

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-17357-2015

Date of Decision:09.10.2023

RAMESH KUMAR KHANNA

..... Petitioner

Versus

ALLAHABAD BANK AND ORS.

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. J.S. Maanipur, Advocate with
Ms. Harpreet Kaur, Advocate
for the petitioner.

Mr. Vikas Chatrath, Advocate with
Mr. Abhishek Singla, Advocate
Mr. B.P.S. Thakur, Advocate and
Mr. Rajbir Singh, Advocate
for the respondent-Bank.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Article 226 of the Constitution of India is seeking setting aside of order dated 06.04.2015 (Annexure P-12) whereby claim of the petitioner with respect to salary for the suspension period i.e. 27.04.2010 to 30.04.2014 has been declined treating the suspension period as 'not on duty'. The petitioner has been further denied benefit of pension.

2. The petitioner joined respondent-Bank as Clerk on 16.12.1978. The respondent-Bank has amalgamated with Indian Bank. The petitioner was promoted to the post of Scale-1 officer on 27.10.1986.

Time to time, he was further promoted. The petitioner was implicated in

FIR No.7 dated 27.04.2010 under Section 7 and 13 (2) of Prevention of Corruption Act, registered at Police Station Vigilance Bureau, Amritsar. The petitioner was arrested on 27.04.2010 and he remained in custody till 14.05.2010. The respondent-Bank vide order dated 30.04.2010 (Annexure P-1) suspended the petitioner w.e.f 27.04.2010. It is apt to notice that the petitioner was suspended in terms of Regulation 12(2)(a) of Allahabad Bank Officer Employees (Discipline & Appeal) Regulations, 1976 (for short '1976 Regulations'). The petitioner on being released on bail preferred representation dated 15.05.2010 before respondent-Bank seeking reinstatement and recalling of suspension order. The respondent-Bank opted to remain silent on the said representation and extended benefit of subsistence allowance to the petitioner. The petitioner attained age of superannuation on 30.04.2014. The petitioner further came to be acquitted vide judgment dated 08.12.2014 passed by the Trial Court. The judgment of acquittal was never challenged and respondent-Bank, though put the petitioner under suspension, yet did not initiate disciplinary proceedings against the petitioner. The petitioner after acquittal, requested the respondent to grant him salary for the suspension period. The petitioner during the said period was granted subsistence allowance. The respondent-Bank vide impugned order dated 06.04.2015 (Annexure P-12) declined request of the petitioner on the ground that suspension period was 'not on duty' period, thus, petitioner is not entitled to salary for the said period. In other words, the sole ground of rejection of claim of the petitioner is that petitioner did not work during 27.04.2010 to 30.04.2010, thus, he is not entitled to salary. The petitioner has been further denied benefit of pension though he filed

option form on 01.11.2010 (Annexure P-23).

3. Learned counsel for the petitioner *inter alia* contends that petitioner was put under suspension, however, respondent-Bank opted not to initiate disciplinary proceedings against the petitioner. The petitioner was suspended under Regulation 12 (2)(a) of 1976 Regulations. The petitioner was entitled to salary and not subsistence allowance because respondent could pay subsistence allowance for first 3 months and thereafter in the absence of any inquiry, the respondent-Bank had no authority to withhold salary of the petitioner. The respondent-Bank was quite competent to modify or revoke suspension order, however, respondent-Bank opted not to pass any order on the application of the petitioner. The petitioner was always ready and willing to work. The petitioner during the period in question did not work at any other place and he survived on subsistence allowance. There was no fault on the part of the petitioner which is evident from the judgment of acquittal as well as absence of disciplinary proceedings against the petitioner. The petitioner is entitled to pension because vide application form dated 01.11.2010 (Annexure P-23), he applied for the pension. The application form (Annexure P-23) was duly received by the Bank and Bank Manager vide letter dated 11.11.2010 (Annexure P-10/A) recommended case of the petitioner for pension.

The petitioner in support of his contention relies upon judgment of Division Bench of this Court in ***Uttar Haryana Bijli Vitran Nigam Ltd. and others Vs. Jagdish Lal 2023 (2) SLR 772.***

4. Per contra, learned counsel for the respondent-Bank submits that petitioner was suspended in terms of Regulation 12 (2)(a) of 1976

Regulations and his suspension continued till his retirement though no order to continue his suspension or on the representation dated 15.05.2010 of the petitioner was passed. The Bank was not supposed to pass order with respect to continuation of suspension and it automatically continued up to the date of retirement. The petitioner was subjected to an inquiry by outside agency, thus, he was entitled to only subsistence allowance in terms of Regulation 14 of 1976 Regulations.

5. Initially, the respondent contended that option Form of the petitioner is not available in the record of the respondent, thus, he is not entitled to pension, however, learned counsel on being confronted with Annexure -10/A submitted that the petitioner in 2014 got his share of provident fund and in 2015 got bank's share towards provident fund, thus, he is not entitled to pension. The act of petitioner amounts to acquiescence, thus, he cannot at this belated stage, claim pension.

