
(2015) 04 GAU CK 0013
In the Gauhati High Court
Case No : Writ Petition (C) No. 4831 of 2012

Sohrab Hussain

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 23-04-2015

Acts Referred:

Dowry Prohibition Act, 1961 — Section 10(1)(b)(i), 4
Penal Code, 1860 (IPC) — Section 302, 498-A

Citation : (2015) 2 GLT 498

Hon'ble Judges : Tinlianhang Vaiphei, J

Bench : Single Bench

Advocate : M.U. Mahmud, A. Roshid, A. Mabarague and M.R. Devi, for the Appellant; R. Mazumdar, SC, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Tinlianhang Vaiphei, J.—The only question which falls for consideration in this writ petition is whether the acquittal of the petitioner from criminal case entitles him to regularizing the period of his absence from the date of his conviction to the date of his reinstatement in service for the purpose of pay and allowances? The controversy arose on the following facts and circumstances:--

"While the petitioner was serving as Headmaster of an L.P. School under the Deputy Inspector of Schools, Barpeta, a case under Section 302 IPC was registered against him. He was subsequently arrested and remanded to jail. After investigation, charge sheet was submitted against him in Sessions Case No. 31(B)/90. He was then tried, convicted under Section 302 IPC and sentenced to imprisonment for life with a fine of Rs. 20,000/- by the learned Sessions Judge, Barpeta vide the judgment dated 11.5.1992. Following his conviction, the Deputy Inspector of School, Barpeta issued the order dated 2.7.1992, discharging him from service. The petitioner then preferred an appeal being Cril. Appeal No. 68/92 from the judgment dated 11.5.1992, but his appeal was dismissed by the High Court by the judgment dated 20.5.1993. The petitioner thereafter preferred

Criminal Appeal No. 434/1994 before the Apex Court, which by the judgment dated 18.9.2002 allowed the appeal and acquitted him. After obtaining the copy of the judgment dated 18.9.2002, he filed an application to the respondents for allowing him to resume his duty with current and back salaries. Ultimately, the Deputy Inspector of Schools, Barpeta by the order dated 12.6.2003 reinstated him to service, allowed him to join as Assistant Head Teacher of No. 965, Hajipara L.P. School and held that his service would be regularized from the date of his discharge from service if and when approved by the appropriate authority. He thereafter joined his post and is still continuing in service. At this stage, it may be noted that no separate departmental enquiry was initiated against the petitioner. It is contended by the petitioner that he, following his acquittal, is entitled to regularization of the period of his discharge from service till his reinstatement in service for payment of back wages. The representations made by him from time to time to that effect have not met any positive response whereupon he is constrained to file this writ petition."

2. The respondent authorities contested the writ petition and filed their affidavit-in-opposition. The stance taken by them is that the petitioner got himself involved in a criminal case leading to his conviction, and the Department has nothing to do with such conviction: the Department cannot in any manner be faulted with for his plight. It is, therefore, contended by the answering respondents that the Department cannot, therefore, be held liable for payment of salaries and allowances for the period for which his services were not availed of by them: the question of payment of back wages as claimed by the petitioner does not arise.

3. Mr. M.U. Mahmud, the learned counsel for the petitioner, however, submits that when the petitioner is honourably acquitted, he is entitled to full pay which he would have been entitled to had he not been discharged from service. Strong reliance is placed by him on the decision of the Apex Court in *State of Assam v. R. Rajagopalachari and Vice Versa*, AIR 1970 SC 57 to fortify his submission. Per contra, Mr. R. Mazumdar, the learned standing counsel for the Education (Elementary) Department, Assam, supports the impugned decision and submits that the Department was in no way concerned with the criminal case in which the petitioner found himself involved and got incarcerated in jail, and the Department cannot, therefore, be saddled with the liability to pay back wages for the period when he was out of service during/after conviction suffered by him in the criminal case: the respondents cannot be made liable for the period for which they could not avail of the services of the petitioner. He presses into service the decision of the Apex Court in *Union of India (UOI) and Others Vs. Jaipal Singh*, (2003) 10 JT 103 : (2004) 1 LLJ 431 : (2003) 9 SCALE 366 : (2004) 1 SCC 121 : (2004) SCC(L&S) 12 : (2003) 5 SCR 115 Supp : (2004) 1 SLJ 374 in support of his contention.

4. In *Jaipal Singh* (supra), the Apex Court observed:

"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, (1996) 8 AD 547 : AIR 1997 SC 1802 : (1998) 1 CTC 557 : (1997) 2 LLJ 683 : (1996) 8 SCALE 443 : (1996) 11 SCC 603 : (1997) SCC(L&S) 491 : (1996) 8 SCR 14 Supp : (1997) AIRSCW 1128 : (1997) 1 Supreme 152 . 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 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 insofar as it directed payment of back wages is liable to be and is hereby set aside."

5. The legal position in this behalf came up for consideration once again before the Apex Court recently in SBI v. Mohd. Abdul Rahim, (2013) 10 SCC 67 wherein it has been held:

"9. In the present case, the respondent was acquitted by the appellate court. There can be no manner of doubt that the said acquittal would relate back and the initial order of conviction would stand obliterated. On that basis, there can be no manner of doubt that the substratum of the cause that had led to the respondent's dismissal/discharge in the present case had ceased to exist. The same would entitle him to be reinstated in service, an act that has been duly performed by the appellant Bank.

