

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (S) No.83 of 2016

Mahendra Kumar Sahu, S/o Shri K.R. Sahu, aged about 53 years, Ex-Head Constable (Radio), Jagdalpur, R/o Near Jain Mandir, Dongargaon, District Rajnandgaon (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Home Department, Mahanadi Bhawan, Mantralaya, New Raipur (C.G.)
2. The Director General of Police, Chhattisgarh Police Headquarter, Raipur (C.G.)
3. The Additional Director General of Police (Radio), Chhattisgarh Police Headquarter, Raipur (C.G.)
4. The Assistant Inspector General of Police (Radio), Police Headquarter, Raipur (C.G.)
5. The Superintendent of Police, Durg (C.G.)

---- Respondents

For Petitioner: Mr. Goutam Khetrapal, Advocate.

For Respondents / State: -

Mr. Ravi Kumar Bhagat, Deputy Government Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

04/01/2022

1. This is the second round of litigation between the parties as by order dated 12-2-2015 passed in W.P.(S)No.2219/2005, this Court directed the Superintendent of Police (Radio), Bhilai to consider the case of the petitioner in terms of Regulation 241 of the Chhattisgarh Police Regulations on the ground of the petitioner's subsequent acquittal from criminal charges by the jurisdictional criminal court. After consideration, the competent authority has rejected his claim by order dated 13-4-2015 against which he filed appeal and by the impugned



order dated 9-12-2015, the appellate authority has dismissed his appeal which has been called in question in the instant writ petition.

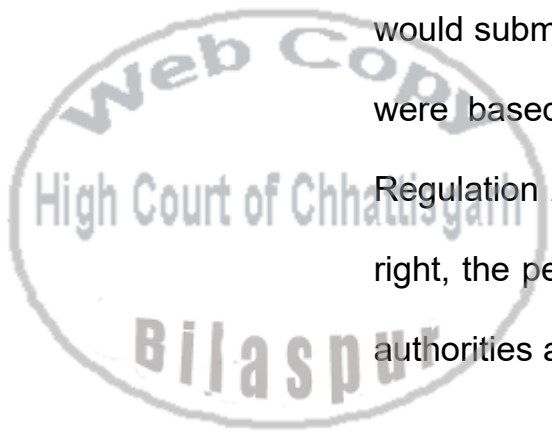
2. The petitioner was appointed on the post of Constable and was posted at Jagdalpur. On 1-12-1994, the petitioner's wife committed suicide and consequently, offence under Sections 306 & 498A of the IPC was registered against the petitioner and he was charge-sheeted in that case before the jurisdictional criminal court. Meanwhile, on 26-4-1994, the respondent i.e. the then State of Madhya Pradesh initiated disciplinary proceedings and served charge-sheet to the petitioner for violation of Regulation 64(11) of the Madhya Pradesh Police Regulations to which he submitted reply and ultimately, after completion of enquiry, he was terminated by order dated 28-2-1995 against which he preferred appeal, but the appeal was also dismissed by the appellate authority by order dated 1-6-1995 against which he preferred mercy petition, but the competent authority directed him to prefer mercy petition after decision of the trial Court and the mercy petition was disposed of by order dated 18-6-1996. Ultimately, the petitioner was acquitted from criminal charges on 28-5-1997 and thereafter, he repeated his mercy petition on 9-6-1997 before the Director General of Police which was rejected on 6-9-1997. (Against the order of acquittal, appeal preferred by the State being Criminal Appeal No.2096/1997 was dismissed by this Court on 15-1-2014.) The order dated 6-9-1997 dismissing the mercy petition was assailed by the petitioner by preferring W.P.(S)No.2219/2005 which was partly allowed by this Court by order dated 12-2-2015 directing the Superintendent of Police concerned to consider the case of the petitioner for reinstatement in the light of Regulation 241 of the Chhattisgarh Police Regulations, but by order dated 13-4-2015 the





Superintendent of Police concerned has rejected the representation maintaining the order dated 7-4-1995 dismissing the petitioner from police service. Against the order dated 13-4-2015, the petitioner preferred appeal before the appellate authority which has been dismissed on 9-12-2015 by the Additional Director General of Police against which this writ petition has been preferred.