The respondents relied upon judgment of Supreme Court in ***Raj Narain Vs. Union of India, 2019 (5) SCC 809, State Bank of India Vs. Md. Abdul Rahim, 2013 (11) SCC 67, Pepsu Road Transport Corporation, Patiala Vs. Mangal Singh, 2011 (11) SCC 702, Pepsu Road Transport Corporation, Patiala Vs. Amandeep Singh, 2017 (2) SCC 766, Allahabad Bank Vs. Deepak Kumar Bhola, 1997 (4) SCC 1*** and a Division Bench Judgment of this Court in ***Sat Pal Dhawan Vs. State Bank of Patiala, 2014 (1) SLR 576*** and a Division Bench Judgment of Allahabad High Court in ***Mata Badal Singh Vs. Allahabad U.P. Gramin Bank, 2016 (34) LCD 2042*** and ***Dilip Kumar Soni Vs. Allahabad Bank, 2015 (15) SCT 600.***

The relevant extracts of ***Dilip Kumar Soni Vs. Allahabad***

Bank (supra) read as:

6. Rule 12(1)(b) of the Regulations of 1976 provides that an officer/employee may be placed under suspension by the competent authority where a case against him in respect of criminal offence is under inspection, inquiry or trial. Rule 12(2) of the Regulations provides that an officer/employee shall be deemed to have been placed under suspension by an order of the competent authority w.e.f. the date of detention, if he is detained in custody, whether on a criminal charge or otherwise for a period exceeding 48 hours. Rule 12(5) provides that an order of suspension made or deemed to have been made under this Regulation shall continue to remain in force until it is modified or revoked by an authority competent authority to do so. Sub-rule (b) of Rule 12(5) provides that an order of suspension made or deemed to have been made under this Regulation may at any time be modified or revoked by the authority which made or deemed to have made the order.

7. Initially the petitioner herein was placed under suspension vide order dated 24.12.2012 under Regulation 12(2), referred to above, on the ground of his detention exceeding 48 hours in connection with a criminal charge. By the time his application for revocation of the suspension under Regulation 12(5)(b) came up for consideration, not only the competent authority had sanctioned his prosecution under Section 19 of the Act on being satisfied that a prima facie case existed against him, but the criminal case also became pending against him before the Special Judge, Anti Corruption, C.B.I. (West), Lucknow, thereby attracting the provisions contained in Regulation 12(1)(b) allowing the suspension to continue on account of pendency of an investigation, inquiry or trial in respect of any criminal offence. In these circumstances, on a perusal of the impugned order, we find that it contains cogent reasons for declining to revoke the suspension which does not suffer from any error in the eyes of law. We do not find any valid ground for

interference in the matter under Article 226 of the Constitution of India, specially in view of the judgments cited by the learned counsel for the opposite party and referred hereinabove.

6. I have heard the arguments of both sides and with the able assistance of learned counsels perused the record.

7. The conceded position emerging from the record is that the petitioner joined respondent-Bank on 16.12.1978 and he was suspended vide order dated 30.04.2010 meaning thereby the petitioner remained in service for 32 years. The petitioner attained age of superannuation in April, 2014. The petitioner was suspended vide communication dated 30.04.2010, however, respondent never initiated disciplinary proceedings. The petitioner was released on bail on 14.05.2010. The petitioner made representation on 15.05.2010 wherein he requested for recalling of suspension order. The respondent-Bank did not decide representation of the petitioner despite the fact that no disciplinary proceedings were initiated against the petitioner. The petitioner was acquitted by Trial Court in criminal case and no appeal was filed against the said judgment. The petitioner in terms of Allahabad Bank (employees') Pension Regulations, 1995 filed option for pension on 01.11.2010. The Senior Manager recommended case of the petitioner vide letter dated 11.11.2010. The respondent vide letter dated 16.05.2014 informed the petitioner that he would not be entitled to retiral benefit till the proceedings are completed. The relevant extracts of the letter read as:

“However, you will not be entitled to receive any pay and/ or allowances after the date of superannuation. You will also not be entitled for the payment of retirement benefits till the proceedings are completed and final order is passed thereon except your own

contribution to Provident Fund.”

8. The respondent in terms of Regulation 12 of 1976 Regulations is empowered to place an employee under suspension. Regulation 12 reads as:

“12. SUSPENSION :

(1) An officer employee may be placed under suspension by the competent authority -

(a) where a disciplinary proceeding against him is contemplated or is pending ; or

(b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial.

(2) An officer employee shall be deemed to have been placed under suspension by an order of the competent authority -

(a) with effect from the date of detention, if he is detained in custody whether on a criminal charge or otherwise, for a period exceeding fortyeight hours ;

(b) with effect from the date of conviction, if in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding fortyeight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

Explanation : *The period of forty-eight hours referred to in Clause (b) of this sub regulation shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any shall be taken into account.*

(3) Where a penalty of dismissal, removal or

compulsory retirement from service imposed upon an officer employee under suspension is set aside in appeal or on review under these regulations and the case is remitted for further inquiry or action or with any directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

- (4) *Where a penalty of dismissal, removal or compulsory retirement from service imposed upon an officer employee under suspension is set aside or declared or rendered void in consequence of or by a decision of a court of law, and the disciplinary authority, on consideration of the circumstances of the case, decides to hold further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the officer employee shall be deemed to have been placed under suspension by the competent authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders,*
- (5) (a) *An order of suspension made or deemed to have been made under this regulation shall continue to remain in force until it is modified or revoked by the authority competent to do so.*
- (b) *An order of suspension made or deemed to have been made under this regulation may at any time be modified or revoked by the authority which made or deemed to*

have made the order.”