10. The issue relating to entitlement to back wages, however, stands on a somewhat different footing. While in Ranchhodji Chaturji Thakore Vs. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar, (Gujarat) and another, (1996) 8 AD 547 : AIR 1997 SC 1802 : (1998) 1 CTC 557 : (1997) 2 LLJ 683 : (1996) 8 SCALE 443 : (1996) 11 SCC 603 : (1997) SCC(L&S) 491 : (1996) 8 SCR 14 Supp : (1997) AIRSCW 1128 : (1997) 1 Supreme 152 , Jaipal Singh (2004) 1 SCC 121 and Baldev Singh Vs. Union of India (UOI) and Others, AIR 2006 SC 531 : (2005) 107 FLR 1143 : (2005) 10 JT 213 : (2005) 9 SCALE 73 : (2005) 8 SCC 747 : (2006) SCC(L&S) 35 : (2006) 2 SLJ 390 : (2005) AIRSCW

6180 : (2005) 7 Supreme 689 , the basis of refusal of back wages by this Court would appear to be the inability of the employer to avail of the service of the employee due to his incarceration in jail, in *Banshi Dhar Vs. State of Rajasthan and Another*, (2007) 112 FLR 687 : (2007) 1 LLJ 992 : (2006) 11 SCALE 199 : (2007) 1 SCC 324 : (2007) 1 SCC(L&S) 205 : (2006) 8 SCR 78 Supp the refusal of back wages by this Court was in a situation largely similar to the case before us, namely, where the employee was all along on bail and was thus available for work.

11. In *Banshi Dhar Vs. State of Rajasthan and Another*, (2007) 112 FLR 687 : (2007) 1 LLJ 992 : (2006) 11 SCALE 199 : (2007) 1 SCC 324 : (2007) 1 SCC(L&S) 205 : (2006) 8 SCR 78 Supp this Court answered the question against the employee by holding that grant of back wages is not automatic and such an entitlement has to be judged in the context of the totality of the facts of a given case. It is on such consideration that back wages were declined. In the present case, it will not even be necessary for the Court to perform the said exercise and delve into the surrounding facts and circumstances for the purpose of adjudication of the entitlement of the respondent to back wages in view of the provisions of Section 10(1)(b)(i) of the Act. The said provisions impose a clear bar on a banking company from employing or continuing to employ a person who has been convicted by a criminal court of an offence involving moral turpitude. No discussion as to the meaning of the expression "moral turpitude" is necessary having regard to the nature of the offences alleged against the respondent, namely, under Section 498-A IPC and Section 4 of the Dowry Prohibition Act, 1961. No doubt, the respondent was not in custody during the period for which he has been denied back wages inasmuch as the sentence imposed on him was suspended during the pendency of the appeal. But what cannot be lost sight of is that the conviction of the respondent continued to remain on record until it was reversed by the appellate court on 22.2.2002. During the aforesaid period there was, therefore, a prohibition in law on the appellant Bank from employing him. If the respondent could not have remained employed with the appellant Bank during the said period on account of the provisions of the Act, it is difficult to visualise as to how he would be entitled to payment of salary during that period. His subsequent acquittal though obliterates his conviction, does not operate retrospectively to wipe out the legal consequences of the conviction under the Act. The entitlement of the respondent to back wages has to be judged on the aforesaid basis. His reinstatement, undoubtedly, became due following his acquittal and the same has been granted by the appellant Bank.

12. The respondent was acquitted on 22.2.2002, the demand for reinstatement was made by him on 22.4.2002 and he was reinstated in service by the appellant bank on 7.11.2002. On the view that we have taken, at the highest, what can be said in favour of the respondent is that he is entitled to wages from the date he had lodged the demand for the same following his acquittal, namely, from 22.4.2002, until the date of his reinstatement, if the same has not already been granted by the appellant Bank."

(Underlined for emphasis)

6. In the instant case, there is no whisper of statement as to whether the petitioner was incarcerated in jail from the time he was remanded to jail till the date of his acquittal. There is also no whisper of statement in his pleadings that the sentence imposed upon him was ever suspended during the pendency of the appeal preferred by him and that despite the suspension of his sentence, he was not allowed to resume his duty or that there is no prohibition in law that he could not be employed till his acquittal. These are vital facts to be proved by him by producing evidence. In any case, he was charged with murder most foul, that too, upon his wife. It is, however, contended by the learned counsel for the petitioner that as the petitioner was honourably acquitted by the Apex Court, denial of back wages to the petitioner is illegal. I have carefully gone through the judgment of his acquittal, but there is nothing to indicate that the petitioner was honourably acquitted by the Apex Court. Grant of back wages is not automatic and such entitlement has to be judged in the context of the totality of the facts of a given case. Therefore, the decision in R. Gopalachari (supra) is clearly distinguishable. In the view that I have taken, the petitioner has not made out any case for payment of back wages. For what has been stated in the foregoing, the petitioner is not entitled to payment of all the back wages as claimed by him. He shall, however, be paid back wages from the date he made an application for his reinstatement following his acquittal till the date of his reinstatement, if he same has not already been paid to him by the respondent authorities in the interregnum. Subject to this, the writ petition is dismissed, but there shall be no order as to cost.