

Corp. Mithilesh Kumar @Mithilesh Singh

v.

Union Of India

(Supreme Court Of India)

HON'BLE MR. JUSTICE DALVEER BHANDARI HON'BLE MR. JUSTICE DEEPAK VERMA

Corp. Mithilesh Kumar @Mithilesh Singh v. Union Of India

Civil Appeal No. 9601-9602 Of 2010 (@ Special Leave Petition(C) No. 8440-8441 Of 2009) | 09-11-2010

1. Delay condoned.

2. Leave granted.

3. Heard learned counsel for the appellant and learned Additional Solicitor General for the respondent- Union of India.

4. Brief facts which are necessary to dispose of these appeals are recapitulated as under :

The appellant was enrolled as Combatant Member of the Indian Air Force on 12.09.1986.

The appellant was convicted in a criminal case under Sections 302/324/148/149 of the Indian Penal Code and was awarded life imprisonment by the trial Court and consequently the appellant was removed from service by the Chief of Air Staff on 22.03.1994.

The appellant filed a Writ Petition under Articles 226 and 227 of the Constitution of India with a prayer to quash the Order of Removal dated 28.03.1998 and that the same be declared as illegal, violative of rules and against the principles of natural justice. The appellant also filed an appeal against his conviction and he was acquitted by the High Court on 22.02.2007. On his representation, the appellant was reinstated in service with effect from 09.04.1994 vide order dated 30.10.2007 without back-wages. It may be pertinent to mention here that the appellant's initial term of engagement was for 20 years with pensionary benefits. Admittedly, this period of initial term of 20 years was also over.

5. The short grievance articulated by the appellant was that alongwith reinstatement, he should have been given back-wages and consequential relief. The appellant failed to place reliance on any judgment of this Court to support his submission.

6. Ms.Indira Jaisingh, learned Additional Solicitor General appearing for the Union of India has submitted that the impugned judgment of the High Court requires no interference and the legal position as focused by the appellant is no longer res integra. She placed reliance on the judgment of this Court in Ranchhodji Chaturji Thakore Vs. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar (Gujarat) & Anr., (1996) 11 SCC p.603. In this case also the appellant was convicted under Section 302 read with Section 34 of the I.P.C. and on that basis he was dismissed from the service. The appellant approached the High Court by filing an appeal against the order of conviction and in that appeal he was acquitted of the offence. The respondent had reinstated the appellant in service but denied the back-wages. This Court examined this position and observed that

"...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 had 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....".

7. Learned Additional Solicitor General has also placed reliance on a judgment of this Court in Union of India & Ors. Vs. Jaipal Singh, (2004) 1 SCC p.121. In this case also the initial conviction was converted into acquittal by the trial Court. This Court observed that

"...if 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...."

8. Reliance was also placed on the decision in Baldev Singh Vs. Union of India & Ors., (2005) 8 SCC p.747. This Court has reiterated the same principle that merely because there has been an acquittal does not automatically entitle the appellant to get the consequential benefits.

9. In view of the consistent legal position, we cannot find any fault with the impugned judgment of the High Court. The appeals, being devoid of any merit are, accordingly, dismissed. The parties are directed to bear their respective costs.

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