From the perusal of above quoted Regulation, it comes out that an employee may be placed under suspension by an order or he may be deemed to have been placed under suspension. The respondent in the present case invoked Sub-regulation (2) of Regulation 12 which is a deeming provision. In other words, the petitioner was placed under suspension invoking deeming provision. Sub-regulation (5) (a) of the said Regulation provides that an order of suspension shall continue to remain in force until it is modified or revoked by the authority competent to do so. Clause (b) of Sub-regulation (5) further provides that order of suspension may at any time be modified or revoked by the authority which made or deemed to have made the order.

The petitioner made representation on 15.05.2010 seeking recalling of suspension order. The respondent neither initiated disciplinary proceedings nor passed any order on the representation dated 15.05.2010 of the petitioner. The respondent is correct while claiming that a suspension order remains in force until it is modified or revoked by the authority, however, the respondent has failed to consider that an order of suspension may be revoked or modified by the authority which made the order.

9. In the case in hand, the petitioner had made representation seeking recalling of suspension order. The respondent had not initiated disciplinary proceedings against the petitioner and he was paid subsistence allowance, thus, the respondent was duty bound to consider representation of the petitioner. The respondent had authority to reject representation of the petitioner but the respondent did not carry absolute authority to keep suspension in continuance especially when there was

representation of the employee and no departmental proceedings were pending.

10. Regulation 14 of 1976 Regulations provides that for the first 3 months, an employee would be entitled to 1/3 of basic pay as subsistence allowance and subsequent to 3 months, where enquiry is held departmentally by the Bank, half of basic pay and where enquiry is held by an outside agency 1/3 of basic pay for the next 3 months and half of basic pay for remaining period of suspension. Regulation 14 of 1976 Regulations is reproduced as below:

**“14.SUBSISTENCEALLOWANCEDURING
SUSPENSION :**

(1) An officer employee who is placed under suspension shall, during the period of such suspension and subject to sub-regulations (2) to (4) be entitled to receive payment from the bank by way of subsistence allowance on the following scale namely;

(a) Basic Pay:

(i) For the first three months of suspension 1/3 of basic pay which the officer employee was receiving on the date prior to the date of suspension irrespective of the nature of enquiry.

(ii) For the subsequent period after 3 months from the date of suspension

(1) Where the enquiry is held departmentally by the bank, 1/2 of the basic pay, the officer employee was drawing on the date prior to the date of suspension, and

(2) Where the enquiry is held by an outside agency 1/3 of the basic pay which the

officer employee was drawing on the date prior to the date of suspension for the next three months and 1/2 of the basic pay which the officer employee was drawing on the date prior to the date of suspension for the remaining period of suspension.”

[Emphasis Supplied]

11. From the perusal of above quoted Regulation, it is clear that an employee is entitled to 1/3 of basic pay for the first 3 months of suspension and thereafter he is entitled to half of basic pay provided an enquiry is held by department or by an outside agency.

In the case in hand, the petitioner was suspended on account of his arrest. The respondent did not initiate enquiry against the petitioner despite expiry of 3 months. A criminal trial was pending against petitioner, however, no other enquiry either by department or outside agency was pending against the petitioner after 3 months of suspension. Thus, Sub-Clause (ii) of Clause (a) of Sub-Regulation (1) of Regulation 14 is not applicable in the case in hand. The respondent on the expiry of 3 months from the date of suspension, in the absence of pending enquiry was duty bound to consider representation of the petitioner.

12. The respondent has rejected claim of the petitioner *qua* full wages in terms of Regulation 15 of 1976 Regulations. The respondent has held that period of suspension was no work period, thus, petitioner is not entitled to wages for the suspension period. Regulation 15 of 1976 Regulations is reproduced as below:

**“15. PAY, ALLOWANCES AND
TREATMENT OF SERVICE ON
TERMINATION OF SUSPENSION:**

(1) Where the competent authority holds that the

officer employee has been fully exonerated or that the suspension was unjustifiable, the officer employee concerned shall be granted the full pay to which he would have been entitled, had he not been suspended together with any allowance of which he was in receipt immediately prior to his suspension or may have sanctioned subsequently and made applicable to all officer employees.

(2) In all cases other than those referred to in Sub-regulation (1) the officer employee shall be granted such proportion of pay and allowances as the Competent Authority may direct :

Provided that the payment of allowances under this sub-regulation shall be subject to all other conditions to which allowances are admissible ; Provided further that the pay and allowances granted under this sub-regulation shall not be less than the subsistence and other allowances admissible under Regulation 1.

(3) (a) In a case falling under sub-regulation (1) the period of absence from duty shall, for all purposes, be treated as a period spent on duty;

(b) In a case falling under sub-regulation (2) the period of absence from duty shall not be treated as a 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.”

13. From the perusal of impugned order dated 06.04.2015, it comes out that sole ground of rejection of claim of the petitioner for full wages is that petitioner was absent from duty. Sub-regulation (1) of Regulation 15 provides that where competent authority holds that the employee has been fully exonerated or that the suspension were

unjustified, the employee shall be entitled to full pay.

