

Badri Narayan Yadav Vs. the State of Bihar and ors.

Badri Narayan Yadav Vs. the State of Bihar and ors.

SooperKanoon Citation : sooperkanoon.com/522216

Court : Jharkhand

Decided On : Nov-12-2008

Reported in : [2009(1)JCR158(Jhr)]

Judge : D.G.R. Patnaik, J.

Appellant : Badri Narayan Yadav

Respondent : The State of Bihar and ors.

Advocate for Pet/Ap. : Mr. B.K. Dubey

Judgement :

D.G.R. Patnaik, J.

1. Prayer in this writ application is for an order directing the Respondents to pay the petitioner his salary and other dues from 13.09.1984 till date of his retirement on 13.12.2005, on the ground that denial of the salary for the aforesaid period, was totally illegal and unjustified on the part of the Respondents.

2. The petitioner was appointed as a Police Constable on 11.10.1965 and since the date of his appointment he had rendered his services at various Police Stations including Jaldega Police Station. During his tenure of posting at the Jaldega Police Station, a criminal case for the offences under Sections 376, 109 and 120B of the I.P.C. was instituted against him and his senior officer of the

Police Station. While the Senior Officer was made the principal accused for the offence of committing rape upon the prosecutrix of the said case, the petitioner was accused of having conspired with, aided and abetted the principal accused for committing the said offence. The petitioner was accordingly remanded to the judicial custody though in course of time, he secured his bail pending trial of the case against him. On the charges that a criminal case was instituted against him for serious offences, he was put under suspension and a departmental proceeding was initiated against him. He submitted his representation praying for keeping the departmental proceedings in abeyance till the conclusion of the criminal trial but his prayer was refused. Finally, after concluding the departmental proceedings ex parte, he was dismissed from service by order dated 13.09.1984. Against the order of his dismissal, he preferred a writ application before this Court, vide C.W.J.C. No. 2428 of 1998(R) but the same was dismissed. By judgment passed on 13.06.1997, in the criminal trial, he was convicted for the charges in respect of the offences for which he was charged with and sentenced to imprisonment. Against the order of conviction, he preferred a Criminal appeal before this Court vide Cr. Appeal No. 119 of 1997(R). By order dated 19.04.2006, the appeal was allowed and he was acquitted from all the charges for which he was convicted by the trial court.

3. Thereafter, the petitioner filed his representation before the Respondents-authorities, claiming salary for the period since after the date of his dismissal from service and till the date of his retirement, which was due on 13.11.2005, on the ground that his dismissal from service was improper and unjustified on account of the fact that in respect of the same charge as framed in the departmental proceedings, he had faced the criminal trial and he was found not guilty by the appellate court.

4. Mr. B.K. Dubey, learned Counsel for the petitioner submits that the departmental proceeding was initiated against the petitioner simultaneously while the criminal trial was pending and the charges both in the criminal trial as well as in the departmental proceeding were one and the same. The departmental proceeding was conducted without enabling the petitioner an adequate and reasonable opportunity to be heard. Furthermore, the petitioner was not served

with a copy of the enquiry Report, nor was he served with any show cause notice in respect of the punishment proposed to be imposed against him. It is further submitted that in the departmental proceedings, there was no charge against the petitioner of misconduct or dereliction of duty and the only charge against him was that a criminal case was instituted and pending against him for certain serious offences. Learned Counsel argues that since on the same set of charges the criminal proceeding was already pending, the departmental proceedings ought to have been kept in abeyance till the conclusion of the criminal proceedings. Learned Counsel argues further that on the same set of evidence of the witnesses in the criminal proceedings, the petitioner was ultimately found not guilty for the charges in respect of any of the offences, by the Appellate Court. As such, the evidences of the witnesses, which were identical in nature as deposed in the criminal proceedings, even if made in the departmental proceeding, cannot lead to any contrary view against the petitioner.

Learned Counsel argues further that although the petitioner's writ application, challenging the order of his dismissal was dismissed by this Court but such order of dismissal of the petitioner's writ application was passed at a time when the criminal proceeding was still pending against him. Referring to the judgment, passed by this Court in the case of *Dhirendra Prasad Mandal v. State of Jharkhand and Anr.* reported in 2008 1 J.L.J.R. 530 and also to the judgment of the Supreme Court in the case of *G.M. Tank v. State of Gujarat and Ors.* reported in : (2006)IIILLJ 1075 SC , learned Counsel argues that the principles of law as laid down in the aforesaid cases is that where the departmental proceedings and the criminal proceedings are based on one and the same charges and on the same set of evidences and the criminal proceedings ends in acquittal of the accused, holding him not guilty of the charges, it would be unjust and unfair to allow the findings recorded in the departmental proceedings to stand. The further contention of the learned Counsel is that the principle of 'No Work No Pay', cannot apply in the case of the petitioner, since the order of his dismissal from his service was not justified and he was illegally restrained from performing his duties, which he could have continued till the age of his retirement and would thereby have earned his salary for the said period. It is further contended that the petitioner is at least entitled to notional service for the aforesaid period, for the purposes of

computing the pensionary benefits to which the petitioner was otherwise entitled to.

