

IN THE HIGH COURT OF JUDICATURE AT PATNA

Hari Lal Yadav

vs.

The State of Bihar & Ors.

Civil Writ Jurisdiction Case No. 17935 of 2014

16 August 2023

(Hon'ble Mr. Justice Mohit Kumar Shah)

Issue for Consideration

Whether the petitioner, having been acquitted in the criminal case and exonerated in the departmental inquiry, is entitled to payment of full salary and emoluments for the period of suspension and incarceration.

Headnotes

The question of back wages can be considered only if the respondents have taken action by way of disciplinary proceedings and the action was found to be unsustainable in law and the petitioner was unlawfully prevented from discharging his duties. However, in the present case, since the petitioner had involved himself in a crime, though he was later acquitted, he had disabled himself from rendering service on account of him being made an accused in the aforesaid criminal case and his resultant incarceration in jail. Under such circumstances, the petitioner is not entitled to payment of back wages and emoluments. (Para 8); **Petition is dismissed. (Para 10)**

Case Law Cited

Arbind Kumar Khan v. State of Bihar & Ors., **2020(1) PLJR 191**; Sidheshwar Prasad Singh v. State of Bihar & Ors., **2001(1) PLJR 70**; State of Bihar v. Abdul Majid, AIR **1954 SC 245**; Ranchhodji Chaturji Thakore v. Superintendent Engineer, Gujarat Electricity Board, **(1996) 11 SCC 603**; Krishnakant Raghunath Bibhavnekar v. State of Maharashtra, **(1997) 3 SCC 636**; Union of India v. Jaipal Singh, **(2004) 1 SCC 121**; **2015 (4) PLJR 770**

List of Acts

Indian Penal Code, 1860; Arms Act, 1959; Bihar Police Manual, Rule 841 (2)(a); Bihar Government Servant (Classification, Control & Appeal) Rules, 2005, Rule 13(3)

List of Keywords

Suspension; Dismissal; Reinstatement; Back wages; No work no pay; Departmental proceeding; Acquittal; Criminal case; Personal rivalry; Emoluments

Case Arising From

Challenge to order dated 28.11.2013 of the Senior Superintendent of Police, Patna, forfeiting full salary and emoluments during suspension, and appellate order dated 14.06.2014 of Deputy Inspector General of Police, Central Range, Patna, rejecting petitioner's appeal.

Appearances for Parties

For the Petitioner: Mr. Ram Yash Singh, Advocate
For the Respondents: Mr. Arvind Kumar No. 2, SC-17

Headnotes Prepared by Reporter: Amit Kumar Mallick, Adv.

Judgment/Order of the Hon'ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 17935 of 2014

Hari Lal Yadav S/o Late Lorik Prasad Yadav R/o Village - Rampur Pagra, P.O. -Pagra, P.S. - Dalsing Sarai, District- Samastipur. A/P Constable in District Police Force, District - Patna.

... .. Petitioner/s

Versus

- 1. The State of Bihar
- 2. Director General cum Inspector General of Police, Bihar, Patna.
- 3. Deputy Inspector General of Police, Central Range, Patna.
- 4. Senior Superintendent of Police, Patna.

... .. Respondent/s

Appearance:

For the Petitioner/s : Mr. Ram Yash Singh, Advocate
For the Respondent/s : Mr. Arvind Kumar No. 2, SC-17

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 16-08-2023

1. The present writ petition has been filed for quashing that part of order dated 28.11.2013, passed by the Senior Superintendent of Police, Patna by which the pay and emoluments, apart from what has already been paid during the period of suspension of the petitioner, has been directed to be forfeited as also for quashing the order dated 14.06.2014 passed by the Deputy Inspector General of Police, Central Range, Patna, whereby and whereunder the appeal filed by the petitioner



has been rejected.

2. The brief facts of the case, according to the petitioner, are that he was appointed as a Constable in the Bihar Police on 25.04.1991. The petitioner is stated to have been arrested while he was on leave and sent to judicial custody in connection with one Dalsing Sarai P.S. Case No. 36 of 2006 on 05.03.2006, whereafter a letter was sent to the petitioner on 02.05.2006 to report for election duty, however, since the petitioner could not report for election duty, a departmental proceeding was initiated by the Senior Superintendent of Police, Patna and charges were framed vide letter dated 05.05.2006. The petitioner is stated to have been enlarged on bail on 30.04.2007, whereafter, he had submitted his show cause reply on 27.05.2008, however, by an order dated 16.07.2008, the petitioner was dismissed from service, which was challenged by the petitioner by filing an appeal before the Deputy Inspector General of Police, Central Range, Patna. In the meantime, the petitioner was acquitted by



