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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 07.05.2024*

+ LPA 608/2023

PUNJAB NATIONAL BANK

..... Appellant

Through: Mr.Rajesh Kr Gautam, Mr.Anant
Gautam, Mr. Dinesh Sharma,
Ms.Anani Achumi, Advs.

versus

D B MADAN

..... Respondent

Through: Mr. Siddharth Bawa, Adv.

CORAM:**HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE SAURABH BANERJEE****REKHA PALLI, J (ORAL)****CM APPL. 44476/2023 & CM APPL. 44478/2023 -Ex.**

1. Exemptions allowed, subject to all just exceptions.
2. The applications stand disposed of.

**LPA 608/2023, CM APPL. 44477/2023 –Stay & CM APPL. 44479/2023 -
Delay 56 days.**

3. The present appeal under Clause 10 of the Letters Patent Act seeks to assail order dated 30.05.2023 passed by the learned Single Judge in W.P.(C) 10457/2019. Vide the impugned order, the learned Single Judge has allowed the writ petition preferred by the respondent/writ petitioner by quashing the order dated 21.01.2019 passed by the appellant whereunder, the appellant had refused to treat the period between 17.12.1994 to 13.12.2000 as period spent on duty by the respondent. Consequently, the appellant has been



directed to pay full salary to the respondent for the period of suspension but also include this period as spend on duty for calculation of pensionary benefits.

4. The sole submission of learned counsel for the appellant is that in terms of Regulation 15 of the PNB Officer Employee (Discipline & Appeal) Regulations, 1977 (hereinafter referred to as 'Regulation 15') only, where an employee is held to be fully exonerated or his suspension is found to be unjustified, that the said employee is entitled to receive full pay for the period during which he had remained suspended. He, however, contends that in the present case, though the respondent stands acquitted in the criminal proceedings on account whereof he was suspended from service on 17.12.1994, the said acquittal was only by way of '*benefit of doubt*' and therefore the learned Single Judge has erred in holding that the respondent was entitled to be treated as fully exonerated and consequently entitled to full wages for the period of suspension.

5. On the other hand, learned counsel for the respondent supports the impugned order. By drawing our attention to the findings recorded by the learned Single Judge in paragraph nos. 28 and 29 of the impugned order, he submits that it is trite law that the words used in the acquittal order are not conclusive of the fact as to whether the acquittal is honourable or by way of a benefit of doubt. By placing reliance on the decision of the Apex Court in ***Union of India & Ors. Vs. Methu Meda***, 2022 (1) SCC 1, he submits that the Apex Court has clearly held that in a case where the acquittal is directed by the Court on consideration of facts and material evidence on record, by recording a finding that the guilt of the accused had not been proved, it has to be treated as an honourable acquittal. In the present case, a perusal of the



order dated 25.05.2018 passed by the learned CBI Court in Case No. 532271/16 would show that the respondent was acquitted not on any technical ground but because the prosecution was not able to prove his guilt. He, therefore, prays that the appeal be dismissed.

6. Having considered the submissions of learned counsel for the parties and perused the record, we may begin by noting that there is no challenge by the appellant to the direction by the learned Single Judge to treat the period between 17.12.1994 to 13.12.2000 as spent on duty for calculation of pensionary benefits. The appellant is, however, aggrieved by the direction to pay full wages for this period.

7. Having noted the scope of the present appeal, we may now turn to the relevant extracts of the impugned order, which read as under:-

*“28. On a close examination of the findings of the Trial Court, I am of the view that there is merit in the contention of the Petitioner that the prosecution despite producing 43 witnesses and hundreds of documents, was unable to establish the guilt of the Petitioner. The Trial Court has, upon examination of evidence, both oral and documentary, held that Petitioner cannot be held accountable for signing the agreements with respect to five vehicles, pertaining to which all necessary formalities stood completed even before he joined the Bank and therefore had no role in the transactions. With respect to the second transaction of three vehicles, it is clearly brought forth in the judgment that while the Petitioner had signed the agreements, the documents pertaining thereto such as the invoices, etc. were neither forged nor procured from unauthorized places/persons and it was later that accused No.4 had misused the documents to cheat the Bank and the Petitioner perhaps had no knowledge either of the stop payment of cheques by M/s. PFLI towards purchase money or insurance premium of the vehicles and it cannot be concluded that he had acted dishonestly. **Trial Court found culpability with respect to 6 accused and convicted them while acquitting the Petitioner and to my mind, the mere use of the words ‘benefit of doubt’ cannot be read out of context and superfluously and will have to be given a meaning on a holistic reading of the judgement, where the Trial Court did not find that any culpability could be attached to the Petitioner.**”*



