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IN THE HIGH COURT OF DELHI AT NEW DELHI**Judgment reserved on: 22.01.2026**

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Judgment delivered on: 30.01.2026

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LPA 141/2024 & CM APPL. 10308/2024**STATE BANK OF INDIA****.....Appellant****Through: Mr.Rajiv Kapur, SC for SBI with
Ms.Riya Sood, Adv.****versus****V .C JAIN****.....Respondent****Through: Mr. Neeraj Jain, Adv. with Mr.M.T.
Reddy Adv.****CORAM:****HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE TEJAS KARIA****J U D G M E N T****DEVENDRA KUMAR UPADHYAYA, C.J.**

1. Heard the learned counsel for the parties and perused the records available before us on this *intra-court* appeal.
2. The instant appeal challenges the judgment and order dated 30.10.2023 passed by the learned Single Judge in *W.P.(C) 4762/2012*, in so far as it directs the appellant to count the period from 21.09.2002 to 24.03.2011 as period having been spent on duty by the respondent for the purposes of his pensionary and retiral benefits, with a further direction to the appellant to re-fix his pensionary and retirement benefits accordingly.



3. Before advertng to the respective submissions made by learned counsel for the parties, we may state the facts relevant for the purposes of resolving the issue involved herein.
4. A complaint by one Mr.Gurcharan Singh was filed containing certain allegations of demand for bribery by the respondent while he was posted as Branch Manager (Scale-III) at the Laxmi Nagar Branch of the appellant in the year 2002. An FIR on the basis of the said complaint was registered by the Central Bureau of Investigation, in connection therewith the respondent was arrested on 02.09.2002, whereafter, he was released on bail.
5. On 24.09.2002, the respondent was suspended with effect from 21.09.2002 on account of his involvement in the criminal case, which led to lodging of the FIR and his arrest.
6. On 08.06.2002, a certain charge sheet was issued to the respondent containing certain charges relating to various misconducts and irregularities said to have been committed by him in discharge of his official duties as a bank employee.
7. *Vide* judgment dated 08.07.2005, the respondent was convicted of the offences under Sections 7, 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988 (*hereinafter referred to as the 'Act, 1988'*) and accordingly, *vide* order dated 11.07.2005 he was sentenced to undergo rigorous imprisonment for a period of two years with a fine of Rs.10,000/-, in default whereof he was further ordered to undergo imprisonment of three months for the offence under Section 7 of the Act, 1988. The respondent was also sentenced to undergo three years rigorous imprisonment with a fine of Rs.10,000/- with a default clause of undergoing three months imprisonment



for the offence under Section 13(2) read with Section 13(1)(d) of the Act, 1988.

8. In terms of Rule 67(j) read with Rule 68(7)(ii) of the SBI Officers Service Rules, 1992 (*hereinafter referred to as the 'Service Rules'*) as also in terms of Section 10(1)(b)(i) of the Banking Regulations Act, 1949, (*hereinafter referred to as the 'Act 1949'*), the respondent was dismissed from service vide order dated 14.10.2005. The order of dismissal dated 14.10.2005 further provided that the period of suspension of the respondent will be treated as such and that he shall not be paid any salary or allowances except the subsistence allowance, for this period, already paid to him. It also provided that gratuity payable to the respondent shall stand forfeited in terms of Section 6(b)(ii) of the Payment of Gratuity Act, 1972.

9. The order dated 14.10.2005, whereby the respondent was dismissed from service on account of his conviction in the criminal case, also provided that disciplinary action initiated against the respondent *vide* charge sheet dated 08.06.2004 shall be kept in abeyance, which may be revived if the order of dismissal from service is altered by order of any Court. The appeal filed by the respondent against this dismissal order was also dismissed. Thereafter, the respondent challenged the order of dismissal as also the appellate order by instituting *W.P.(C) 15726/2006* before this Court.

10. Against the judgment of conviction and order of sentence dated 08.07.2005 and 11.07.2005, the respondent preferred Criminal Appeal No.579/2005 before this Court, which was allowed *vide* order dated 24.12.2010 and the judgment of conviction and the order of sentence were set aside, and the respondent was, thus, acquitted.



11. However, as is apparent from the appellate order passed by this Court, dated 24.12.2010, the acquittal of the respondent cannot be said to be a clean acquittal; rather, he appears to have been given benefit of doubt. The Appellate Court concluded that the prosecution's case was full of doubts. The operative portion of the appellate order dated 24.12.2010 is extracted herein below:

“29. In view of the discussion above, I am of the view that the prosecution case is full of doubt. Therefore, I find myself unable to sustain the impugned judgment of conviction and consequent order on sentence. Appeal is, accordingly, accepted. Impugned judgment and order on sentence are set aside and the appellant is acquitted on both counts, giving him benefit of doubt.”

