IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15488 of 2014

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Md. Shahjahan Son of Late Id Mohammad Resident of Village Goria Tola, Police Station-Chapra Muffasil, District- Saran, Present Working as Assistant Manager, State Bank of India Pachgachchia Branch, Police Station Bihra, District-Saharsa.

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief General Manager, Local Head Officer-West Gandhi Maidan, Patna.
2. The General Manager (NW-II) State Bank of India , Local Head Office-West Gandhi Maidan Patna.
3. The Regional Manager, State Bank of India, Regional Business Office, Saharsa.
4. The Branch Manager, State Bank of India, Pachgachchia Branch, Police Station-Bihra, District-Saharsa.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjeev Kumar, Advocate

For the Respondent/s : Mr. Kaushlendra Kumar Sinha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

C.A.V. JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 28.06.2023

The writ petition is filed against the order declining full pay and allowances during the period in which, allegedly, the petitioner was wrongly kept out of service. The petitioner was an employee of the State Bank of India having joined the bank on 18.01.1989. The petitioner's wife had initiated a criminal proceeding under Section 498(A) I.P.C. pursuant to which the petitioner was arrested by the Police and detained in custody between 22.11.2003 to 15.01.2004. The petitioner was released on bail on 15.01.2004 on which date itself the petitioner was suspended as per Annexure-1. The petitioner represented with Annexure-2, contending that the case filed by his wife was false and that he had reported for duty on 17.01.2004, from which date he has been working in the Bank's service. It was also pointed out that the Fast Track Promotion Test was to be held on 08.02.2004, in which he was eligible to participate. The petitioner also requested that he be allowed to continue, till the charge-sheet is filed, and permitted to appear in the promotion test. The Bank declined his request by Annexure-3. The petitioner, by Annexure-4, sought for subsistence allowance which, this Court is informed, has been paid. Later, by Annexure-5 dated 02.06.2006, the Bank considered the representations and the relevant papers produced and taking into account the fact that the conclusion of criminal proceedings would take some time, the suspension was revoked and the petitioner was taken back in service. When the petitioner sought for the full pay and allowances for the suspension period, it was communicated by Annexure-5 series that the manner in which the period of suspension is to be treated will depend upon the outcome of the criminal case.

2. The petitioner challenged the said action of the

Bank by writ petition numbered as C.W.J.C. No. 13721 of 2009. The aspect of how the suspension period was to be treated was left to be considered after conclusion of the criminal proceedings, as per Annexure-6 judgment. An intra Court appeal was unsuccessful and a review filed also stood rejected. The petitioner was acquitted of the criminal charges by Annexure-A judgment, produced along with the counter affidavit on 14.03.2011. The petitioner by Annexure-7 based on the judgment of the criminal Court and his acquittal, sought for restoration of all the benefits during the period he was placed under suspension. The Bank rejected the representation as per Annexure-8.

3. The learned counsel for the petitioner argued for restoration of the entire period of suspension as period spent on duty; especially when there was no ground for suspending the employee. It was also pointed out that the acquittal of the employee gave him a right to seek for such restoration and also the consequential benefits that flow from such restoration. The learned counsel appearing for the Bank emphasized that there was no honourable acquittal granted to the petitioner. The decision of the Madras High Court in ***State of Tamil Nadu v. HA Munaf 2002 (I LLJ 66) 2002*** was also relied on. It was

argued that when a person is acquitted on the ground that the charge was not proved beyond all reasonable doubt, it cannot be held that the person was honourably acquitted or that he was given a clean chit of the charges levelled against him.

4. This Court has to first examine the concept of an 'honourable acquittal', which, it has been held in **Dy.Inspector Gen.Of Police & Anr vs S.Samuthiram** reported in **(2013) 1 SCC 598,** to be not a concept emanating from the Code of Criminal Procedure or the Indian Penal Code. It was held in para-24 that:

> "The meaning of the expression 'honourable acquittal' came up for consideration before this Court in **Reserve Bank Of India vs Bhopal Singh Panchal**, reported in **(1994) 1 SCC 541**. In that case, this Court has considered the impact of Regulation-46(4) dealing with 'honourable acquittal' by a criminal court under criminal proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be 'honourable'. The expressions 'honourable acquittal', 'acquitted of the blame', 'fully exonerated' are unknown to the Code of Criminal Procedure or the Indian Penal Code, which are

coined by judicial pronouncements. It is difficult to define precisely as to what is meant by the expression 'honourably acquitted'. When the accused is acquitted after full consideration of prosecution evidence and the fact that the prosecution has miserably filed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted."

