BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 20.02.2020
PRONOUNCED ON : 03.11.2020
CORAM :
THE HONOURABLE MRS.JUSTICE J.NISHABANU
W.P(MD)No.3582 of 2014
and
M.P.(MD).Nos.1 and 2 of 2014

S.Xavier Moni ... Petitioner

Vs.

1.The Bank of India,
rep.by its Chairperson/Managing Director,
Star House, C-5 G Block,
Bandra – Kurla Complex,
Bandra East,
Mumbai-400 051.

2.The Zonal Manager,
Bank of India, Chennai Zone,
Star House, II Floor,
17/30, Errabalu Street,
Chennai-600 001.

3.The Assistant General Manager,
Chief Manager,
Bank of India, Chennai Service Branch,
Shakthi Towers,
No.792 Anna Salai,
Chennai-600 002. ... Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings issued by the second respondent Zonal Manager in Ref.Zo:IR:0-15:393 dated 22.11.2012 and his consequential proceedings dated 30.01.2013 and 02.04.2013, quash the same and further direct the second respondent to release forthwith all the service benefits which the petitioner is legally entitled to and claimed under his representation dated 19.03.2012.

For petitioner :Mr.K.Ragatheesh kumar

For respondents :Mr.T.Govindasamy

ORDER

This Writ Petition has been filed by the petitioner challenging the orders issued by the second respondent/ Zonal Manager in Ref.Zo.IR:393 dated 22.11.2012 and his consequential proceedings dated 30.01.2013 and 02.04.2013 and for a direction to the second respondent to release forthwith all the service benefits which the petitioner is legally entitled to.

2.Gist of the case of the petitioner is as follows:-

Originally, the petitioner joined as Clerk on 19.05.1968 in the Foreign Exchange Department in the Bank of India and by dint of hardwork, he rose to the rank of Officer and he retired on 30.04.2003. When the petitioner was working at Sowcarpet Branch in Chennai, he was placed under suspension from service between 22.02.1982 and 15.06.1983 alleging that he involved in certain irregularities in Foreign Exchange dealing along with one M.R.Natarajan, the Foreign Exchange Dealer cum Officer in Charge, when he was working in Madras Main Branch and caused loss to the bank to the tune of Rs.6,22,282.48/- by fabricating documents. According to him, the Bank, without conducting any domestic enquiry, referred the matter for CBI enquiry. Neither any charge memo nor any departmental proceedings were initiated. The Central Bureau of Investigation registered a case against the petitioner and the said Natarajan, and the case was tried in C.C.No.6 of 1997 by the Principal Special Judge for CBI cases, Chennai. By an order, dated 03.01.2003, the Court of Principal Special Judge for CBI cases dismissed the case and acquitted both the petitioner and the said Natarajan.

2.1. It is further averred that prior to suspension, the petitioner was promoted to scale-II with effect from 01.04.1981. However, the promotion was kept in abeyance due to the pendency of the case. Similarly, the petitioner was denied all further promotions, increments and upgradation, till the date of the retirement because of the pendency of the case. The petitioner was also not awarded Milestone Award, which an employee is entitled to get on completion of 25 years of service. Hence, the petitioner made a representation to the second respondent on 07.02.2003 requesting him to sanction all the benefits, as he was acquitted of all charges. On the advice of the second respondent, the petitioner made separate representations with regard to each claim on 17.04.2003 through the Chief Manager, who forwarded the same to the second respondent recommending the claims of the petitioner in different heads. The second respondent, by their inter- Office Memorandum dated 21.04.2003 sought for certain particulars and information from the third respondent with regard to the claims of the petitioner. By memorandum, dated 24.04.2003, the third respondent provided the particulars and the information to the second respondent and further recommended to sanction the claims of the petitioner. On 19.04.2003, the petitioner applied for Provident Fund and gratuity on the basis of last drawn pay and the same was sanctioned to the petitioner on 22.07.2003. On 06.05.2003, the second respondent called and asked the petitioner to give an undertaking in writing that he would not claim any promotions with retrospective effect so as to settle the claim immediately. The petitioner refused to give an undertaking since he felt that he was legally entitled to get all the benefits with retrospective effect. Since the petitioner did not yield to the suggestion, the respondents immediately preferred an appeal against the judgment in C.C.No.6 of 1997 to this Court under Criminal Appeal No.1454 of 2003. By judgment dated 02.02.2012, this Court dismissed the said appeal. On the strength of the Judgment, on 19.03.2012, the petitioner made a representation to the second respondent requesting him to settle the benefits. However, the same was rejected by the second respondent vide impugned order dated 22.11.2012.

