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W.A.No.864 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2024

CORAM :

THE HON'BLE MR. JUSTICE R. MAHADEVAN

AND

THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ

W.A.No.864 of 2023

and

C.M.P.No.8445 of 2023

1.The Chairman cum Managing Director,
The Oriental Insurance Co. Ltd.,
Head Office, Asaf Ali Road,
New Delhi.

2.The General Manager,
The Oriental Insurance Co. Ltd.,
Head Office, Asaf Ali Road,
New Delhi.

3.The Deputy General Manager,
The Oriental Insurance Co. Ltd.,
P.B.No.1877, UIL Building, IV Floor,
No.4, Esplanade, Chennai.

... Appellants

Vs.

C.Robert Vincent

... Respondent

Writ Appeal filed under Clause 15 of the Letters Patent, against the order passed by the learned Judge dated 01.09.2022 passed in W.P.No.3356 of 2018.



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For Appellants : Mr.C.K.Chandrasekhar

For Respondent : Mr.S.Thanka Sivan

JUDGMENT

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

The present appeal has been filed by the Oriental Insurance Company Ltd., as against the order dated 01.09.2022 passed by the learned Judge in W.P.No.3356 of 2018.

2.The short facts, which are necessary to dispose of the present Writ Appeal, are as follows:

2.1. The respondent was employed as an Administrative Officer at the appellant company. While so, the Central Bureau of Investigation (CBI) registered a case against Kaleelul Rahman, Cashier and John Christopher, Office Assistant of the company, as the first and second accused respectively on the allegation of misappropriation of Rs.9 lakhs of the company's funds. According to the respondent, both these staff members were not subordinate to him. However, when the CBI filed a charge sheet before the CBI Court, Madurai, the respondent was also arrayed as the third accused along with the accused 1 and 2.

2.2. Simultaneously, the appellant company initiated disciplinary proceedings against the respondent. Consequently, a charge memo was issued to



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the respondent alleging that he along with the other two staff members conspired together and misappropriated the company's funds. Subsequently, enquiry was conducted, and the enquiry officer, in his proceedings dated 12.07.2012, concluded that the charges framed against the respondent were proved. Based on the Enquiry Officer's Report and after providing opportunity to the respondent, the Disciplinary Authority (the third appellant) passed an order on 20.09.2013 imposing the punishment of removal from service on the respondent.

2.3. The appeals filed by the respondent to the second appellant on 09.02.2016 and thereafter, to the first appellant on 24.10.2017, were rejected, thereby confirming the punishment of removal from service.

2.4. Challenging the orders dated 20.09.2013, 09.02.2016, and 24.10.2017 passed by the appellant authorities, the respondent filed a writ petition in WP.No.3356 of 2018 seeking to quash the same and direct the appellants to permit the respondent to retire and pay all his salary, promotion, terminal benefits core and non-core benefits to him.

3. The learned Judge, after hearing the arguments advanced by the learned counsel on either side, found that the criminal court had acquitted the petitioner (Accused No. 3) from all the charges relating to misappropriation, criminal conspiracy and violations under the Prevention of Corruption Act. It was further pointed out by the learned Judge that there was no connection between



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the respondent and the other accused. Hence, the learned Judge held that as the charges were not proved before the criminal court, the disciplinary proceedings that led to the punishment of removal from service, should be revisited. Accordingly, the learned Judge ordered the writ petition by directing the appellants to reconsider the matter and award an alternative punishment which includes the compulsory retirement, to the respondent, within a period of eight weeks. For better appreciation, the relevant portion of the said order is extracted hereunder:

"45. Here in the case in hand, in respect of same set of charges, when a clear honourable acquittal has been registered by the petitioner before the Court of law, where the full fledged trial has been conducted, even though ipso facto that would not be a basis to come to a conclusion in the departmental proceedings, this Court feel that, when the charge of misappropriation mainly has been made against the petitioner and this has been concluded by the criminal court that, he has not misappropriated any money and no evidence has been produced and he has been declared to be an innocent one, this Court feel that, the respondents can consider him for giving an alternative punishment to the petitioner for the proven charges namely, issuance of cheques in his name and his family members name and belatedly made the payment after collecting the same from the customers.

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47. Having taken note of all these factors and the totality of the situation, based on the discussion herein above made, this Court feel that, the major punishment of removal of service inflicted against the petitioner can be revisited by the respondents for awarding any alternative punishment including the punishment of compulsory retirement, thereby making the petitioner eligible to get retiral and pensionary benefits and for such limited purpose, this Court feel that, the matter can be remitted back to the respondents company.