3. Return has been filed controverting the averments made in the writ petition stating that no case is made out for interfering with the order dated 13-4-2015 and the order dated 9-12-2015 passed by the disciplinary authority as well as by the appellate authority.
4. Mr. Goutam Khetrapal, learned counsel appearing for the petitioner, would submit that departmental enquiry and criminal proceeding, both, were based on identical and similar facts therefore in the light of Regulation 241 of the Chhattisgarh Police Regulations, as a matter of right, the petitioner is entitled for reinstatement and orders of both the authorities are liable to be set aside.
5. Mr. Ravi Kumar Bhagat, learned Deputy Government Advocate appearing for the State / respondents, would submit that the petitioner was subjected to departmental enquiry for breach of Regulation 64(11) of the Chhattisgarh Police Regulations, whereas in criminal case, he was charged for offence under Sections 306 & 498A of the IPC, therefore, it was based on quite different set of facts, neither similar nor identical, as such, Regulation 241 of the Chhattisgarh Police Regulations has rightly been made applicable by both the authorities and as such, the petition deserves to be dismissed.
6. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record



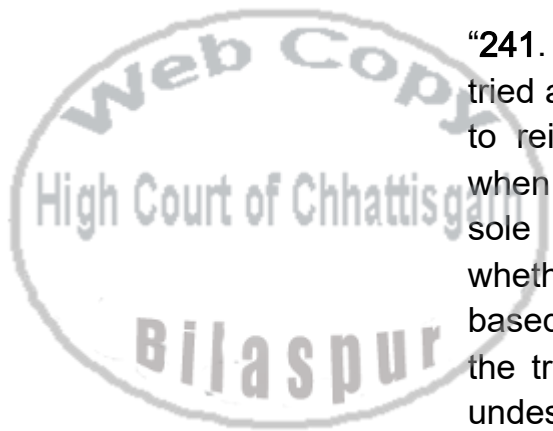


with utmost circumspection.

7. In the first round of litigation, the order of the Director General of Police on mercy petition, dated 6-9-1997 was set aside and the matter was remitted to the disciplinary authority to consider the case of the petitioner in the light of Regulation 241 of the Chhattisgarh Police Regulations, as he has been acquitted from the charges under Sections 306 & 498A of the IPC.
8. In order to consider the plea as to whether the petitioner is entitled for the benefit of Regulation 241 of the Chhattisgarh Police Regulations, it would be appropriate to notice Regulation 241 of the said Regulations which states as under: -

“241. Cases of acquittal When a police officer has been tried and acquitted by a criminal court, he must as a rule be reinstated. He may not be punished departmentally when the offence for which he was tried constitutes the sole ground of punishment. If, however the acquittal, whether in the court of original jurisdiction or of appeal was based on technical grounds. Or if the facts established at the trial show that his retention in Government service is undesirable, the Superintendent may take departmental cognizance of his conduct, after obtaining the sanction of the Inspector-General.”

9. A careful perusal of Regulation 241 of the Chhattisgarh Police Regulations would show that it is an exception to the rule applicable to the police force providing that once an employee has been acquitted by the criminal court, as a matter of right, he should be reinstated in service and he may not be punished departmentally when the offence for which he was tried constituted the sole ground of punishment. However, Regulation 241 also carves out a caveat that if the order of acquittal is based on technical grounds or if the facts established at the trial show that his retention in Government service is undesirable, the Superintendent may take departmental cognizance of his conduct,





after obtaining the sanction of the Inspector General.