12. After his acquittal *vide* order dated 24.12.2010, the respondent made a representation seeking his reinstatement in service and accordingly, by means of order dated 25.03.2011, the respondent was reinstated in service; however, the said reinstatement was subject to certain conditions. The order of reinstatement dated 25.03.2011 provided that reinstatement would be effective from the date the respondent reports to the Bank to join his duties and further that he shall not be paid any salary or allowances for the period he remained under suspension/out of service and that this period will not be counted as service for all purposes including, calculation of terminal benefits. The order further provided that disciplinary action initiated *vide* charge sheet dated 08.06.2004 in respect of certain irregularities said to have been committed by the respondent, which was kept in abeyance on account of his dismissal from service, shall stand revived from the stage it had reached at the material point of time.



13. The conditions of reinstatement as mentioned in the order dated 25.03.2011 are extracted herein below:

- “1. Your reinstatement will be effective from the date of your reporting to the AGM (HR), SBI, New Delhi LHO.*
- 2. You will not be paid any salary & allowances for the period you remained under suspension/out of service and this period will not be counted as service for all purpose including calculation of terminal benefits.*
- 3. The disciplinary action initiated against you vide letter no. VIGL/HSS/495 dated 08.06.2004 in respect of the irregularities committed by you while posted as Chief Manager at Laxmi Nagar Branch, Delhi which was kept in abeyance on account of your dismissal from service stands revived from the stage reached at the material time”*

14. Pursuant to the said order dated 25.03.2011, the respondent joined the services in the Bank without any protest or demur as to the conditions mentioned therein, which included the condition that he shall not be paid any salary of allowances for the period he remained under suspension out of service and that such period will not be counted as service for all purposes including, calculation of terminal benefits. No challenge was made to such conditions by the respondent at any forum.

15. The respondent, on his reinstatement *vide* order dated 25.03.2011 withdrew *W.P.(C) 15726/2006*. The disciplinary proceedings which were initiated against the respondent by issuing the charge sheet dated 08.06.2004 culminated in order of punishment dated 23.09.2011 whereby, penalty of reduction in rank to a lower scale in time scale of pay by one stage till retirement was imposed upon the respondent. The respondent, thereafter, retired on attaining the age of superannuation on 30.11.2011.

16. After retirement, the respondent instituted the proceedings of *W.P.(C) 4762/2012* on 26.07.2012 with the prayer for issuing a direction to the



appellant to pay him arrears of salary with effect from 21.09.2002 to 24.03.2011. He further prayed to re-fix his pensionary and retiral benefits by treating the said period as period spent on duty.

17. It is noteworthy that the respondent, pursuant to order of reinstatement dated 25.03.2011, submitted his joining without any protest to the conditions stipulated therein, which *inter alia* provided that the respondent shall not be paid any salary and allowance for the period under suspension/out of service and that this period will not be counted as service for all purposes including, calculation of terminal benefits. Even while instituting *W.P.(C) 4762/2012*, no challenge to such conditions were made in the writ petition and straightaway a prayer was made that the pensionary and retiral benefits of the respondent be re-fixed treating the said period as spent on duty.

18. Learned Single Judge, while passing the impugned judgment and order dated 31.10.2023, has held that the respondent is not entitled to salary (back wages) for the period from 21.09.2002 to 24.03.2011 as claimed by him; however, the said period has been directed to be treated as continuous service for the purposes of pensionary and retiral benefits.

19. No challenge has been made to the impugned judgment and order by the respondent so far as it holds that he shall not be entitled to back wages for the period in question and therefore, the claim of salary made by the respondent stands finally decided. The appellant has challenged the impugned judgment only in respect of that portion of the judgment whereby the learned Single Judge has held that the period in question shall be treated as continuous service for the purposes of pensionary and retiral benefits of



the respondent and has further given a direction to re-fix the same accordingly.

20. The question, in the facts and circumstances of the case, which falls for our consideration and adjudication is as to whether, having accepted the conditions as set out in the order of reinstatement dated 25.03.2011 which was passed on acquittal of the respondent in the Criminal Appeal filed by the respondent challenging his conviction, the respondent is entitled for counting the period in question as period of continuous service for the purposes of calculation of his pensionary and retiral benefits. For determining the said issue, certain provisions, which have application in the present case, need to be noted Rule 67 and 68A (7) of the Service Rules read as under:

“c. Rule 67 and 68(7) of State Bank of India Officers’ Service Rules, 1992

67. Without prejudice to any other provisions contained in these rules, any one or more of the following penalties may be imposed on an officer, for an act of misconduct or for any other good and sufficient reason:-

Minor Penalties

(a)....

