



W.A.(MD)No.933 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the order	Date of Pronouncing the order
22.02.2023	02.03.2023

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

W.A.(MD)No.933 of 2021
and
C.M.P.(MD)Nos.4243 and 6406 of 2021

- 1.The Bank of India,
Rep. by its Chairperson/Managing Director,
Star House, C-5, G Block,
Bandra – Kurla Complex,
Bandra East, Mumbai – 400051.
- 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.

... Appellants

vs.

S.Xavier Moni

... Respondent

Prayer :- Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 03.11.2020, made in W.P.(MD)No.3582 of 2014.

For Appellants

: Mr.J.Saravanel

For Respondent

: Mr.G.Prabhu Rajadurai



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JUDGMENT

DR.G.JAYACHANDRAN, J.

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This Writ Appeal is preferred by the Bank Management being aggrieved by the direction issued by the learned Single Judge to grant notional promotion and give monetary benefit in favour of S.Xavier Moni, who joined as Clerk in the appellant Bank and retired as an Officer on 30.04.2003.

2. During his tenure, serving as Staff Officer in Foreign Exchange Department, Madras, in the year 1982, in view of the criminal case being registered against him and one M.R.Natarajan for creating fictitious contracts and passing fictitious vouchers, which resulted in huge loss to the Bank, the said S.Xavier Moni was placed under suspension, vide order dated 19.02.1982. Though the Criminal Case registered by the C.B.I., vide judgment dated 03.01.2003, in C.C.No.6 of 1997, ultimately ended in acquittal, the writ petitioner was denied of his duty promotion and fitment to appropriate pay scale. Hence, he made the following requests to the higher officials:-

"(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 yourself 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.



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(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/-

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

3. The aforesaid requests were considered by the Zonal Manager and he communicated through the letter, dated 22.11.2012, that his acquittal is based on benefit of doubt and not a clear acquittal and therefore, his request was restricted to the claims, which are permissible and indicated in the proposal of the Bank, in the following terms.

"(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 legal 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. You would also not be entitled for release of increments due during the period of suspension.



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(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."*

4. The writ petitioner S.Xavier Moni not being satisfied for the grant of restricted relief quoting his acquittal was not honourable, but only based on benefit of doubt, preferred W.P.(MD)No.3582 of 2014. The learned Single Judge after considering the judicial pronouncement regarding the difference between the acquittal and honourable acquittal based on benefit of doubt has held as below:-

"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."

5. Being aggrieved by the said direction, this Writ Appeal is filed by the Management stating that the interpretation of the learned Single Judge regarding the acquittal by a criminal Court is not correct. The Writ Petitioner seeks Milestone Award, which is meant for employees, who have completed 25 years of unblemished service. Whereas, the Writ Petitioner has been charged for the offences under Section 120-B read with Sections 420, 467, 468, 471 and 477-A of I.P.C. and Section



5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947. He faced trial, however, got acquitted due to extension of benefit of doubt. It not been a honourable acquittal, the Writ Petitioner is not entitled for payment of arrears during period under suspension. Further, he is not entitled for reimbursement of any legal expenses, since it is a case of particular individual and not he represented the Management and only in case of honourable acquittal, reimbursement on the litigation expenses can be claimed. Similarly, the claim of leave allowance for the days, he attended the Court, is also not sustainable. The writ petitioner got an acquittal based on benefit of doubt, which will not attract the benefits given to a person acquitted honourably. Therefore, the learned counsel for the appellants submitted that out of six reliefs claimed by the writ petitioner, based on the order of learned Single Judge, the Management has declined to give those benefits on the ground that the acquittal was not honourable.

