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IN THE HIGH COURT OF ORISSA AT CUTTACK

WRIT PETITION (CIVIL) No.12002 of 2004

Subani Sahoo	....	***Petitioner***
	-versus-	
Orissa State Financial Corporation and Another	....	***Opposite Parties***

Advocates appeared in this case:

For Petitioner	:	Mr. B.S. Tripathy, Advocate
For Opposite Parties	:	Mr. C.A. Rao, Senior Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIK

JUDGMENT
04.03.2022

Dr. S. Muralidhar, CJ.

1. The Petitioner, an erstwhile Deputy Manager (Finance) working at the Jeypore Branch of the Odisha State Financial Corporation (OSFC) has filed this writ petition questioning an office order dated 6th October, 2004 issued by the General Manager, OSFC placing the Petitioner under suspension with effect from 4th November, 2003 in terms of Regulation 43 (1) of the OSFC Staff Regulations, 1975 (Regulations). The Petitioner has also prayed for quashing of a decision dated 26th December,

2005 taken by the Board of Directors of OSFC at their 338th meeting to treat the Petitioner's period of suspension from 4th November, 2003 to 24th May, 2005 "as such with pay and allowance already released in your favour without any change." It is further prayed that a direction be issued to the Opposite Parties to release the Petitioner's unpaid salary for the months of November and December, 2003 and the entire salary for the period of suspension from 4th November, 2003 to 24th May, 2005 by treating the same as duty, in lieu of his acquittal in G.R. Case No.608 of 2003.

2. Notice was issued in this petition on 30th March, 2005. The petition was also permitted to be amended by an order dated 24th July, 2017 of this Court.

3. The background facts are that while the Petitioner was working as Deputy Manager (Finance) in the Jeypore Branch of OSFC, one Umakanta Pati lodged an FIR against the Petitioner at Kendrapara Police Station on 2nd November, 2003. The complaint was that the Petitioner had established an industry under the name of Tulasi Steel Industry in village Danpur in 2001 in which the complainant had invested Rs.1,32,000/-. The Petitioner was stated to have subsequently sold the unit without informing the complainant. On 10th October, 2003 when the complainant and one Fakir Barik went to the house of the Petitioner and asked him to return the money, the Petitioner refused. He is alleged to have abused and threatened to kill them.

4. On the basis of the above FIR, the Petitioner was arrested on 4th November, 2003 and produced before the Court on 5th November, 2003. He was released on bail by the S.D.J.M., Kendrapara by an order dated 15th November, 2003.

5. On 29th December, 2003 the police furnished the final form/charge sheet against the Petitioner under Sections 420, 506 and 294 IPC. As a result, G.R. Case No.608 of 2003 was registered.

6. The case of OSFC was that the Petitioner applied for leave on 4th and 5th November, 2003 and left the headquarters at Jeypore with permission from 1st to 5th November, 2003 since the 2nd November was a Sunday and 3rd November was a local holiday. On 6th November, the Petitioner extended his leave up to 7th November by telegram on the ground of some urgent work. He again applied to extend his leave up to 30th November on the ground of illness. However, he joined the Jeypore Branch on 27th November, 2003.

7. In the meanwhile, on receiving Umakanta Pati's written complaint, the OSFC enquired into the matter and placed the Petitioner under suspension with effect from 4th November, 2003. However, this was communicated to the Petitioner only on 6th October, 2004. It is explained that the suspension order was passed only after the OSFC subsequently came to know about the

arrest and release of the Petitioner on bail in the aforementioned criminal case. The actual suspension took place between 6th November, 2004 to 16th May, 2005 during which the Petitioner was paid subsistence allowance @ 50% of the last salary drawn under Regulation 44(3)(a) of the OSFC Regulations. The Petitioner was reinstated in duty by an order dated 17th May, 2005. On 15th October, 2005 OSFC accepted the Petitioner's application for voluntary retirement from service (VRS) and discharged him on 15th October, 2005. On 12th January 2006, OSFC released a sum of around Rs. 5.5 lakhs towards terminal benefits of the Petitioner under VRS.

