IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6696 of 1999

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Krishna Kumar Mishra, son of Bishwanath Mishra, Resident of village-Dhebani, P.S. Brahmpur, District Buxar, at present posted as Peon in the Buxar Branch of Canara Bank.

.... Petitioner/s

Versus

1. The Canara Bank through its Chairman & Managing Director, Canara Bank H.O. Banglore.
2. The Deputy General Manager, Canara Bank, Circle Office, Patna
3. Branch Manager, Canara Bank Buxar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Aditya Narain Singh
With Mr. Jundan Kumar Sinha &
Mr. Rita Verma, Advocates

For the Canara Bank : Mr. Rajan Ghoshrave

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 12-05-2015

1. The petitioner was working as Peon in Currency Chest of Canara Bank, Muzaffarpur. Allegedly, on 23.10.1989, he misbehaved with an Officer of the Bank which led to initiation of a departmental proceeding and institution of a criminal case under Sections 353 and 323/34 of the Indian Penal Code, against him.

2. He was placed under suspension under the orders of the Deputy General Manager of the Bank on 01.11.1989. Charge memo was served upon him. On the same set of facts, which was the basis for institution of the criminal case. The departmental proceeding, however, did not proceed awaiting the result of the

criminal case, which fact is not in dispute.

3. In the criminal case, the petitioner was put on trial and was convicted for the offence punishable under Sections 353, 323 and 341 of the Indian Penal Code by a judgment and order dated 16.9.1993 passed by a Court of Muzaffarpur in Trial No. 106 of 1993. He was, however, asked to execute bond of Rs. 2000/- with two sureties in order to maintain peace in the meantime and with a direction not to repeat such type of offence in future, exercising power under the Probation of Offenders Act,1958.

4. On account of his conviction by the trial Court by judgment and order dated 16.9.1993, the petitioner was dismissed from the service of the Bank with effect from 16.9.1993 by an order dated 7.2.1998.

5. In the meanwhile, the petitioner had preferred an appeal against his conviction and sentence vide Criminal Appeal No.111 of 1993. The appellate Court acquitted him of the charge by a judgment dated 23.1.1999, which has been brought on record by way of Annexure-4 to this writ application. The petitioner, thereafter represented before the Chairman-cum-Managing Director of Bank to reinstate him in service with consequential benefits in the light of the judgment of the appellate Court in the criminal appeal. The Deputy General Manager of the Bank, thereafter, passed an order dated

26.5.1999, reinstating the petitioner in the service of the Bank in view of the judgment of the appellate Court in the criminal case on the following terms:-

> " 1. Shri K.K.Mishra shall be reinstated in the service of the Bank as Sub-Staff with effect from the date of reporting for duties;
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> 2. He shall be fitted in the corresponding stage of salary which he was drawing at the time of dismissal.
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> 3. The period of suspension from 03.11.1989 to 13.01.1991 and the interregnum period from the date of serving the orders of dismissal i.e., 22.02.1998 till the date of his joining the Bank on reinstatement pursuant to this proceedings shall be treated as one not spent on duty and the same shall not be reckoned for any purpose whatsoever.
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> 4. He shall not be eligible for any back wages/arrears of salary on account of revision of salary due to Bipartite settlement/increment during the above period.
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> 5. He shall give an undertaking letter to the Bank assuring good behaviour henceforth."

6. The Bank did not proceed, thereafter, with the departmental enquiry.

7. The petitioner is aggrieved by conditions 2,3 and 4 as quoted above, and the said order of the Deputy General Manager of the Bank dated 26.5.1999 has been challenged in the present writ application to the extent it imposes upon the petitioner, these three conditions.

8. A counter affidavit has been filed on behalf of the Respondent-Canara Bank, stating since the petitioner was acquitted

on being given the benefit of doubt, in the criminal case, the period of suspension and interregnum period between the date of serving the dismissal order and the date for reporting for duty on reinstatement has been treated as not spent on duty and hence the petitioner is not entitled to either any pay and allowance or other benefits for the above period. It is the case of the Bank that it was the petitioner's conduct of involving himself in the crime that was taken into account for his not being continued in the service of the Bank. It has been pleaded in the counter affidavit that the question of back-wages could be considered only if the Bank had taken action by way of disciplinary proceeding and such action of the Bank was found to be unsustainable in the eye of law and he was unlawfully prevented from discharging his duty.

9. There is an important fact for adjudication of the present case, which is not in dispute. The disciplinary proceeding which was kept in abeyance because of the pendency of the criminal case did not resume after the petitioner's acquittal by the appellate Court and the respondent allowed the disciplinary proceeding to die its own death.

10. Mr. Aditya Narain Singh, learned counsel for the petitioner has submitted that back-wages to the petitioner could not be disallowed as his dismissal was based only on his conviction in

the criminal case which was launched at the behest of the Bank officials. He has submitted that since the Bank did not proceed any further in the departmental proceeding, after petitioner's acquittal in the criminal case finally by the appellate Court, there could be no reason for denying the back-wages to the petitioner for the period during which he remained out of service. He has placed reliance upon Supreme court decision reported in (1995) 3 SCC 377 (Deputy Director of Collegiate Education (Admn.) Vs. S. Nagoor Meera), in support of his submission.