In the case in hand, the petitioner vide letter dated 15.05.2010 specifically requested for recalling of suspension order and expressed his willingness to work. There is nothing on record to show that petitioner was not willing to work. The respondent has not passed any order with respect to request of the petitioner to recall suspension order. The petitioner has been exonerated in criminal trial and respondent never initiated departmental proceedings which should be consequent to suspension. By not initiating disciplinary/departmental proceedings, the respondent accepted that suspension was on account of pending criminal case and they have no grievance with the conduct of the petitioner. In the absence of departmental proceedings and dropping of criminal trial, the respondent-Bank was not justified to reject claim of full pay of the petitioner. Regulation 15 specifically permits full pay in case of exoneration or holding of suspension unjustified. The petitioner was not subjected to enquiry and he stands exonerated from criminal trial, thus, he was entitled to full pay and could not be held absent from duty when he was ready and willing to work.

13.1. The respondent in support of his contention with respect to back wages has relied upon judgment of Supreme Court in ***Raj Narain*** (supra). The relevant paragraphs of the judgment read as:

“6. The decision of Ranchhodji Chaturji Thakore (supra) was followed by this Court in [Union of India and Others v. Jaipal Singh](#) (supra) to refuse back wages to an employee who was initially convicted for an offence under [Section 302](#) read with [Section 34](#) IPC and later acquitted by the High Court in a criminal appeal. While refusing to grant relief to the Petitioner

therein, this Court held that subsequent acquittal would not entitle an employee to seek back wages. However, this Court was of the opinion that if the prosecution is launched at the behest of the department and the employee is acquitted, different considerations may arise. The learned counsel for the Appellant endeavored to distinguish the prosecution launched by the police for involvement of an employee in a criminal case and the criminal proceedings initiated at the behest of the employer. The observation made in the judgment in [Union of India and Others v. Jaipal Singh](#) (supra) has to be understood in a manner in which the department would become liable for back wages in the event of a finding that the initiation of the criminal proceedings was mala fide or with vexatious intent. In all other cases, we do not see any difference between initiation of the criminal proceedings by the department vis-a-vis a criminal case lodged by the police. For example, if an employee is involved in embezzlement of funds or is found indulging in demand and acceptance of illegal gratification, the employer cannot be mulcted with full back wages on the acquittal of the person by a criminal Court, unless it is found that the prosecution is malicious.

7. The point that remains to be considered is whether the Appellant is entitled to payment of full wages between 1979 and 1987. The Appellant was placed under suspension on 23.10.1979 and his suspension was revoked on 21.10.1987. An interesting development took place during the interregnum by which the disciplinary proceedings were dropped on 21.03.1983. It is clear from the record that the Appellant was the one who was seeking postponement of the departmental inquiry in view of the pendency of

criminal case. The order of suspension was in contemplation of disciplinary proceedings. By virtue of the disciplinary proceedings being dropped, the Appellant becomes entitled to claim full salary for the period from the date of his suspension till the date of closure of the departmental inquiry. Thereafter, the Respondents took four years to reinstate him by revoking his suspension. The order of suspension dated 23.10.1979 came to an end on 21.03.1983 which is the date on which disciplinary proceedings were dropped. The Appellant ought to have been reinstated immediately thereafter unless a fresh order was passed, placing him under suspension during the pendency of the criminal trial which did not happen. Ultimately, the Appellant was reinstated by an order dated 21.10.1987 by revocation of the order of suspension. Though, technically, the learned Additional Solicitor General is right in submitting that the impugned judgment does not even refer to the I.A., we are not inclined to remit the matter to the High Court at this stage for fresh consideration of this point. We hold that the Appellant is entitled for full wages from 23.10.1979 to 21.10.1987 after adjustment of the amounts already paid towards subsistence allowance.

The respondent has pointed out Para 6 of the aforesaid judgment, however, perusal of Para 7 of the afore-cited judgment discloses that Apex Court has extended benefit of full wages for the suspension period where suspension has been recalled. Hon'ble Supreme Court has extended benefit of full wages not from the date of recalling of suspension but from the date of suspension.

In the case in hand, the petitioner was suspended, however, no enquiry was conducted, meaning thereby, the respondent opted to rely

upon outcome of criminal trial. The petitioner was exonerated in criminal proceeding, thus, respondent-Bank was bound to rely upon outcome of criminal proceedings. The judgment cited by respondent supports case of the petitioner rather than respondent. The Petitioner is entitled to full wages from the date of his application seeking recalling of suspension order.

13.2. The respondent has further relied upon judgment of Supreme Court in ***Md. Abdul Rahim*** (supra). The relevant extracts of the judgment read as:

8. Before delving into the contentious issues arising from the arguments advanced, the issue with regard to the applicability of the provisions of the Sastry Award may be dealt with in the first instance. According to us, the said provisions do not have any special significance inasmuch as there can be no doubt on the proposition that on the very same facts that give rise to a criminal offence it is always open to the employer to initiate a departmental proceeding which option the employer may or may not exercise. In the event the employer chooses to initiate a departmental proceeding, it would be open for such an employer to take disciplinary action against the erring employee if the charges levelled are found to be substantiated notwithstanding the acquittal of the employee in the criminal case that may have been lodged against him. This is on the principle that standard of proof in a criminal case and a departmental proceeding is different. However, in a case where the employer chooses not to initiate a departmental proceeding and acts only on the basis of the conviction in the criminal prosecution, he would be bound by the final verdict in the same, i.e., in case of a reversal. The provisions of

the Sastry Award, relied upon on behalf of the respondent, therefore, does not in any manner alter the basic principles surrounding the initiation of a criminal action and a departmental enquiry on the same set of facts and the consequences thereof.

