

08.08.2023
03
AN/Ct. No.07

WPA 18767 of 2021

**Devendra Prasad Mishra
versus
Assistant General Manager & ors.**

Mr. Goutam Dey
Mr. Dipendu Sarkar
Mr. Ankan Mondal
Ms. Ankita Ghosh

... for the petitioner

The petitioner has prayed for a writ in the nature of mandamus commanding the respondents to set aside the order passed on the representation dated 17.04.2020 of dismissal and for treating the petitioner as a regular employee from the time of his dismissal till the date of his retirement. The petitioner has also prayed for an order directing the respondent authorities to pay full salaries to the petitioner.

The writ petitioner was dismissed from the Bank's service by an order of the disciplinary authority dated 06.04.2004. The petitioner unsuccessfully challenged the same before the appellate authority. After the petitioner was acquitted by the criminal court, he applied before the authorities of the Bank for release of retirement benefits and other allowances. Such prayer of the petitioner was rejected by an order impugned in this writ petition.

Learned counsel appearing for the petitioner draws the attention of the Court to the order passed by the

Criminal Court and submits that since the Criminal Court has found the petitioner not guilty of the charges under Section 406/420 of the Indian Penal Code and has been acquitted from the said charges, the respondent authorities ought to have reinstated the petitioner in service. He, therefore, submits that the petitioner is entitled to full salaries as well as retiral benefits from the date of his retirement as he has been acquitted by the Criminal Court.

This writ petition was taken up for hearing on 03.08.2023 when a prayer for adjournment was made by the writ petitioner. Such prayer was allowed and the matter was adjourned on 03.08.2023.

Today, at the first call, an adjournment was sought for and the same was allowed and the matter was fixed at 3.00 P.M. for hearing and liberty was given to learned counsel appearing for the petitioner to appear at 3.00 P.M. When the matter was taken up for hearing at 3.00 P.M., learned counsel appearing for the petitioner again prayed for time to file supplementary affidavit to bring on record the order of the Criminal Court. When this Court asked the learned advocate as to whether he has a copy of the order passed by the Criminal Court, he replied in negative.

This writ petition was filed in the year 2021 and even at the time of hearing the order of the Criminal Court is not available. Therefore, the prayer for filing supplementary affidavit is rejected.

It is well settled that mere acquittal by the Criminal Court does not necessarily mean that the disciplinary authority has to consider such acquittal and pass orders for reinstatement. Learned counsel appearing for the petitioner also could not satisfy this Court that the order passed by the Criminal Court can be said to be an honourable acquittal of the petitioner in the said criminal case. He also could not satisfy this Court that the service rules applicable to the petitioner contains a provision for automatic reinstatement in service upon being acquitted by the Criminal Court. The law on this subject is well settled. The Hon'ble Supreme Court in the case of **Deputy Inspector General of Police & anr. versus S. Samuthiram reported in (2013) 1 SCC 598** held that in the absence of any provision in the service rules for reinstatement, if an employee is honourably acquitted by a Criminal Court, no right is conferred on the same to claim any benefit regarding reinstatement. The Hon'ble Supreme Court held as follows:

“26. As we have already indicated, in the absence of any provision in the service rules for reinstatement, if an employee is honourably acquitted by a criminal court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed

to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile, etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say that in the instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so.

27. We have also come across cases where the service rules provide that on registration of a criminal case, an employee can be kept under suspension and on acquittal by the criminal court, he be reinstated. In such cases, the reinstatement is automatic. There may be cases where the service rules provide that in spite of domestic enquiry, if the criminal court acquits an employee honourably, he could be reinstated. In other words, the issue whether an employee has to be reinstated in service or not depends upon the question whether the service rules contain any such provision for reinstatement and not as a matter of right. Such provisions are absent in the Tamil Nadu Service Rules."

Hence, the writ petitioner could not satisfy this Court that he was honourably acquitted. The petitioner also could not satisfy that there is any provision in the service rules for reinstatement, if an employee is honourably acquitted by a Criminal Court.

In view thereof, the prayer of the writ petitioner for reinstatement in service upon being acquitted by the Criminal Court cannot be allowed by this Court. The authority by the impugned order considered the prayer of the petitioner for release of the provident fund balance with upto date interest, remaining amount of gratuity, release of pension, privilege leave encashment and rejected such claim by assigning cogent reasons. An opportunity of hearing was afforded to the petitioner. This Court does not find any infirmity in the decision making process.

The writ petition, accordingly, fails and the same is hereby **dismissed**.

There will be no order as to costs.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Hiranmay Bhattacharyya, J.)