

Sayed Wasimuddin Vs. State of Jharkhand and Ors.

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Court : Jharkhand

Decided On : Dec-07-2017

Appellant : Sayed Wasimuddin

Respondent : State of Jharkhand and Ors.

Judgement :

WP(S) 6467/2008 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S) No.6467 of 2008 ----- Sayed Wasimuddin, S/o Late Nasimuddin Ahmad, Resident of Village & P.O. Amrath, P.S. Jamui, District Jamui, at present residing at Near of Clinic of Doctor Arun Kumar Singh, Police Department, Mohalla Maharajganj, P.O. & Dist. Jamui Petitioner Versus 1. The State of Jharkhand 2. Inspector General of Police, Dumka Range, P.O., P.S. and District Dumka.

3. Deputy Inspector General Of Police, Santhal Pargana Range P.O., P.S. and District Dumka 4. Superintendent of Police, Deoghar, Police Head Quarter, P.O., P.S. and District Deoghar Respondents ----- CORAM : HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY ----- For the Petitioner : Mr. Rahul Kumar, Advocate For the Respondents : Mr. Rakesh Kumar Shahi, Advocate ----- 12/07.12.2017 Heard learned counsel appearing for the petitioner and learned counsel appearing for the Respondents.

2. This writ application has been filed with a prayer for quashing the order dated 31.08.2008 passed by the respondent No.4 whereby and whereunder the said respondent has ordered for the dismissal of the petitioner from service.

3. The facts disclosed in this writ application in a nutshell is that the petitioner was a regular employee under the respondents on the post of Police having identification No.319 and on ground of his being involved in Jamui P.S. Case No.112 of 1986 registered for the offences punishable under Section 302/34 of the Indian Penal Code, the petitioner was put under suspension and departmental proceeding was initiated against him and later on the respondent decided to keep the departmental proceeding in abeyance awaiting the final outcome of the said criminal case. The petitioner was later on dismissed from service.

4. Against his order of dismissal, the petitioner preferred an appeal before the Deputy Inspector General of Police, Santhal Paragana Range at Dumka and the appellate authority upheld the dismissal order. 1 WP(S) 6467/2008 5. The petitioner again preferred an appeal before the Inspector General of Police, Bhagalpur Region and after hearing the parties the Appellate Authority modified the order up to the extent that till the disposal of the criminal case in the trial court, the departmental proceeding be kept in abeyance and in case the trial court find petitioner guilty in committing murder then pursuant to the order of the trial court, the petitioner shall be dismissed from the Service.

6. Consequent upon the said order of Inspector General of Police, Bhagalpur, the petitioner was allowed to remain in police force in the suspended animation.

7. Subsequently, the petitioner was on 04.12.1990 held guilty in Sessions Case No. 433 of 1987 arising out of the said Jamui P.S. Case No.112 of 1986 and on conviction sentenced to life imprisonment.

8. Against the said judgment of conviction and order of sentence in Sessions Case No.433 of 1987, the petitioner preferred Criminal Appeal (DB) No.529 of 1990 in the Hon'ble Patna High Court. During the pendency of the said Criminal Appeal (DB) No.529 of 1990, the respondent No.4 issued a show- cause upon the petitioner vide order dated 18.04.2008, a copy of the same is the annexed as Annexure-5 of this writ application.

9. The petitioner replied to the show-cause, a copy of the reply is annexed as Annexure-6 of this writ application but the respondent No.4 during the pendency of

the Criminal Appeal (DB) No.529 of 1990, dismissed the petitioner from service vide order dated 31.08.2008, a copy of which is annexed as Annexure-7 of this writ application.

10. After the order of dismissal, during the pendency of this writ petition, the petitioner had attained the age of superannuation on 31.1.2010.

11. Vide judgment dated 26.07.2013, the Hon'ble Patna High Court was pleased to allow the Criminal Appeal (DB) No.529 of 1990 and the judgment of conviction and order of sentence passed against the petitioner in Sessions Case No.433 of 1987, was set aside and that the petitioner was acquitted of the charges along with the co-appellant of the said criminal appeal. 2 WP(S) 6467/2008 12. Learned counsel for the petitioner submitted that in Serial No.847 of Bihar Police Manual which is a compendium of government orders, it has been mentioned that the charges in proceedings in respect of police officer, imprisoned for an offence involving moral turpitude shall be that the accused has been convicted, imprisoned or fined, as the case may be, for the offence concerned. Such proceedings shall not be taken until the appeal against the order of conviction has been heard or the time allowed for appeal has expired.

13. It is further submitted by the learned counsel for the petitioner that in the present case, the petitioner is dismissed and the dismissal of the petitioner is based solely on the ground that he was convicted in a criminal case and the petitioner has been acquitted in the appeal. Hence, in the changed circumstances, the case of the petitioner may be considered and the impugned order may be quashed.

14. In support of his contention, learned counsel for the petitioner relied upon the judgment of Divisional Controller, Karnataka State Road Transport Corporation versus M.G. Vittal Rao reported in (2012) 1 Supreme Court Cases 442, wherein the Honble Apex Court has held that question of considering reinstatement after decision of acquittal or discharge by a competent criminal court arises only if the dismissal from service was based on conviction by the criminal court in view of the provisions of Article 311 (2) second proviso (a) of the Constitution of India or analogous provisions in the statutory rules applicable in a case.

15. Learned counsel for the petitioner also relied upon the judgment rendered by a co-ordinate bench of this court in the case of Bhagwan Ram versus State of Bihar reported in 2016 SCC OnLine Jhar 390, wherein when the departmental proceeding was initiated on the basis of the fact that a criminal case was initiated against the petitioner of that case and he was arrested but subsequently, he was acquitted in the trial, a co-ordinate bench of this court has been pleased to quash and set aside the dismissal order and remanded back the matter to the disciplinary authority to take a fresh decision taking into account the fact that the petitioner has been acquitted in a criminal case. 3 WP(S) 6467/2008 16. In the counter-affidavit filed by the respondents the facts as mentioned above has remained uncontroverted.

17. On perusal of the impugned order, it appears that the petitioner has been dismissed from service only on the ground that he has been convicted in Sessions Case No.433 of 1987 and from the Annexure-I.A.-1 of I.A. No.7644 of 2013, it appears that the petitioner has been acquitted from the charge and the appeal of the petitioner and the co-appellant has been allowed.

18. In such view of the matter, the impugned order of dismissal dated 31.08.2008, is hereby quashed and set aside. The matter is remanded back to the disciplinary authority to take a fresh decision taking into account the fact that the petitioner has been acquitted from the charges vide the judgment in Criminal Appeal (DB) No.529 of 1990 and pass a reasoned order within a period of four months from the date of receipt/production of the copy of this order.

19. With the aforesaid observation and direction, this writ application stands disposed of. Animesh (Anil Kumar Choudhary, J.) 4