

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7926 of 2010

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Vijay Kumar Sharma, S/O Late Shyam Bihari Sharma, R/O Village and P.O.- Badi Kalpa, P.S.- Jehanabad, District-Jehanabad, presently working as Clerk Cum Shroff, Indian Bank, Gaya Branch, Gol Pathar, Thakurwari, Tekari Road, Gaya, District- Gaya.

.... Petitioner/s

Versus

1. Indian Bank through Its General Manager, 24, Park Street, Kolkatta, 700016.
2. The Circle Head, Indian Bank, Circle Office, Frazer Road, Patna.
3. The Assistant General Manager, Indian Bank, Circle Office, Frazer Road, Patna.
4. The Deputy General Manager, Indian Bank, Circle Office, 1st Floor, Govind Bhawan, New Dak Bungalow Road, Patna.
5. The Senior Manager, Indian Bank, Gaya Branch, Gol Pathar, Thakurwari, Tekari Road, Gaya.
6. The Branch Manager, Indian Bank, Gaya Branch, Gol Pathar, Thakurwari, Tekari Road, Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S.B.K. Mangalam, Advocate.

For the Respondent/s : Mr. Samjay Kumar Thakur, Advocate.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

7 15-05-2015

Heard learned counsel for the parties.

2. Having regard to the nature of grievance of the petitioner with regard to denial of increment and the benefit of earned leave, this Court does not find anything wrong in the impugned order because both the bank and the petitioner are bound by the inter parte order under which the prayer for reinstatement with back wages was rejected while allowing the claim of the petitioner only in respect of giving continuity in service for the period he had to remain out of service on account

of the order of conviction and sentence passed by the criminal trial court and the consequential dismissal from service on account of such conviction. In this regard it would be also useful to quote the order of this Court dated 24.07.2008 in C.W.J.C. No. 11795/205 which reads as follows:-

"Heard learned counsel for the petitioner and learned counsel for the State.

There are some basic issues which are not in dispute in the present writ application. Petitioner was an employee of the Indian Bank and was holding the post of a Clerk-cum-Shroff. A criminal case came to be filed emerging out of some disputes within the family of the petitioner where he was also made an accused. It was a case of murder and some other offences under the I.P.C.

The trial court found the petitioner guilty and this conviction forced the hands of the respondent Bank to invoke the provisions of section 10(1)(b)(i) of Banking Regulation Act, 1949. Petitioner was therefore, dismissed from service on 17.8.1998.

The criminal matter traveled in appeal to the High Court and the High Court in its wisdom acquitted the petitioner of the wrong doing alleged against him. 2 After acquittal of the petitioner by the High Court he moved the respondent bank for his reinstatement in service by a letter of request dated 20.5.2003. The Bank decided to take him back into

employment and issued a letter in this regard dated 3.12.2003, it is contained in Annexure – 4 to the writ application. This is the impugned annexure in the present writ application also.

Petitioner is aggrieved because there are certain conditions which have been made in this letter while accepting his joining:

1. That the period from dismissal till reinstatement shall not be treated to be in service or as on duty and it shall not be reckoned for any purpose.

2. That the petitioner shall not be eligible for back wages.

The two conditions in the opinion of the counsel for the petitioner are misplaced and in conflict with the settled principle in this regard for such matters.

Learned counsel for the petitioner draws my attention to some of the decisions which have been rendered by the Hon'ble Supreme Court with regard to reinstatement in service after acquittal in case of Dilip Kumar Sharma & Ors Versus State of Madhya Pradesh, 3 AIR 1976 SC 133. Specially emphasis on paragraphs no. 9, 10 & 31 of the judgment. With regard to back wages, he relies on two decisions in this regard which are Brahma Chandra Versus Union of India, AIR 1984 SC 380 and J.K. Synthetics Ltd. Versus K.P. Agarwal (2007) 2 SCC 433.

Learned counsel however appearing on

behalf of the respondent Bank has two assertions to make. He submits that the petitioner was offered reemployment/reinstatement with these two conditions as part and parcel of the offer. He has accepted the above conditions by putting an endorsement on the letter in Hindi that he had read the conditions understood the same and accepts it.