6. The learned counsel for the appellants submitted that the Hon'ble Supreme Court of India in **Management of Reserve Bank of India, New Delhi vs. Bhopal Singh Panchal** reported in (1994) 1 SCC 541 has recognized the decision of appellate Bank not to treat the suspension period as duty in case of employees got acquittal due to benefit of doubt. Referring the Bank Regulation 46 and interpretation of the said clause by the Hon'ble Supreme Court, the learned counsel for the appellants submitted that the Hon'ble Supreme Court has settled the law



regarding the employees arrested on criminal charge in the following words:

"8. The provisions of the Regulations show that Regulation 46 is a self-contained provision for dealing with an employee's absence from duty when he is arrested either for debt or on a criminal charge or when he is detained in pursuance of any process of law. Sub-regulation (1) of that Regulation suggests that when the employee is absent from duty on account of any of the three reasons mentioned there, he may be considered as being under suspension from the date of his arrest or his detention till such date as the competent authority may direct in that behalf. The sub-regulation further provides that when the competent authority directs his suspension, the employee is entitled to such subsistence allowance as is admissible to the employee under suspension under sub-regulation (4) of Regulation 47. Regulation 47 thus comes in the picture only for the purpose of determining the amount of subsistence allowance payable to such employee and further only when the competent authority directs that such employee should be treated as being under suspension during the period of his absence.

9. Sub-regulation (2) of Regulation 46 then makes clear that the subsistence allowance paid to such employee under sub-regulation (1) is subject to adjustment of the employee's pay and allowances. That adjustment is to be made according to the circumstances of each case and in the light of the decision taken by the competent authority as to whether the period of absence is to be treated as a period on duty or on leave. The proviso to sub-regulation (2) then states that the employee shall be entitled to full pay and allowances only if two conditions are satisfied, viz., that the competent authority has treated him as on duty during such period and he is acquitted of all blame when he is arrested for debt or in connection with a criminal charge, and when he is detained otherwise he satisfies the competent authority that he had not been guilty of improper conduct resulting in his



detention. In other words, his acquittal even if it is without blame or his release from detention even if his arrest is not on account of improper conduct on his part, does not automatically entitle the employee to full pay and allowances. The competent authority has to pass an order in each case taking into consideration all circumstances to treat the period of absence as period on duty before full pay and allowances become admissible to the employee."

7. The learned counsel for the appellants submitted that in this case, the writ petitioner was not acquitted honourably and therefore, the competent authority has taken a conscious decision how to treat the suspended period of the writ petitioner/S.Xavier Moni.

8. Further, the learned counsel for the appellants relied on the judgment of the Hon'ble Supreme Court in **State of Rajasthan and others vs. Heem Singh** reported in **2020 SCC Online SC 886**, wherein it is held as under:-

"40. In the present case, we have an acquittal in a criminal trial on a charge of murder. The judgment of the Sessions Court is a reflection of the vagaries of the administration of criminal justice. The judgment contains a litany of hostile witnesses, and of the star witness resiling from his statements. Our precedents indicate that acquittal in a criminal trial in such circumstances does not conclude a disciplinary enquiry. In Southern Railway Officers Association. v. Union of India [(2009) 9 SCC 24 : (2009) 2 SCC (L&S) 552] , this Court held : (SCC p. 40, para 37)



*"37. Acquittal in a criminal case by itself cannot be a ground for interfering with an order of punishment imposed by the disciplinary authority. The High Court did not say that the said fact had not been taken into consideration. The revisional authority did so. **It is now a well-settled principle of law that the order of dismissal can be passed even if the delinquent official had been acquitted of the criminal charge.**" (emphasis supplied)*

41. In Inspector General of Police v. S.Samuthiram [(2013) 1 SCC 598 : (2013) 1 SCC (Cri) 566 : (2013) 1 SCC (L&S) 229], a two-Judge Bench of this Court held that unless the accused has an "honourable acquittal" in their criminal trial, as opposed to an acquittal due to witnesses turning hostile or for technical reasons, the acquittal shall not affect the decision in the disciplinary proceedings and lead to automatic reinstatement. But the penal statutes governing substance or procedure do not allude to an "honourable acquittal". Noticing this, the Court observed : (SCC pp. 609-10, paras 24-26)

"Honourable acquittal

*24. The meaning of the expression "honourable acquittal" came up for consideration before this Court in RBI v. Bhopal Singh Panchal [RBI v. Bhopal Singh Panchal, (1994) 1 SCC 541 : 1994 SCC (L&S) 594]. In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. **In that context, this Court held that the mere acquittal does not entitle an employee***



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to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions “honourable acquittal”, “acquitted of blame”, “fully exonerated” are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression “honourably acquitted”. When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.””

