

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.8148 OF 2011

DATE: 06.09.2016

Between :

Asha Goud S/o.Narsa Goud,
Aged about 61 yrs, Branch Manager (Retd.),
Head Office, Adilabad.

.... Petitioner

And

The District Cooperative Central Bank, Adilabad,
Rep., by the General Manager, Adilabad.

.... Respondent



This Court made the following :

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ORDER :

Petitioner was placed under suspension by order dated 24.10.2002, which was actually served on 30.10.2002 on the ground of his involvement in a criminal case. By order dated 09.08.2003, served on the petitioner on 29.08.2003, suspension was revoked. Petitioner was accused No.4 in C.C.No.287 of 2005 on the file of Special Judicial Magistrate of First Class, Mobile (PCR), Adilabad. Vide judgment dated 06.11.2007, petitioner was acquitted of the charge levelled against him. In the meantime, petitioner retired from service on attaining the age of superannuation, on 31.01.2005.

2. After acquittal, petitioner submitted a representation for treating the period of suspension as on duty and for payment of all consequential benefits including pay and allowances after adjustment of the subsistence allowance paid for the period of suspension and encashment of leave. Neither the pay and allowances were paid nor the encashment was granted to the petitioner. Hence, this writ petition.

3. Heard M. Siva, learned counsel for petitioner and Sri. S.Surender Reddy, learned standing counsel for respondent.

4. Mr. Siva submits that petitioner was placed under suspension on the allegation of his involvement in a criminal case. Thus, as consequence to the acquittal in criminal case, he is entitled to treatment of the entire period of suspension as on duty,

more so, when no disciplinary action was initiated against the petitioner. He would further submit that petitioner is entitled to encashment of earned leave and denial of the same is also illegal.

5. He submits that the issue of grant of earned leave and treatment of period of suspension is regulated by the Memorandum of Agreements entered between the employees and the Management and orders issued by the Management from time to time. The Leave is governed by Chapter-XI of I.T.Award dated 12.03.1970 as modified from time to time. He placed before this Court the relevant awards/agreements codified by the Andhra Pradesh Cooperative Banks' Association. Paragraph-10 deals with Leave Rules. By virtue of proceedings dated 19.09.1991, 180 days of earned leave was allowed for encashment. This limit of 180 days was subsequently revised to 240 days vide orders dated 19.11.1996. Learned counsel would submit that petitioner has accumulated 240 days of earned leave, even if period of suspension is ignored and merely because petitioner was placed under suspension, the entire earned leave cannot be wiped out. In terms of the agreements reached from time to time and orders issued by the management, as a matter of course, an employee is entitled to encashment of earned leave and there is no prohibition for encashment of earned leave merely because an employee is placed under suspension.

6. With reference to the claim for treatment of period of suspension as on duty, Mr. Siva referred to paragraph-12 of the compilation, which deals with disciplinary proceedings. This paragraph is also based on the provisions of I.T. award, dated

12.03.1970. Paragraph 12(ii)(c) deals with payment of subsistence allowance in case an employee placed under suspension was subsequently acquitted.

7. He would submit that petitioner was granted clean acquittal and, therefore, he is entitled to full pay and allowances in terms of above provision. In support of his contention that mere observations in the judgment of criminal Court that the 'charges not proved beyond reasonable doubt' cannot mean that acquittal was not clean and that based on the evidence on record, the nature of acquittal has to be considered, he placed reliance on the decision of the Supreme Court in the case of **Gurpal Singh Vs. High Court of Judicature for Rajasthan**¹.

8. Learned Standing counsel submits that since the trial Court acquitted the petitioner by giving benefit of doubt, it cannot be said that the petitioner is acquitted on merits and therefore, not entitled to treat the entire period of suspension as on duty. He would submit that having regard to his acquittal, the competent authority has treated the period of suspension to the extent admissible as Earned Leave and the balance as extraordinary leave. He would therefore, submit that petitioner is not entitled to full pay and allowances for the period of suspension. Since the petitioner was not acquitted on merits, he is also not entitled to grant earned leave.