8. On realising that a sum of Rs. 2 lakhs had been deducted from his dues by treating the period of his suspension from 4th November, 2003 to 24th May, 2005 as penalty, the Petitioner made a representation to the OSFC on 23rd March, 2006 for release of his withheld dues. By the impugned letter dated 20th May 2006, OSFC informed the Petitioner that it had been decided to treat the Petitioner's period of suspension from 4th November, 2003 to 24th May, 2005 "as such with pay and allowance already released in your favour without any change."

9. The Petitioner's further representations dated 28th December, 2007 and 27th December, 2010 were rejected by the OSFC by its letters dated 8th January, 2008 and 24th February, 2011 respectively. Since the present petition was already pending, it was additionally decided by the Board of Directors of the OSFC

"to act upon the direction of the Court as and when such orders are passed".

10. Meanwhile, in G.R. Case No.608 of 2003 the SDJM by judgment dated 4th May, 2012 acquitted the Petitioner for the offences under Sections 406 and 294 IPC but convicted him for the offence under Section 420 IPC. The Petitioner was sentenced to undergo Rigorous Imprisonment (RI) for a period of two years and to pay a fine of Rs. 3,000/- and in default to undergo, Simple Imprisonment (SI) for three months.

11. The Petitioner then challenged the above order of conviction in the court of the Sessions Judge, Kendrapara in Criminal Appeal No.5 of 2012. The said appeal was allowed by a judgment dated 31st March, 2016. The Petitioner was set at liberty forthwith.

12. Contending that on account of the acquittal on merits, the entire period of suspension should be treated as being on duty, the Petitioner filed the present petition.

13. The present petition was initially heard by a learned Single Judge of this Court. Mr. B.S. Tripathy, learned counsel appearing for the Petitioner submitted before the learned Single Judge that once the Petitioner's acquittal was a clean one, the entire period of suspension should be treated as period on duty and the Petitioner should accordingly be paid his salary for the said period. Reliance was placed on the decision dated 29th November, 2013 of another

learned by the Single Judge of this Court in W.P. (C) N0. 369 of 2007 (***Raj Kishore Biswal v. Orissa State Financial Corporation***). It was contended that the Petitioner's case was squarely covered by the said judgment.

14. On the other hand, Mr. C.A. Rao, learned Senior Counsel appearing for OSFC placed reliance on the following observations of the Supreme Court in ***A.K. Bindal and Another v. Union of India, AIR 2003 SC 2189***:

> "The amount is paid not for doing any work or rendering any service. It is paid in lieu of the employee himself leaving the services of the company or the industrial establishment and forgoing all his claims or rights in the same. It is a package deal of give and take. That is why in business world it is known as 'Golden Handshake'. The main purpose of paying this amount is to bring about a complete cessation of the jural relationship between the employer and the employee. After the amount is paid and the employee ceases to be under the employment of the company or the undertaking, he leaves with all his rights and there is no question of his again agitating for any kind of his past rights, with his erstwhile employer including making any claim with regard to enhancement of pay scale for an earlier period. If the employee is still permitted to raise a grievance regarding enhancement of pay scale from a retrospective date, even after he has opted for Voluntary Retirement Scheme and has accepted the amount paid to him, the whole purpose of introducing the Scheme would be totally frustrated".

15. Mr. Rao also referred to the observations of the learned Single Judge in the judgment dated 11th November, 2013 in W.P.(C) No.

7574 of 2010 in ***(Banambar Panda v. United Bank of India*** where in almost identical circumstances, the decision of the United Bank of India rejecting the Petitioner's claim for financial and service benefits pursuant to his acquittal was upheld by this Court.