(b)....

(c).....

(d).....

Major Penalties

(e)....

(f).....

(g).....

(h)

\(i).....

(j) dismissal.

XXX XXX XXX

68. (7) (i)

(ii) Without prejudice to what is stated in clause (i) above and notwithstanding anything contained in sub-rules (2),(3) and (4), the Disciplinary Authority or the Appointing Authority, as the case may



be, may impose any of the penalties specified in rule 67, if the officer has been convicted of a criminal charge or on the strength of facts or conclusions arrived at by a judicial trial. Provided that before a penalty is imposed in terms of this clause, the officer employee may be given an opportunity of making representation on the penalty to be imposed, before any order is made.”

Rule 68A(7)(i) and 68A(8)(i) and (ii) are as under:

“d. Rule 68(A) and 68(A)(8)(i) of State Bank of India Officer’ Service Rules, 1992

Suspension

68.A.

(7)(i) An officer who is placed under suspension shall be entitled to receive during the period of such suspension and subject to clauses (ii) and (iii) subsistence allowance equal to half his substantive salary and such other allowances as the competent authority may decide.

.....

68.A. (8)(ii) In all cases other than those referred to in clause (i) above and where the officer has not been subjected to the penalty of dismissal, the period spent under suspension shall be dealt with in such a manner as the Disciplinary Authority may decide and the pay and allowances of the officer during the period adjusted accordingly.”

68A. (8)(i) Where the Appointing Authority holds that the officer has been fully exonerated or that the suspension was unjustifiable, the officer shall be granted the full pay to which he would have been entitled, had he not been so suspended, together with any allowance of which he was in receipt immediately prior to his suspension or may have been sanctioned subsequently and made applicable to all officers. The period of absence from duty in such a case shall, for all purposes, be treated as period spent on duty.”

21. Section 10(1)(b)(i) of the Act, 1949 is also extracted hereunder:

“e. Section 10(1)(b)(i) of the Banking Regulation Act, 1949

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;

.....”



22. If we peruse Section 10(1)(b)(ii) of the Act, 1949, we find that the said provision puts a prohibition on employment in a banking company in a situation where a person is convicted by a Criminal Court of an offence involving moral turpitude. Rule 68(7)(i) of the Service Rules governing the service conditions of the respondent provides that disciplinary authority/appointing authority may impose one of the penalties specified in Rule 67 if an officer has been convicted of a criminal charge or on the strength of facts or conclusions arrived at by a judicial trial. Accordingly, on his conviction, by the Trial Court *vide* judgment of conviction dated 08.07.2005 whereby, the respondent was convicted of the offence under Section 7, 13(2) and 13(1)(d) of the Act, 1988, the respondent was dismissed from service *vide* order dated 14.10.2005. It is to be noticed that in terms of the mandate as contained in Section 10(1)(b)(i) of the Act, 1949 since the respondent was convicted of an offence under the Act, 1988 he could not continue in employment and accordingly, by passing the dismissal order dated 14.10.2003 he was kept out of employment.

23. It is also to be noticed that conviction of the respondent had resulted on a complaint which was not filed by the appellant rather by an individual, namely, Mr.Gurcharan Singh and accordingly, if on his acquittal from the criminal charge by the appellate order the respondent has been reinstated, it cannot be said that he was kept out of employment during the period in question for any reason which is attributable to the appellant.

24. In the aforesaid view of the matter, we fully concur with the finding recorded by the learned Single Judge whereby it has been held that the respondent is not entitled to the back wages for the period in question. The



learned Single Judge has extensively quoted certain judgments of the Hon'ble Supreme Court where it has been held *inter alia* that the question of back wages would be considered only if the order of punishment is found to be unsustainable in law and that the charged officer is found to have been unlawfully prevented from discharging the duties for the reason attributable to the employer.

25. Learned Single Judge has referred to the judgment of the Hon'ble Supreme Court in the case of ***Raj Narain v. Union of India, (2019) 5 SCC 809*** where it has clearly been held that an employee against whom criminal proceedings are initiated would stand on a different footing in comparison to an employee facing a departmental inquiry and further that an employee involved in a crime disables himself from rendering his services on account of his incarceration in jail and subsequent acquittal by an Appellate Court would not entitle him to claim back wages.