9. In the above background of facts, now the issues for consideration are (i) whether the petitioner is entitled for treatment of entire period of suspension as 'on duty' and as a consequence

¹ 2013 (13) SCC 94

entitled for all monetary benefits owing there from?; and
(ii) whether petitioner is entitled for encashment of earned leave ?

10. Ordinarily, when employee is placed under suspension on the allegation of involvement in a criminal case, even if he is acquitted, he would not be able to claim to treat the period of suspension as on duty as a matter of course. It would depend on the service conditions of the employee and on the given facts and circumstances of each case. However, in the instant case, the instructions/memorandum of settlements clearly point out that if the acquittal is clean, but not on the ground of benefit of doubt, the employee is entitled to treatment of period of suspension as on duty and payment of full allowances, after excluding the subsistence allowance already paid. In case the acquittal was on 'benefit of doubt', discretion is vested in the competent authority to determine such portion of pay and allowances as management may deem it proper.

11. Petitioner was prosecuted on the allegation of criminal breach of trust and forgery of documents. After conducting full trial and on appreciation of evidence on record, trial Court held as under:

“30. The counsel for accused 2 to 4 cross examined P.W.4 to say that there is no record showing any payments made by A3 and A4 on behalf of Radha Bai which was admitted by P.W.4, but P.W.4 denied a suggestion that in order protect A1, he is deposing false against A3 and A4. **Since there is no documentary proof that A3 and A4 paid the amounts in the name of Radha Bai,** the version of PW.4, cannot be considered. Admittedly as per procedure, the bank grants loan in the name of society in bulk and it is for the society to select the members

to advance the loans and it is the procedure that they have to take personal bonds and promotes from the individuals and issue pay orders to them to collect the amount from the bank authorities. The bank authorities are only concerned to take the pay orders and as per the identification made by the secretary or president of society, they will issue cheques or amounts to the beneficiaries. ***As per this procedure, it can be said that A3 and A4 who are bank officials are no way responsible for issuing any pay orders in the name of wrong persons. They rely upon the identification of beneficiaries made by society officials. ”***

12. By holding so, in the operative portion of the judgment, trial Court observed as under:

“ whereas accused 3 to 5 are given a benefit of doubt as there is no documentary evidence to prove the case against them.”

13. Thus, it is not case of acquittal by giving benefit of doubt, but it was case of no evidence and a clean acquittal.

14. In the decision relied by Mr. Siva, Supreme Court observed that merely because the trial Court used the word ‘benefit of doubt’, does not *ipso facto* would mean that a person is not acquitted on merits. At this stage, it is useful to extract the observations of the judgment in Para 38 in **Gurpal Singh**. It reads as under:

“38. The trial court also observed that the evidence with regard to “last seen” was fabricated and, therefore, did not inspire confidence. It is also observed that the investigation in the case had not been conducted fairly. The trial court was left with a

definite impression that the evidence had been “doctored”. ***The court categorically observed that “the investigation conducted smacks of bias and prejudice under influence of certain elements inimically placed vis-à-vis the accused”. These observations, in our opinion, would bring the present case within the realm of those cases which are often described as cases of “no evidence”. Merely because the court ultimately used the term that prosecution has failed to prove the case “beyond reasonable doubt” would not raise the stature of the evidence, produced by the prosecution, in this case from the level of being thoroughly unreliable.” (emphasis supplied)***

15. It is not in dispute that no disciplinary proceedings were initiated. Petitioner was placed under suspension only on the ground that he was involved in a criminal case and after acquittal, his suspension was revoked.

16. At this stage, it is appropriate to extract the relevant provisions of Memorandum of Agreement, which read as under:

“Para-12. Disciplinary proceedings:

(ii) (c) If he be acquitted, it shall be open to the management to proceed against him under the provisions set out below in clause (x) and (xi) infra relating to the charges. However, in the event of the management deciding after enquiry not to continue him in service, he shall be liable only for termination of service with three months pay and allowances in lieu of notice. And he shall be deemed to have been on duty during the period of suspension, if any, and shall be entitled to the full pay and allowances minus such subsistence allowance as he has drawn and to all other

privileges for the period of suspension provided that if he be acquitted by being given the benefit of doubt he may be paid such portion of such pay and allowances as the management may deem proper and the period of his absence shall not be treated as a period spent on duty unless the management so direct.”

