

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.9366 of 2016 (O&M)

Date of Decision: 28.03.2017

Kuldip Singh Mand

... Petitioner

Versus

UCO Bank and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. S.S. Toor, Advocate,
for the petitioner.

Mr. K.P.S. Dhillon, Advocate,
for the respondents.

RAJIV NARAIN RAINA, J. (Oral)

1. This petition has been filed seeking directions to quash the order dated March 09, 2016 whereby request of the petitioner for reinstatement and full salary has been wrongly and illegally declined by the respondents. The order Annex P-9 is a detailed order passed by the Deputy Zonal Head who is the disciplinary authority of the petitioner. The Bank refutes the claim and justifies its action on the touchstone of paragraph 557 of Shastri Award and paragraph 17.14 of the Desai Award as partially modified by the provisions of Bipartite Settlement dated September 08, 1983 applicable to the Bank. As regards payment of full salary as requested by the petitioner for the period under suspension the above provisions have been invoked to deny him relief. It is a condition in the award/settlement that where the investigation/inquiry is conducted by an outside agency (i.e. CBI/Police) and the said agency has come to the conclusion to prosecute the employee and the agency submits challans before the Court for trial then

subsistence allowance will be paid as follows:-

“1. For the first six months 1/3rd of the pay and allowance which the workman could have got but for suspension.

2. For the period of suspension if any, thereafter, 1/2^{lf} of the pay and allowances which the workman could have got but for suspension, until the enquiry is over i.e. completion of trial and pronouncement of judgement by honourable court.”

2. It is not disputed that a criminal trial is in progress against the accused petitioner in FIR No.259 dated October 05, 2012 under Section 420/467/468/469/47/120B registered at Dinanagar Police Station, District Gurdaspur and other co-accused for fraudulently preparing and submitting a fake/tampered ration card etc and faking educational certificate to procure promotion etc. in the Bank. Subsequently, the Punjab School Education Board, SAS Nagar, Mohali cancelled the Senior Secondary result of the petitioner vide letter dated March 08, 2013. The petitioner was arrested by Dinanagar Police on October 11, 2012 and suffered jail and was released on bail on November 07, 2012. It may be mentioned that the petitioner had approached this Court under Section 482 Cr.P.C. for quashing of FIR but the application was disposed of on July 20, 2015 with the observations that new Special Investigation Team has been constituted. Therefore, there is no occasion to quash the FIR. Earlier, the Special Investigating Team had submitted its report on February 13, 2014.

3. At the same time, the petitioner has been charge-sheeted on July 01, 2014 to face departmental proceedings. He has filed reply on July 23, 2014. The Bank has filed an affidavit in compliance of the interim orders of this Court.

4. In the application the respondent-Bank has relied on Clause 4 of the Memorandum of Settlement on Disciplinary Action Procedure for Workmen signed between Indian Banks Association and Workman Unions on April 10, 2002, it is clearly mentioned in sub head “Disciplinary Action and Procedure” that:-

“If after steps have been taken to prosecute an employee or to get him prosecuted, for an offence, he is not put on trial within a year of the commission of offence, the management may then deal with him as if he had committed an act of “gross misconduct” or of “minor misconduct”, as defined below; provided that if the authority which was to start prosecution proceedings refuses to do so or comes to the conclusion that there is no case for prosecution it shall be open to the management to proceed against the employee under the provisions set out below in Clauses 11 and 12 intra relating to discharge, but he shall be deemed to have been on duty during the period of suspension, if any, and shall be entitled to the full wages and allowances and to all other privileges for such period. In the event of the management deciding, after enquiry, not to continue him in service, he shall be liable only for termination within three months' any pay and allowances in lieu of notice as provided in Clause 3 above. If within the pendency of the proceedings thus instituted he is put on trial such proceedings shall be stayed pending the completion of the trial, after which the provisions mentioned in Clause 3 above shall apply.”

5. In the face of embargo in Clause 4 above and in the light of the pendency of the criminal trial, the disciplinary proceedings have to be stayed by the Bank itself pending the completion of the trial. The Bank has to keep its hands off the domestic enquiry till the outcome of the criminal case. This rule is actually in favour of the delinquent employee as his defence in the trial will not be prejudiced. Many a writ are filed for this

protection in the face of dual proceedings i.e. departmental and criminal involving life and liberty not to be compelled to reveal defence before evidence is recorded in the trial.

6. In view of this legal position and in the presence of Clause 4 read with the cited provisions of the awards/settlement, the prayer for reinstatement and full salary while under suspension is not found tenable. Interference is not warranted at this stage in discretionary exercise of jurisdiction under Article 226 of the Constitution of India.

(RAJIV NARAIN RAINA)
JUDGE

28.03.2017

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Whether speaking/reasoned *Yes*

Whether reportable *No*