

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1361 of 2015
IN
Civil Writ Jurisdiction Case No. 6696 of 1999**

- =====
1. The Canara Bank through its Chairman & Managing Director, Canara Bank, Head Office, Bengaluru.
 2. The Deputy General Manager, Canara Bank, Circle Office, Patna.
 3. Branch Manager Canara Bank, Buxar.

.... Appellants

Versus

Krishna Kumar Mishra Son of Bishwanath Mishra, Resident of Village - Dhebani, P.S. - Brahmpur, District - Buxar.

.... Respondent

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Appearance :

For the Appellants : Mr. Rajan Ghoshrave, Advocate

For the Respondent : Mr. Damodar Prasad Tiwary, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 07-02-2017

Delay of one day is condoned. I.A. No. 5941 of 2015 is allowed.

For an occurrence dated 23.10.1989, a departmental proceeding was initiated and a criminal case was lodged under Sections 353 and 323/34 of the Indian Penal Code. The private respondent, namely, Krishna Kumar Mishra, who is the sole respondent, was put under suspension. The Bank in its wisdom decided to not proceed with the departmental enquiry awaiting the outcome of the criminal case. The trial Court found him guilty under Sections 353, 323 and 341 of the Indian Penal Code vide judgment



and order dated 16.09.1993. However, the employee got the benefit of Probation of Offenders Act and instead of any other sentencing for prison, he was ordered to execute a bond of Rs.2,000/- with two sureties and an undertaking to maintain peace and good conduct.

On the conviction of the private respondent on 16.09.1993, the Bank dismissed him from service with effect from the date of conviction. This order of dismissal cannot be said to be illegal in any manner, because such dismissal on conviction by a criminal Court is permissible in service jurisprudence. Even the Constitution of India has envisaged such a situation.

The private respondent preferred an appeal. The appellate Court acquitted him of the charge vide judgment dated 23.01.1999. Armed with the order of the appellate Court, the private respondent approached the Bank for reinstatement. Reinstatement was ordered in 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;
2. He shall be fitted in the corresponding stage of salary which he was drawing at the time of dismissal.
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.

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.

5. He shall give an undertaking letter to the Bank assuring good behaviour henceforth.”

The private respondent took offence to the conditions laid down in conditions 2, 3 and 4. He decided to file a writ application for quashing of those conditions. The writ was heard. Matter was allowed. The Bank was ordered to extend all reliefs including back wages etc. Aggrieved by such a direction, the Bank is before this Court in appeal.

No doubt, the learned single Judge has taken note of some of the decisions of the Hon’ble Supreme Court for extending the benefit and quashing conditions 2, 3 and 4. However, the learned single Judge committed an error in law by granting back wages and benefits for the period 16.09.1993 till 23.01.1999.

16.09.1993 is the date when the private respondent was found guilty by a criminal Court of law, which led to his dismissal. 23.01.1999 is the date when the appellate Court acquitted him.



Therefore, the period indicated as above cannot be said to be a period for which the Bank can be made liable for payment of salary etc. to the private respondent after his conviction. So long as the conviction of the private respondent remained in force, he cannot be treated to be on duty. Therefore, any order for payment of salary and allowances for this period is unwarranted. The order of the learned single Judge to that extent is required to be modified. So far as reinstatement and other benefits are concerned relating to the seniority etc. is another issue which is not required to be commented upon.

The appeal is allowed to the extent indicated above.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Pawan/-

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