9. xxx xxx xxx xxx

10. *The issue relating to entitlement to back wages, however, stands on a somewhat different footing. While in Ranchhodji Chaturji Thakore (supra), Jaipal Singh (supra) and Baldev Singh (supra), the basis of refusal of back wages by this Court would appear to be the inability of the employer to avail of the service of the employee due to his incarceration in jail, in Banshi Dhar (supra), the refusal of back wages by this Court was in a situation largely similar to the case before us, namely, where the employee was all along on bail and was thus available for work. In Banshi Dhar (supra), this Court answered the question against the employee by holding that grant of back wages is not automatic and such an entitlement has to be judged in the context of the totality of the facts of a given case. It is on such consideration that back wages was declined. In the present case, it will not even be necessary for the Court to perform the said exercise and delve into the surrounding facts and circumstances for the purpose of adjudication of the entitlement of the respondent to back wages in view of the provisions of Section 10(1)(b)(i) of the Act. The said provisions impose a clear bar on a banking company from employing or continuing to employ a person who has been convicted by a criminal court of an offence involving moral turpitude. No discussion as to the meaning of the expression 'moral turpitude' is necessary having regard to the nature of the offences alleged against the respondent, namely, under Section*

498A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act, 1961. No doubt, the respondent was not in custody during the period for which he has been denied back wages in as much as the sentence imposed on him was suspended during the pendency of the appeal. But what cannot be lost sight of is that the conviction of the respondent continued to remain on record until it was reversed by the appellate court on 22.02.2002. During the aforesaid period there was, therefore, a prohibition in law on the appellant-bank from employing him. If the respondent could not have remained employed with the appellant-bank during the said period on account of the provisions of the Act, it is difficult to visualise as to how he would be entitled to payment of salary during that period. His subsequent acquittal though obliterates his conviction, does not operate to retrospectively wipe out the legal consequences of the conviction under the Act. The entitlement of the respondent to back wages has to be judged on the aforesaid basis. His reinstatement, undoubtedly, became due following his acquittal and the same have been granted by the appellant bank.

The respondent has relied upon Para 10 of the afore-cited judgment. In Para 8 of the judgment, the Court has held that if department opts not to initiate a departmental proceeding, the department is bound to rely upon outcome of criminal prosecution. The Court has declined claim of the respondent therein relying upon Section 10 (1) of Banking Regulation Act, 1949 which imposes a clear bar on a banking company from employing or continuing to employ a person who has been convicted by criminal Court of an offence involving moral turpitude.

In the case in hand, Regulation 12(5) empowers respondent

to recall or revoke suspension order, thus, Regulation 12(5) provides for altogether different than Section 10 (1) of Banking Regulation Act. The petitioner was neither held guilty in departmental proceedings nor he has been convicted by criminal Court. The petitioner was acquitted by Trial Court. The department has not even initiated departmental proceedings and criminal trial was dropped, thus, Regulation 12 read with 15 of 1976 Regulations comes for the rescue of the petitioner.

13.3. The relevant extracts of Division Bench Judgment of Allahabad High Court in ***Mata Badal Singh Vs. Allahabad U.P. Gramin Bank*** (supra) cited by respondent read as:

16. Thus, when the proceedings against the petitioner have been initiated under the provisions of Prevention of Corruption Act and in context of discharge of his official function/duties and in case the petitioner is allowed to discharge his duties, it shall not be in the interest of the equity rather shall be repugnant to the context. Hence, there is no justification to set aside the suspension order, because Apex Court in the case of Secretary to Govt., Prohibition and Excise Department Vs. L. Srinivasan, (1996) 3 SCC 157, observed that even if a criminal trial or enquiry takes a long time, it is ordinarily not open to the Court to interfere in case of suspension as it is in the exclusive domain of the competent authority who can always review its order of suspension being an inherent power conferred upon him to place an employee under suspension and while exercising such a power, the authority can consider the case of an employee for revoking the suspension order if satisfied that the criminal case pending would be concluded after an unusual delay for no fault of the employee concerned. (See also: U.P. Rajya Krishi

Utpadan Mandi Parishad Vs. Sanjeev Ranjan (1993) Supp. (3) SCC 483; and State of Rajasthan Vs. B.K. Meena and others (1996) 6 SCC 417.

The Allahabad High Court has held that suspension order cannot be quashed by Court on the ground that criminal trial is going to take long time, however, it is open to competent authority to review its order of suspension being an inherent power conferred upon him.

In the case in hand, the respondent carries expressed power to consider application seeking recalling of suspension order. The respondent did not pass any order on the application of the petitioner seeking recalling of suspension. The respondent did not think it appropriate to reconsider suspension order especially when no departmental proceeding was initiated and petitioner was willing to work. The respondent was bound to pass an appropriate order in terms of Regulation 12 when there was specific request on the part of petitioner.