29. Furthermore, it is not a case where the prosecution has failed to take steps to examine crucial witnesses or the witnesses turned hostile, etc., which are the category of cases in which the Supreme Court has held that an acquittal will not be termed as an honourable acquittal. (emphasis supplied)

35. This Court cannot disagree with the Respondent on the proposition of law that grant of back wages and/or treatment of suspension period as spent on duty or otherwise is a discretion which the employer is entitled to exercise and in fact, is the domain of the employer. To this extent, the judgements relied upon by the Respondent need not be again referred to as the principle is fairly well settled to be open to any debate. However, it is equally well settled that discretion has to be judiciously exercised and an arbitrary exercise of discretion is open to interference by a Court in judicial review under Article 226 of the Constitution of India which is an equity jurisdiction. The impugned order shows that the Respondent has not exercised the jurisdiction judiciously and has applied the doctrine of 'no work no pay' without examining the facts of the present case. It is true that the Petitioner was not working during the suspension period but that was on account of the suspension order issued by the Respondent since at that stage the criminal case was pending. However, when the impugned order was passed, the facts were on record and in knowledge of the Respondent that the criminal case had resulted in an acquittal and the charge sheet in the departmental proceedings stood quashed. At this stage, to invoke the doctrine of 'no work no pay', in my view, was completely arbitrary and illegal. Regulation 15(1) and (3) of Regulations 1977 does entitle the Respondent to deny back wages for the suspension period and/or treating the period as not spent on duty, but by a plain reading of the Regulation, it is clear that the provisions do not fetter grant of the said reliefs. These are enabling provisions permitting the Respondent to grant relief to an employee in case of full exoneration or where the suspension period is unjustified. In light of the two judicial orders in favour of the Petitioner, the question that begs an answer is whether the exercise of discretion to deny reliefs to the Petitioner was judicious and the answer can only be in the negative."

8. Upon a perusal of the aforesaid, it emerges that the learned Single Judge has after carefully examining the order dated 25.05.2018 of the CBI Court, came to a categorical conclusion about the factum of the respondent



being not found to be guilty by the CBI Court after due consideration of the factual position and material evidence brought on record. The learned Single Judge held it was only thereafter that the respondent was acquitted by the said CBI Court which has to be therefore be treated as an honourable acquittal. The learned Single Judge, therefore, held that it was a fit case that the respondent should be granted benefits under Regulation 15. As noted hereinabove, the only submission of learned counsel for the appellant, is that the learned Single Judge has erred in holding that the respondent was honourably acquitted in the terms used in Regulation 15.

9. We have therefore, at the insistence of the learned Counsel for the appellant carefully perused the order passed by the CBI Court on 25.05.2018, upon which, we have no doubt in our minds that the learned counsel for the respondent is correct in urging that, in the present case, it is not as if the respondent has been let off on account of witnesses turning hostile or not appearing before the concerned CBI Court, but has been acquitted only because no material evidence whatsoever was found against him. In view thereof, we find no reason to differ with the view taken by the learned Single Judge that the present case was a case of honourable acquittal and the mere use of the word '*benefit of doubt*' by the CBI Court as has been rightly held by the learned Single Judge, could not be conclusive *per se*. In any event, the words '*benefit of doubt*' as used in the order passed by the said CBI Court cannot be literally taken on the face of it, as it is, but has to be interpreted as per the factual matrix involved. In this regard, we may refer to the relevant extracts of *Methu Meda* (Supra) as under:-

10. While addressing the question, as argued the meaning of expression "acquittal" is required to be looked into. The expressions



“honourable acquittal”, “acquitted of blame” and “fully acquitted” are unknown to the Code of Criminal Procedure or the Penal Code, 1860. It has been developed by judicial pronouncements. In State of Assam v. Raghava Rajgopalachari [State of Assam v. Raghava Rajgopalachari, 1967 SCC OnLine SC 1 : (1972) 7 SLR 44] , the effect of the word “honourably acquitted” has been considered in the context of the Assam Fundament Rules (FR) 54(a) for entitlement of full pay and allowance if the employee is not dismissed. The Court has referred to the judgment of Robert Stuart Wauchope v. Emperor [Robert Stuart Wauchope v. Emperor, 1933 SCC OnLine Cal 369 : ILR (1934) 61 Cal 168] , in the context of expression “honourably acquitted”, Lort-Williams, J. observed as thus : (Robert Stuart Wauchope case [Robert Stuart Wauchope v. Emperor, 1933 SCC OnLine Cal 369 : ILR (1934) 61 Cal 168] , SCC OnLine Cal)

“The expression “honourably acquitted” is one which is unknown to courts of justice. Apparently it is a form of order used in courts martial and other extra-judicial tribunals. We said in our judgment that we accepted the explanation given by the appellant, believed it to be true and considered that it ought to have been accepted by the government authorities and by the Magistrate. Further we decided that the appellant had not misappropriated the monies referred to in the charge. It is thus clear that the effect of our judgment was that the appellant was acquitted as fully and completely as it was possible for him to be acquitted. Presumably, this is equivalent to what the government authorities term “honourably acquitted”.”