the learned trial court by a judgment dated 11.04.2011. In such view of the matter, the Deputy Inspector General of Police, Central Range, Patna vide order dated 07.07.2011, in light of acquittal of the petitioner in the pending criminal case, had quashed the order of punishment dated 16.07.2008, ordered for reinstatement of the petitioner in service and had directed the Senior Superintendent of Police, Patna to get the disciplinary proceedings conducted afresh qua the petitioner herein, whereafter the Inquiry Officer had conducted the inquiry afresh and had found the petitioner to be not guilty of the charges levelled against him. Thus, the Senior Superintendent of Police, Patna, by the impugned order dated 28.11.2013 has though exonerated the petitioner from the charges levelled against him, however, has passed an order directing that nothing else than what has already been paid during the period of suspension shall be paid to the petitioner herein. The said order dated 28.11.2013 was challenged by the petitioner by filing an



appeal, however, the same has also stood rejected by the impugned order dated 14.06.2014.

3. The learned counsel for the petitioner has submitted that since the petitioner has not only been exonerated from the criminal charges but also in the departmental proceeding initiated against him, he should not be penalized for no fault of his by not making payment of his pay and emoluments other than what has been paid during the course of his suspension. The learned counsel for the petitioner has also relied on Rule 841 (2) (a) of the Bihar Police Manual to submit that in case the delinquent is fully exonerated, he is required to be paid full pay, apart from relying on Rule 13(3) of the Bihar Government Servant (Classification, Control & Appeal) Rules, 2005, however, this Court finds that the same pertains to cases where dismissal, removal or compulsory retirement of a government servant is set aside by a Court and then in such cases the intervening period shall be treated as on duty for all purposes and the government servant shall be paid full pay and



allowances for the said period, however the present case lies on a different footing. The Ld. Counsel for the petitioner has also relied on the following judgments:-

(i) *Judgment rendered by a coordinate Bench of this Court in the case of **Arbind Kumar Khan vs. The State of Bihar & Ors.**, reported in **2020(1) PLJR 191**;*

(ii) *Judgment rendered by a coordinate Bench of this Court in the case of **Sidheshwar Prasad Singh vs. The State of Bihar & Ors.**, reported in **2001 (1) PLJR 70**;*

(iii) *Judgment rendered by the Hon'ble Apex Court in the case of **The State of Bihar vs. Abdul Majid**, reported in **A.I.R. 1954 SC 245**.*

4. *Per contra*, the learned counsel for the respondent-State has submitted by referring to the counter affidavit filed in the present case that the petitioner had proceeded for 10 days leave with effect from 01.03.2006 and was to join his duties on 12.03.2006, but in the meantime, the petitioner was made an accused in Dalsing Sarai P.S. Case No. 36 of 2006 under Sections 353/504 of the



Indian Penal Code and Sections 25(1-B)A/26 of the Arms Act, which had *prima facie* been found to be true, hence the petitioner was arrested on 05.3.2006 and forwarded to judicial custody, whereupon he was released on bail only on 30.04.2007, which led to initiation of a departmental proceeding against the petitioner resulting in his termination from service, after conduct of a full-fledged departmental proceeding, by an order dated 16.7.2008, passed by the Senior Superintendent of Police, Patna, whereafter the petitioner had filed an appeal before the Deputy Inspector General of Police, Central Range, Patna, who upon considering the fact that the petitioner had stood acquitted during the interregnum period in the aforesaid criminal case, had set aside the order of dismissal of the petitioner, reinstated the petitioner in service and had directed for re-conduct of the departmental proceeding in question, by an order dated 07.07.2011, whereafter the Inquiry Officer had conducted the Inquiry afresh and acquitted the petitioner from



the charges levelled against him, leading to passing of the impugned order dated 28.11.2013, whereby and whereunder though the petitioner has been exonerated of the charges levelled against him in the departmental proceeding but it has been held that the petitioner shall not be entitled to any pay and emoluments over & above what has already been paid during the suspension period. The said order dt. 28.11.2013 was challenged by the petitioner by filing an appeal, however, the same has also been dismissed by the impugned order dated 14.06.2014 passed by the Deputy Inspector General of Police, Central Range, Patna. The learned counsel for the respondent-State has submitted that since the petitioner had got involved in a criminal case on account of his personal dispute, hence the Department is not responsible for preventing the petitioner from discharging his duties, thus since the petitioner was prevented from rendering services on account of his incarceration due to the aforesaid criminal case, he has been rightly denied pay and



emoluments on the principle of 'no work no pay'.

