

UNION OF INDIA AND ORS.

v.

JAIPAL SINGH

NOVEMBER 3, 2003

[DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.]

Service Law :

Back wages—Government servant convicted by trial court of an offence u/s 302/34 IPC—Dismissal from service—On appeal, conviction set aside—Writ petition by employee seeking reinstatement and full back wages—Allowed by High Court—Held, though in the event of prosecution at the behest or by the department itself perhaps different considerations may arise, if an employee or a public servant got involved in a criminal case and if after initial conviction by trial court he gets acquittal on appeal subsequently, 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—Although, the employee has to be reinstated in service for the reason that the earlier discharge was on account of criminal proceedings and conviction only, yet department will be well within its rights to deny back wages to the employee for the period he was not in service—Department cannot be made liable to pay for the period for which it could not avail of the services of the employee—Employee will be entitled to back wages from the date of acquittal and except for the purpose of denying him actual payment of back wages, that period also will be counted as period of service without any break.

Ranchhodji Chaturji Thakore v. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar (Gujarat) and Anr., [1996] 11 SCC 603, relied on.

Constitution of India, 1950 :

Articles 136 and 141—Held, an order rejecting a special leave petition at the threshold without detailed reasons therefor does neither constitute any declaration of law by Supreme Court nor a binding precedent—Precedent.

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8565 of 2003.

From the Judgment and Order dated 30.10.2001 of the Punjab and Haryana High Court in C.W.P. No. 12929 of 1999.

B Raju Ramachandra, Additional Solicitor General, R.C. Verma, Mukesh Verma, Mrs. Sushma Suri and B.V. Balaram Das for the Appellants.

Ranbir Singh Yadav for the Respondent.

The following Order of the Court was delivered :

C Leave granted.

The above appeal has been filed against the order of the Division Bench of the High Court of Punjab and Haryana and Chandigarh dated 30.10.2001 in CWP No. 12929 of 1999 whereunder the Division Bench has allowed the writ petition filed by the respondents and granted relief, as prayed for, directing re-instalment of the respondent with full back wages and consequential benefits. The respondent was involved in a criminal case and he was charge-sheeted for an offence under Section 302 read with Section 34 of the IPC along with his brother and though he was convicted by the learned Additional Sessions Judge, Rewari for the same by a judgment dated 05.03.1997, on further appeal, before the High Court, the Division Bench of the High Court returned a verdict of acquittal. As a consequence thereof, since, he was not re-instated inspite of the order of acquittal, he moved the High Court and obtained orders, as noticed supra. Aggrieved, the appellants have come before this Court.

F Heard Mr. Raju Ramachandran, learned Additional Solicitor General appearing for the appellants, who placed strong reliance upon the decision of this Court in [1996] 11 SCC 603: *Ranchhodji Chaturji Thakore v. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar (Gujarat) and Anr.* wherein this Court, in a case identical to the facts of the present case, has chosen to order only re-instatement but denied back-wages on the ground that the department was in noway 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

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judgment of the very same High Court dated 19.07.2001 in CWP No. 10201 of 2000. Learned counsel for the respondent, by inviting our attention to the judgment of the High Court in that case contended that on 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 re-instatement and back wages was contested by the authorities before this Court.

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 therefore does not constitute any declaration of law by this Court or constitute a binding precedent. Per contra, the decision relied upon for the appellant is one on merits and for reasons specifically recorded therefore and operates as a binding precedent as well. On going through the same, we are in respectful agreement with the view taken in [1996] 11 SCC 603 (supra). If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest or by department itself, perhaps different considerations 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 re-instatement cannot be sustained and the respondent has to be re-instated, 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 in so far as it directed payment of back wages are liable to be and is hereby set aside.

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

A break. The re-instatement, if not already done, in terms of the order of the High Court will be done within thirty days from today.

The appeal is allowed and disposed of on the above terms.

R.P.

Appeal allowed and disposed.