26. The question as to how the period during which the respondent was out of employment, initially on account of his suspension and thereafter on account of his dismissal for the reason of his conviction by the Trial Court, has to be considered in the light of the relevant provisions in the Service Rules. We may refer, in this regard, to Rule 68A(8)(i) and (ii) of the Service Rules as quoted above.

27. Rule 68A(8)(i) provides that in a case where the appointing authority holds that the officer has been fully exonerated or the suspension was unjustifiable, the officer shall be granted full pay to which he would have been entitled had he not been placed under suspension, along with the allowances. It further provides that period of absence from duty in such a



case shall, for all purposes, be treated as period spent on duty. The crucial expression occurring in Rule 68A(8)(i) is “*the officer has been fully exonerated*”. Only in such a situation where an officer is found to have been fully exonerated, he shall be entitled to a salary along with allowance and also that such period of absence from duty will be treated as a period spent on duty. It also means, in our opinion, that in case the appointing authority is unable to hold that the officer has been fully exonerated, entitlement of either back wages or for treating the period of absence from duty as period spent on duty, will not be available to him.

28. We may now refer to Rule 68A(8)(ii) of the Service Rules, which applies in all cases other than those referred to in Rule 68A(8)(i). Rule 68A(8)(ii) provides that in cases other than those set out in Rule 68A(8)(i), the period spent under suspension shall be dealt with in such a manner, as the disciplinary authority may decide and pay and allowances of the officer during such period shall be adjusted accordingly. Thus, in a case where the officer is not fully exonerated, determination of the question as to how the period of absence from duty is to be treated lies at the discretion of the disciplinary/appointing authority.

29. Hon’ble Supreme Court in the case of ***Greater Hyderabad Municipal Corpn. v. M. Prabhakar Rao, (2011) 8 SCC 155*** has held, in the light of Rules governing the conditions of service of the employee therein, that the relevant rule vests power on the competent authority to order reinstatement and to form an opinion whether suspension of the government servant was wholly unjustified and if in his opinion suspension is found to be wholly



unjustified, such government servant would be paid full pay and allowances to which he would have been entitled had he not been suspended.

30. Referring to the judgment of *Union of India v. K.V. Jankiraman (1991) 4 SCC 109*, Hon'ble Supreme Court in *M. Prabhakar Rao (supra)* has also observed that in cases where criminal conviction results in acquittal with benefit of doubt or on account of non-availability of evidence, the authority concerned must be vested with the power to decide whether the employee deserves any salary for the intervening period and if he does, the extent to which he deserves such benefit.

31. It has also been observed in *Jankiraman (supra)* that to lay down a rule that in every case when an employee is exonerated in disciplinary proceedings he shall be entitled to all salary for the intervening period, is to undermine discipline in the administration that shall jeopardise public interest.

32. Hon'ble Supreme Court has further observed in *M. Prabhakar Rao (supra)*, relying on *Jankiraman (supra)* that even in cases where acquittal in criminal proceedings is on account of non-availability of evidence, the authority concerned must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and further that such a power is vested in the competent authority with the view to ensure that discipline in administration is not undermined and public interest is not jeopardised.

33. It has also been observed by the Apex Court in *M. Prabhakar Rao (supra)* that in every such case where an employee is exonerated in disciplinary or criminal proceedings, whether or not he shall be entitled to



all salary during the period of suspension, such a decision has to be taken by the competent authority on the facts and circumstances of each case. Paragraphs 8 to 10 of **M. Prabhakar Rao (supra)** are extracted herein below:

“8. Sub-rule (3) of FR 54-B extracted above, thus, vests power on the competent authority to order reinstatement to form an opinion whether suspension of a government servant was wholly unjustified and if, in its opinion, the suspension of such government servant is wholly unjustified, such government servant will be paid the full pay and allowances to which he would have been entitled, had he not been suspended. The proviso to sub-rule (3) of FR 54-B, however, states that where such authority is of the opinion that the termination of the proceedings instituted against the government servant had been delayed due to reasons directly attributable to the government servant then the government servant shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine. In other words, even where the competent authority is of the opinion that the suspension was wholly unjustified, the government servant may still not be entitled to be paid the whole pay and allowances, but may be paid such pay and allowances as may be determined by the competent authority.