10. The provisions contained in Regulation 241 of the Chhattisgarh Police Regulations came up for consideration before the Full Bench of the M.P. High Court in the matter of Harinarayan Ramratan Dubey, Khandwa v. State of Madhya Pradesh and others¹ in which the scope and ambit of Regulation 241 was considered and it has been held as under: -

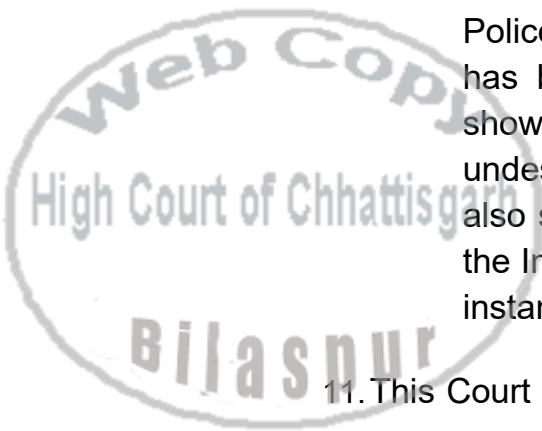
“The regulation thus prohibits departmental punishment for the offence of which an officer has been acquitted by a competent Court. It however makes an exception in the case where acquittal was based on technical grounds. But the exception itself is made subject to a condition precedent that no departmental enquiry should be held without obtaining the sanction of the Inspector General of Police. Another provision in the para is that when an officer has been acquitted but the facts established at the trial show that his retention in Government service is undesirable, departmental action can be taken; but there also subject to the condition precedent that the sanction of the Inspector General of Police must be obtained in the first instance.”

11. This Court also in the matter of Pohari Sharan Pandey v. State of MP (now CG) and the Superintendent of Police² has considered the scope and ambit of Regulation 241 of the Chhattisgarh Police Regulations and held as under: -

“14. In the case in hand the charge in the criminal case as well as in the departmental enquiry was one and the same. The alleged forged police rojnamcha sanha was produced before the Magistrate. Shri A. H. Khan, the then Incharge was also examined and cross examined. The Magistrate had found that the witness Shri P.R. Sao had admitted the alleged forged bills as genuine. The then S.D.O.(P) Shri G.R. Shrivastava also supported the case of the petitioner and the criminal Court found that the prosecution was lodged on account of the malice on the part of the Police Station Incharge Shri A. H. Khan towards the petitioner. In the departmental enquiry Shri P.R. Sao and Shri A.H. Khan

1 1975 MPLJ 429

2 2007 LawSuit(Chh) 118





were also examined. The then S.D.O.(P) was not examined, under whom the petitioner had actually worked, at the relevant time but other S.D.O.(P) Shri P. N. Awasthi was examined. Thus, it is found that the evidence and the documents produced before the criminal Court, as well as before the enquiry authority, were almost the same, except that some new witnesses like Shri P.N. Awasthi, S.D.O.(P), who was not S.D.O.(P) at the relevant time, were examined in the departmental enquiry. The petitioner is entitled to the benefit under Regulation 241 of the Regulations, which is statutory in nature. Regulation 241 clearly mandates that when a police officer has been tried and acquitted in a criminal Court, he must, as a rule, be reinstated. He may not be punished departmentally when the offence for which he was tried constitutes the sole ground of punishment. In the case of acquittal on technical grounds, the departmental cognizance of misconduct may be taken after obtaining the sanction of the Inspector General of Police. In the present case there was clear cut exoneration and there was no finding against the petitioner that he was undesirable in service.

15. As a result, and for the reasons mentioned herein above, the review application is allowed. The petitioner is entitled to the reinstatement in service without consequential benefits, except back wages.”

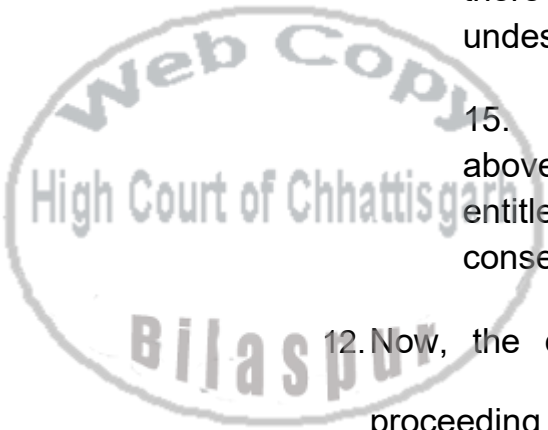
12. Now, the question would be, whether both in the departmental proceeding and in criminal proceeding charges were one and same set of allegations?