2.2. After acquittal in the criminal case, the respondents have no right to interpret the judgment of this Court in different ways and deny the legitimate rights. Hence, the petitioner submitted another representation to the second respondent on 28.12.2012 explaining the same and requesting for the disbursement of his claim. By letter dated 30.01.2013, the second respondent once again refused to accept the claim of the petitioner. The petitioner made several representations dated 17.02.2013, 02.03.2013 and 01.04.2013 explaining the clear position and requesting him to reconsider the same.

2.3. Since the petitioner was a senior citizen, he made another representation to the second respondent on 03.05.2013 requesting him at least to sanction the benefits which he agreed to give vide his letter in Ref:ZO:IR:VK:0-15:393 dated 22.11.2012. Since there was no reply, the petitioner made another representation dated 17.06.2013 to the second respondent explaining that the petitioner acquittal in the criminal case was honourable and requesting him to consider the matter at the earliest. None of his request was considered by the second respondent. The petitioner made representation to the General Manager, Bank of India, Head Office, Mumbai, on 03.10.2013 requesting him to take necessary steps with regard to the claims of the petitioner which is pending before the second respondent. However, all the efforts made by the petitioner ended in vain. Hence, the petitioner is before this court for the relief stated supra.

3. *Per contra,* it is the case of the respondents that the Writ Petitioner was posted as an Officer in the Foreign Exchange Department at Madras Main Branch on 01.04.1979. The Writ Petitioner herein and Foreign Exchange Dealer cum Officer-in-charge by name M.R.Natarajan had worked in the aforesaid department. During the tenure of service of the Writ Petitioner herein, the Writ Petitioner had committed serious acts/misconducts/irregularities. The Writ Petitioner had falsified the books of the bank to show a near-square position resulting in a serious loss to the bank and oversold position of US Dollars was concealed by the Writ Petitioner by entering fictitious contracts, thereby the books were falsified to show near-square position deliberately by manipulating the bank records. The Writ Petitioner had taken into position the fictitious sale contract with a view to conceal the overbought position deliberately, thereby falsified the books of the bank and caused the bank to meet the grave risk. The Writ Petitioner had allowed such

fictitious contracts to run overdue till particulars period when it was reversed in the sale contract ledger. Some of the contracts alleged to have been entered with the bank were not actually concluded through such banks. Having deliberately did not take into position the forward sale contract of US Dollars for deliver in the particular period thereby caused the position to be oversold and taking the contract as afresh sale on the particular date at the old rate of the previous dates instead of market rate for the particular period thereby caused a heavy loss to the bank. More particularly various records of the respondent bank had been manipulated by the Writ Petitioner, thereby he caused the aforesaid loss and specifically spoiled the reputation of the respondent bank among the banking fraternity. In the instant case, although there were material evidences available to prove the prosecution case, it was not properly established by the prosecution side and hence, the Writ Petitioner was acquitted and the benefit of doubt given in favour of him.

3.1. Further, the respondent Bank had received the judgment only on 07.02.2003 and preferred appeal before this Court in Criminal Appeal No.1454/2003. This Hon'ble Court had dismissed the aforesaid appeal on 02.02.2012 by confirming the order of acquittal dated 03.01.2003 made in C.C.No.6 of 1997 on the file of the Principal Special Judge for CBI Cases, Chennai. However, it is to be noted that the loss of Rs.6,22,282.48 was caused by the Writ Petitioner alone.

