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(2008) 117 FLR 484

Calcutta High Court

Case No: W.P.S.T. No. 1298 of 2001

Durga Das Pandey	APPELLANT
Vs	
State of West Bengal and Others	RESPONDENT

Date of Decision: Jan. 24, 2008

Acts Referred:

- Penal Code, 1860 (IPC) - Section 161

Citation: (2008) 117 FLR 484

Hon'ble Judges: Prasenjit Mandal, J; K.J. Sengupta, J

Bench: Division Bench

Advocate: Piush Chaturvedi, for the Appellant;

Final Decision: Allowed

Judgement

K.J. Sengupta and Prasenjit Mandal, JJ.
Leave given to file Supplementary Affidavit and I he same is kept with record. In spite of service, none appears to oppose this application.

This application is directed against the judgment and order dated 28th September, 2001. By the judgment and order impugned, the applicant''s application, for granting promotional benefit on reinstatement, after order of dismissal being set aside and consequential benefits for promotion order, was rejected.

2. The short fact of the case, for which the application was filed before the learned Tribunal is set out hereunder:

The applicant was appointed as Clerk-cum-Typist on 12th February, 1965 by the Deputy Director of Agriculture, Bankura Range. He was implicated in a criminal prosecution on or about 1972 and consequent thereupon, he was placed under suspension. The charge in the criminal prosecution was u/s 161 of the Indian Penal Code and he was ultimately

convicted. Naturally, the applicant was dismissed from services on 21st June, 1983. On appeal against the aforesaid conviction, this Court in Criminal Appellate jurisdiction was pleased to set aside the order of conviction, and the applicant was acquitted on merit. Naturally, the applicant was reinstated in services on 10th December, 1991. The applicant, on being reinstated, was continuously making representations for granting promotion to the next post of Upper Division Clerk, which is an automatic one in course of service, with effect from 1st April, 1981, as if there has been neither order of dismissal nor any order of conviction.

3. According to the applicant, all blots were removed and he should be treated as if he were in service continuously. The department concerned on reinstatement, treated the entire period as on duly, however, no payment was made.

The learned Tribunal has relied on a decision of the Supreme Court, rendered in the case of Dr Ramesh Chandra Tyagi Vs. Union of India (UOI) and Others, and did not grant any relief of promotion observing that order of reinstatement was preceded by order of acquittal in the criminal proceedings and docs not give him any right of promotion automatically. During pendency of the present application, the applicant has been granted promotion, as he was asking for, in 2002. Subsequent development has been brought on record by filing Supplementary Affidavit.

Learned Counsel for the applicant contends that the learned Tribunal has applied incorrect position of law. The Supreme Court decision relied on by the learned Tribunal was in a case of promotion by way of selection. Considering difficulty and further administrative chaos because of selection process followed by appointment in favour of other candidates, order of promotion was not granted when it had fallen due, as if he was not dismissed. He submits that in this case, promotion is an automatic one and such order of promotion should have been granted retrospectively with effect from 1st April, 1981, when his immediate junior had got promotion, and all consequential benefits should have been given. He submits that in. this case, the decision rendered in the case of Sulekh Chand and Salek Chand Vs. Commissioner of Police and Others, will be applicable.

4. We have considered the facts of this case and also heard the learned Counsels submission. We find there is some substance in the submission of the learned Counsel for the applicant. In this case, the applicant is expected to get promotion from date on which his immediate junior got promotion and this is a promotion on 1:1 basis and not by way of selection. The judgment rendered in the case of R. Veerabhadram Vs. Govt. of A.P., , relied on by the learned Tribunal was rendered on fact where the dismissed employee subsequently reinstated, was claiming for promotional post which was to be granted by way of selection. During the period when he remained dismissed, the selection process was undertaken and the employee concerned was not in service. Though he was reinstated subsequently, considering administrative difficulty, the promotion order was not granted retrospectively. Had it been so, there has been a

serious difficulty as far as other employees are concerned.

5. In this case, the promotion is on 1:1 basis and there is no selection process. Therefore, the ratio decided in the case of Sukkh Chand and Salek Chand (supra) will be apposite. Hon"ble Supreme Court observed in that case that once the acquittal was on merit, necessary consequence would be that the delinquent is entitled to reinstatement as if there is no blot on his service and the need for the departmental enquiry is obviated. It is settled law that in case of acquittal on technical ground, the authority concerned can conduct departmental enquiry on the self-same allegations and take appropriate disciplinary action, but not in a case where the acquittal, was on merit.

6. Here is the identical case. The applicant was acquitted on merits by the High Court. Therefore, the applicant was in service, as if there is no stigma nor blot and he was deemed to have been illegally and unduly kept out of service, On reinstatement, he was and still is entitled to get his promotion. The learned Tribunal _did not consider this matter in the aforesaid direction. We, therefore, cannot uphold this judgment and order of the learned Tribunal,

7. Accordingly, the impugned judgment and order of the learned Tribunal is set aside, We hold that the applicant is entitled to get promotion order with effect from 1st April, 1981, when it had fallen due and he will get this order of promotion notionally, and no payment will be made for this promotional order till his dale of reinstatement, i.e. upto 1991. During this period, the applicant will not be entitled to get any pecuniary benefit because he did not work at all and he was kept out of employment and unless any one works, he cannot get anything on promotion. However, from the date of reinstatement in 1991, till the date of getting the promotion in 2002, he will get pecuniary benefit @ 50% of the salary and he will also get all seniority benefit, as if he was in promotional post with effect from 1st April, 1981. Such payment, as aforesaid, shall be made within a period of three months from the dale of communication of this order, in our view, on reinstatement the applicant should have been accommodated in any supernumerary post, when the post was not available, as his right was taken way by way of illegal action of dismissal.

Thus, this application is allowed. There will be no order as to costs.