IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2025

CORAM

THE HONOURABLE MS. JUSTICE R.N.MANJULA

W.P No.24758 of 2018

T.Kaliyan ... Petitioner

Vs.

1. Indian Overseas Bank
   Rep. by its Managing Director
   And Chief Executive Officer Central Office,
   763, Anna Salai, Chennai-600 002.

2. The Executive Director/Appellate Authority,
   Indian Overseas Bank,
   Central Office, 763,
   Anna Salai, Chennai-600 002.

3. The General Manager/Disciplinary Authority,
   Indian Overseas Bank,
   Central Office, 763,
   Anna Salai, Chennai-600 002. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of CERTIORARIFED MANDAMUS after calling for the records pertaining to the impugned orders dated 25.05.2010 passed by the 3 respondent in DO:GM (SNM):DA:985:2010 and the order dated 20.07.2010 passed by the 3rd respondent in DO:GM(SCS):CDAC:2010, and the order No.CO: CDAC: Law:3174:2018-19 dt.03.08.2018 passed by the 3rd respondent quash the same based on my honourable acquittal on merits by this Court in C.A. No.172/2010 and consequently direct the respondents to treat the period of suspension from 8.8.2008 to 19.5.2009 and the period from 25.5.2010 to 29.02.2016 as duty with pay for all purposes; to grant him scale-V,VI and VII promotions to sanction and pay monetary benefits for the above period and for the above promotions after adjusting the subsistence allowance already paid and to pay the revised terminal benefits for the petitioner's entire service from 19.05.1978 to 29.02.2016 including the earned leave/privilege leave salary, after adjusting the terminal benefits already paid to me, together with interest, Award costs.

For Petitioner	:	Ms. Nandhini H for M/S.P.Krishnaswamy
For Respondents	:	Mr.K.Srinivasamurthy

ORDER

The petitioner has filed this writ petition challenging the order dated 03.08.2018 and to direct the third respondent to treat the period of suspension of the petitioner between 25.05.2010 to 29.02.2016 as duty with pay along with the Scale V, VI and VII promotions.

2.Heard Ms. Nandhini H, learned counsel for the petitioner, Mr.K.Srinivasamurthy, learned counsel for respondents and perused the materials available on record.

3. When the petitioner was working as Chief Manager in the first respondent Bank at the time of his compulsory retirement on 25.05.2010, the punishment of compulsory retirement was imposed at the culmination of disciplinary proceedings initiated against him. In this regard a criminal case has been registered against the petitioner in R.C.No.41(A)/2008 on 05.08.2008 on the file of the CBI under the Prevention of Corruption Act and charge sheet has been filed in C.C.No.4/2008 on the file of II Additional District Judge/Special Judge for CBI cases, Coimbatore. At the conclusion of the trial, the petitioner was found guilty and convicted.

4. Now the petitioner contends that his conviction was set aside in an appeal and hence he should be deemed to have continued in service as though he was neither placed under suspension nor he was not imposed with the punishment of compulsory retirement. The petitioner referred Section 10(1)(b)(i) of the Banking Regulation Act, 1949. For the sake of clarity, Section 10 of the said Act is as follows:

> *10. Prohibition of employment of managing agents and restrictions on certain forms of employment:*
>
> *(1) No banking company-*
>
> *(a) shall employ or be managed by a managing agent; or*
>
> *(b) shall employ or continue the employment of any person -*
>
> *(i) who is, or at any time has been, adjudicated*

insolvent, or has suspended payment or has compounded with his creditors, or who is, or has been, convicted by a criminal court of an offence involving moral turpitude, or

(ii) whose remuneration or part of whose remuneration takes the form of commission or of a share in the profits of the company."

5. The learned counsel for the respondent submitted that the petitioner did not challenge the punishment of compulsory retirement and he is drawing pension and he has drawn all the terminal benefits, immediately after he was sent on compulsory retirement. The petitioner being a convict has a statutory disqualification to work in a financial institution like banking institution. Further, the employees who have imposed with the punishment of compulsory retirement on or before 30.04.2015 alone are eligible for encashment of privilege leave. Since the petitioner was imposed with compulsory retirement on 25.05.2010, he is not eligible for leave encashment as that of those employees who have been imposed with similar punishment on or before 30.04.2015. Even if the petitioner was not imposed with the punishment of compulsory retirement, he would have attained the age of superannuation during February, 2016 itself. His conviction was set aside on appeal only on 23.10.2017 which is subsequent to his attaining the age of superannuation and hence he is not eligible to get the relief as prayed.

