

Raj Narain Vs. Union of India & Ors.

[Civil Appeal No. 3339 of 2019 arising out of S.L.P. (Civil) No. 100 of 2016]

L. NAGESWARA RAO, J.

Leave granted.

1. The Appellant was placed under suspension on 23.10.1979 while he was working as Sorting Assistant in Railway Mail Service (RMS) at Mughalsarai, in contemplation of disciplinary proceedings on the allegations of involvement in forged payments of high value money orders. An FIR was lodged against the Appellant at Mughalsarai Police Station and the case was registered as Crime No.358 of 1979 under Section 409/420 IPC. The order of suspension was revoked on 21.10.1987 pursuant to which he joined duty and worked till 28.02.1997, when he was dismissed from service in view of his conviction under Section 409, 467 and 420 IPC. He was sentenced to imprisonment for three years. The Appellant, thereafter, filed an appeal against his conviction. The Criminal Appeal filed by the Appellant was allowed and he was acquitted of the charges for offences under Section 409, 420 and 467 IPC.

2. The request of the Appellant for reinstatement after acquittal was refused on 13.06.2002. It was mentioned in the Memo dated 13.06.2002 that the Appellant could be reinstated as he was already dismissed from service more than six years ago. The order of dismissal dated 28.02.1997 and the order of refusal to reinstate in service dated 13.06.2002 were challenged by the Appellant before the Tribunal. The Tribunal allowed the original application and directed the reinstatement of the Appellant by holding that he shall be entitled for seniority and notional fixation of pay with increments from the date of his dismissal till his reinstatement.

However, the Tribunal held that the Appellant shall not be entitled for any back wages for the period during which he was not in service. Pursuant to the order of the Tribunal, the Appellant was reinstated on 20.01.2003. By an order dated 01.05.2003, the Senior Superintendent of RMS, Allahabad rejected the representation of the Appellant for full pay and allowances for the period of the suspension i.e. 23.10.1979 to 11.11.1987. The Writ Petition filed by the Appellant against the order of the Tribunal by which he was not granted back wages was partly allowed by the High Court.

The High Court held that the Appellant shall be entitled to full back wages from the date of the order of his acquittal i.e. 31.08.2001 till the date of his reinstatement i.e. 20.01.2003. The Appellant is before us assailing the legality and validity of the judgment of the High Court by which the payment of back wages was restricted only to the period between the date of his acquittal and the date of his reinstatement.

3. The learned counsel appearing for the Petitioner relied upon the judgment of this Court in *Ranchhodji Chaturji Thakore v. Superintendent Engineer, 3 Gujarat Electricity Board and Anr.1 and Union of India and Others v. Jaipal Singh*² to contend that in case the criminal proceedings are initiated at the behest of the employer, and the employee is acquitted, he would be entitled to claim full wages for the period he was kept out of duty during the pendency of the criminal proceedings. He also submitted that the Appellant is entitled to full salary for the period from 1979 to 1987. He submitted that the Appellant has filed an Interlocutory Application seeking the said relief in the High Court which was not considered.

4. Ms. Madhavi Divan, learned Additional Solicitor General contended that the Appellant is not entitled to back wages. She submitted that there was no difference between a criminal case initiated at the instance of the employer and one by the police. She also submitted that the Appellant was not entitled to any relief of payment of full back wages between 1979 to 1987 as the I.A. filed by the Appellant does not find mention in the impugned judgment of the High Court. 1 1996 (11) SCC 603 2 2004 (1) SCC 121 4

5. This Court in *Ranchhodji Chaturji Thakore* (supra) considered the case of an employee who sought back wages for the period he was kept out of duty during the pendency of a criminal case for his involvement in an offence under Section 302, IPC. The claim of the Petitioner therein was that he was entitled to full wages on his acquittal by the Criminal Court. This Court rejected the said submission by holding that the question of payment of back wages would arise only in case of termination of service, pursuant to findings recorded in a departmental enquiry.

In the event of the dismissal order being set aside by the Court, the delinquent employee would be entitled to claim back wages as he was unlawfully kept away from duty by the employer. This Court was of the opinion that an employee against whom criminal proceedings are initiated would stand on a different footing in comparison to an employee facing a departmental inquiry. The employee involved in a crime has disabled himself from

rendering his services on account of his incarceration in jail. Subsequent acquittal by an Appellate Court would not entitle him to claim back wages.

6. The decision of Ranchhodji Chaturji Thakore (supra) was followed by this Court in Union of India and Others v. Jaipal Singh (supra) to refuse back wages to an employee who was initially convicted for an offence under Section 302 read with Section 34 IPC and later acquitted by the High Court in a criminal appeal. While refusing to grant relief to the Petitioner therein, this Court held that subsequent acquittal would not entitle an employee to seek back wages. However, this Court was of the opinion that if the prosecution is launched at the behest of the department and the employee is acquitted, different considerations may arise. The learned counsel for the Appellant endeavored to distinguish the prosecution launched by the police for involvement of an employee in a criminal case and the criminal proceedings initiated at the behest of the employer.

The observation made in the judgment in Union of India and Others v. Jaipal Singh (supra) has to be understood in a manner in which the department would become liable for back wages in the event of a finding that the initiation of the criminal proceedings was mala fide or with vexatious intent. In all 6 other cases, we do not see any difference between initiation of the criminal proceedings by the department vis-a-vis a criminal case lodged by the police. For example, if an employee is involved in embezzlement of funds or is found indulging in demand and acceptance of illegal gratification, the employer cannot be mulcted with full back wages on the acquittal of the person by a criminal Court, unless it is found that the prosecution is malicious.

7. The point that remains to be considered is whether the Appellant is entitled to payment of full wages between 1979 and 1987. The Appellant was placed under suspension on 23.10.1979 and his suspension was revoked on 21.10.1987. An interesting development took place during the interregnum by which the disciplinary proceedings were dropped on 21.03.1983. It is clear from the record that the Appellant was the one who was seeking postponement of the departmental inquiry in view of the pendency of criminal case. The order of suspension was in contemplation of disciplinary proceedings. By virtue of the disciplinary proceedings being dropped, the Appellant becomes entitled to claim full salary for the period from the date of his suspension till the date of closure of the departmental inquiry.

Thereafter, the Respondents took four years to reinstate him by revoking his suspension. The order of suspension dated 23.10.1979 came to an end on 21.03.1983 which is the date on which disciplinary proceedings were dropped. The Appellant ought to have been reinstated immediately thereafter unless a fresh order was passed, placing him under suspension during the pendency of the criminal trial which did not happen. Ultimately, the Appellant was reinstated by an order dated 21.10.1987 by revocation of the order of suspension. Though, technically, the learned Additional Solicitor General is right in submitting that the impugned judgment does not even refer to the I.A., we are not inclined to remit the matter to the High Court at this stage for fresh consideration of this point. We hold that the Appellant is entitled for full wages from 23.10.1979 to 21.10.1987 after adjustment of the amounts already paid towards subsistence allowance.

8. For the reasons mentioned above, we approve the judgment of the High Court by holding that the Appellant shall be entitled for back wages only from the date of acquittal on 31.08.2001, till the date of his reinstatement on 20.01.2003. Further, the Appellant shall be entitled to full salary from 23.10.1979 to 21.10.1987.

9. Accordingly, the appeal is disposed of.

.....J. [L. NAGESWARA RAO]

.....J. [M.R.SHAH]

New Delhi,

April 01, 2019.