13. The petitioner has been charged for violation of Rule 64(11) of the Chhattisgarh Police Regulations vide Annexure P-2 on 26-4-1994.

Operative portion of the charge-sheet states as under: -

मृतका द्वारा लिखे गए पत्रों से एवं लक्ष्मीछाया द्वारा जगदलपुर से दिनांक 13-8-92 को आरोपी को, जब वह में इंदौर में थी. लिखे गए पत्र से एवं जाँचकर्ता अधिकारी की रिपोर्ट से यह पाया जाता है कि आरोपी के घर, शादी के पूर्व, जब वह अकेला रहता था तो उसका बबली उर्फ लक्ष्मीछाया से प्यार था और इसी कारण आरोपी के घर, आना जाना भी था। शादी के बाद भी, आरोपी के घर, बबली उर्फ लक्ष्मीछाया का आना जाना बना रहा और उससे प्यार भी रहा तथा अवैध संबंध भी रहे। इसके बलावा आरोपी द्वारा, अपनी पत्नी मृतका सीमा साहू के चरित्र पर शंका की गई।

इन सभी कारणों से उत्प्रेरित होकर एवं मानसिक रूप से आरोपी के द्वारा मृतका को प्रताडित करने के कारण उसके द्वारा आत्म-हत्या की गई। जिसके





लिए आरोपी ही जवाबदार है ।

आरोपी के द्वारा पुलिस विभाग जैसे अनुशासित बल में रहते हुए शादी के पहले बबली उर्फ लक्ष्मीछाया से प्यार किया गया और मृतका श्रीमती सीमा साहू से शादी होने के पश्चात् भी, शादी-शुदा होते हुए भी, उस प्यार को कायम रखा गया , जिसके कारण बबली उर्फ लक्ष्मीछाया का, आरोपी के घर, शादी के पहले और शादी के बाद भी आना-जाना बना रहा तथा शादी के पूर्व एवं बाद में उससे अवैध संबंध रहे । आरोपी के द्वारा अपनी पत्नी के चरित्र पर भी शंका की गई, जिससे मृतिका सीमा साहू द्वारा इन सभी कारणों से उत्प्रेरित होकर मानसिक प्रताड़ना के कारण आत्म-हत्या की गई ।

अतः मैं डी.आर. कोरी, पुलिस अधीक्षक, रेडिया, भिलाई जोन, भिलाई, आरोपी निलंबित प्रधान-आरक्षक, (रेडिया)-81, महेन्द्र कुमार साहू के विरुद्ध विभागीय-जाँच करने हेतु निम्नांकित आरोप लगाता हूँ:-

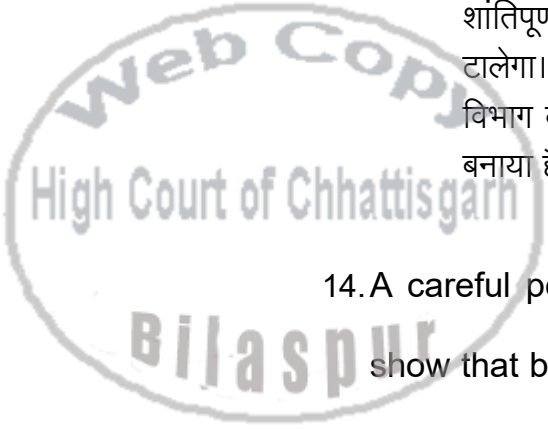
आरोप:

आरोपी ने उक्त कृत्य करके पुलिस रेगुलेशन के पैरा क्रमांक 64. सेवा की सामान्य शर्तों के फिकरा क्रमांक 11 के अंश, "सभी स्तरों के व्यक्तियों के साथ धैर्यता से, दयालुता से एवं सम्यता से व्यवहार करेगा । निजी जीवन में वह शांतिपूर्ण व्यवहार का उदाहरण पेश करेगा एवं सभी प्रकार की पक्षपात को टालेगा।" का उल्लंघन किया और उसके द्वारा कथित कदाचरण कृत्य से पुलिस विभाग की छवि धूमिल किया जाकर, अपने आप को पुलिस विभाग के अनुपयुक्त बनाया है ।