5.1. In support of his above contention, the learned counsel for the respondent relied on the following judgements of the Hon'ble Supreme Court that merely because there has been an acquittal, it does not entitle the petitioner to get the mandatory benefits or other service benefits as claimed:

> ***i) Union of India and Ors. Vs. Jaipal Singh*** *reported in* ***[2003] Supp.5 S.C.R. 115***
>
> ***ii) State Bank of India and another Vs. Mohammed Abdul Rahim,*** *reported in* ***(2013) 11 Supreme Court Cases 67.***

6. On perusal of the judgment passed in the criminal appeal filed by the petitioner, it is seen that the conviction of the trial Court was set aside on the finding that the trial Court failed to appreciate the material contradictions in the evidence. It is further observed that there is a probability of animosity between the accused and the defacto complainant which might result in a criminal case against the petitioner.

7. On the holistic reading of the above judgment, it would only give an inference that the order of acquittal has been passed on merits and not by simply giving the benefit of the doubt to the petitioner. But for the reasons best known to the petitioner, he did not challenge the order of punishment of compulsory retirement or pray to stay the said punishment until the completion of the criminal appeal, and intend to get an order of reinstatement at the time when the appeal was pending by citing the reason that the criminal proceedings had not attained finality. No doubt, the petitioner's acquittal in the criminal case as per the judgment passed by the appellate Court can have some impact on the punishment of compulsory retirement, which was imposed prior to the conclusion of the appeal.

8. In fact, no disciplinary proceedings have been initiated against the petitioner and the petitioner was not found guilty in the disciplinary proceedings. Section 10(1)(b)(i) of the Banking Regulation Act, 1949, mandates not to continue the employment of a person who had been convicted by the criminal Court for an offense involving moral turpitude. No doubt the petitioner has been tried for an offence falling under the Prevention of Corruption Act, 1988, which involves moral turpitude and after he was convicted in such a criminal case the bank cannot be expected to engage his services any further.

9. Had not the petitioner been awarded with the punishment of compulsory retirement, he would have got his retirement on his attaining the age of superannuation on 29.02.2016. It is claimed by the petitioner that if he had been allowed to continue in service, he would have got Scale V, VI, and VII promotions and in this regard, he had given a representation to the respondents. It was rejected on 03.08.2018 by citing the Regulation 10(1)(b)(i) of the Banking Regulation Act, 1949.

10. The learned counsel for the respondent submitted that the promotion avenue for the petitioner is not automatic but a selection based on merits. In such a case, the petitioner who was out of service cannot be given with promotional benefits even notionally.

11. The learned standing counsel for the respondent cites the judgment of the Hon'ble Supreme Court in Union of India and Ors. v. Jaipal Singh, reported in [2003] Supp. 5 S.C.R. 115, it is held that if a person's earlier discharge from service had occurred on account of the criminal proceedings and conviction, he would not be entitled to get back wages even if he got an order of acquittal in the appellate forum. It is observed that the department cannot be made liable to pay the wages for the period for which they could not avail the services of the employees. Even though the period out of employment was counted as a period of service without any break, the benefit of back wages is not allowed in the above case.

12. In yet another case of the Hon’ble Supreme Court in ***State Bank of***

India and another Vs. Mohammed Abdul Rahim, reported in ***(2013) 11 Supreme Court Cases 67,*** it is held that the grant of back wages is not automatic in the event of acquittal, and such entitlement has to be adjudicated in the context of the totality of the facts of each case.

13. It is further held that when a statutory provision bars a bank from employing or continue to employ a person who had been convicted by the criminal court of an offense involving moral turpitude, the other surrounding facts and circumstances would lose significance. Even when the disciplinary proceedings were not initiated against the petitioner, the respondent bank was unable to continue the services of the petitioner because of the bar placed under Regulation 10(1)(b)(i) of the Banking Regulation Act, 1949.

14. As stated already, the petitioner did not also attempt to get any order of stay for the punishment of compulsory retirement, citing the pendency of the criminal appeal. Hence, for the services not rendered by the petitioner, he cannot be allowed to get back wages and promotions even with any notional impact. However, the above period can be counted as continuity of service that can be included as a qualifying service for the purpose of terminal benefits like pensions and other incidental benefits. Since the appeal is a continuation of criminal proceedings and the petitioner got an order of acquittal in the appellate court on merits, I feel it is necessary to set aside the order of punishment of compulsory retirement and allow the petitioner to retire on his attaining the age of superannuation as on 29.2.2016.

15. In view of the above stated reasons, this writ petition is **partly allowed** and the impugned order No.CO: CDAC: Law:3174:2018-19 dt.03.08.2018 passed by the 3rd respondent, rejecting the petitioner's representation dated 16.11.2017, 15.12.2017, 23.01.2018, 23.02.2028 & 21.03.2018, is set aside partially so far as it relates to the denial of permission to retire on superannuation by setting aside the compulsory retirement. Consequent to the setting aside of the punishment of compulsory retirement, the respondents are directed to permit the petitioner to retire on superannuation with effect from February 2016 by taking into account of those periods during which he was out of service for the purpose of pension and other service benefits except for back wages and the benefit of promotion. No costs.

13.02.2025

jrs

R.N.MANJULA, J.
jrs

Index : Yes
Internet : Yes/No
Speaking/Non- Speaking
Neutral: Yes/No

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