48. In the result, the following orders are passed in this writ petition :

(i) That the impugned orders insofar as inflicting the maximum punishment of removal of service alone is set aside for the purpose of



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remitting the matter back to the respondents for reconsideration for awarding an alternative punishment which includes the compulsory retirement against the petitioner.

(ii) In this regard, the respondents are hereby directed to consider the aforesaid facts and circumstances including the honourable acquittal registered by the petitioner and the findings given by the criminal court in this regard in favour of the petitioner and accordingly, pass an order giving a modified punishment to the petitioner including the one, that is compulsory retirement as a punishment commensurate with the proven charges against the petitioner.

(iii) As a sequel, the petitioner since would be entitled to get retiral and pensionary benefits and whatever such retiral or post retiral benefits, that shall be calculated and be paid to the petitioner in accordance with the rules which are in vogue.

(iv) The needful as indicated above shall be undertaken by the respondents within a period of Eight weeks from the date of receipt of a copy of this order.'

Challenging the aforesaid order of the learned Judge, the writ petitioner has come up with this writ appeal.

4. The learned counsel appearing for the appellants would contend that the punishment imposed on the respondent, based on proven charges, should not be interfered with, especially on the ground of disproportionality. He would further contend that the order of acquittal in the criminal case has no bearing or relevance on the departmental disciplinary proceedings as the standards of proof in both the cases are different. However, the learned Judge merely relied on the order of acquittal passed by the trial court, has set aside the orders so passed by the appellant authorities and thereby ordered the writ petition. In support of his contentions, the learned counsel has cited the



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judgments in ***Samar Bahadur Singh v. State of UP [2011 (9) SCC 94]*** and ***State of Karnataka v. Umesh [2022 (6) SCC 563]***. Therefore, the learned counsel prayed to quash the order passed by the learned Judge and allow this writ appeal.

5. Per contra, the learned counsel appearing for the respondent would submit that the respondent was honourably acquitted from the charges in the criminal case and not on the basis of benefit of doubt. Referring to the Judgment of the Criminal Court dated 20.03.2015 passed in C.C.No.1 of 2005, the learned counsel submitted that the respondent was found to have no connection with the alleged conspiracy between the other two staff members and hence, the criminal court acquitted the respondent, stating that there was no sufficient evidence and material to prove the offence alleged against him. The learned counsel also submitted that departmental enquiry and criminal proceedings based on the same set of facts and charges cannot be permitted, if the employee is honourably acquitted in the criminal proceedings, especially when there was no evidence to hold the employee guilty of charges. In support of his contention, the learned counsel has cited the judgments of the Apex Court in ***G.M. Tank v. State of Gujarat and others [(2006) 5 SCC 44]***; and ***Capt.M.Paul Anthony v. Bharat Gold Mines Ltd. and another [(1993) 3 SCC 679]***.



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5.1. Continuing further, the learned counsel appearing for the respondent would contend that the appellants have imposed the punishment of dismissal from service, which has resulted in the denial of retirement benefits to the respondent. Referring to the judgment of Apex Court in ***Umesh Kumar Pawha v. Board of Directors, Uttarakhand Gramin Bank and others [(2022) 4 SCC 385]***, the learned counsel submitted that when the respondent was acquitted from the charges in the criminal case, the punishment of removal from service inflicted on him in the departmental proceedings for the same charges, is excessive. Therefore, the order of the learned Judge setting aside the order impugned in the writ petition and directing the appellants to reconsider the respondent's case for an alternative punishment, such as, compulsory retirement, so as to enable him, to receive retirement and pensionary benefits, is perfectly correct and the same does not require any interference at the hands of this court.

6. Heard the rival submissions and perused the materials available on record.

7. In the present case, the respondent was subjected to criminal as well as departmental disciplinary proceedings for the same charges of conspiracy and misappropriation of the company's funds along with two staff members. Though the criminal case registered against the respondent ended in acquittal, in



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the departmental proceedings, he was inflicted with the punishment of removal from service. The appeals filed by the respondent came to be rejected by the authorities concerned. Those orders passed by the appellant authorities were challenged in the writ petition. Placing reliance on the criminal court judgment, the learned Judge set aside the orders passed by the authorities and directed the appellants to reconsider the case and award any alternative punishment including the punishment of compulsory retirement so as to enable the respondent to get retirement benefits, by the order impugned in this appeal.