14.A careful perusal of the aforesaid portion of the charge-sheet would show that basically, charge upon the petitioner was that on account of his illicit relationship with Babli @ Laxmichaya, his legally wedded wife Smt. Seema Sahu committed suicide and further charge was that he also tortured his wife which is an offence punishable under Section 498A of the IPC. Though the petitioner was charged under Regulation 64(11) of the Police Regulations, but the main basis was that he abetted his wife Smt. Seema Sahu to commit suicide. Regulation 64(11) of the Police Regulations states as under: -

"64. General Condition of Service.—Every candidate for an appointment in the police should be made acquainted, prior to appointment, with the general conditions of police service, which are as follows:—

(11) He shall act with respect and deference towards all officers of Government, and with forbearance, kindness





and civility towards private persons of all ranks. In private life he shall set an example of peaceful behaviour and shall avoid all partisanship.”

15. Regulation 64 of the Police Regulations is General Condition of Service and sub-regulation (11) provides that in private life every police officer shall set an example of peaceful behaviour and shall avoid all partisanship, meaning thereby, he has to treat his / her family members with respect and he / she shall not enter into any violent behaviour. As such, since charge under Sections 306 & 498A of the IPC was framed against the petitioner and he was tried also, therefore, charge under Regulation 64(11) of the Police Regulations was formulated against him. Now, in criminal case also charge against the petitioner was that he has instigated his wife to commit suicide and also doubted the character of his wife, therefore, she committed suicide which is punishable under Section 498A of the IPC. Charge framed by the Superintendent of Police, Radio, Bhilai Zone, Bhilai, against the petitioner states as under: -

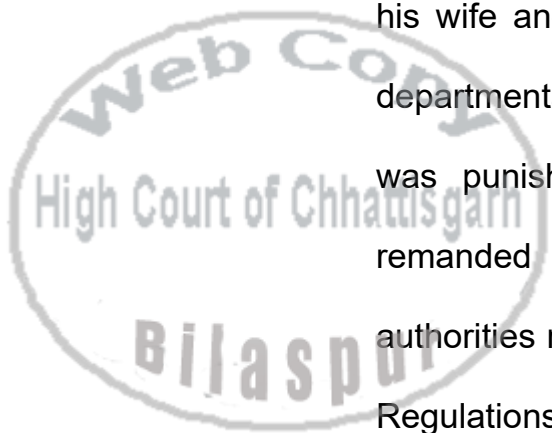
आरोपी ने उक्त कृत्य करके पुलिस रेगुलेशन के पैरा क्रमांक 64. सेवा की सामान्य शर्तों के फिकरा क्रमांक 11 के अंश, “सभी स्तरों के व्यक्तियों के साथ धैर्यता से, दयालुता से एवं सम्यता से व्यवहार करेगा । निजी जीवन में वह शांतिपूर्ण व्यवहार का उदाहरण पेश करेगा एवं सभी प्रकार की पक्षपात को टालेगा।” का उल्लंघन किया और उसके द्वारा कथित कदाचरण कृत्य से पुलिस विभाग की छवि धूमिल किया जाकर, अपने आप को पुलिस विभाग के अनुपयुक्त बनाया है ।

16. Now, the petitioner was firstly terminated departmentally on 28-2-1995 and on 1-6-1995, his appeal was dismissed and mercy petition was filed which was also dismissed with liberty to prefer mercy petition after decision of the trial Court in criminal case in which ultimately he was acquitted on 28-5-1997, thereafter, he filed mercy petition on 9-6-1997 which was dismissed on 6-9-1997. A careful perusal of the judgment of the trial Court in criminal case, dated 28-5-1997 would show that the prosecution has miserably failed to prove the fact of



cruelty against the petitioner. In paragraph 11, learned Sessions Judge has clearly held that the prosecution has failed to prove the charged offences and accordingly proceeded to acquit the petitioner which has been affirmed by this Court in Cr.A.No.2096/1997 on 15-1-2014. As such, the petitioner's clean acquittal on criminal charges had already become final.