17. The memorandum of agreement/instructions would clearly show that in case of acquittal on merits, an employee is entitled to treat the period of suspension as on duty and payment of full pay and allowances. Discretion is vested in the competent authority to restrict pay and allowances only in case, acquittal was not on merits, but on “Benefit of Doubt”. In the instant case as noticed above, the acquittal of petitioner was on merits and the word “Benefit of Doubt” was used only in the limited context of declaration that petitioner was not guilty. Thus, petitioner is entitled to treatment of entire period of suspension as on duty and for payment of full pay and allowances.

18. An employee is entitled to accumulate earned leave and at the end of his service, he can seek for encashment of leave earned by him. Provision of earned leave is part of the service conditions of employment. Denial of such encashment has to be supported by conditions of Service or Rules or Regulations or instructions notified by competent authority.

19. In the instant case the compilation placed on record by learned counsel for the petitioner do not disclose that power is vested in the competent authority, by way of memorandum of settlement, to deny encashment of earned leave. On the contrary, the memorandum of understanding reached between the

employees and the Management would provide for encashment of earned leave accumulated to an extent of 240 days in the service. As per the instructions/provisions of the agreements, it appears that there is no restriction imposed on an employee to claim the encashment of earned leave accrued to his credit merely because he was placed under suspension. In the case on hand, this Court need not go into the dispute whether the period of suspension be computed for the purpose of accumulation of earned leave, since as fairly contended by Mr. Siva, petitioner had 240 days earned leave to his credit even after ignoring the period of suspension. No other provision is brought to my notice which empowers the competent authority to deny encashment of earned leave granted. When there is no prohibition for encashment of earned leave, denial of the same amounts to arbitrary exercise of power and authority.

20. Having regard to the above analysis, the action of the respondent-Bank in denying encashment of earned leave and not treating the period of suspension as "on duty" and payment of full pay and allowances amounts to arbitrary exercise of power and without sanction of law.

21. Accordingly the writ petition is allowed. The following directions are issued.

21.1. The respondent-Bank is directed to treat the period of suspension from 30.10.2002 to 29.08.2003 as on duty and shall pay the pay and allowances payable to the petitioner to the said period after adjusting the amount of pay and allowances paid to him.

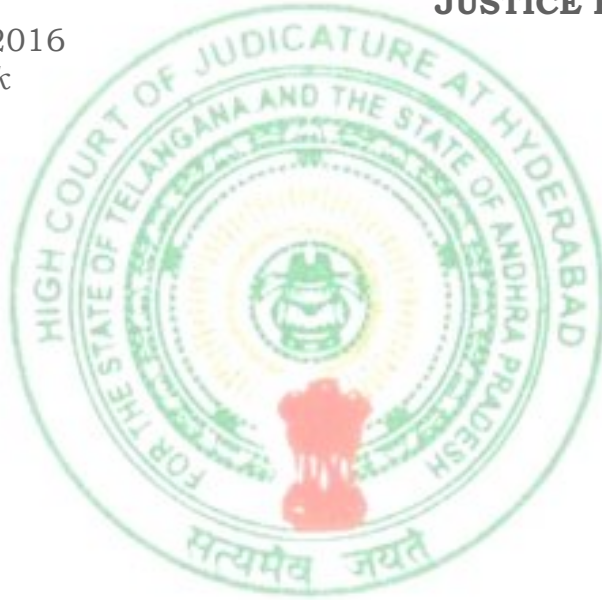
21.2. The respondent-Bank is further directed to release the amount payable towards the encashment of earned leave.

21.3. The arrears of amount due and payable to the petitioner shall be paid within three (3) months from the date of receipt of copy of this order. Any delay in payment of amount beyond three months shall carry an interest of 6% p.a.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

Date: 06.09.2016
Kkm/Rds/tvk

JUSTICE P.NAVEEN RAO



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