

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

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CWP-22545-2014

Date of Decision: 05.12.2023

Jyoti Parkash

...Petitioner

Versus

Punjab National Bank and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Mayank Garg, Advocate for
Mr. Raman B. Garg, Advocate for the petitioner
Mr. Varshit Garg, Advocate and
Mr. Madan Gupta, Advocate for the respondents

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 18.03.2014 (Annexure P-3) and order dated 05.05.2014 (Annexure P-5) whereby petitioner was compulsorily retired.

2. The brief facts of the case which are necessary for the adjudication of the present petition are that the petitioner was working with respondent-bank since 26.04.1980. The petitioner came to be implicated in two cheque dishonor cases. The petitioner had issued two cheques of ₹1,30,000/- each in favour of one person, namely Suresh Kumar. The cheques came to be dishonored on account of insufficient fund and Suresh Kumar filed two complaints under Section 138 of Negotiable Instruments Act, 1881 (for short '1881 Act') against the petitioner. The petitioner was convicted vide judgment dated 25.08.2011 passed by JMIC, Rohtak. The petitioner was

awarded sentence of 6 months. The petitioner preferred appeal which came to be dismissed, thus, petitioner had to suffer awarded sentence of 6 months. The respondent-bank issued a show cause notice dated 06.02.2014 (Annexure P-1) calling upon the petitioner to show cause as to why he should not be compulsorily retired on account of his conviction in two cheque dishonor cases. The petitioner vide order dated 18.03.2014 (Annexure P-3) came to be compulsorily retired from service. The petitioner preferred an appeal before appellate authority which came to be dismissed vide order dated 05.05.2014 (Annexure P-5). The petitioner in the normal course had to retire in 2019 whereas he was compulsorily retired in 2014.

3. Learned counsel for the petitioner submits that petitioner was compulsorily retired on the sole ground that he has been convicted for an offence which involved moral turpitude. This Court in ***Om Pal v. State of Haryana, 2015 (26) S.C.T. 231*** and ***Jagroop Singh v. The Punjab State Power Corporation Limited and Others, 2017(2) L.A.R. 251*** has held that an employee cannot be dismissed from service on the ground of conviction under Section 138 of 1881 Act because conviction under Section 138 of 1881 Act does not involve moral turpitude. A similar view has been expressed by a Division Bench of Kerala of Kerala High Court in ***Kerala State Road Transport Corporation v. S. Abdul Latheef, 2005(4) S.C.T. 622*** and Division Bench of Madras High Court in ***L. Manjula v. State of Tamil Nadu, 2015(27) S.C.T. 840***.

4. *Per contra*, learned counsel for the respondents relying upon judgment of Division Bench of Madras High Court in ***M. Lakshmanan v. ICICI Bank Employees Union, 2010 (25) S.C.T. 743*** submitted that every

case is an independent case and Court is supposed to look into facts and circumstances of each case. A dishonor of cheque may or may not involve moral turpitude. In the case in hand, the petitioner was an employee of the bank, thus, his conviction amounts to his involvement in an offence involving moral turpitude.

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

6. The conceded position emerging from record is that the petitioner was working with respondent bank since 1980. The petitioner had completed service of 34 years by 2014. The petitioner was compulsorily retired on the sole ground that he has been convicted in an offence involving moral turpitude. The petitioner was convicted in two cheque dishonor cases which were issued by him in favour of Suresh Kumar. The appeal of petitioner stands dismissed and he had suffered awarded incarceration. The cheques were not issued as part of his official duty.

7. From the perusal of judgments passed by this Court in *Om Pal (supra)* and *Jagroop Singh (supra)* as well as judgments of Division Bench of Kerala High Court in *Kerala State Road Transport Corporation (supra)* and Division Bench of Madras High Court in *L. Manjula (Supra)*, it comes out that offence punishable under Section 138 of 1881 Act does not involve moral turpitude, thus, an employee cannot be punished on the ground that he has been convicted under Section 138 of 1881 Act.

8. It is settled proposition of law that an offence in one particular situation may involve moral turpitude and may not in another situation.

1897. The Hon'ble Supreme Court in *State Bank of India and Others Vs P. Soupramaniane; (2019) 18 SCC 135* has adverted with expression moral turpitude. The Hon'ble Supreme Court has held:

“13. Ordinarily, the tests that can be applied for judging an offence involving moral turpitude are:

(a) Whether the act leading to a conviction was such as could shock the moral conscience or society in general;

(b) Whether the motive which led to the act was a base one, and

(c) Whether on account of the act having been committed the perpetrators could be considered to be of a depraved character or a person who was to be looked down upon by the society. [Mangali v. Chhakki Lal, 1962 SCC OnLine All 215 : AIR 1963 All 527]

14. The other important factors that are to be kept in mind to conclude that an offence involves moral turpitude are : the person who commits the offence; the person against whom it is committed; the manner and circumstances in which it is alleged to have been committed; and the values of the society. [Jorabhai Hirabhai Rabari v. Distt. Development Officer, 1995 SCC OnLine Guj 117 : AIR 1996 Guj 3]”

9. In the case in hand, this Court finds that petitioner had not issued cheques in discharge of his official duty or as an employee of the bank whereas he had issued cheque with respect to personal transactions, thus, it cannot be concluded that petitioner was involved in an offence involving moral turpitude, nevertheless, this fact cannot be ignored that petitioner was working with a bank and he was well-verse of consequences of dishonor of cheque. The petitioner was convicted and his appeal stands dismissed.

10. The petitioner was supposed to retire in 2019 and he has been compulsorily retired in 2014. The petitioner is getting pension and he has already received gratuity as well as leave encashment. The petitioner at this belated stage cannot be permitted to work for next 5 years. There is no lapse

on the part of bank, thus, bank cannot be asked to pay full salary instead of pension.

11. In the peculiar facts and circumstances, this Court is of the considered opinion that petitioner cannot be reinstated, however, his pension needs to be re-calculated considering him in service from 2014 to 2019. It is made clear that petitioner would not be entitled to financial benefit on account of leave encashment and gratuity over and above he has already received. To maintain the balance and considering interest of both sides, the respondents are directed to re-calculate pension w.e.f. 01.01.2021. The petitioner shall be entitled to arrears without interest.

12. The needful shall be done within two months from today.

Disposed of in aforesaid terms.

(JAGMOHAN BANSAL)
JUDGE

05.12.2023
Mohit Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No