequential benefits.

14. In all the aforesaid decisions, cited above, the primary question for consideration was the validity of the termination and the question whether the employee would be entitled for reinstatement, in case if he was acquitted in a criminal case but the question whether on reinstatement, the employee was entitled for full salary for the period during which he remained suspended and later on terminated has not been considered in detail as a issue and only the

consequential benefits have been allowed to the employee after quashing the termination order. While the Apex Court in the case of Baldev Singh v. Union of India and others (Supra), has categorically denied the salary for the period of suspension and the period of termination, in case the employee has been convicted in a criminal case, but subsequently acquitted, applying the principle of "no work, no pay". In any view of the matter, there is no straight jacket formula that on the acquittal in criminal case, and on reinstatement it is necessary that back wages should be paid for the period during which employee has not already worked. It depends upon the facts and circumstances of each case.

In the present case, the situation is very glaring. Admittedly, the petitioner, alongwith his wife, was present when the crime has been committed. He was not only present, but was also standing on one leg, and also participated in the performance of an alleged ritual, which was in the nature of crime, being committed before him by none else than his father-in-law. Being a Police Personal, it was his bounded duty when the crime was being committed before him, to react and would have made all serious efforts to prevent the occurrence of such brutal crime and would have shown strongest possible protest so as to prevent the crime, but same has not been done and he quietly participated in the alleged rituals which was in the nature of crime. Although for want of evidence, beyond doubt, the petitioner has been acquitted, but his actual involvement in the crime could not be denied. His presence at the place of incident where his two brother-in-laws have been brutally murdered by no-one else, but by their own father (father-in-law of the petitioner) raises a serious question and doubt about his involvement and conduct, liable to be impeccable. In such a situation, although the petitioner has been reinstated in service, but I am of the firm view, that in view of aforesaid facts and having regard to his conduct, as stated above, the petitioner is not entitled for any salary or any allowance for the period during which he remained suspended and terminated, except what he already got during the period of suspension. It is such a case petitioner does not deserve any lenient view.

In the light of the discussions made above, the writ petition lacks merit. In the result, the writ petition fails and it is accordingly dismissed.

No order as to cost.