3.2. With regard to the promotion as alleged in Paragraph No.9 of the Writ Petition, the Writ Petitioner was advised vide letter Ref.P.R.BND:122 dated 23.04.1987 by the respondent bank that his promotion results for the year 1981 to 1984 which were kept in a sealed cover were opened and he was selected for promotion. However, his promotion has been kept in abeyance under Clause 14.4 of the Revised Promotion Policy in terms of Regulation 17 of the Bank of India Officers' Service Regulations, 1979, Branch Circular No.105/183 dated 15.02.2012 issued by the Human Resources Department, Recruitment and Promotion Division, Head Office, Mumbai. As such, the Writ Petitioner is not entitled for any claim as allegedly claimed in Para No.9 of the Writ Petition. The promotion to higher cadre from one cadre to another is not in regular course. The officer concerned has to necessarily comply with all the terms of promotion policy circulated by the Head Office of the respondent Bank in terms of Regulation 17 of the Bank of India Officers' Service Regulations, 1979 and then such of the promotion process being conducted. Each officer depending upon the grade for which he participates in the promotion process, he has to necessarily pass through various qualifying merit channel like and seniority channel and the eligibility criteria, etc.

3.3. Further, the suitability for promotion will be determined on the basis of performance, potential for shouldering higher responsibilities, banking knowledge, professional qualification etc., and more particularly, the clean integrity and diligence of the officer concerned. There are various parameters have to be crossed/passed in the promotion process in order to reach the promotion line. When the aforesaid MMGS-II promotion with effect from 01.04.1981 which was kept in abeyance as discussed above and without crossing MMGS-II cadre and without actually performing the duties, the claim made by the Writ Petitioner as alleged in Paragraph No.9 are totally untenable.

3.4.According to the respondents, the Writ Petitioner is not entitled for Milestone award since the Writ Petitioner is not acquitted with clean hands and not completed the full 25 years of unblemished service within the respondent bank. In reply to para No.10(ii), it is submitted that Clause 15 of Bank of India Officer Employees' (Discipline & Appeal) Regulations, 1976 provides for pay, allowances and treatment of service on termination of suspension. As per sub clause 15(2), in all the cases other than full exoneration, the employee shall be granted such proportion to pay and allowances as the competent authority may direct and that the pay and allowances granted under this sub-regulation 15(2) shall not be less than the subsistence and other allowances admissible under Regulation 14. As per sub-clause 15(3)(b) in all the cases other than full exoneration, the period of absence from duty (due to suspension) shall not be treated as period spent on duty unless the competent authority specifically directs, for reasons to be recorded in writing, that it shall be so treated for any specific purpose.

3.5. In view of above provisions, since the petitioner has been acquitted with benefit of doubt, he would not be entitled for full pay and allowance for the period of suspension. He would also not be entitled for release of increments, if any, during the period of suspension. Furthermore, the petitioner is not entitled for payment of travelling expenses and halting allowance as claimed by him, since his acquittal was not a clean one. The mere recommendations as alleged by the Writ Petitioner and such of the letters filed in his typed set of papers will not hold good for his alleged claim. The claim of the Writ Petitioner, as regards travelling expenses, halting allowance, reimbursement of legal expenses, in terms of the Administrative Circular No.1999-2000/5 dated 11.10.1999, the Writ Petitioner is not entitled for such of the claim. Hence, the Writ Petition may be dismissed.

4. Learned counsel for the petitioner would submit that the impugned order issued by the second respondent are highly arbitrary, illegal and unconstitutional. The second respondent has failed to note that the competent Principal Special Judge for CBI cases, Chennai, acquitted the petitioner as well as the first accused therein by judgment dated 03.01.2003 in C.C.No.6 of 1997 and relieved them of all the charges. Against the said Judgment, an appeal was preferred by the respondents bank. This Court by

Judgment dated 02.02.2012 dismissed the said appeal. Thus, the acquittal of the petitioner was honourable in nature and not on account of any 'benefit of doubt' as misconceived by the respondents bank. The petitioner is entitled to get the expenses viz., legal expenses, travelling expenses and halting allowances met out by the petitioner for attending to the Court cases which ultimately ended in his favour by way of acquittal. Equally, the petitioner is also entitled to get the full salary for the period of suspension since allegations upon which he had been suspended, have not been proved by the respondent bank. Further, the petitioner is entitled to get the 'Milestone Award' which would be awarded to the employees of the Bank of India on completion of 25 years of service and in the case on hand, the petitioner had put in 35 years of service. None of the representations on time made by the petitioner had been considered by the second respondent in the proper prospective. Neither any notice nor any opportunity of hearing was provided to the petitioner before the issuance of the impugned proceedings. Therefore, this Writ Petition is liable to be allowed.