11. Learned counsel appearing on behalf of the respondent Canara Bank, on the other hand, has submitted that the petitioner was held guilty in a criminal case by a trial Court and by operation of Regulation 21(3) (a) of Chapter XI of Canara Bank Service Code, the petitioner remained out of service because of his conviction in a criminal case and employer, in the present case Canara Bank cannot be saddled with payment of wages for the period during which the petitioner remained out of service. He has placed reliance upon Supreme Court judgment reported in (2004) 1 SCC 121 (Union of India Vs. Jaipal Singh) and (1996) 11 SCC 603 (Ranchhodji Chaturji Thakore Vs. Supdt. Engineer).

12. I must take note of the fact that the order of dismissal was passed on 07.02.1998 and it was made effective from

a retrospective date i.e. 16.9.1993, which was the date of the judgment and order of the trial Court convicting the petitioner of the offence. Evidently, criminal case was launched at the behest of the superior Officers of the Bank and for the same charge, the said disciplinary proceeding was initiated, though without any reason. In such circumstance, I find substance in submission made on behalf of the petitioner that there cannot be any valid reason for denial of back-wages for the period during which the petitioner remained out of service only on account of his conviction in the criminal trial which subsequently, was reversed and the petitioner was acquitted by the appellate Court of the charge.

13. The Supreme Court in case of Deputy Director Collegiate Education (Admn) Vs. S. Nagoor Meera (supra), dealing with paragraph 9 held as follows:-

> "9... ……………………If, however, the government servant-accusedis acquitted on appeal or other proceeding, the order can always be revised and if the government servant is reinstated, he will be entitled to all the benefits to which he would have been entitled to had he continued in service."

14. Mr. Aditya Narain Singh, learned counsel for the petitioner has also placed reliance upon an order of the Supreme Court reported in (1996) 1 SCC 296 (State of Punjab and others vs. Shambhu Nath Singla and others) in support of his submission.

15. The Supreme Court decision in case of Union of India vs. Jaipal Singh (supra) is distinguishable on facts for the reason that in that case, said Jailpal Singh was charge-sheeted for an offence under Section 302/34 of the Indian Penal Code along with his brother and the criminal case against him was not instituted at the behest of the Department. In the present case, this is an admitted fact that the criminal case was instituted against the petitioner with respect to an occurrence which had taken place in the Bank premises and the First Information Report was lodged by the Bank officials himself. As the occurrence relates to petitioner's conduct in the Bank, a departmental enquiry was also initiated against him. In case of Jaipal Singh (supra), the Supreme Court held as follows in paragraph 4:-

> "4. 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 therefor does not constitute any declaration of law by this Court or constitute a binding precedent. Per contra, the decision relied upon by the appellant is one on merits and for reasons specifically recorded therefor it operates as a binding precedent as well. On going through the same, we are in respectful agreement with the view taken in Ranchhodji 1. If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest of or by the 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 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. Though exception taken to that part of the order directing reinstatement cannot be sustained and the respondent has to be reinstated 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 insofar as it directed payment of back wages is liable to be and is hereby set aside."
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> (emphasis mine)

16. Upon careful reading of paragraph 4 of the said judgment, one can find that the Supreme Court observed that different considerations would have arisen, had the prosecution, which finally resulted in acquittal of the person concerned, was at the behest or by the department itself. Reference of the Supreme Court judgment in case of Ranchhodji Chaturji Thakare Vs. Supdt. Engineer, Gujarat Electricity Board (supra) has been made and relied upon by the Supreme Court in case of Jaipal Singh (supra) and upon consideration of the said judgment, the Supreme Court

observed that different considerations might have arisen had the prosecution been launched at the behest of the department. In the present case, it is evident that the criminal prosecution against the petitioner was launched by the Bank officials/Bank.

17. I am also of the opinion that the order of dismissal could not have been given effect to retrospectively. In any view of the matter, in the facts and circumstances of the case, since the Bank in its wisdom decided not to proceed any further in the departmental proceeding despite the petitioner's acquittal in the criminal case, the petitioner cannot be denied back wages and other consequential benefits upon his reinstatement after his acquittal in the criminal case.

18. The impugned order as contained in Annexure-1 dated 26.5.1999 passed by the Deputy General Manager, Canara Bank to the extent it puts conditions that the petitioner will not be paid his salary for the period mentioned in Condition 3 of the judgment, is set aside. The petitioner shall be entitled for full salary for the period right from the date he was put under suspension till the date of his reinstatement. The condition (condition No.2) that the petitioner shall be fitted in corresponding stage of salary which he was drawing at the time of dismissal also cannot be sustained. It is directed that the petitioner will be placed at appropriate stage of

salary which he would have been entitled to, as on the date of reinstatement, had he not been dismissed from service. The petitioner shall also be entitled to all back wages, arrears of salary on account of revision of salary arising out of Bipartite Settlement/increment during the said period. Fourth condition of the said order dated 26.5.1999 is also quashed. All back wages and arrears of salary must be paid to the petitioner in the light of the present order within a period of six months from the date of receipt/production of a copy of this order.

18. This writ application is allowed accordingly.

(Chakradhari Sharan Singh, J)

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