5. Counter affidavit has been filed on behalf of the Respondents denying and disputing the entire claim of the petitioner. The stand taken by the Respondents is that a criminal case was registered against the petitioner vide Jaldega P.S. Case No. 431 of 1983 for the offences under Sections 109, 120(B) and 342 of the I.P.C. and after concluding the investigation, the Investigating Officer had submitted chargesheet against the petitioner for specific offences for which a criminal case was instituted against him. The petitioner was put under suspension and departmental proceeding was initiated against him. The petitioner was offered adequate opportunity to defend himself but he intentionally ignored the proceedings. The Enquiry Officer conducted the departmental proceedings and recorded the statements of the victims of the case and after hearing the matter at length, he submitted his enquiry report with his findings of guilt against the petitioner. The Disciplinary Authority thereafter considered the evidences and the findings recorded by the Enquiry Officer and on being satisfied, had imposed the punishment of petitioner's dismissal from service by order dated 30.09.1984 and since thereafter, the petitioner did not perform any duty whatsoever and hence, the question of any payment of salary to him for any period after termination of his services does not arise at all. It is further stated that against the order of his dismissal, the petitioner had preferred a writ application before this Court, but the same was dismissed vide order passed in C.W.J.C. No. 2428 of 1998 (R), dated 20.11.1998. The petitioner, therefore, cannot take up the same issue all over again, challenging the order of his dismissal on the grounds, which did not exist on the date when the order of dismissal was passed.

Referring to the judgments passed in the aforesaid cases relied upon by the learned Counsel for the petitioner, learned Counsel for the Respondents submits that neither of the cases would apply to the facts of the present case as the facts of the cases in both the judgments are distinguishable from the facts of the present case. Learned Counsel would explain that in the case of Dhirendra Prasad Manal (Supra), the trial court in the criminal proceedings had recorded finding of acquittal in favour of the accused-petitioner, namely, Dhirendra Prasad Mandal. Such

finding of the criminal court was recorded even at the time when the disciplinary proceeding was pending against him and the disciplinary authority ignored the findings of the trial court in the criminal proceedings. Learned Counsel adds that similarly in the case of G.M. Tank (Supra) also, it was during the pendency of the proceedings, challenging the order of dismissal from service, that the Court in the criminal trial had recorded its finding of acquittal in favour of the accused-petitioner. On the contrary, in the present case, no finding was recorded by the trial court either during the pendency of the departmental proceeding or on the date when the order of punishment by way of dismissal from service was passed against the petitioner in the departmental proceedings or even when the proceedings challenging the order of dismissal was pending. Furthermore, in the criminal proceeding, the trial court had held the petitioner guilty of the charges and had sentenced him to imprisonment, although, much later, the order of conviction and sentence as passed by the trial court in the criminal proceeding was set aside by the High Court in Appeal.

6. From the rival submissions, the facts which emerge are:

(i) That a criminal case for the offences under Sections 376, 109 and 120B of the I.P.C. was registered against the petitioner and his senior in Office in the year 1983. While the senior was made the principal accused for the offence under Section 376 of the I.P.C., the petitioner was charged with, for having criminally conspired and abetting the commission of rape upon the prosecutrix.

(ii) On the charge of criminal misconduct, criminal case was instituted against the petitioner. Thereafter, a departmental proceeding was also initiated against the petitioner. The petitioner was given ample opportunity to participate in the departmental proceeding but he preferred not to participate and hence, the departmental proceedings continued ex parte against the petitioner.

(iii) On the basis of the evidences adduced by the witnesses in the departmental proceeding, the enquiry Officer had found the petitioner guilty of the charges. Accepting the findings of the Enquiry Officer, the disciplinary authority imposed the punishment of the petitioner's dismissal from service. This order was passed on 13.09.1984.

(iv) The petitioner challenged the order of dismissal before this Court, which was dismissed both by the learned Single Judge as well as by the Division Bench of this Court and thus, the order of dismissal attained finality.

(v) In the criminal case, which came to be decided after about 13 years, the petitioner was found guilty of the charges of criminal conspiracy and abetment and was sentenced to 10 years' imprisonment by judgment dated 13.06.1997 passed by the trial court.

(vi) The petitioner's appeal against the judgment of his conviction and sentence was disposed of after about 11 years' later. The appellate court on appreciation of the evidences recorded its finding and judgment of acquittal and set aside the judgment of conviction and sentence as passed against him by the trial court.

7. It is obvious from the above facts and as per the ratio decided by the Supreme Court in the case of G.M. Tank (Supra), though in the light of the acquittal, the order of dismissal of petitioner from service, which was based on the same set of facts and evidences, cannot reasonably be sustained but it has also to be borne in mind that until such acquittal, there was no reason to hold the dismissal of the petitioner from service, to be erroneous. As such, any relief in terms of money can be awarded only with effect from the date of acquittal, which in the instant case is the date of judgment passed in the Cr. Appeal No. 119 of 1997(R) by the appellate court on 19.04.2006. Prior to this date the petitioner had already attained the age of his superannuation on 13.11.2005. Under the aforesaid circumstances, in my opinion, the petitioner is not entitled to any monetary relief for the period after the date of his dismissal from service on 13.09.1984, till the date when the judgment of acquittal was passed by the appellate court on 19.04.2006. The petitioner shall however, be entitled to notional service for the period since after his dismissal from service till the age of his superannuation for the purposes of computing the pensionary benefits.

8. With these observations this writ application is disposed of.