

(1993) 11 PAT CK 0014

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 5558 of 1993

Suresh Tripathi and Ramesh Chaubey

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 10-11-1993

Acts Referred:

Citation : (1993) 11 PAT CK 0014

Final Decision : Dismissed

Judgement

G.C. Bharuka, J.—There are two Petitioners in the present case, namely, Suresh Tripathi (Petitioner No. 1) and Ramesh Chaubey (Petitioner No. 2). They have prayed for quashing the order dated 15th April, 1993 (Annexure-1) passed by the Additional Director of Education, Patna and Magadh Division, Patna, by which Petitioner No. 2 and one Surendra Tiwary, assistant teachers in high school, Pirainiya, Danapur, Patna, have been put under suspension on the ground of their conviction by the Judicial Magistrate, 1st class Danapur, in Trial No. 1068/91.

2. The impugned order (Annexure-1) per se does not show that the order of suspension has been passed either during the pendency of in contemplation of any departmental proceeding.

3. Against the order of conviction, the accused persons including Petitioner No. 2 had preferred Criminal Appeal Nos. 232 of 1991 and 235 before the Session Judge, Patna, which have been disposed of during the pendency of the present writ application on 19.8.1993 and the order of conviction and sentence passed by the trial court has been set aside. The judgment of the appellate court has been filed by way of a supplementary affidavit enclosing the same as Annexure-4.

4. In the above view of the matter, reading the order of suspension on its face value, the same can not be sustained because the ground taken therein has now become nonest inasmuch as the order of conviction and sentence stands set aside by the appellate court so far as Petitioner No. 2, (Ramesh Chaubey) is concerned.

5. The impugned order (Annexure 1) shows that neither any order of suspension has been passed against Petitioner No. 1 (Suresh Tripathi) nor the Appellate Court order in Criminal Appeals Nos. 232 and 235 of 1991 talks of this Petitioner No. 1. Therefore, for want of any cause of action, the present writ application is not maintainable at the instance of Petitioner No. 1 (Suresh Tripathi) and, as such, it is dismissed so far as Petitioner No. 1 is concerned.

6. So far as Petitioner No. 2 (Ramesh Chaubey) is concerned, keeping in view the appellate order, the impugned order (Annexure-1) is quashed so far as he is concerned.

7. In the case of Corporation of the City of Nagpur, Civil Lines, Nagpur and another Vs. Ramchandra and others, , it has been held that normally where the accused is acquitted honourably and completely exonerated of the charges in a criminal case, it is not expedient to continue a departmental enquiry on the very same charges or grounds or evidence. It has further been held that, however, merely because the accused is acquitted, the power of the authority concerned to continue the departmental enquiry is not taken away nor is its discretion in any way fettered.

8. Accordingly, it will be open for the disciplinary authority to take such action or pass such order as may be permissible in law in a legally initiated departmental proceeding if not already pending. The writ petition is, accordingly, allowed only in respect of Petitioner No. 2 (Ramesh Chaubey) subject to the observations made above. No cost.

Gurusharan Sharma, J.

9. I agree.