17. Thus, from the aforesaid analysis, it is quite established that charges in the departmental proceeding were based on the allegation that the petitioner abetted the commission of suicide of his wife and treated her with cruelty which is punishable under Sections 306 & 498A of the IPC and since he is said to have not maintained good relationship with his wife and is said to have acted violently with his wife, therefore, departmental proceeding was initiated against him and in which he was punished also, departmentally. But when the matter was remanded to consider afresh by order dated 12-2-2015, the two authorities refused to grant the benefit of Regulation 241 of the Police Regulations on the ground that the charges are not one and same in both the proceedings i.e. criminal and departmental and both the charges are different, whereas, as noticed above, though the departmental proceeding is based on Regulation 64(11) of the Police Regulations, but the basis of invoking Regulation 64(11) is criminal behaviour i.e. the offence punishable under Sections 306 & 498A of the IPC for which he was admittedly acquitted on 28-5-1997 honourably by the criminal court and criminal appeal preferred against his acquittal has been dismissed by this Court by affirming the judgment of acquittal. Therefore, there it is clearly established that Regulation 241 of the Police Regulations is squarely attracted, as he has been tried for offence under Sections 306 & 498A of the IPC and



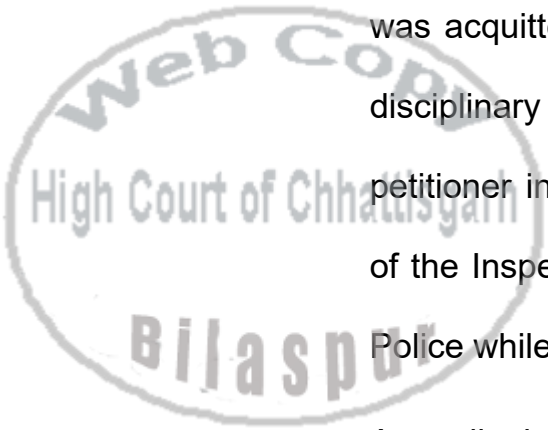


he has been acquitted by the criminal court and his acquittal has been affirmed by this Court in criminal appeal. Thus, as a matter of right, by Regulation 241 he is entitled to be reinstated as he cannot be punished departmentally for the offence for which he has been tried and acquitted clearly.

18. In view of the finding recorded herein-above, charges in criminal trial and departmental proceeding are substantially one and same. Therefore, the argument of Mr. Bhagat, learned State counsel, that charges framed against the petitioner i.e. based on departmental proceeding and criminal trial are different, is hereby rejected.

19. However, it is not the case of the State/respondents that the petitioner was acquitted on technical ground and even it is not the case of the disciplinary authority or the appellate authority that retention of the petitioner in Government service is undesirable, as no prior sanction of the Inspector General has been obtained by the Superintendent of Police while passing the impugned order.

20. Accordingly, the order dated 13-4-2015 passed by the disciplinary authority and the order dated 9-12-2015 passed by the appellate authority, both, are set aside and consequently, the order of the disciplinary authority dated 7-4-1995 terminating the services of the petitioner, is also hereby set aside. The petitioner is entitled to be reinstated with all consequential service benefits except back-wages. However, the issue of back-wages will be considered by the competent authority in accordance with Rule 54 of the Fundamental Rules within 3 months from the date of receipt of a copy of this order. The petitioner is entitled to make submission that he is entitled for full back-wages.





21. The writ petition is allowed to the extent extracted herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma





HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.83 of 2016

Mahendra Kumar Sahu

Versus

State of Chhattisgarh and others

Head Note

Police Constable is entitled to be reinstated as a matter of right by Regulation 241 of the Chhattisgarh Police Regulations on clean acquittal.

एक पुलिस आरक्षक, पूरी तरह दोषमुक्त होने पर, छत्तीसगढ़ पुलिस विनियम के विनियम 241 के उपबंधों के अनुसार पुनः पदस्थ किये जाने का हकदार होगा।