5.*Per contra*, the learned counsel appearing for the respondents would submit that the impugned order was passed after considering all the aspects of the matter. The allegations levelled against the petitioner is serious in nature and the Writ Petitioner has caused huge loss to the respondent bank by manipulating many documents. In the case on hand, the acquittal of the petitioner is not an 'honourable' one but it is on account of 'benefit of doubt' and therefore, the petitioner has no right to claim the benefits as sought for in this Writ Petition. More over, proper enquiry has been conducted by the respondent bank and a decision was taken which does not warrant any interference at the hands of this Court. It is to be borne in mind that the allegations levelled against the respondents is baseless and it has no legs to stand in the eye of law. Viewing from any angle, the Writ Petition has no merits at all and it is liable to be dismissed.

6.Heard the learned counsel for the Petitioner and the learned counsel for the respondents and perused the materials available on record.

7. Admittedly, in this case, except initiation of criminal proceedings for the loss of Rs.6,22,282.48/- stated to have been caused by the petitioner to the Bank, neither a charge memo nor any departmental proceeding was initiated against the petitioner by the Bank. It is not in dispute that the criminal case was ended in acquittal before the trial Court and the same was also affirmed by this Court in Crl.A.No.1454 of 2003, by judgment dated 02.02.2012. While so, the Bank denied to provide all the service and monetary benefits to the petitioner only on the ground that the acquittal of the petitioner is not a honourable acquittal and it was only for benefit of doubt. It is no doubt, the acquittal is an acquittal and it is a full exoneration and there is no different degrees of

acquittal in criminal jurisprudence. The words "Proof beyond reasonable doubt" and "benefit of doubt" being used in criminal justice system fall within the realm of appreciation of evidence by a Judge while appraising the evidence in totality and they are subjective elements in an otherwise objective enquiry. Based on the same, it cannot be taken that the acquittal is not a clean acquittal and such interpretation is not legally sustainable.

8. In the case of **M.Krishnan and others Vs. State represented by the Inspect of Police, District Crime Branch, Sivagangai** reported in **2014 (5) L.W.798**, a Division Bench of this Court has held in paragraph Nos.39 and 40 as follows:

> "39.Therefore, two situations kept on coming up. One is where an employer is confronted with the question of appointment of a person involved in a criminal case, but acquitted and another where a serving employee is charged with certain acts of misconduct, which also amounted to punishable offences under the Indian Penal Code or any other law. In both these situations, the employees find it convenient to rely upon the ultimate decision of the Court to order acquittal, but the employers find it difficult to accept the standard of proof that the criminal Courts applied, to order the acquittal. This is where and this is how an artificial dichotomy was created and it slowly crept into the system of administration of justice. If acquittal is the one and only possible conclusion that could be reached by applying either of the two standards of proof, the employers were prepared to go by the same. But in cases where the decision to acquit as seen from the discussion of the criminal Court, could not have been reached by applying the civil standard, there was a temptation to brand those acquittals as something inferior to the other form. Once this is realised, we would have no difficulty in understanding that while the word acquittal used in the judgment of a criminal Court denotes the ultimate conclusion reached by them (which is also in tune with the language employed in the Code), the expressions such as benefit of doubt, etc., denote the decision making process through which the mind of the Judge goes, when he acquits a person.
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> 40.Therefore, our answer to the first question is that there is no prohibition in law for the criminal Courts to use the expressions such as benefit of doubt and beyond reasonable doubt, despite the fact that Sections 232, 235, 248 and

> 255 of the Code of Criminal Procedure use only a simple expression namely acquittal without any adjectives. But, these adjectives or expressions such as benefit of doubt and beyond reasonable doubt will have no meaning or significance insofar as criminal jurisprudence is concerned. In Civil Law and service jurisprudence, there is a world of difference between not proved and disproved. In criminal jurisprudence, there is no distinction between these expressions namely not proved and disproved, as both would result only in one consequence, namely acquittal. Consequently, an acquittal is an acquittal and there are not different forms nor different degrees of acquittal insofar as criminal jurisprudence is concerned. The different adjectives used by various Courts, to the acquittals granted by them, actually indicate the process of reasoning through which they arrive at the decision to acquit a person. Proof beyond reasonable doubt and benefit of doubt are actually tools that guide the subjective mind of the Judge to arrive at a finding whether the accused is guilty or not."