5. I have heard the learned counsel for the parties and perused the materials on record, from which it is apparent that the petitioner had got embroiled in a criminal case, which is purely his undoing resulting in him being arrested and sent to judicial custody on 05.03.2006, which had in turn led to his suspension and finally dismissal from service on 16.07.2008, nonetheless, on account of his acquittal from the aforesaid criminal case on 11.04.2011, he was reinstated in service by an order dated 07.07.2011 passed by the Deputy Inspector General of Police, Central Range, Patna, thus, it is clear that the Department was/is in no way responsible for preventing the petitioner from rendering his services whereas on the contrary the petitioner was prevented from rendering services on account of his incarceration and pendency of the aforesaid criminal case, not lodged by the Department but lodged on account of personal rivalry of the petitioner herein. In this regard, it would be apt to refer to a leading Judgment on the



said issue, rendered by the Hon'ble Apex Court in the case of ***Ranchhodji Chaturji Thakore Versus Superintendent Engineer, Gujarat Electricity Board, Himmatnagar (Gujarat) and Another***, reported in **(1996) 11 SCC 603**, paragraph No. 3 whereof is reproduced herein below:-

“3. The reinstatement of the petitioner into the service has already been ordered by the High Court. The only question is whether he is entitled to back wages. It was his conduct of involving himself in the crime that was taken into account for his not being in service of the respondent. Consequent upon his acquittal, he is entitled to reinstatement for the reason that his service was terminated on the basis of the conviction by operation of proviso to the statutory rules applicable to the situation. The question of back wages would be considered only if the respondents have taken action by way of disciplinary proceedings and the action was found to be unsustainable in law and he was unlawfully prevented from discharging the duties. In that context, his conduct becomes relevant. Each case



requires to be considered in his own backdrops. In this case, since the petitioner had involved himself in a crime, though he was later acquitted, he had disabled himself from rendering the service on account of conviction and incarceration in jail. Under these circumstances, the petitioner is not entitled to payment of back wages. The learned single Judge and the Division Bench have not committed any error of law warranting interference”.

6. The aforesaid issue has yet again been considered by the Hon’ble Apex Court in the case of **Krishnakant Raghunath Bibhavnekar vs. State of Maharashtra and Ors., reported in (1997) 3 SCC 636**, paragraph Nos. 3 and 4 whereof are reproduced herein below:-

“3. The appellant while working as compositor in the Government of India Printing Press, was charged for offences punishable, inter alia, under [Section 409](#) of IPC. Pending trial, he was kept under suspension and was paid subsistence allowance. After his acquittal, the appellant was reinstated but the respondents did not grant the



consequential benefits to him. Consequently, the appellant approached the Administrative Tribunal. The Tribunal by the impugned order dated 27-4-1995 in OA No. 40 of 1992, dismissed the application. Thus, this appeal by special leave.

4. Mr. Ranjit Kumar, learned counsel for the appellant, contends that under Rule 72(3) of the Maharashtra civil services (Joining Time, foreign Services, and Payment during Suspension, dismissal and Removal) Rules, 1991 (for short "the Rules"), the Rules cannot be applied to the appellant nor would the respondents be justified in treating the period of suspension of appellant, as the period of suspension, as not being warranted under the Rules. We find no force in the contention. It is true that when a government servant is acquitted of offences, he would be entitled to reinstatement. But the question is whether he would be entitled to all consequential benefits including the pensionary benefits treating the suspension period as duty period, as contended by Shri Ranjit Kumar? The object of sanction of law behind prosecution is to put an end to crime



against the society and laws thereby intends to restore social order and stability. The purpose of prosecution of a public servant is to maintain discipline in service, integrity, honesty and truthful conduct in performance of public duty or for modulation of his conduct to further the efficiency in public service. The Constitution has given full faith and credit to public acts. Conduct of a public servant has to be an open book; corrupt would be known to everyone. The reputation would gain notoriety. Though legal evidence may be insufficient to bring home the guilt beyond doubt or foolproof. The act of reinstatement sends ripples among the people in the office/locality and sows wrong signals for degeneration of morality, integrity and rightful conduct and efficient performance of public duty. The constitutional animation of public faith and credit given to public acts would be undermined. Every act or the conduct of a public servant should be to effectuate the public purpose and constitutional objective. Public servant renders himself accountable to the public. The very cause for suspension of the petitioner and taking punitive action against him was his



conduct that led to his prosecution for the offences under [the Indian Penal Code](#). If the conduct alleged is the foundation for prosecution, though it may end in acquittal on appreciation or lack of sufficient evidence, the question emerges whether the Government servant prosecuted for commission of defalcation of public funds and fabrication of the records, though culminated into acquittal, is entitled to be reinstated with consequential benefits. In our considered view, this grant of consequential benefits with all back wages etc. cannot be as a matter of course. We think that it would be deleterious to the maintenance of the discipline if a person suspended on valid considerations is given full back wages as a matter of course on his acquittal. Two courses are open to the disciplinary authority, viz., it may enquire into the misconduct unless, the selfsame conduct was subject of charge and on trial the acquittal was recorded on a positive finding that the accused did not commit the offence at all; but acquittal is not on benefit of doubt given. Appropriate action may be taken thereon. Even otherwise, the authority may, on reinstatement after following the principle of natural justice,