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12. In view of the above, if the acquittal is directed by the court on consideration of facts and material evidence on record with the finding of false implication or the finding that the guilt had not been proved, accepting the explanation of accused as just, it be treated as honourable acquittal. In other words, if prosecution could not prove the guilt for other reasons and not “honourably” acquitted by the court, it be treated other than “honourable”, and proceedings may follow. (emphasis supplied)

13. The expression “honourable acquittal” has been considered in S. Samuthiram [State v. S. Samuthiram, (2013) 1 SCC 598 : (2013) 1 SCC (Cri) 566 : (2013) 1 SCC (L&S) 229] after considering the judgments in RBI v. Bhopal Singh Panchal [RBI v. Bhopal Singh Panchal, (1994) 1 SCC 541 : 1994 SCC (L&S) 594] and R.P. Kapur [R.P. Kapur v. Union of India, AIR 1964 SC 787] , Raghava



Rajgopalachari [State of Assam v. Raghava Rajgopalachari, 1967 SCC OnLine SC 1 : (1972) 7 SLR 44] ; this Court observed that the standard of proof required for holding a person guilty by a criminal court and enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing guilt of the accused is on the prosecution, until proved beyond reasonable doubt. In case, the prosecution failed to take steps to examine crucial witnesses or the witnesses turned hostile, such acquittal would fall within the purview of giving benefit of doubt and the accused cannot be treated as honourably acquitted by the criminal court. While, in a case of departmental proceedings, the guilt may be proved on the basis of preponderance of probabilities, it is thus observed that acquittal giving benefit of doubt would not automatically lead to reinstatement of candidate unless the rules provide so.

14. Recently, this Court in State (UT of Chandigarh) v. Pradeep Kumar [State (UT of Chandigarh) v. Pradeep Kumar, (2018) 1 SCC 797 : (2018) 1 SCC (Cri) 504 : (2018) 1 SCC (L&S) 149] , relying upon the judgment of S. Samuthiram [State v. S. Samuthiram, (2013) 1 SCC 598 : (2013) 1 SCC (Cri) 566 : (2013) 1 SCC (L&S) 229] said that acquittal in a criminal case is not conclusive of the suitability of the candidates on the post concerned. It is observed, acquittal or discharge of a person cannot always be inferred that he was falsely involved or he had no criminal antecedent. The said issue has further been considered in Mehar Singh [State v. Mehar Singh, (2013) 7 SCC 685 : (2013) 3 SCC (Cri) 669 : (2013) 2 SCC (L&S) 910] holding non-examination of key witnesses leading to acquittal is not honourable acquittal, in fact, it is by giving benefit of doubt. The Court said that nature of acquittal is necessary for core consideration. If acquittal is not honourable, the candidates are not suitable for government service and are to be avoided. The relevant factors and the nature of offence, extent of his involvement, propensity of such person to indulge in similar activities in future, are the relevant aspects for consideration by the Screening Committee, which is competent to decide all these issues.

15. In the present case, the charges were framed against the respondent for the offences punishable under Sections 347/327/323/506 Part II and 364-A IPC. He was acquitted after trial vide judgment dated 19-3-2010 by the Sessions Judge, Jhabua because the person kidnapped Nilesh and also his wife have not supported the case of prosecution. As per prosecution, the complainant was beaten by the respondent and the said fact found support from the evidence of the doctor. Therefore, it appears that the



Committee was of the view that acquittal of the respondent, in the facts of the present case, cannot be termed as “honourable acquittal” and the said acquittal may be treated by giving benefit of doubt.

10. Before concluding, we may note that interestingly since we find that it is not even the case of the appellant that the respondent was let off because of non-appearance of any witnesses or their turning hostile; we are, therefore, of the considered view that the ratio of the aforesaid decision rendered by the Apex Court in ***Methu Meda*** (supra) would squarely apply to the facts of the present case. Considering the same, we find no reason to differ with the view taken by the learned Single Judge that this was a fit case that the respondent ought to have been treated as honourably acquitted and, consequently, entitled to all benefits in terms of Regulation 15.

11. The appeal, thus being meritless, is alongwith the accompanying applications dismissed.

(REKHA PALLI)
JUDGE

(SAURABH BANERJEE)
JUDGE

MAY 7, 2024/rr