16. The learned Single Judge who heard this petition, B. Rath, J., in a detailed order dated 19th December, 2019 doubted the correctness of one part of the decision of the coordinate Bench of the learned Single Judge in ***Raj Kishore Biswal v. Orissa State Financial Corporation*** (*supra*) and was of the view that in light of Regulation 43 of the OSFC Staff Regulations, 1975, the Petitioner was, upon his acquittal, entitled to the benefit as prayed for. Accordingly, the following question was referred to the Division Bench for its decision:

"Whether acceptance of amount involving VRS without protest and for having no restriction for claim involving previous pending disputes shall debar a person from the benefits he is entitled under the provisions of Regulation 43 of the OSFC Staff Regulations, 1975 for his acquittal from criminal charges?"

17. That is how the petition is before this Bench. This Court has heard the submissions of Mr. B.S. Tripathy, learned counsel appearing for the Petitioner and Mr. C.A. Rao, learned Senior Counsel appearing for OSFC.

18. The Court would first like to refer to Regulation 43 of the OSFC Staff Regulations, 1975 which reads as under:

"43. Employees arrested for debt or on criminal charge:-

(1) An employee who is arrested and detained in custody for a period exceeding a continuous period of 48 hours for debt or on a criminal charge shall be considered as under suspension from the date of his/her arrest, and shall be allowed the payments admissible to an employee under suspension under Regulation 44 until the termination of the proceedings against his/her when an adjustment of his/her pay and allowances shall be made according to the circumstances of the case and in the light of the decision as to whether his/her absence is to be accounted for as a period of duty or leave, the full pay and allowances being given only in the event of the employee being acquitted of all blame and treated as on duty during the period of his/her absence less the period spent by the employee, in actual detention. An employee who is committed to prison for debtor is convicted of any criminal offence shall be liable to dismissal.

(2) Where conviction of an employee is set aside by a higher court, and the employee is acquitted honourably he/she shall be reinstated in service.

Explanation-
In this Regulation the expression "termination of the proceedings" shall mean the decision of the lowest Court which first finally disposes of the case, criminal or conviction by the lowest court or any of the appellate courts and it shall open to the Corporation to dismiss an employee who is committed to prison or who is convicted of a criminal charge as from the date of the order of the court that convict him/her."

19. The emphasis in the above Regulation 43 (2) is on the word 'honourably' following the word 'acquitted' which is a pre-condition to the employee being entitled to reinstatement. Therefore, one of the questions that arises in the present case is whether the Petitioner was 'honourably' acquitted. While reversing the conviction awarded by the trial Court for the offence under Section 420 IPC, and thereby allowing the Petitioner's appeal, the Appellate Court of the learned Sessions Judge observed as under:

> "On perusal of the judgment, it is found that believing the statement of the informant regarding payment the learned lower court has found the accused guilty, even if, *there is no credible material on record regarding any misrepresentation made by the accused in order to any dishonest intention to receive the contribution made by the informant.*
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> On assessment of all the materials on record, it is apparent that the partnership deed was executed on 24.6.2002 vide Ext.A. Thereafter Bank account was opened in the name of the informant. The informant and other partner namely Kalilsh Ch. Pradhan were looking after the financial matter of the case industry. On their approach, the other partners joined in the partnership firm to carry on the business. Therefore the transaction has been made in 2003 after execution of partnership deed. This irresistibly ruling out the element of fraud inflicted by the accused on the informant. It is not out of place to mention that the informant, *P.W-1, has not filed a single document to prove the actual payment made by him to the accused. No eye witness has been examined to establish the allegation of payment. There is absolutely no corroborative evidence when and where the misrepresentation was made by the accused. There is also absolutely no material on*