8. It is settled law that mere acquittal by a criminal court will not confer on the employee a right to claim any benefit, including reinstatement [Refer: **Deputy Inspector General of Police and Another v. S. Samuthiram [(2013) 1 SCC 598]**]. However, if the charges in the departmental enquiry and the criminal court are identical or similar, and if the evidence, witnesses and circumstances are one and the same, then the matter acquires a different dimension. If the court in judicial review concludes that the acquittal in the criminal proceeding was after full consideration of the prosecution evidence and that the prosecution miserably failed to prove the charge, the Court in judicial review can grant redress in certain circumstances. The court will be entitled to exercise its discretion and grant relief, if it concludes that allowing the findings in the disciplinary proceedings to stand, will be unjust, unfair and oppressive. Each



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case will turn on its own facts [Refer: ***G.M. Tank v. State of Gujarat & Others, (2006) 5 SCC 446; and State Bank of Hyderabad v. P. Kata Rao, (2008) 15 SCC 657***].

9. It is evident from the criminal court judgment passed in favour of the respondent herein that the allegation of connivance levelled against him was disbelieved; and it was categorically held that there was no sufficient material connecting the respondent with the conspiracy and misappropriation done by the accused 1 and 2. However, in the departmental proceedings, for the same set of charges, the respondent was imposed with the severe punishment of removal from service, which raises a serious concern about the proportionality of punishment imposed on him and which would also result in undue hardship to him and his family. Taking note of the same, the learned Judge has directed the appellants to reconsider the case of the respondent and award any alternative punishment including compulsory retirement, for the proven charges relating to issuance of cheques in his name and his family members name and belatedly made payment after collecting the same from the customers, so as to enable him to get retirement benefits.

10. At this juncture, it will be useful to refer the judgment of the Apex Court in ***Umesh Kumar Pawar v. Uttarakhand Gramin Bank [(2022) 4 SCC 385]***, the relevant passage of which is usefully extracted below:



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'4. So far as the submission on behalf of the appellant that the appellant has not conducted any misconduct and the finding recorded by the inquiry officer on the charges proved are perverse is concerned, the High Court is justified in holding that in the limited jurisdiction available to the High Court in exercise of powers under Article 226 of the Constitution of India, the High Court is not required to reappreciate the evidence and/or interfere with the findings recorded by the inquiry officer accepted by the disciplinary authority. However, as observed hereinabove the order of removal of service can be said to be disproportionate to the charges and misconduct held to be proved.

5. Now in so far as the dismissal of Writ Petition (S/B) No.267 of 2013 is concerned, at the outset it is required to be noted that the High Court has not dealt with and considered the same on merits independently. The High Court has dismissed the said writ petition for promotion primarily on the ground that once he is removed from service there is no question of considering his case for promotion. However, it is required to be noted that the appellant claimed the promotion from Scale II to Scale III from the date when his juniors came to be promoted w.e.f. 30.03.2005. From the material available on record, it appears that in the earlier round of litigation being Writ Petition (S/B) No.65 of 2012, the High Court had directed the Bank to consider his case for promotion considering his ACR for the Financial Years 1999-2000 to 2003-2004. The said exercise was required to be done by the Bank. Therefore, so far as the Writ Petition (S/B) No.267 of 2013 is concerned, the same is required to be remanded to the High Court to decide the same afresh in accordance with law and on its own merits.

6. In view of the above and for the reasons stated above the impugned Judgment and Order passed by the High Court passed in Writ Petition (S/B) No.4 of 2013 is hereby modified to the extent substituting the punishment from that of removal of service to that of compulsory retirement."

In the light of the above judgment, this court is of the view that the order of the learned Judge, directing the appellants to reconsider the case of the respondent, and award any alternative punishment, which includes the punishment of compulsory retirement, for the proven charges in the departmental proceedings, appears to be reasonable, when the respondent was honourably acquitted from



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the same set of charges in the criminal case and hence, the same does not require any interference.

11. Thus, finding no merit, the writ appeal stands dismissed. However, there is no order as to costs. Consequently, connected miscellaneous is closed.

[R.M.D,J.] [M.S.Q, J.]
12.03.2024

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Index: Yes / No.

Speaking order/ Non-speaking order

Neutral Citation: Yes / No.

To

1.The Chairman cum Managing Director,
The Oriental Insurance Co. Ltd.,
Head Office, Asaf Ali Road,
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and
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