pass appropriate order including treating suspension period as period of not on duty, (and on payment of subsistence allowance etc.) Rules 72(3), 72 (5) and 72 (7) of the Rules give a discretion to the disciplinary authority. Rule 72 also applies, as the action was taken after the acquittal by which date rule was in force. Therefore, when the suspension period was treated to be a suspension pending the trial and even after acquittal, he was reinstated into service, he would not be entitled to the consequential benefits, As a consequence, he would not be entitled to the benefits of nine increments as stated in para 6 of the additional affidavit. He is also not entitled to be treated as on duty from the date of suspension till the date of the acquittal for purpose of computation of pensionary benefits etc. The appellant is also not entitled to any other consequential benefits as enumerated in paragraphs 5 and 6 of the additional affidavit”.

7. The aforesaid view of the Hon’ble Apex Court in the case **Ranchhodji Chaturji Thakore** (Supra) was again reiterated in the case of **Union of India and Ors. vs. Jaipal Singh, reported in (2004) 1 SCC 121**, paragraph Nos. 3, 4 and 5 whereof are



reproduced herein below:-

“3. Heard Mr. Raju Ramachandran, learned Additional Solicitor General appearing for the appellants, who placed strong reliance upon the decision of this Court in Ranchhodji Chaturji Thakore v. Supdt. Engineer, Gujarat Electricity Board wherein this Court, in a case identical to the facts of the present case, has chosen to order only reinstatement but denied back wages on the ground that the department was in no way concerned with the criminal case and, therefore, cannot be saddled with liability also for back wages for the period when he was out of service during/after conviction suffered by the respondent in the criminal case. Per contra, Mr. Ranbir Singh Yadav, learned counsel for the respondent sought to place reliance upon an order of this Court dismissing the special leave petition filed summarily against the judgment of the very same High Court dated 19.07.2001 in CWP No. 10201 of 2000. The learned counsel for the respondent, by inviting our attention to the judgment of the High Court in that case contended that on the facts the case on hand was also similar to the case considered therein but this Court



dismissed the special leave petition when the relief granted for reinstatement and back wages was contested by the authorities before this Court.

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 special leave petition 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 by the appellant is one on merits and for reasons specifically recorded therefor it operates as a binding precedent as well. On going through the same, we are in respectful agreement with the view taken in Ranchhodji. If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest or by department itself, perhaps different consideration may arise. On the other hand, if as a citizen the employee or a public servant got involved in a criminal case and it 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 adverting 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 respondent will be entitled to*



back wages from the date of acquittal and except for the purpose of denying the respondent actual payment of back wages, that period also will be counted as period of service, without any break. The reinstatement, if not already done, in terms of the order of the High Court will be done within thirty days from today”.

8. Therefore, this Court, taking into account the law laid down by the Hon'ble Apex Court, is of the considered view that no salary/pay or emoluments can be paid to the petitioner herein for the period, he was in jail custody or even for the period of suspension on account of the pending criminal case and his resultant incarceration, inasmuch as the petitioner was involved in a criminal case pertaining to his own personal affairs in which the respondents did not have any role to play, hence, the State Government cannot be saddled with the burden of paying salary for the period the petitioner had not worked on account of him being in jail custody. The question of back wages can be considered only if the respondents have taken action by way of disciplinary proceedings and the



action was found to be unsustainable in law and the petitioner was unlawfully prevented from discharging his duties, however, in the present case, since the petitioner had involved himself in a crime, though he was later acquitted, he had disabled himself from rendering service on account of him being made an accused in the aforesaid criminal case and his resultant incarceration in jail. Under such circumstances, the petitioner is not entitled to payment of back wages and emoluments. This aspect of the matter has also been considered by this Hon'ble Court in a judgment reported in **2015 (4) PLJR 770**.

9. Now, coming to the judgments referred to by the learned counsel for the petitioner, as aforesaid, it would suffice to state that the same do not address the issue involved in the present case rather the same pertain to cases where the order of dismissal has been set aside by the Courts as also deals with the necessity of passing orders regarding payment of salary for the period starting from the date of dismissal up to the date of



reinstatement, upon the order of dismissal being set aside by the Hon’ble Courts. Thus, the Judgments referred to by the learned counsel for the petitioner are distinguishable in the facts and circumstances of the present case.

10. Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, I do not find any merit in the present writ petition, hence the same stands dismissed.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	12.09.2023
Transmission Date	N/A