> *record to show the dishonest intention of the accused at the beginning of the transaction. The fact of financial loss of accused industry is altogether a different matter, which is not coming within purview of criminal liability as provided under Section 420 IPC.*
>
> 7.1 From above analysis, it is found that the evidence given by the informant is not in conformity with the FIR story. It is also found to be contradictory and the contradiction could not be provided for non-examination of the IO in this case. Further it finds no corroboration in the testimony of other witnesses. The important witness namely Priyatama Barik (wife of PW-3) has been withheld without sufficient reason, which in the present case is definitely fatal to the prosecution. The version of the informant (PW-1) brought to record by the prosecution is again found contradictory to the contents of the partnership deed, Ext-A. *The necessary conclusion, therefore, is there is absolutely no material to attract the provision U/s. 420 IPC. The judgment of the learned Court below not being based on material on record is not sustainable in the eye of law*. Consequently, the conviction and sentence are liable to be set aside in the present appeal." (emphasis supplied)

20. It is therefore apparent that the acquittal of the Petitioner was in fact a clean and 'honourable' acquittal. As held by the Appellate Court, the judgment of the trial Court finding the Petitioner guilty of the offence punishable under Section 420 IPC was based on no credible evidence. It is significant that the above judgment of the Appellate Court has attained finality.

21. It was submitted by Mr. Rao, learned Senior Counsel appearing for the OSFC, that as long as OSFC was not the reason for the arrest and detention of the Petitioner, it cannot be compelled to make payment for the period during which he was under suspension and was facing the criminal trial. In other words, it was sought to be contended that only where the arrest was pursuant to a complaint made by OSFC itself, that it would upon acquittal of the Petitioner, be obliged to pay his entire salary and allowances for the period of absence and not when the acquittal was in a case involving private parties. He, placed considerable reliance on the observations of the learned Single Judge in ***Banambar Panda*** (*supra*) in support of the above submission.

22. The Court is unable to accept the above submission on account of the unambiguous wording of Regulation 43 which makes no distinction between an acquittal in a criminal case where the OSFC was the complainant and one where a private party was the complainant. Secondly, in ***Banambar Panda*** (*supra*) there was no discussion of any regulation governing employees of United Bank of India which was on par with the OSFC Staff Regulations. There was no occasion therefore for the learned Single Judge in ***Banambar Panda*** (*supra*) to discuss the effect of a provision like Regulation 43 (2) of the OSFC Staff Regulations. On the other hand, the decision in ***Raj Kishore Biswal v. Orissa State Financial Corporation*** (*supra*) which involved similar facts and concerned the OSFC itself, is apposite

in its application to the case on hand. However, this Court does not concur with the observation in the said decision that only because the employee accepted the VRS amount without protest, he would be denied consequential relief.

23. When there is a specific Regulation governing the situation and where the Petitioner satisfies the requirement of such regulation, the relief envisaged therein has to follow. Since the Petitioner's acquittal was an honourable one, as explained hereinbefore, he cannot possibly be denied the benefit of reinstatement with back salary in terms of Regulation 43 (1) read with Regulation 43 (2) of the OSFC Staff Regulations, 1975. The Court is, therefore, inclined to accept the case of the Petitioner that he could not have been denied the full salary for the period of his suspension from 4th November, 2003 to 24th May, 2005.

24. This Court accordingly answers the question referred to it by the learned Single Judge in the negative and holds that the Petitioner's acceptance of the VRS amount without protest will not debar him from the benefits he is entitled to under Regulation 43 of the OSFC Staff Regulations, 1975 upon his honourable acquittal from criminal charges.

25. The rejection of the Petitioner's claim in this regard by the OSFC is hereby set aside and a direction is issued to the OSFC to make payment of the unpaid salary for the months of November and December, 2003 and the entire salary for the period of

suspension from 4th November, 2003 till 24th May, 2005 by treating it as on duty. The aforementioned payment should be made by the OSFC to the Petitioner within a period of four months from today together with the simple interest @ 6% per annum from the date that the arrears of salary fell due till the date of payment which shall in any event not be later than 11th April, 2022. If there is a failure by OSFC to make payment to the Petitioner within the above stipulated time, OSFC will be liable to pay the Petitioner simple interest @ 9% per annum on the amount due for the period of delay.

26. The writ petition is disposed of in the above terms, but in the circumstances, with no order as to costs.

(S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K.Jena/PA