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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 5213 of 2011**

Horendra Giri, aged about 62 years, S/o Devnarayan Dubey, resident of Subhash Ward, Kanker, PS, Tahsil and District Kanker (CG)

---- Petitioner

Versus

1. The Registrar, Co-operative Societies, Chhattisgarh, Raipur, C.G.
2. The Chief Executive Officer, Zila Sahakari Kendriya Bank Maryadit, Raipur (CG)

---- Respondents

For Petitioner	:	Shri Sushobhit Singh, Advocate
For Respondent no.2	:	Shri S. C. Verma along with Shri Durgesh Goyal, Advocates

Hon'ble Shri Justice P. Sam Koshy**Order On Board****08.05.2018**

The case of the petitioner is that he was working with respondent no.2 as a Vyavsthapak and was posted at Gramin Sahkari Sanstha Bhatgaon. While the petitioner was working with respondent no.2, he was charged in three criminal cases for offences under the provisions of Indian Penal Code. He was prosecuted for the offence under Section 409 of IPC and three separate criminal cases were registered as Criminal Case Nos. 466/99, 467/99 & 468/99. The matters were put to trial before the JMFC Mahasamund. All the three criminal cases finally stood concluded by a judgment of acquittal being passed in favour of the petitioner. Against the said judgment of acquittal, the State preferred leave to appeal before the High Court which also stood dismissed. Thus, the three judgments of

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acquittal stood affirmed. Meanwhile, respondent no.2 had vide order dated 15.09.1973 Annexure P-2 terminated the services of the petitioner alleging misappropriation of an amount of Rs.27,777.67 only on the basis of a show cause notice issued to the petitioner.

2. Contention of the counsel for the petitioner is that the order of termination dated 15.09.1973 is bad in law to the extent that the same has been issued without conducting a detail departmental enquiry by the respondents. Moreover, the petitioner who was prosecuted for the alleged misappropriation of fund in 3 separate criminal proceedings which having been concluded in favour of the petitioner, the allegation leveled against the petitioner on the basis of which the termination order was issued does not survive any further and the order of termination thus becomes bad in law. Even otherwise, the order of termination was without any enquiry.

3. So far as the allegation against the petitioner is concerned, since there is an order of acquittal in his favour, the natural consequences of the same ought to have been that the respondents should have recalled the order of termination and granted the petitioner all consequential benefits of reinstatement in service. In case the petitioner had crossed the age of superannuation, he should have been paid the retiral benefits which would have been otherwise payable to the petitioner as if the order of termination did not exit.

4. From the reply which has been filed by the respondents it appears that except for a preliminary objection of there being an alternative statutory remedy, no other grounds have been contended in their reply. So far as the issue of alternative remedy is concerned, this Court is of the opinion that at this moment of time where the present writ petition is being

considered after having entertained the same for almost 8 years back, it would be too harsh and the same therefore would not be sustainable at this juncture. Since the respondents have not taken any other ground on merit in their reply, this Court is inclined to except the version of the petitioner of the order of termination being issued without conducting a departmental enquiry. The said order of termination is bad in law on two counts; firstly there being no departmental enquiry before issuance of the order of termination and secondly, in all the criminal cases the petitioner being acquitted from the charges levelled against him, hence, it would not be sustainable and the same deserves to be and is accordingly set aside.

5. If the petitioner, in between, has crossed the age of superannuation, it is directed that the authority concerned shall grant the notional fixation of pay and other benefits payable to the petitioner from the date of termination till the date of superannuation. It is further directed that the petitioner shall be paid the actual entire monetary benefits so far as the retiral dues which the petitioner would be entitled for i.e. gratuity, leave encashment including pension if any.

6. The writ petition thus stands allowed and disposed of.

Sd/-
P. Sam Koshy
Judge