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W.A.Nos.832 and 833 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2024

CORAM

THE HON'BLE Mr. JUSTICE R.SURESH KUMAR
AND
THE HON'BLE Mr. JUSTICE K.KUMARESH BABU

W.A.Nos.832 & 833 of 2013 and
M.P.Nos.1 and 1 of 2013

W.A.No.832 of 2013:

1.State Bank of India,
Represented by its
Chief General Manager,
Local Head Office,
Chennai Circle, College Road,
Chennai – 600 006.

2.Assistant General Manager,
Region II, State Bank of India,
Zonal Office, Tiruchirapalli – 620 006.

... Appellants

Vs.

1.S.Krishnamurthy (Died)

2.K.Vimala
3.K.Ravi
4.K.Ilakkya
5.K.Akalya
6.S.Annakili

... Respondents

[R2 to R6 are brought on record as LR's
of the deceased sole respondent vide
order dated 03.01.2024 in M.P.No.1 of 2015]



W.A.Nos.832 and 833 of 2013

Prayer : Appeal filed under Clause 15 of the Letters Patent Act, praying to set aside the order dated 28.09.2012 made in W.P.No.24660 of 2002.

For Appellants : Mr.A.Thayapalan

For R1 : Died

For R2 to R6 : Mr.Balan Haridas

W.A.No.833 of 2013:

Deputy General Manager,
State Bank of India,
Region II, Zonal Office,
Mc. Donalds Road,
Trichirapalli – 620 001.

... Appellant

Vs.

1.State Bank of India,
Ambedkar Trade Union (Reg. No.2329/MDS)
Rep. By its General Secretary,
No.635, Rani Ammaiya Street,
Periyar Nagar, Chennai – 600 039.

2.The Presiding Officer,
Central Government Industrial
Tribunal Cum Labour Court,
1st Floor, B Wing, No.26 Haddows Road,
Shastri Bhavan, Chennai – 600 006.

... Respondents

Prayer : Appeal filed under Clause 15 of the Letters Patent Act, praying to set aside the order dated 28.09.2012 made in W.P.No.6101 of 2008.

For Appellant : Mr.A.Thayaparan

For 1st Respondent : Mr.Balan Haridas

For 2nd Respondent : Court



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COMMON JUDGMENT

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(Judgment of the Court was delivered by R.SURESH KUMAR, J.)

Since these appeals arising out of the same issue against the deceased employee one Krishnamurthy and against the appellant Bank, with the consent of the learned counsel appearing for both sides, these appeals were heard together and are disposed of by this common order.

2. That the employee S.Krishnamurthy was working as a Messenger of the appellant Bank and for the alleged offence punishable under Section 420 I.P.C. a criminal case was filed against him and trial went on before the Judicial Magistrate at Thiruthuraipoondi. The trial Court ultimately by judgment and conviction dated 24.06.1996 convicted the employee for 6 months rigorous imprisonment with fine of Rs.1000/-.

3. Pursuant to the said conviction earned by the employee, the appellant Bank in 1996 inflicted the punishment of discharge of the said employee with effect from the said date i.e. 18.10.1996. That is the order which was challenged in W.P.No.24600 of 2002.



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4. Subsequently even though the employee had filed a regular appeal against the conviction, he had also filed a Criminal Revision Case No.758 of 1996, where the Court permitted him for compounding the offence with a defacto complainant under Section 320 Cr.P.C. thereby by order dated 15.07.1999 of the Court in the Criminal Revision Case since had permitted him to compound the offence he had been acquitted.

5. Thereafter on 20.12.1999 the employee had given a representation bringing the notice of the Bank about his acquittal registered in the said Criminal Revision Case. Immediately the Bank has not considered such representation for reinstating him, therefore he had given a representation which was also not considered, hence he approached this Court and filed a writ petition in W.P.No.22539 of 2001 seeking for a direction, which was also granted by this Court directing the Bank to consider his representation.

6. Thereafter only on 09.01.2002 order has been passed by the Bank reinstating him however with some conditions. One of the main condition that was imposed by the Bank while reinstating was that, he would not be entitled for backwages from the date of discharge till the



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date of reinstatement. That order dated 09.01.2002 passed by the Bank has been challenged by the employee in W.P.No.24660 of 2002. In the meanwhile, on behalf of the employee the Trade Union has gone to the Industrial Tribunal by raising an I.D. which was also dismissed, as against which, the Trade Union filed a writ petition in W.P.No.6101 of 2008. The said two writ petitions came to be decided by the common order passed by the Writ Court dated 28.09.2012, where the learned Judge has allowed both the writ petitions.

7. Aggrieved over the said order passed by the Writ Court as against the order allowing the said two writ petitions, these two writ appeals have been filed, that is how these two writ appeals have come up before this Court. During the pendency of this litigations, the employee Krishnamurthy died therefore his legal heirs have been impleaded.

8. Now the only question to be decided by this Court is as to whether the employee was entitled to get backwages from the date of discharge till the date of reinstatement.



