

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.20614 of 2014 (O&M)

Date of Decision:27.09.2017

State Bank of India

... Petitioner

Vs.

Rajinder Kumar Chaudhary and another

... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Ms. Madhu Dayal, Advocate for the petitioner.

Mr. Ashwani Bakshi, Advocate for respondent No.1.

P.B. BAJANTHRI J. (Oral)

In the instant petition, petitioner has sought for quashing of order dated 18.7.2004 (Annexure P-2).

Respondent No.1 was appointed as a clerk in the petitioner-Bank in the year 1982. While he was working, he was placed under suspension on 11.09.1989 on the allegations of certain frauds stated to have been committed by him. With reference to allegations, an FIR was filed on 25.9.1990. Thus, criminal proceedings were launched against respondent No.1 for various offences like Section 420 IPC etc. During pendency of the criminal proceedings, petitioner initiated disciplinary proceedings by issuing charge-sheet on 12.9.2000. Disciplinary proceedings concluded in imposing the penalty of dismissal from service. Respondent No.1 exhausted the remedy of appeal in which he has suffered order before the appellate authority. In the meanwhile, respondent No.1 had filed an application under Section 33-C (2) of the Industrial Disputes Act, 1947 (for short “the Act”) seeking certain relief in respect of subsistence allowance. During pendency

of the application, petitioner and respondent No.1 entered into a compromise. Application filed under Section 33-C(2) of the Act was closed. When things stood thus, respondent No.1 was acquitted in the criminal case on 28.10.2006. Thus, he had a cause of action for the purpose of claiming difference of salary with reference to payment of only subsistence allowance. Consequently, he filed application under Section 33-C(2) of the Act. The application filed on 23.1.2009 was dismissed. Respondent No.1 approached this Court by filing writ petition. In the writ petition, award of the Labour Court was set aside and the matter was remanded to the Labour Court. Labour Court decided respondent No.1's claim on merit and passed an award in his favour. The petitioner is aggrieved by the award passed by the Labour Court dated 18.7.2014. Hence, the present petition.

Learned counsel for the petitioner submitted that respondent No.1 is not entitled for difference of salary during the suspension period on the score that respondent No.1 was placed under suspension with reference to allegations levelled by the petitioner-Bank and not with reference to the filing of FIR and the fact that respondent No.1 was involved in a criminal case. It was further submitted that insofar as disciplinary proceedings are concerned, it has attained finality by imposing the penalty of dismissal from service. Therefore, if respondent No.1 is acquitted in the criminal case, in that event, he is not entitled for difference of salary during the suspension period. Learned counsel for the petitioner relied on para 557 of Sastri Award read with para 17.15 of Desai Award as modified Bipartite settlement dated 8.9.1983 in particularly para-5 relating to subsistence allowance. Having regard to the subsistence allowance stated in para-5, respondent No.1 is not entitled. It was further contended that respondent

No.1's claim is with reference to 521 of Sastri Award. It was further submitted that para 521 is not attracted. In the present case, in particularly para 521 (2) (a) (c) with reference to acquittal read with in not holding inquiry and further respondent No.1 has been acquitted in the criminal case beyond reasonable doubt. Therefore, respondent No.1 is not entitled for difference of salary during the suspension period. Thus, the Labour Court has erred in not appreciating the fact that respondent No.1's case do not fit into para 521 and 557 of the Sastri Award and Bipartite settlement dated 8.9.1983.

Per contra, learned counsel for respondent No.1 submitted that para 521 is applicable since respondent No.1 has been acquitted beyond reasonable doubt. Having regard to the facts of the case, respondent No.1's case do not fall under para 557. In support of respondent No.1's contention that he has been acquitted beyond reasonable doubt, he relied on a decision passed by this Court in Ajmer Lal Pundeer v. Oriental Insurance Co. Ltd. New Delhi and others; 2011 (4) PLR 819 wherein it has been held in para 8 as under:

“8. The argument that the petitioner was acquitted by granting the benefit of doubt and since the same did not amount to honorable acquittal, his suspension period cannot be treated as that of spent on duty, too has no merit in the facts of the present case. In the judgment and order dated 31.01.2009, vide which, the petitioner was acquitted, the Division Bench of this Court observed as under:-

“Similarly, no role has been attributed to Ajmer Lal and Amar Kaur father-in-law and mother-in-law, respectively of the deceased. In fact, appellant Ajmer Lal suffered 30% burn injuries. It seems at the time when Kiran Bala has been set on fire by appellant Sanjiv Kumar, it is Ajmer Lal who came

forward to save her and in the process, he suffered burn injuries. If Ajmer Lal had set Kiran Bala on fire along with appellant Sanjiv Kumar, then there was no need for him to try to extinguish the fire.”