5. Citing the above declaration of law; in **Commissioner Of Police And Anr vs Mehar Singh**, reported in **(2013) 7 SCC 685**, the Hon'ble Supreme Court held that an acquittal based on benefit of doubt would not stand at par with clean acquittal on merit after a full-fledged trial, where there is no indication of the witnesses being won over. Again the Hon'ble Supreme Court in **Union Territory, Chandigarh vs Pradeep Kumar**, reported in **(2018) 1 SCC 797**, considered whether an acquittal from a criminal case would, by reason of the acquittal alone, be conclusive suitability of a candidate. It was held that even if the candidate has self-declared his criminal antecedents and there is an acquittal from the criminal case charged against him, that alone would not be conclusive proof of his eligibility to be considered for appointment; in that case, to the Police Department. It was held in paragraph-13 *"It is thus well settled*

that acquittal in a criminal case does not automatically entitle him for appointment to the post. Still, it is open to the employer to consider the antecedents and examine whether he is suitable for appointment to the post." (sic) especially considering the fact that therein the recruitment was to the Police Service where impeccable character and integrity is an imperative condition and an indispensable virtue. It was held that a person having criminal antecedents will not fit in the category and even if he is discharged or acquitted in a criminal case charged against him, that would not lead to a presumption of 'honourable acquittal' or 'complete exoneration'. It was found that the Screening Committee examined each and every case of the respondent and the reasoning for their acquittal to find ineligibility. This was the reasoning on which the judgment of the High Court allowing the claim of the applicants was set aside.

6. The very same principle should be applied in this case, where the petitioner was acquitted in the criminal case; the institution of which and the resultant pre-trial incarceration led to the suspension of the employee. As has been noticed by the Hon'ble Supreme Court, 'honourable acquittal' is not a concept found in the Cr.P.C. or the I.P.C. and it has been evolved by judicial pronouncements. It is normal for the criminal courts to

acquit the accused conferring the accused, the benefit of doubt, when the prosecution has failed to prove the case and it is not the practice at all to give a certificate of 'honourable acquittal' while acquitting the accused in criminal cases.

7. In that circumstance, what is required is for the authority to look at the judgment of acquittal, to understand whether there was anything at all which would disentitle the acquitted accused from the benefits he claim, which he lost only by the pre-trial incarceration and whether such consequence, merely for a detention on a complaint being lodged, would be entailed.

8. The petitioner herein was acquitted after a full-fledged trial and not on any technical ground. This Court has gone through the judgment wherein four persons were examined on behalf of the de facto complainant, the wife of the petitioner herein, who had alleged demand of dowry coupled with physical violence upon her; under Section-498A of the I.P.C. P.Ws.1, 2 and 3 were the brother and step brothers of the de facto complainant. P.W. 4, an inhabitant of the petitioner/husband's house, and P.W. 5, the de facto complainant. P.Ws. 1, 2, 3 and 5 spoke in tandem with the prosecution version, but P.W.4 turned hostile. The allegation in the complaint was also assault by the accused, who were the petitioner, his sister-in-law & nephew. It

was alleged that the petitioner had illicit relations with his widowed sister-in-law and when she (complainant) forbid him, there was a demand of dowry and physical violence inflicted on her. She spoke of a specific incident on 22.11.2003 when all the accused together assaulted her physically and inflicted injuries upon her with a *'lathi'* and threw her out of her matrimonial home. She is stated to have been sheltered in the house of one Shri Hareshwar Rai who informed her family through telephone. Shri Hareshwar Rai was examined as a defence witness who denied the incident. The learned Magistrate also found that, though the de-facto complainant through the first information report and in the examination-in-chief, spoke of a brutal assault and her *dupatta* and other apparel having been covered with blood, there was absolutely no medical evidence on that aspect.

9. This Court cannot but find favour with such an observation, especially since if the assault was as brutal as spoken of; which resulted in injuries leading to profuse bleeding, definitely, the victim would have taken medical assistance and evidence of the same would have been available. It was also found that there was a restitution case filed by the *de facto* complainant and there was '*Mehar'*, paid by the petitioner

on divorce, which, though denied by the de-facto complainant, was admitted by her brother. In cross-examination, the *de facto* complainant had also categorically deposed that she was not willing to reside with her husband. It was on these circumstances that the accused stood acquitted for reason of benefit of doubt.