14. A Division Bench of this Court after discussing plethora of judgments of Hon'ble Supreme Court in ***Jagdish Lal*** (supra) has held that an employee is entitled to full wages for the suspension period if disciplinary proceedings as well as criminal proceedings are dropped. The relevant extracts of the judgment read as:

“16. A perusal of the said authority would go on to show that the disciplinary proceedings were dropped and the employee was ultimately reinstated and accordingly it was held that the appellant was entitled for the full wages for the period from 23.10.1979 to 21.10.1987, after adjustment of the amounts already paid, which supports the case of the respondent-employee.

17. In *Brahma Chandra Gupta (supra)* the Apex Court noticed that the employee was never proceeded against on the departmental side and upheld the order of the trial Court that full amount of salary be paid to the employee on his reinstatement for the entire period, which was held to be the correct approach.

18. In *Nathu Ram (supra)* while referring to the relevant rules, the views of the learned Single Judge and the Division Bench of the High Court were upheld, keeping in view the regulations and while noting that full pay had been granted from the date of suspension till the date of dismissal.

19. Thus, we are of the considered opinion that once the writ petitioner has earned his exoneration, both on the criminal side and on the departmental side, now the Nigam is not justified in agitating that he is to be denied pay and allowances for the intervening period.”

14.1 A Division Bench of this Court in ***Shashi Kumar Vs. Uttar Haryana Bijli Vitran Nigam and another*** 2004 SCC OnLine P&H 1159 has held that once an employee is acquitted by the Trial Court, he is entitled to full salary. There is no concept of ‘honourable acquittal’ or ‘fully exonerated’ in criminal law. The relevant extracts of the judgment read as:

“7. In any event, the terms “honourable acquittal” or “fully exonerated” are unknown in the Code of Criminal Procedure or in Criminal Jurisprudence. These terms came up for consideration before a Division Bench of the Madras High Court in the case of *Union of India v. Jayaram* [A.I.R. 1960 Mad. 325]. Rajamannar, C.J. delivering the judgment of the Division Bench observed as under:—

“There is no conception like “honourable acquittal” in Criminal P.C. The onus of establishing the guilt of

accused is on the prosecution, and if it fails to establish the guilt beyond reasonable doubt, the accused is entitled to be acquitted.

Clause (b) of Article 193 of the Civil Service Regulations which says that when a Government servant who was under suspension is honourably acquitted, he may be given the full salary to which he would have been entitled if he had not been suspended applies only to the case of departmental inquiry.

Where the servant was suspended because there was a criminal prosecution against him, and he was acquitted therein, and reinstated he is entitled under the general law, to the full pay during the period of his suspension. To such a case Article 193(b) does not apply”.

8. The aforesaid judgment of the Madras High Court was considered and followed by this Court in the case of Jagmohan Lal v. State of Punjab through Secretary to Punjab Govt. Irrigation [AIR (54) 1967 Pb. & Hy. 422 (Punjab)]. In that case, on acquittal, the petitioner was reinstated in service, but his period of suspension was not treated as the period spent on duty. He had, therefore, filed writ petition under Articles 226/227 of the Constitution of India claiming that he was entitled to full pay and allowances for the period of his suspension. Considering the impact of Rules 7.3, 7.5 and 7.6 of the Punjab Civil Services Rules Vol. I, Part I, it was observed as follows:—

(2) xxx xxx xxx xxx

The interpretation which has been put by the Government on the rule is incorrect. The blame which attached to the petitioner was that there was a criminal charge against him under which he was standing his trial. The moment he is acquitted of the charge, he is acquitted of the blame. In criminal law, the Courts are called upon to decide whether the

prosecution has succeeded in bringing home the guilt to the accused. The moment the Court is not satisfied regarding the guilt of the accused, he is acquitted. Whether a person is acquitted after being given a benefit of doubt or for that reasons, the result is that his guilt is not proved. The Code of Criminal Procedure does not contemplate honourable acquittal. The only words known to the Code are 'discharged' or 'acquitted'. The effect of a person being discharged or acquitted is the same in the eyes of law. Since, according to the accepted notions of imparting criminal justice, the Court has to be satisfied regarding the guilt of the accused beyond a reasonable doubt, it is generally held that there being a doubt in the mind of the court, the accused is acquitted.

I am, therefore, quite clear in my mind that the intention underlying rule 7.5 can be no other except this; the moment the criminal charge on account of which an officer was suspended fails in a court of law, he should be deemed to be acquitted of the blame. Any other interpretation would defeat the very purpose of the rule. It is futile to expect a finding of either honourable acquittal or complete innocence in a judgment of acquittal. The reason is obvious; the criminal courts are not concerned to find the innocence of the accused. They are only concerned to find whether the prosecution has succeeded in proving beyond a reasonable doubt the guilt of the accused”.

In the case in hand, respondent never initiated departmental proceedings and criminal proceedings were dropped, thus, petitioner in view of Regulation 15 of 1976 Regulations read with judgment of this Court in ***Jagdish Lal*** (supra) and ***Shashi Kumar*** (supra) is entitled to salary for the suspension period.