According to him, therefore, the conduct of the petitioner now disentitled him to challenge the impugned order contained in Annexure – 4. He further submits that the ratio laid down in the case of Ranchhodji Chatarji Thakore Versus Superintendent Engineer, Gujarat Electricity Board, AIR 1997, SC 1802, supports their case.

After having heard the two rival contentions and having perused the various issues rendered in the 4 matter. There is no dispute with regard to one aspect of law that once a person who is acquitted by the Superior Court in appeal, after his conviction his taint goes. He can no longer be saddled with the accusations which was leveled against him at the time of investigation or when trial court found him guilty. Acquittal as a matter of right thereafter, entitles the person to reclaim his position in service.

The petitioner therefore, rightly approached the respondents to reinstatement him and the petitioner has to be reinstated at the post and position from where he was dismissed on the ground of conviction. The time interregnum from the date of

dismissal till the date of reinstatement can never be treated as break in service. This aspect of the matter therefore, is held in favour of the petitioner that he has a right to be reinstated to the post. Conditions imposed by the Bank that this period shall not be treated as on duty for any purpose deserves to be interfered with and the same is quashed.

Payment for back wages is yet another issue and it has been the consistent view of the Court including the Hon'ble Supreme Court for the reasons indicated in various orders including the decision of Ranchhodji 5 Chatarji Thakore Versus Superintendent Engineer, Gujarat Electricity Board, AIR 1997(Supra) that the petitioner is not entitled to back wages. The Hon'ble Supreme Court has laid down the parameters of law in such matters very succinctly in paragraph 3 of the decision.

In totality, therefore, the decision of the Bank not to grant back wages to the petitioner is in conformity with the settled principles of law but the decision of the Bank to treat the period the petitioner was dismissed till reinstatement as a break in service is totally misplaced and arbitrary. It is also clarified that with the unfair bargaining position if the petitioner did put an endorsement on the letter of reinstatement that he has read the same and accepted the same, in the opinion of this Court, the same cannot be held out against him, more so, when the law of the land is in his favour in this regard. The

writ application stands allowed to the extent indicated in the earlier part of the order and Annexure – 4 is quashed to the extent indicated above."

3. This Court, in fact, has not been able to understand as to what prejudiced actually the petitioner is going to suffer inasmuch as in the counter affidavit while answering paragraph 23 of the writ application, the respondents, in paragraph no. 9, have clarified that the petitioner will be entitled for fixation of benefit in the revised pay scale. Beyond this, this Court will also not go to say any thing because in terms of the aforesaid inter parte judgment the petitioner would not be entitled for any arrears of salary. The petitioner at best may be entitled for pay fixation in higher pay scale at the stage on which he had been terminated from service. In other words, if the petitioner, at the time of being dismissed from service, had earned certain increments their computation will have to be necessarily made after his being taken back in service in the same pay scale or its replacement pay scale.

4. At this stage, Mr. Mangalam points out that the petitioner has already retired from service, but his period of remaining out of service on account of dismissal has not even been counted for the purpose of payment of retirement benefit. Since,

this issue was never raised by the petitioner in the writ application as also has not been answered by the respondent in the counter affidavit, this Court would not like to make any premature observation, but then this has to be again clarified that once the petitioner was reinstated and the order of this Court had held him entitled for counting the length of the past-service, his such services has to be reckoned to be continuous for the purpose of payment of retirement benefit.

5. Therefore, if now the petitioner would approach for redressal of his grievance only in respect of recalculation of retirement benefit and fixation of salary and payment of retirement benefit, the respondent Bank shall reconsider the case of the petitioner strictly in accordance with the observation made above in this order and also pass necessary orders and as a consequence thereof any amount may become admissible and payable its payment be also made to the petitioner, preferably within a period of six months from the date of receipt of a copy of this order.

6. With the aforementioned observation and direction, this writ application is disposed of.

(Mihir Kumar Jha, J)

Sujit/-

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