10. The petitioner, who was the accused in a criminal case charged on the complaint made by his wife, was implicated in an offence under Section-498A of the I.P.C. and detained in prison. It cannot be disputed that the detention in police custody, without anything else, was the reason for suspension. The petitioner on being released from jail had appeared before the bank and he was allowed to join on 17.01.2004. Obviously, on the petitioner himself having explained the reason of his absence; being the detention by police, Annexure-1 was issued suspending him from service. This Court finds the joining on 17.01.2004, asserted by the petitioner, not having been denied by the respondent bank. The respondent bank, though submits that he was suspended on being detained in prison, the suspension was with effect from 15.01.2004, when he was released on bail. Annexure-1 is acknowledged by the petitioner on 20.01.2004. It cannot be

disputed that the bank has the authority to suspend an employee, if in the opinion of the management he has committed an offence and he is facing prosecution. The bank is also conferred with the authority to take disciplinary action against the employee, even if there is no prosecution initiated. The power to so suspend the employee is a discretion conferred on the bank which is neither automatic nor to be exercised arbitrarily. The impugned order records that the clerk-cum-cashier, the petitioner herein, was suspended when an F.I.R. was lodged against him in connection with an alleged criminal offence under Section-304 of the I.P.C. However, the offence alleged was under Section-498A of the I.P.C., as seen from Annexure-A judgment and order of acquittal produced by the bank itself. The bank ought to have exercised its discretion judiciously and looked at whether a suspension was warranted on the basis of the allegations raised; which, obviously, from the erroneous statement that the accused was implicated under Section-304 of the I.P.C., does not seem to have been done.

11. Be that as it may, even if an employee is stated to have grievously assaulted his wife and a criminal case is lodged against him, which led to his detention in prison, this Court would assume that the bank had the power to suspend

him, but however, the bank takes upon itself the responsibility to restore the benefits to the employee, if he is acquitted in the criminal offence. In this context, it is also very pertinent that the bank itself, while the criminal trial was pending, revoked the suspension and took him back into service; which revocation was only by reason of there being no possibility of the criminal case reaching a logical conclusion in the near future. Hence, it is translucent that the offence alleged was not such that would entail the employee to be kept out of service; by reason only of the allegations. Admittedly, the employee was acquitted after trial, conferring him the benefit of reasonable doubt. It has been held by the Hon'ble Supreme Court that a reasonable doubt, which would entail an acquittal, is not any doubt that crosses the mind of the Judge. It should be reasonable enough to come to the conclusion that the prosecution has failed to prove the case from the evidence led.

12. In the present case, there was no winning over of witnesses and there were three witnesses who spoke in favour of the prosecution; but all related witnesses; being the de-facto complainant and her close relatives. P.W. 4, who turned hostile, was an inhabitant of the house of the accused. What assumes significance is also the evidence of the defence witness, in

whose house the complainant is stated to have sought shelter, after being brutally assaulted and grievously injured. He denied the entire incident and there was no medical evidence to prove the brutal assault and grievous injury. This Court cannot but find that there is an 'honourable acquittal' as emanating from the judgment resulting in the acquittal of the accused. It is true that in all cases where there is an acquittal on the ground of benefit of reasonable doubt it cannot be said that there is a 'full exoneration' or 'honourable acquittal'. As held by the Hon'ble Supreme Court, the facts have to be gone into and in the present case the facts as emanating from the order of acquittal clearly indicates a false case having been foisted against the accused. Coupled with this is the fact that the bank did not exercise its discretion in the matter of suspension of the employee, judiciously, which is also evident from the fact that even while the criminal case was pending the bank revoked the suspension and took him back into service.

13. Considering all the above aspects, this Court finds that the suspension was not proper and that the petitioner has to be treated as having worked during the period he was suspended and he would be entitled to every consequential benefit, including full pay and allowances.

14. The impugned order is set aside and it is directed that the petitioner be given full pay and allowances during the period of suspension and all other consequential benefits, including continuity of service; minus the subsistence allowance paid.

15. The writ petition would stand allowed, leaving the parties to suffer their respective costs.

(K. Vinod Chandran, CJ)

K.C.Jha/-

AFR/NAFR	
CAV DATE	
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