15. The respondent has not considered claim of the petitioner for pension because petitioner got employee's share in provident fund in 2014 and thereafter bank's employer's share in 2015. By accepting employer's share, the petitioner made himself dis-entitled to pension. As per respondent, the act of petitioner amounts to acquiescence and as per principle of estoppel, the petitioner is not entitled pension. The petitioner filed option Form on 01.11.2010 whereby petitioner opted for pension scheme. The Senior Manager of the Bank recommended case of the petitioner vide letter dated 11.11.2010. The petitioner vide communication dated 16.05.2014 was informed that he will not be entitled to retrial benefits till the proceedings are completed and final order is passed thereon except his contribution to provident fund. The pension scheme was introduced vide circular dated 15.09.2010. By the said circular, employee's were given option to opt for pension or provident fund. The relevant extracts of the circular read as:

“1. Eligibility criteria for exercising another Option as envisaged in the Memorandum of Settlement/ Joint Note dated 27th April, 2010:

1.1 All workmen employees and officers (hereinafter referred to as 'employees' for both the categories) who are/were in the service of the Bank as on the date of the Settlement/Joint Note, i.e., 27.04.2010, and exercise option to join the Pension Scheme in terms of the Settlement/Joint Note will contribute from their arrears on account of wage revision in terms of the Settlement/Joint Note between the parties, an amount of Rs.878 crores and Rs.922 crores respectively towards their share in the amount of Rs.1800 crores offered by UFBU towards

30% of the estimated funding gap of Rs.6000 crores (for the Banking Industry as a whole). The said amount is worked out @ 2.8 times of the revised pay for the month of November 2007 for individual employees.

1.2 Another option for joining the existing Pension Scheme (under ABEPR-1995) shall be extended to those employees who:-

1.2.1 (a) were in the service of the Bank prior to 29th September 1995 and continue in the service of the Bank on the date of the Settlement/Joint Note;

(b) exercise an option in writing within 60 days from the date of offer, to become a member of the Pension Fund and

(c) authorise the Trust of the Provident Fund of the Bank to transfer the entire contribution of the Bank along with interest accrued thereon to the credit of the Pension Fund.

1.2.2 (a) were in the service of the Bank prior to 29th September 1995 and retired after that date and prior to the date of the Settlement/ Joint Note;

(b) exercise an option in writing within 60 days from the date of offer, to become a member of the Pension Fund and

(c) refund within 30 days after expiry of the said period of 60 days, the entire amount of the Bank's contribution to the Provident Fund and interest accrued thereon received by the employee on retirement together with his/her share in contribution towards meeting 30% of Rs.3115 crores (for the Banking Industry as a whole) which is estimated and reckoned as the funding gap for those eligible under Clause 2(11), 2(III) and 2(IV) of the Settlement and

Clause (3), (4) and (5) of the Joint Note, as the case may be. On an individual basis, the payment over and above the Bank's contribution to Provident Fund and interest thereon has been worked out at 56% of the said amount of Bank's contribution to Provident Fund and interest thereon received by the employee on retirement.

xxxx xxxx xxxx xxxx

3.12 *Within 30 days from expiry of option period (i.e., 20.09.2010 to 18.11.2010) the optees, except the existing employees who are in the service of the Bank on the date of option, shall refund the entire amount of the Bank's contribution to the Provident Fund and interest accrued thereon received on retirement or death, as the case may be. Such refund shall be made together with 56% of the said amount of Bank's contribution to Provident Fund and interest thereon, towards optee's share of 'funding gap' explained hereinabove, except where an amount equivalent to 2.8 times of revised 'Pay' of the ex-employee for November 2007 has been withheld from his/her arrear salary on account of wage revision. Regarding setting off the commutation value against the refund/contribution and modalities of remittance, separate instructions will follow."*

16. From the perusal of above quoted circular, it comes out that an employee is not entitled to employer contribution to provident fund, if he opts for the pension scheme. In case of an employee in service, an employee was supposed to file option and authorize trust of the provident fund to transfer the entire contribution of Bank alongwith interest to the credit of pension fund. The petitioner filed option on 01.11.2010. He

attained age of superannuation on 30.04.2014. The option was supposed to be filed within 60 days and petitioner filed option within prescribed period. As petitioner had not retired, thus, as per aforesaid circular as soon as option was filed, the trust was authorized to transfer contribution of employer in provident fund to the credit of the pension fund. The role of the petitioner was confined to filing of option. The respondent released employee's contribution in 2014 and thereafter employer's contribution in 2015. The initial stand of the respondent-Bank was that as per their record, there is no option form. On being confronted with various documents, learned counsel changed his stand. Thus, under wrong impression, the employer's contribution was released in 2015. The petitioner has expressed his intention to return entire fund received towards employer's contribution alongwith interest. The interest of the Bank would be secured, if petitioner is directed to refund entire employer's contribution alongwith interest @ 12% per annum. The respondent has attempted to allege that act and conduct of petitioner amounts to acquiescence and in view of principles of estoppel, he cannot claim pension at this belated stage.

The petitioner had filed option well within time and he was released employer's contribution because respondent-Bank at the initial stage formed an opinion that petitioner has not filed option Form. In view of option Form dated 01.11.2010 (Annexure P-23) read with letter dated 11.11.2010 written by Senior Manager of the Bank, there is no scope of doubt that petitioner had opted for pension scheme and Bank was under wrong impression that he had not filed option Form. The Bank under this wrong impression had released contribution of the employer. The release

of provident fund on account of mis-conception of facts cannot dis-entitle petitioner from pension especially in the wake of the facts that petitioner filed writ petition in 2015 itself wherein he specifically claimed for pension.