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9. Insofar as the earlier discharge order passed by the Bank dated 18.10.1991 is concerned, that was made pursuant to the conviction earned by the employee and that order has also not been questioned by the employee, but subsequently he has been acquitted by permitting him to compound the offence by the order of the Court only on 15.07.1999, therefore till such date the reason for his out of service cannot be attributable on the Bank as the Bank has rightly discharged him on 18.10.1996 pursuant to the conviction he has earned.

10. However, after he has been acquitted on 15.07.1999 since he become eligible to get reinstated, he had made a request on 20.12.1999 by way of sending a representation to the Bank, however the Bank has not considered it immediately. Therefore, it triggered the employee to come before this Court to file a writ petition in W.P.No.22539 of 2001 seeking for a writ of mandamus which was also issued by this Court on 21.11.2001, only thereafter the Bank had come forward to pass orders on 09.01.2002 to reinstate the employee, of course with the conditions that he is not entitled for the backwages from the date of discharge till the date of reinstatement.



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11. Once the Bank had accepted the acquittal earned by the petitioner workman by permitting him to compound the offence in the Criminal Revision Case No.758 of 1996 by order dated 15.07.1999 and the same has been brought to the notice of the Bank on 20.12.1999 immediately such an order of reinstatement ought to have been passed.

12. Why the Bank has delayed 2 + years in passing such order till 09.01.2002 has not been explained and no plausible reason can be attributed for such a delay in passing the order of reinstatement, therefore if at all the employee is not entitled for the backwages for the period from 18.10.1996 till 20.12.1999 the date on which he has made a representation to seek for reinstatement, pursuant to his acquittal dated 15.07.1999, atleast he would be entitled to get such a reinstatement and therefore backwages from 21.12.1999. Assuming that, a reasonable period of one month can be given to the Bank from the date of the knowledge about his acquittal for passing orders of reinstatement, from January 2000 he should have been reinstated and therefore is entitled to get the backwages.



13. Though in this context, a judgment of the Hon'ble Supreme Court reported in **(2004) 1 SCC 121** in the matter of ***Union of India and others Vs. Jaipal Singh*** as well as the judgment of the Hon'ble Supreme Court reported in **2023 SCC Online SC 1618** in the matter of ***Ram Lal Vs. State of Rajasthan and others*** have been cited, the principle that was enunciated in those judgments was that, once the employee after getting the acquittal and subsequently reinstated during the period he was out of service whether he was entitled to get backwages is concerned, the first judgment in **(2004) 1 SCC 121** has made it clear that, the employee was not entitled for such backwages. However, in a subsequent judgment i.e. **2023 SCC Online 1618** it has been held that, there should not be any further proceedings at all. Here in the case in hand, even though an attempt had been made to initiate disciplinary action against the employee and such a disciplinary action also, according to the Bank, since has been initiated and conducted, it ended with the punishment of censure, the learned Judge by giving reasons after verifying the original records has not accepted such a disciplinary proceedings, to that extent what has been stated by the learned Judge in the impugned order has to be accepted.



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informing that, he has been acquitted by allowing him to compound the offence, is not entitled for any such backwages.

16. The reason being that, during the said period it cannot be stated that the Bank purposely without any plausible reason has discharged him as he admittedly earned a conviction before the Criminal Court after full-fledged trial, hence the Bank had no other option except to discharge him as the Bank need not wait for the order to be passed in the appeal filed by the employee.

17. However, once he has been acquitted by order dated 15.07.1999 and this has been brought to the notice of the Bank on 20.12.1999 within a reasonable period, which we quantified as 30 days, the Bank should have passed orders reinstating him, therefore from January 2000 the delay caused on the part of the Bank in reinstating him for no reasons can be attributable only on the Bank for which the Bank has to pay backwages to the employee. Therefore for all the aforesaid reasons, we are inclined to pass the following orders in disposing these two writ appeals.

(i) That the order passed by the learned Judge which is



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impugned herein is liable to be modified to the following extent.

(ii) That the respondent/employee i.e. the deceased employee on his behalf the legal heirs who are the present respondents are entitled to get the backwages for the deceased employee for the period from January 2000 till 09.01.2002, however they are not entitled for such backwages from 18.10.1996 till December 1999. Therefore, such backwages amount as per the salary of the deceased employee during the relevant point of time shall be calculated and be paid to the legal heirs who are the present respondents in these *lis*, within a period of three months from the date of receipt of a copy of this judgment. In respect of all other aspects the order passed by the learned Judge is to be confirmed subject to the aforesaid modification and therefore the writ appeals accordingly are disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

[R.S.K., J.]

[K.B., J.]

18.01.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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R. SURESH KUMAR, J.
and
K.KUMARESH BABU, J.

Sgl

To

- 1.The General Secretary, State Bank of India,
Ambedkar Trade Union (Reg. No.2329/MDS)
No.635, Rani Ammaiyar Street,
Periyar Nagar, Chennai – 600 039.
- 2.The Presiding Officer,
Central Government Industrial
Tribunal Cum Labour Court,
1st Floor, B Wing, No.26 Haddows Road,
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