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

CWP-28298-2013

Date of decision : 16.03.2023

Dinesh Saini and others

..... Petitioners

versus

Punjab Financial Corporation

..... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Vikas Chatrath, Advocate
Mr. Abhishek Singla, Advocate
Ms. Tanya Sehgal, Advocate
Mr. Nitin Kaushal, Advocate
Mr. Rajbir, Advocate
for the petitioners.

Mr. G.S. Bal, Senior Advocate with
Mr. Laxman Choudhary, Advocate
for the respondent.

PANKAJ JAIN, J. (Oral)

Petitioners were working with respondent-Corporation and retired in the year 2017 and 2019 respectively. They were booked under two different FIRs for offence punishable under Prevention of Corruption Act. Owing to the same, they were put under suspension. They earned acquittal in both the FIRs. After earning acquittal, the petitioners prayed for reinstatement as department never proceeded against them independently. In one of the FIR bearing No.27/1994, State opted to file appeal. In the said appeal, leave to appeal stands allowed and the criminal appeal bearing No. CRA-S-2020-SB-2012 stands admitted.

2. The petitioners have been ordered to be reinstated. However, prayer for consequential benefits alongwith arrears w.e.f. the date of their

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suspension i.e. 07.05.1992 till their reinstatement has been declined.

3. Counsel for the petitioners submits that once the department has decided not to proceed independent of the criminal trial against the petitioners, their acquittal would entitle them of all the consequential benefits and the same cannot be withheld merely for the reason that in the appeal, notice has been issued. It has been further claimed that in the absence of any regulation having an effect of vesting power in the respondent to initiate proceeding after retirement, the respondent has no reason to withhold the benefits admissible to the petitioners.

4. Per contra, Mr. Bal submits that in view of the fact that leave to appeal already stands granted by this Court, there is a *prima facie* case in favour of respondent-employer. Owing to delay in legal process, respondent-department cannot be led to a situation where the employees-petitioners may go scotfree despite having been convicted.

5. I have heard counsel for the parties and have gone through the records of the case.

6. In the considered opinion of this Court, following issues arises for the consideration:-

(i) What is the effect of grant of leave to appeal under Section 378(3) Cr.P.C.?

(ii) Can it be said that the respondent-department shall be rendered without remedy in case the petitioners are convicted in a criminal appeal?

7. In criminal jurisprudence, an accused is presumed to be innocent until proven guilty. The acquittal earned from trial Court not only bolsters the presumption that he is innocent, rather he stands proclaimed to be innocent. Thus, as on date, when the judgment of acquittal stands, mere

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grant of leave to appeal cannot have an effect of taking away the acquittal earned. Under Section 378, the right to appeal in the prosecution is not automatic but is subject to grant of leave by the Appellate Court. Thus, at this stage, the only effect that the leave to appeal earned by the prosecution is that the Higher Court has found that the matter does need consideration in appeal. But the fact remains that at this stage, the petitioners are not only presumed to be innocent but have been held to be innocent.

8. Till now apart from suspension, the respondent-corporation has not proceeded against the petitioners. They have been allowed to retire after reinstatement. Thus, the best case of respondent-corporation is that on conviction, the retired employees will be proceeded against by the corporation. Can the corporation do so?

9. Mr. Bal does not dispute that there is no regulation parameteria to Rule 2.2b of Punjab Civil Service Rules which clothes the authorities to proceed against the employees after superannuation. The issue already stands settled by Apex Court in case of *Chandra Singh vs. State of Rajasthan and another*, reported as (2003) 6 Supreme Court Cases 545 as under:-

“xx xx xx

Any proceedings, which have been undertaken after the retirement becomes without any authority or jurisdiction and any order passed in pursuance to the said proceedings after retirement, without there being any provisions giving jurisdiction to an employer to the said effect are nullity in law. Relevant paragraph of the said judgment is as under:-

We also cannot accept the contention of Mr. Rao that in the case of Mata Deen Garg, the departmental proceedings could be kept pending despite the passing

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of the impugned order. The High Court had not passed any order in the departmental proceedings. It sought to invoke the jurisdiction which was conferred on the High Court and the State by reason of a statutory rule. A departmental proceeding can continue so long as the employee is in service. In the event, a disciplinary proceeding is kept pending by the employer the employee cannot be made to retire. There must exist specific provision in the pension rules in terms whereof, whole or a part of the pension can be withheld or withdrawn wherefor a proceeding has to be initiated. Furthermore, no rule has also been brought to our notice providing for continuation of such proceeding despite permitting the employee concerned to retire. In absence of such a proceeding, the High Court or the State cannot contend that the departmental proceedings against the appellant Mata Deen Garg could continue.”

10. In ***Bhagirathi Jaina vs. Board of Directors OSFG***, reported as ***(1999) 3 Supreme Court Cases 666***, Apex Court held as under:-

“xx xx xx

In case there is no provision under the rules governing the service for continuation of disciplinary proceedings after retirement of an employee, no punishment or no deduction from the retiral benefit can be done as the proceedings after the retirement automatically lapses. Relevant paragraph of the said judgement is as under:-

“In view of the absence of such provision in the abovesaid regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30.6.95 there was no authority vested in the

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Corporation or continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement.”