16.1 In support of his contention that petitioner is not entitled to pension, the respondent has relied upon judgment of Supreme Court in ***Pepsu Road Transport Corporation, Patiala Vs. Mangal Singh*** and ***Pepsu Road Transport Corporation, Patiala Vs. Amandeep Singh***. The relevant extracts of judgment of Supreme Court in ***Mangal Singh*** (supra) read as:

“22. Now we will try to explain the essential distinction between these two retirement benefits that an employee may derive at the time of his retirement from service. The C.P.F. was introduced with the object of providing social security to the employees working in factories and other establishments, after their retirement. The C.P.F. was instituted as a Compulsorily Contributory Provident Fund by the enactment of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Provident Fund Act"). The employee registered under the Provident Fund Act shall be entitled to claim all benefits available under the C.P.F. Scheme framed under the Act. This CPF Scheme requires opening of the account for the employee by the employer. The Government/employer is under the continuous obligation to deposit equal or matching contribution made by the employee in his account till he retires. Once the employee is retired, then his rights qua Government/employer's contribution into his C.P.F. account finally crystallizes. After retirement, this entire C.P.F.

amount is paid to the employee as a retrial benefit. On the receipt of C.P.F. amount, the relationship between employee and employer ceases to exist without leaving any further legal right or obligation qua each other.”

The Hon’ble Court has held that on receipt of CPF amount, the relationship of employee and employer ceases to exist without leaving any further legal right or obligation *qua* each other.

In the case in hand, the petitioner well within time had filed option for pension. The respondent in 2014 released employee’s contribution and thereafter in 2015 employer’s contribution. Initially, the stand of the respondent was that the petitioner had not filed option for pension, however, on being confronted with documents on record, the respondent has conceded that petitioner had filed option. The petitioner was paid employer’s contribution in 2015 and in the same year he approached this Court seeking pension on the basis of option filed by him. The petitioner was released employer’s contribution under wrong notion and impression of the respondent. The petitioner at the first available opportunity has approached this Court and he has expressed his willingness to return employer’s contribution alongwith interest @ 12% in lieu of pension.

16.2. The respondent in support of his contention has further cited judgment of Supreme Court in ***Amandeep Singh*** (supra). The relevant extracts of said judgment read as:

“23. In view of the above, it is well settled that the notice inviting option need not to be personally served to the employees unless the Regulation or any instruction so provides. The Regulations 1992 which are being considered in the present case had already been interpreted in PEPSU Road Transport

Corporation v. Mangal Singh as noticed above. This Court having already held that Regulations 1992 do not contemplate any personal service of notice to employees the finding in the judgment of the courts below holding otherwise for decreeing the suit of the plaintiff are unsustainable. From the facts of the present case it is clear that although Regulations were in force from 1992, plaintiff retired on 30th November, 2011 and after retirement received CPF benefits without any protest and at no point of time before retirement he has raised any grievance. The benefit which was available to him under CPF scheme was received by the plaintiff, he cannot be allowed to another benefit flowing from the pension scheme which he never opted. Extending benefit of the pension scheme to the plaintiff shall be extending double benefits- CPF benefit as well as pension scheme which was never contemplated by the Regulations. In any view of the matter, the issue in the present case is covered by the judgment in PEPSU Road Transport Corporation v. Mangal Singh (supra) and we do not propose to take any different view in the matter. Learned counsel for the respondents has also contended that in so far as the outstanding amount of CPF is concerned the said amount could have been deducted by virtue of Regulation 24 and which amount is to be adjusted against death-cum-retirement gratuity. In the present case the plaintiff having not opted for pension scheme, the requirement from refunding the advance taken from CPF within six months is not attracted. More so, in the present case as has been stated by the appellant in the written statement in the suit even after retirement an amount of L 4999/- was due from the advance taken by the respondents from his CPF amount.”

Hon'ble Court has held that the respondent has availed benefit available to him and he cannot be allowed another benefit flowing from pension scheme which he never opted.

The Supreme Court denied benefit of pension because respondent therein availed benefit of CPF and had never opted for pension scheme whereas in the case in hand, the petitioner opted for pension and he has approached this Court as soon as employer's contribution was released to him.

17. In the wake of above facts and discussion, this Court is of the considered opinion that present petition deserves to be allowed and accordingly allowed. The petitioner is entitled to full wages from the date of application seeking recalling of suspension order, however, respondent-Bank shall not be liable to pay interest. The subsistence allowance already paid shall be deducted from the full wages to be paid. The respondent shall not be liable to pay interest on the said amount. The petitioner shall be entitled to pension, if he refunds employer's contribution alongwith interest @ 12% within 2 month from today. The respondent-Bank has amalgamated with Indian Bank, thus amalgamated bank i.e. Indian Bank shall comply with this order.

18. Before parting with this judgment, this Court would hasten to add that it has become very common as well convenient for disgruntled people to lodge false, fabricated and vexatious complaints against public servants. If despite exoneration from prosecution as well as departmental proceedings, the employees are deprived from salary which is their source of livelihood, it would be travesty of justice, encourage disgruntled people and demoralize Government servants who are

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honestly working for the public. It is pious duty of State as well as Courts to protect from such disgruntled people, public servants who are discharging their duties in an honest and dedicated manner.

(JAGMOHAN BANSAL)
JUDGE

09.10.2023
Ali

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No