9. As far as the facts of the present case is concerned, admittedly, the writ petitioner, who was placed under suspension never been subjected to any departmental enquiry. He was reinstated after suspension, but his promotions were withheld in view of the pendency of the criminal case. Though he was acquitted, some of the retirement benefits are denied on the ground that his acquittal is not honourable acquittal, but only based on benefit of doubt. Citing the Service Rules prevailing for the Bank employees, it is contended that there is no illegality in treating a delinquent, who has been acquitted from the criminal charges either benefit of doubt or honourably. A person with blemished service cannot seek for Milestone Award, which is meant for persons with unblemished service for more than 25 years. The plea of the writ petitioner to reimburse his legal expenses and also travel allowance for attending the Court is highly preposterous for the delinquent to ask.



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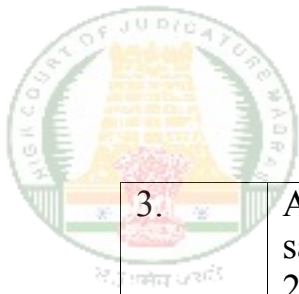
Therefore, the order of the learned Single Judge, directing the Bank to grant notional promotion to the writ petitioner and pay the monetary benefits is not sustainable.

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10. We have heard the rival submissions of the learned counsel representing on either side and perused the materials on record.

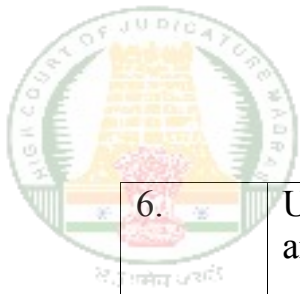
11. The relief claimed by the respondent and the appellants' reply is tabulated as below:-

S.No.	RELIEFS CLAIMED BY RESPONDENT	APPELLANTS' REPLY
1.	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.	Promotion from Scale I to II granted w.e.f. 01.04.1981. The same was not given effect to since the acquittal of the respondent in the criminal case was on benefit of doubt and not on honourable grounds.
2.	Reimbursement of legal expenses upto Rs. ,14,460/-	Administrative Circular No. 1999-2005 dated 11.10.1999 reimbursement - permissible only when acquittal is honourable.



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3.	Annual increment due December 1982 and salary for suspension period from 23.02.1982 to 14.06.1983.	As per clause 15(2) r/w 15(3)(b) of BOI Officer Employees' (Discipline & Appeal) Regulations, 1976 in cases not fully exonerated, the period of absence from duty due to suspension shall not be treated as period spent on duty. Since respondent has been acquitted with benefit of doubt, he would not be entitled for full pay and allowance for the period of suspension and for increments due during the period of suspension.
4.	Milestone Award	Given to employees who have completed 25 years of unblemished service whereas in case of respondent the CBI had filed case for commission of serious criminal offences under IPC and Prevention of Corruption Act and the acquittal of the respondent was not an honourable acquittal.
5.	Reimbursement of travelling expenses halting expenses with sanction of duty leave for attending court case from Madurai to Chennai from June 1995 to May 1998.	Respondent not entitled for reimbursement for attending court case at Chennai since acquittal is not honourable as per Appellant Circular dated 11.10.1999.



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6.	Updated pension upon promotion and arrears.	Respondent cannot be given updated pension and arrears after calculation upon promotion to Scale II and the arrears, if any, accrued during the said period since the promotion to Scale II was not given effect to.
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11. While payment of arrears of salary due upon promotion with effect from 01.01.1981 from scale – I to scale – II has been granted with effect from 01.04.1981, the further promotions upto scale VII are not purely on seniority, but it is merit-cum-seniority. A person, who has a mole in service and facing criminal prosecution, cannot be considered for a higher post and therefore, notional promotion to the writ petitioner is not sustainable. Similarly, the legal expenses and salary for the suspended period are also provided only to delinquent, who is fully exonerated and not on benefit of doubt.