9. From the above decision, it is clear that based on the usage of the words "Proof beyond reasonable doubt" and "benefit of doubt" in the judgment of the criminal case, it cannot be taken as if the acquittal was on technicalities or something inferior to the other form of acquittal and such interpretation cannot be accepted.

10. In the case of **Gurusiddappa Vs. Office of the Group Commandant, Central Industrial Security Force, rep. by its Group Commandant, Ministry of Home Affairs, Chennai and others**, reported in **2018 (4) LLN 530 (Mad.)**, a learned Single Judge of this Court has held that once the Criminal finding has become final, the Departmental action against the petitioner on the same set of facts and circumstances cannot be countenanced by law, as the petitioner was admittedly acquitted not on technicalities but on merits and that the petitioner shall be promoted with effect from the date of his juniors were considered for such promotion with all attendant and service benefits as admissible to the petitioner. The relevant paragraph Nos.12 and 13 are extracted hereunder:

> "12. This Court has given its anxious consideration to the submissions made on behalf of the learned counsel for the petitioner as well as the respondents. Firstly, this Court has to see whether the charges are held proved in the Department Enquiry in the teeth of the clear finding given by the Criminal Court stating that the entire prosecution case was a cooked up story. Once the

> Criminal finding has become final, the Departmental action proceeded against the petitioner on the same set of facts and circumstances cannot be countenanced by law, as the petitioner was admittedly acquitted not on technicalities but on merits. Once the petitioner has been acquitted on merits, the Departmental action in imposing the penalty for the same incident, is completely without any justification. Therefore, this Court is of the considered view that the petitioner has to succeed on this ground alone. Even otherwise, when one side the Criminal Court has given a clear acquittal viz., honourable acquittal to the petitioner, the Department cannot find the petitioner guilty of the same charges which was a subject matter of the Criminal prosecution. Such action on the part of the respondents cannot be justified under any circumstances. Since this Court is of the view that the Departmental action as proceeded against the petitioner is illegal and cannot be countenanced in law, it refrains from going into the issue of whether the penalty with cumulative effect can be imposed on the petitioner or not under the Service Rules.
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> 13. In view of the above said narrative and discussion, this Court set aside the impugned proceedings No.V-15014/Rev/GS/SS/2010-85, dated 4.2.2011, proceedings No.V-11014/56/2006/L&R(SZ) 6460, dated 17.11.2006 and proceedings No.V-15014/GHC/ AD.VI/GS/SSP/2005-1978, dated 14.06.2006. This Court is also of the considered view that the petitioner is entitled to be considered for promotion as Sub Inspector of Police with effect from the date of his juniors were considered for such promotion with all attendant and service benefits as admissible to the petitioner. The respondents are directed to implement the direction passed by this Court within a period of eight weeks from the date of receipt of a copy of this order."

11. The above decision is squarely applicable to this case. As stated earlier, in this case, no departmental proceeding initiated against the petitioner and the criminal case also ended in acquittal. Therefore, it is deemed to be taken that the petitioner has been retired like that of the other employees without any unblemished record of service.

12. A perusal of record shows that immediately after acquittal from the criminal case, the petitioner has made a representation dated 19.03.2012 requesting to provide the following benefits:

(i) Payment of arrears of salary due upon promotion w.e.f. 01.01.1981 from Scale -I to Scale - II, and promotion with retrospective effect upto Scale VII.

(ii) Reimbursement of legal expenses to the extent of Rs.1,14,460/- to defend himself for the period from June 1983 to February, 2012.

(iii) Release of annual increment due in December 1982, and salary for the suspension period from 23.02.1982 to 14.06.1983.

(iv) Mile stone award due to you.