11. The same was followed by Coordinate Bench in case of **S.C. Jain vs. Managing Director Confed in CWP No.15247 of 2011** to hold that:-

“A perusal of the aforesaid provisions clearly shows that the penalties, as provided for under the Rules, can be imposed only on an employee, who is drawing salary, either appointed on temporary or permanent basis. The penalties, which can be inflicted, show that the same are also of the kind which can be on an employee in service. None of the punishments, as extracted above, suggest that it can be imposed after an employee has retired from service. The issue as to whether departmental proceedings, even if initiated against an employee during service, can continue after retirement was gone into by Hon'ble the Supreme Court in Chandra Singh's case (supra), wherein it was opined that in the absence of specific Rule to that effect and once an employee is permitted to retire, the proceedings cannot continue. In view of my aforesaid discussion, once no provision in the Rules has been cited, in terms of which the proceedings against retired employee can be initiated, in my opinion, the action of the authorities in issuing charge-sheets to the petitioners after their retirement is without jurisdiction and is liable to be set aside. Ordered accordingly. Withheld retiral benefits of the petitioners be released within one month.”

12. Even in case of one of the petitioners, Coordinate Bench in

CWP-16403 of 2010 titled as Aneep Dewan vs. PFC held as under:-

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“xx xx xx

The learned counsel for the respondent contends that an appeal is a continuation of proceedings and, therefore, till the final conclusion of the matter before the High Court leading to the honourable acquittal, no employee can demand reinstatement. In my view, this argument is fallacious, for, in a case of a conviction and pendency of an appeal at the instance of the employee/accused placed under suspension, even a suspension of Criminal Court sentence never operates as a stay of the finding of the guilt against an accused. In such a situation, the fact that a person may obtain a bail or stay of sentence does not operate as a stay of conviction. On the other hand, if a person is acquitted, a prosecution of an appeal cannot lead to the initial charge as operating against an employee to deny to him continuance in employment. It is only the reversal of the judgment at the higher forum resulting in conviction that can constitute a ground for allowing either a suspension or a termination possible, if the Rules so permitted. In this case, when all the petitioners were acquitted after a criminal trial, a pendency of an appeal ought not to make a difference, unless the Rules themselves provide that the mere prosecution of a criminal case could be a ground for suspension. I have not been shown such Rules that allow such a type of suspension. I have already pointed out that there is no departmental action pending against the employees.”

13. The Division Bench of this Court in ***CWP No.14375 of 2003 titled as ‘Shashi Kumar vs. Uttri Haryana Bijli Vitran Nigam and another*** held as under:-

“xx xx xx

9. The judgment rendered in the case of

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Union of India vs. Jayaram (supra) has also been followed by a Division Bench of the Gujarat High Court and another, 1971 7..... Clause (b) of Article 193 of the Civil Service Regulations, which was under consideration before the Madras High Court was substantially similar to our Rule 152, with this difference, that instead of the words "fully exonerated" the words were "honourably acquitted". With respect we are in agreement with the reasoning of Rajamannar, C.J. and in our opinion, it is not open to the authorities concerned to bring in the concept of honourable acquittal or full exoneration so far as the judgment of the Criminal court is concerned. In a criminal trial the accused is only called upon to meet the charge levelled against him and he may meet the charge (a) by showing that the prosecution case against him is not true; or (b) that it is not proved beyond reasonable doubt; or (c) by establishing positively that his defence version is the correct version and the prosecution version is not correct. In any one of these three cases, if the Court comes to the conclusion that the prosecution has failed to establish its case beyond reasonable doubt or that the prosecution case is not true or that the defence version is correct and is to be preferred as against the prosecution version, the Criminal Court is bound to acquit the accused. The accused is not called upon in every case to establish his complete innocence and it is sufficient for the purposes of criminal trial that he satisfies the Court that the prosecution has not established its case beyond reasonable doubt. Since he is not called upon to prove a positive case, the concept of honourable acquittal or full exoneration can have no place in a criminal trial and it is because of this reasoning that we agree with the observations of

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Rajamannar, C.J. in Jayaram's case, AIR 1960 Madras 325."

14. In view of the above, thus the only remedy that may be available to the respondent-Corporation in the event the petitioners earn conviction by the Appellate Court is to enforce the recovery, if any, by filing civil suit as they have no authority to proceed against the retired employee in the absence of power to do so. They cannot be allowed to arrest the benefits admissible to the petitioners on their reinstatement and consequential terminal benefits merely on the apprehension that the Appellate Court having granted leave to appeal may hold petitioners guilty and convict them.

15. In view of the aforesaid, present writ petition is allowed. Petitioners are held entitled for all consequential benefits owing to them on having earned acquittal. Impugned orders dated 04.09.2013 and 25.09.2013 are hereby ordered to be quashed. Respondent-corporation is directed to release terminal benefits of the petitioners alongwith interest @ 6% per annum from the date of their accrual till the date of actual realization. In case, the petitioners are convicted in the pending appeal, respondents shall be at liberty to take its legal recourse settled in accordance with law.

16. Ordered accordingly.

(PANKAJ JAIN)
JUDGE

16.03.2023

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No