12. From a reading of the trial Court's judgment in C.C.No.6 of 1997 and the further appeal by the Department in Crl.A.No.1454 of 2003, this Court finds that both the Courts have recorded acquittal stating that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt. Non-production of vital documents, in spite of demand by the accused and non-examination of vital witnesses, were given as reasons for acquittal. The service records of the writ



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petitioner indicate that for the alleged loss caused to the Bank, he was placed under suspension on 19.02.1982. The suspension order was revoked on 15.06.1983. As per the revised promotion policy, he has been given promotion. The judgment in the criminal case registered in the year 1997 though ended in acquittal and the further Criminal Appeal by the Department also ended in acquittal *per se*, will not entitle the employee for all the retirement benefits as if there is no mole or blemish in his service. The failure to produce documents and conduct the trial properly, will not give any further advantage other than the acquittal and convert the acquittal based on beyond doubt theory with honourable acquittal is incorrect. More so, the delinquent, who is facing action for misconduct or dereliction of duty, just because, he is acquitted in the criminal prosecution, cannot seek reimbursement of legal expenses. Such protection will be available only when the officer tried for a criminal prosecution while discharging his duty bona fide and not otherwise. Therefore, the direction of the learned Single Judge to provide all the service and monetary benefits to the writ petitioner in accordance with law does not mean that he must be given all the benefits 1 to 6 mentioned above. Such disbursement of the benefit is subject to the law governing the said service and when the authority is convincing that certain benefits cannot be given to the accused, who has been acquitted on the basis of benefit of doubt and so long as the said rule not challenged and struck down withholding certain benefits, perks to a delinquent, who was later found not guilty in a criminal proceeding, is permissible if it is supported by the Rules.



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13. As far as the present case is concerned, vide communication, dated 22.11.2012, certain promise has been given by the Zonal Manager for the representation made by the delinquent, seeking back wages with other attendant benefits. But, after filing the Writ Petition and being successful in getting the relief of notional promotion and all monetary benefits in the Writ Appeal, the Management citing its Circular dated 11.10.1999, regarding reimbursement of legal expenses to staff members involved in prosecution cases and the Circular, dated 29.09.1992, regarding Milestone Award Scheme - 1990 and Circular, dated 15.02.2012, regarding promotion policy in terms of Regulation 17 of the Bank of India Officers' Service Regulations, 1979 and state that the writ petitioner cannot be provided with notional promotions with all monetary benefits contrary to these Rules.

14. This Court on going through the judgment of the learned Single Judge see that though the Court has directed the Department for providing all the service and monetary benefits to the writ petitioner, it is only in accordance with law and not against law. A person, who has faced prosecution by C.B.I., and got acquittal on the technical ground of failure to produce certain documents, cannot be classified under honourable acquittal. This Court is aware of the fact that under the criminal jurisprudence, there is no classification between the honourable acquittal and the acquittal based on benefit of doubt. An acquittal is always an acquittal. The reason for acquittal may differ. But, the deemed fiction of acquittal 'not proved beyond



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doubt' and 'honourable acquittal' invented for the purpose of service jurisprudence where even if the Department has not initiated disciplinary proceedings consequence to the criminal prosecution, the outcome of the criminal prosecution will have no bearing on the departmental proceedings. Award given for unblemished service, like, Milestones Award or reimbursement of the legal expenses for an employee, who faced criminal prosecution, cannot be extended to all and if any reasonable classification imposed under the Rule, the same cannot be held invalid. Therefore, the direction of the learned Single Judge has to be construed that the conferment of all benefits should always be in accordance with law and law includes the Circulars issued by the Bank. If there is any restriction under the Circular or Regulations, it will prevail.

15. With the above clarification to the order of the learned Single Judge, this Writ Appeal is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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[G.J., J.] [K.K.R.K., J.]
02.03.2023



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DR.G.JAYACHANDRAN, J.
and
K.K.RAMAKRISHNAN, J.

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PRE-DELIVERY JUDGMENT MADE IN
W.A.(MD)No.933 of 2021

DATED : 02.03.2023