(v) Reimbursement of travelling expenses from Madurai to Chennai (to & fro) for attending Court case at Chennai from 27.07.1995 to 06.05.1998 (25 x 2 = 50 times) together with halting allowance amounting to Rs.33,500/- and

(vi) Updated pension upon your promotion and arrears thereon.

13. By the impugned order dated 22.11.2012, the 2nd respondent has sent a reply as follows:

"The matter was examined at appropriate level. In view of the fact that you have been acquitted with benefit of doubt which in other words is not a clean acquittal, necessarily, it restricts claims of various reimbursements made, which is as under:

(i) The competent authority has granted promotion to you from Scale I to II w.e.f. 01.04.1981 and also granted revised fitment subsequent upon promotion in Scale II w.e.f. 01.04.1981. We are in the process of calculating your fitment on your promotion from Scale I to II w.e.f. 01.04.1981 and rework your payment of all type and pay the arrears accordingly.

(ii) You are not entitled for reimbursement of lega expenses as per the Administrative Circular No.1999-2000/5 dated 11.10.1999, wherein it is mentioned that the reimbursement of legal expenses incurred by an Officer in defending his case is permissible when the case has concluded with clean acquittal of the staff member.

(iii) You are not entitled for full pay and allowances for the period of suspension. Your would also not be entitled for release of increments due during the period of suspension.

(iv) You are not entitled for Milestone Award.

(v) Your request for reimbursement of travelling expenses for attending Court case at Chennai cannot be considered.

(vi) We are in the process of calculation of the updated pension due to you upon your promotion to MM Scale II and the arrears, if any, accrued to you during the said period.”

14. It is seen that by the impugned orders dated 31.01.2013 and 02.04.2013, the 2nd respondent has replied to the further representations of the petitioner to the effect that the order dated 22.11.2012 holds good. Though the second respondent in the order dated 22.11.2012 agreed to provide some of the benefits to the petitioner, in the counter affidavit, it was refused.

15. As stated earlier, the acquittal of the petitioner is a full exoneration from the charges. Having failed to prove the allegation raised against the petitioner before the Court of law and having failed to take any disciplinary proceeding against the petitioner, now the respondents cannot deny to provide all the service and monetary benefits to the petitioner by making wrong interpretation, which is not legally permissible. As the 2nd respondent denied the benefits to the petitioner by wrong interpretation of the judgment passed by a Court of law, this Court is inclined to set aside the impugned orders.

16. So far as the promotion of the petitioner is concerned, it is not in dispute about the entitlement of the petitioner upto the level of MM Scale II. In respect of other levels are concerned, it is stated by the respondents that the promotion is not an automatic and it will be considered on the basis of length of service, performance - Annual Performance Appraisal, Potential for shouldering higher responsibilities, banking knowledge, professional qualification, interview, etc. However, the fact remains that if the criminal proceedings not initiated against petitioner, he would have been definitely made attempt to get promotion by attending interest and improving his qualification and now that chances went away. Therefore, it is open to the respondents to consider to fix the level and to grant notional promotion to the petitioner by considering the past performance of the petitioner, sufferings/mental agony undergone by the petitioner for these long years and also the acquittal of the petitioner from the criminal proceedings. Except the above, the petitioner is entitled to all the other benefits.

17. In the result, this Writ Petition is allowed and the impugned orders are set aside and the respondents are directed to provide all the service and monetary benefits to the petitioner in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

bala/gcg

To

1.The Chairperson/Managing Director,
The Bank of India,
Star House, C-5 G Block,
Bandra - Kurla Complex,
Bandra East,
Mumbai-400 051.

2.The Zonal Manager,
Bank of India,
Chennai Zone,
Star House, II Floor,
17/30, Errabalu Street,
Chennai-600 001.

3.The Assistant General Manager,
Chief Manager,
Bank of India, Chennai Service Branch,
Shakthi Towers,
No.792 Anna Salai,
Chennai-600 002.

+1 CC to MR.T. GOVINDHASAMY, Advocate (SR-21030[F]dated 04/11/2020)

+1CC to M/s.ISAAC CHAMBERS, Advocate (SR-20922[F] dated 03/11/2020)

order made in
W.P(MD)No.3582 of 2014
03.11.2020

VB (10.11.2020) 12P 6C