Learned counsel for respondent No.1 further relied on a decision of the Madras High Court rendered in **Ramasamy v. State, rep. By the Inspector of Police, Manamadurai Police Station, Manamadurai, Sivagangai District**; 2013 (3) MLJ (Criminl) 62 wherein in para 21, it has been held as under:

“21. As far as the present case is concerned, the Trial Court in his Judgment in C.c. No.27 of 2007, dated 12.12.2007 in paragraph 10 has crystal clearly observed that PW 1 has only deposed that the accused had spoken indecent/vulgar 'words' but has not uttered what type of words they have employed/used and has come to a resultant conclusion that his evidence does not relate to any criminal act under Section 294 (b) IPC and moreover, PW 1 has not stated anything about the accused A1 to A3, as to whether they intimidated him or threatened him and resultantly, held that the charges under Sections 294(b), 323 and 506 (i) r/w 109 IPC against the petitioner/A1 and other accused have not been proved beyond reasonable doubt and acquitted them under Section 255(1) Cr.P.C. As such, the acquittal of the petitioner/A1 based on 'benefit of doubt' in C.C. No.27 of 2007 on the file the trial Court is only to be construed as one of 'Honorable Acquittal'. Looking at from that angle, the Criminal Revision Petition succeeds.”

Learned counsel for respondent No.1 further relied on a decision passed by this Court in **Shiv Kumar Goel v. State of Haryana and another**; 2007 (1) SCT 739 wherein it has been held in para 5 as under:

“5. It is true that in para 12, learned Special Judge has observed that the benefit of doubt was being given to the

petitioner but the discussion in para 9 leaves no manner of doubt that the petitioner has been acquitted on merit because he was neither imputed a statement of demanding money on behalf of Executive Engineer Sh. J.C. Mittal nor any such allegation was mentioned in the complaint Ex.PB. Even none of the witnesses has stated so. The kingpin of the whole crime appears to be the Executive Engineer Sh. J.C. Mittal who was not even sent for trial by the police. Therefore, it cannot be concluded that the petitioner has been merely given a benefit of doubt. In fact the prosecution had failed to satisfy the requirements of Section 7 of the Prevention of Corruption Act, 1988, by proving the allegations in material particular. The requirement of substantive law has not been satisfied and in such a situation it cannot be accepted that the petitioner has been acquitted by giving him benefit of doubt.”

By referring to the aforesaid judgments, learned counsel for respondent No.1 contended that how beyond reasonable doubt is required to be interpreted. This Court and Madras High Court have held that if the criminal court acquitted a person beyond reasonable doubt, in that event, how the service benefits should be extended. It was further submitted that beyond reasonable doubt alone cannot be read into, it has to be read with reference to the material available on record. In the present case also, respondent No.1 pointed out from para 15 read with para 17 of the acquittal order so as to contend that petitioner is liable to reconsider respondent No.1's claim for extending difference of subsistence allowance for the suspension period.

Heard learned counsel for the parties.

Question for consideration in the present petition whether respondent is entitled to benefit of difference of salary for the suspension period or not with reference to para 557 of the Sastri Award read with para

17.15 of Desai Award as modified Bipartite settlement dated 8.9.1983 in particularly para-5 relating to subsistence allowance is applicable or para 521 of Sastri Award is applicable.

Undisputed facts are that respondent No.1 was placed under suspension on 11.9.1989. Whereas criminal proceedings were launched by filing an FIR on 25.9.1990. Thus, it is evident that suspension is with reference to misdeeds and certain allegations stated to have been committed by respondent No.1 during the course of his employment. Therefore, it is not with reference to criminal proceedings like filing of FIR. Petitioner has initiated parallel proceedings like criminal and disciplinary proceedings. Disciplinary proceedings were concluded in imposing the penalty of dismissal from service and it was affirmed by the appellate authority on 22.7.2004. Respondent No.1 was placed under suspension with reference to disciplinary proceedings. When it has attained finality in dismissing respondent No.1 from service, question of extending any difference of salary for the suspension period do not arise.

Para 557 of Sastri Award read with para 5 of Bipartite Settlement relates to subsistence allowance, it is crystal clear that it is with reference to investigation is not entrusted or taken up by outside agency (CBI), subsistence allowance will be payable. Whereas in the present case, respondent No.1 is seeking difference of subsistence allowance for the suspended period with reference to para 521 (2) (a) (c). Reading of para 521 (2) (a) (c), it is evident that it is with reference to acquittal. Further if the inquiry is not continued or held. Whereas in the present case, respondent No.1 was subjected to disciplinary proceedings and it was concluded in imposing the penalty. Therefore, para 521 (2) (a) (c) is not at all attracted.

Consequently, judgments cited supra with reference to the fact that respondent No.1 was acquitted beyond reasonable doubt and its consideration do not arise.

Full back wages on acquittal cannot be the rule where suspension was ordered for valid consideration as held by the Supreme Court in the case of Krishnakanti v. State of Maharashtra; JT 1997 (3) SC 726 (para-4). If the authority holds that suspension of the employee was not wholly justified, full payment may be denied as held by the Supreme Court in the case of Greater Hyderabad Municipal Corporation v. M. Prabhakar Rao (C.A. No.6014 of 2016; decided on 28.7.2011 (Para-11). Similar view was expressed by the Supreme Court in the earlier decision in the case of Smt. K. Ponnannai v. State of Kerala; AIR 1997 SC 3660.

Accordingly, award passed by the Labour Court dated 18.7.2004 (Annexure P-2) is set aside.

Petition stands allowed accordingly.

27.09.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned Yes/No

Whether reportable Yes/No