HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP-22080-2023

Date of decision: 03.10.2023

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Himmat Khan ... Petitioner

VS.

State of Haryana & Ors. ... Respondents

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CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

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Present: Mr. Mohammad Arhsad, Advocate for the petitioner

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Sandeep Moudgil, J.

(1). The petitioner has filed the present writ petition invoking the jurisdiction of this Court under Article 226 of the Constitution of India with a prayer for issuance of a writ in the nature of *certiorari* for quashing the order dated 17.08.2023 (Annexure P13) passed by respondent No.1 and the order dated 07.05.2018 (Annexure P4) passed by respondent No.3 vide which the representation/appeal filed by the petitioner, who was dismissed from service, for his reinstatement has been rejected.

(2). The factual matrix of the case are that the petitioner, namely, Himmat Khan was issued charge-sheet vide memo dated 07.02.2008 for dismissal from service, on the ground that an FIR No.35 dated 18.11.2005, regarding embezzlement of loans in connivance with Deen Mohammad son of Rehman Bax. Another charge-sheet was issued against the petitioner vide memo dated 04.10.2008 for stoppage of two annual increments with cumulative effect, on the charges of "gross misconduct by advancing poultry loan to Noor Mohammad and cheating the bank in connivance with Deen Mohd. Ex- Director, on the basis of FIR No.3 dated 15.02.2001. After considering the replies filed by him in both the two show cause notice, the petitioner was dismissed from the services of the bank vide office order dated 14.12.2010 (which is not on record). The appeal filed by the petitioner before Registrar, Cooperative Societies, was also rejected on 06.09.2012 (Annexure P1). The said order dated 06.09.2012 (Annexure P1) was challenged by the petitioner by filling Revision Petition No.144 of 2012 which was decided on 30.09.2014 (Annexure P2) with a direction to the competent authority i.e. Board of Directors, to take decision in view of petitioner's acquittal in FIR No.35 dated 18.11.2005. However, the Board of Directors, vide its decision dated 23.03.2018, while observing that the service record of the petitioner remained bad and unanimously, rejected his appeal.

(3). The aggrieved petitioner filed an appeal before the Registrar, Cooperative Societies, Haryana which was allowed vide order dated 25.11.2019 (Annexure P5) observing as follows:-

> *"…Since the appellant had been acquitted in all the FIRs but the respondent Bank has passed the order dated 07.05.2018 and rejected the representation of appellant. In view of the decision of BOD dated 22.03.2018. The impugned order merely mentions that "the service record of Sh. Himmat Khan, clerk (dismissed) remained bad". Ld. Counsel for the respondent Bank failed to produce any cogent evidence establishing the bad record of the appellant except the aforementioned criminal cases wherein he had already been acquitted. Since the criminal cases on the basis of which the charge sheet was issued, have been dismissed against the appellant, no guilt on the part of appellant has been found. Merely mentioning bad record is not sufficient and cogent reason to reject the representation of the appellant. Therefore, the appellant deserves to be reinstated in service.*

> *8. In view of the above discussion, the instant appeal is hereby allowed and the appellant is allowed only notional pay from the date on which he was dismissed from service till his reinstatement, on the basis or no work no pay, as he had not worked since his dismissal."*

(4). The respondent-Bank preferred a revision petition against the order dated 25.11.2019 (Annexure P5) which has been decided against the petitioner vide order dated 17.08.2023 prompting the petitioner to approach this Court.

(5). Learned counsel for the petitioner contended that the revision petition filed by the respondent-Bank was not maintainable on grounds of delay. It is further contended that during the period when all the four FIRs and charge sheets were issued, the petitioner was performing the duties of Cashier and as per the bank's loan policy, the Cashier has not been assigned with any power to deal with the affairs of processing, sanctioning and disbursing of agriculture loans. It is further averred that the petitioner while working as a Cashier neither processed any agriculture loan nor sanctioned the same and his name was included "in all the 4 FIRs under Section 120-B IPC as a second operator of account of the bank whose duty was only to prepare cheques of the loanees on availability of sufficient fund after allowing payment by the Manager who is otherwise head of the bank.

(6). The argument raised on behalf of the petitioner is that the petitioner has been acquitted from the charges levelled against him in all these four FIRs and as such, the respondent-Bank, at this belated stage, cannot be allowed to say that order of the criminal court is not binding whereas the bank had legally admitted the enquiry conducted by Sada Ram in which he has opined that "The case is under consideration of law and the decision of Hon'ble Court will only prevail". Therefore the claim of the bank is liable to be rejected. He further averred that the bank mentioned in both the dismissal orders that "Offence has been committed while working with PARDB Punhana" whereas no such offence ever happened in branch Punhana. It was also averred that no action was taken against the first operator Sh. Ranbir Singh Raghav. Branch Manager who was otherwise more responsible than the petitioner i.e. second operator whose duty was only to maintain account and issue cheque.

(7). Heard learned counsel for the petitioner and gone through the paperbook.

(8). It is well settled law that the departmental proceedings can be proceeded along with criminal proceedings. The acquittal earned in a criminal case by itself cannot be a ground for interfering with an order of punishment imposed by the disciplinary authority as the position of law is well settled that an order of dismissal can still be passed even if the delinquent had been acquitted of the criminal charge. Reference can be made to Supreme Court decision in ***Southern Railway Officers' Association Versus Union of India (2009) 9 SCC 24***.

(9). In the present case, the trial court acquitted the delinquent petitioner on technical grounds/non production of relevant original documents and did not pass any specific observations on the substantive charges. Further, the revisional court rightly observed that the contention of the petitioner that no action was taken against other erring officer/officials who were more responsible than the petitioner, is also not tenable as it was specifically stated by the Managing Director of the ISCARDB that disciplinary action was taken against the other officers as well, and that the culpability of petitioner in the commissioning of offence is of a much higher degree than other official involved as he prepared the cheque under his signature without corresponding loan file in the name of the Director Deen Mohd and is therefore directly responsible for the embezzlement and therefore deserves a higher degree of punishment wherein gross embezzlement of bank funds worth Rs. 2.40 lacs has been done by the petitioner, who has been found to be the main brain behind this fraud.

(10). In view of the fact that the charge of gross misconduct by the petitioner by advancing poultry loan to Noor Mohd of Ferozepur Jhirka regarding cheating the bank in connivance with Deen Mohd., Ex- Director has been proved in a departmental enquiry and the allegations levelled against the petitioner are very much grave, no fault can be found with the order passed by the revisional authority vide which it has been categorically held that the continuation of the petitioner in the service of a Public Cooperative Financial Institution such as ISCARD bank is not in public interest.

(11). Dismissed *in limine*.

03.10.2023
V.Vishal

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned? Yes/No
2. Whether reportable? Yes/No