

(2005) 12 OHC CK 0002
In the Orissa High Court
Case No : Writ Petition (C) No. 10477 of 2004

Union of India (UOI) and Another

APPELLANT

Vs

Sibaram Nayak

RESPONDENT

Date of Decision : 22-12-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 409

Citation : (2006) 101 CLT 454 : (2006) 109 FLR 949 : (2006) 3 LLJ 429

Hon'ble Judges : Pradip Mohanty, J; I.M. Quddusi, J

Bench : Division Bench

Advocate : J.K. Mishra, Asst. Solicitor General, for the Appellant; None, for the Respondent

Judgement

I.M. Quddusi. J.

1. This Writ Petition has been filed against the judgment and order dated 17.11.2003 passed by the Central Administrative Tribunal Cuttack Bench, Cuttack in O.A. No. 325 of 1999 which was filed by the Opp. Party claiming back wages from the date of dismissal till the date of reinstatement.

2. It may be stated that the opposite party was dismissed from service due to his conviction in a criminal case. However, the conviction was set aside in appeal and on a representation being made by the opposite party, the authorities reinstated him in service, but did not pay him back wages. The Tribunal vide the impugned order directed the present petitioners to consider the case of the opposite party as if he was in service from the date of dismissal and therefore entitled to all consequential benefits including the back wages and pay the same within three months from the date of receipt of the copy of its order.

3. The brief facts of the case are that the opposite party while working as Extra Departmental Branch Post Master at Sibilaposi Branch Post Office was placed under suspension due to his alleged involvement in a criminal charge u/s 409, IPC. The Trial Court convicted him for the charge, but in appeal the judgment of

the Trial Court was set aside and he was acquitted. The Judgment and order was delivered on 8.2.1994 by the learned Sessions Judge, Dhenkanal in Criminal Appeal No. 104 of 1987. However, after being convicted by the Trial Court he had been dismissed from service vide order dated 30.11.1987. Consequent upon his acquittal, he approached the authorities by moving a representation on 2.11.1994 with a prayer to reinstate him on his original post, but the authorities did not pay any heed to the same. He sent several reminders and ultimately the instant petitioners reinstated him in service vide order dated 29.10.1999. He joined his duties on 9.11.1999 in pursuance of the reinstatement order. Before his reinstatement, he had filed the above mentioned O.A. for reinstatement and back wages, but after his reinstatement, the question of payment of back wages remained there.

4. Before the Tribunal, the instant petitioners did not dispute that the order of the Magistrate convicting the opposite party was set aside in appeal and he was acquitted vide judgment and order dated 8.2.1994. It was also not disputed that the opposite party was dismissed on his conviction, but after his acquittal in appeal, he was reinstated in service vide order dated 29.10.1999 pursuant to which he joined duties on 9.11.1999. But they took a plea that since the opposite party had not performed any duty, he is not entitled to any back wages.

5. The Tribunal, after giving detailed reasons, held that the opposite party was acquitted on merits and not on the basis of benefit of doubt. In the normal course, it was incumbent upon the petitioners to examine his case soon after receipt of the representation and take a decision thereon. But though the representation was pending since 1994, no heed was paid to the same, Therefore, the opposite party cannot be blamed for the belated decision of the petitioners. In view of this applying the ratio laid down in the case of Ramananda v. Union of India and Ors. 2003 (1) ATJ 3777, directed the petitioners to consider the case of the opposite party as if he was In service from the date of dismissal and therefore entitled to all consequential benefits.

6. In the case of Hukmi Chand Vs. Jhabua Cooperative Central Bank Ltd., Jhabua (M.P.) and Another, , it has been held by the Hon''ble Apex Court that the grant of back wages will obviously depend upon the facts and circumstances of each case, especially because in the interregnum, the employee does not work with the employer on account of a valid termination of service,

7. In the case of Union of India Vs. K.V. Jankiraman, etc. etc., , in respect of back wages the Supreme Court has held :

We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings. However, there may be

cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated from disciplinary/criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardize public interests. We are, therefore, unable to agree with the Tribunal that to deny the salary to an employee would in all circumstances be illegal. While, therefore/we do not approve of the said last sentence in the first sub-paragraph after Clause (iii) of paragraph 3 of the said Memorandum, viz., "but no arrears of pay shall be payable to him for the period of notional promotion", we direct that in place of the said sentence the following sentence be read in the Memorandum :

"However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion proceeding the date of actual promotion, and if so to what extent will be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so."

To this extent we set aside the conclusion of the Tribunal on the said point.

8. Therefore, the better course for the petitioners would have been to consider the representation of the Opp. Party and take a decision regarding payment of back wages. The Tribunal has also directed the instant petitioners to consider the case of the Opp. Party as if he was in service from the date of dismissal and the back wages that would arise to be paid to the applicant before it shall be paid.

9. In view of the above mentioned facts and circumstances, we find no illegality, impropriety or manifest error of law in the impugned judgment and order passed by the Tribunal. We also find that the dismissal of the Opp. Party was not pursuant to a decision taken in any departmental proceedings but due to his conviction in a criminal case. The Tribunal has not considered the case of the Opp. Party regarding payment of back wages for the period prior to date of the order of dismissal and we are also not inclined to consider the same as we feel that the petitioners are the best Judges to decide the same also.

10. Since time granted by the Tribunal for making compliance of its order has already expired, we direct that now the order be complied with within a period of three months from the date of communication of the order by the learned Asst.

Solicitor General.

The Writ Petition is disposed of accordingly.

Pradip Mohanty, J.

11. I agree.