9. The rationale, on which sub-rule (3) of FR 54-B is based, is that during the period of suspension an employee does not work and, therefore, he is not entitled to any pay unless after the termination of the disciplinary proceedings or the criminal proceedings the competent authority is of the opinion that the suspension of the employee was wholly unjustified. This rationale has been explained in clear and lucid language by a three-Judge Bench of this Court in Union of India v. K.V. Jankiraman [(1991) 4 SCC 109 : 1991 SCC (L&S) 387 : (1993) 23 ATC 322] . At SCC p. 121 in para 26 P.B. Sawant, J., writing the judgment for the Court in the aforesaid case further observed:

“26. ... However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee, etc. In such circumstances, the authorities concerned must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it.



Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated in disciplinary/criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardise public interests.”

10. It will be clear from what this Court has held in Union of India v. K.V. Jankiraman [(1991) 4 SCC 109 : 1991 SCC (L&S) 387 : (1993) 23 ATC 322] that even in cases where acquittal in the criminal proceedings is on account of non-availability of evidence, the authorities concerned must be vested with the power to decide whether the employee at all deserves any salary for the intervening period, and if he does, the extent to which he deserves it. In the aforesaid case, this Court has also held that this power is vested in the competent authority with a view to ensure that discipline in administration is not undermined and public interest is not jeopardised and it is not possible to lay down an inflexible rule that in every case where an employee is exonerated in the disciplinary/criminal proceedings he should be entitled to all salary during the period of suspension and the decision has to be taken by the competent authority on the facts and circumstances of each case.”

34. Hon’ble Supreme Court in **Reserve Bank of India v. Bhopal Singh Panchal, (1994) 1 SCC 541** has clearly held that as per the regulation applicable in the said case, the employer has to have exclusive power to decide whether to treat the period of suspension on duty or on leave or otherwise and that the power, thus, vested cannot be validly challenged. The Court further observed that in such a situation the employee is absent for reasons of his own involvement in the misconduct and the employer is in no way responsible for keeping him away from his duties and therefore, the employer cannot be saddled with the liability to pay the employee his salary and allowances for that period as the same would be against the principle of ‘no work no pay’ and positively inequitable to those who have to work and



earn their pay. The Court further held that the employer's power in that behalf is unassailable. Paragraph 15 of the judgment in **Bhopal Singh Panchal (supra)** is apposite to be quoted here which reads as under:

“15. We have already pointed out the effect of the relevant provisions of Regulations 39, 46 and 47. The said regulations read together, leave no manner of doubt that in case of an employee who is arrested for an offence, as in the present case, his period of absence from duty is to be treated as not being beyond circumstances under his control. In such circumstances, when he is treated as being under suspension during the said period, he is entitled to subsistence allowance. However, the subsistence allowance paid to him is liable to be adjusted against his pay and allowances if at all he is held to be entitled to them by the competent authority. The competent authority while deciding whether an employee who is suspended in such circumstances is entitled to his pay and allowances or not and to what extent, if any, and whether the period is to be treated as on duty or on leave, has to take into consideration the circumstances of each case. It is only if such employee is acquitted of all blame and is treated by the competent authority as being on duty during the period of suspension that such employee is entitled to full pay and allowances for the said period. In other words, the Regulations vest the power exclusively in the Bank to treat the period of such suspension on duty or on leave or otherwise. The power thus vested cannot be validly challenged. During this period, the employee renders no work. He is absent for reasons of his own involvement in the misconduct and the Bank is in no way responsible for keeping him away from his duties. The Bank, therefore, cannot be saddled with the liability to pay him his salary and allowances for the period. That will be against the principle of ‘no work, no pay’ and positively inequitable to those who have to work and earn their pay. As it is, even during such period, the employee earns subsistence allowance by virtue of the Regulations. In the circumstances, the Bank’s power in that behalf is unassailable.”

35. In **Union of India v. Jaipal Singh, (2004) 1 SCC 121** Hon’ble Supreme Court has held that if an employee or public servant got involved in a criminal case and his prosecution which ultimately resulted in his acquittal was not at the behest of or by the department itself, the department, in any manner, cannot be faulted with for having kept him out of service, since the law obliges a person convicted of an offence to be so kept out and



not to be retained in service. The relevant observations can be found in paragraph no.4 in ***Jaipal Singh (supra)***, which is extracted here in below:

“4. On a careful consideration of the matter and the materials on record, including the judgment and orders brought to our notice, we are of the view that it is well accepted that an order rejecting a special leave petition at the threshold without detailed reasons therefore does not constitute any declaration of law by this Court or constitute a binding precedent. Per contra, the decision relied upon by the appellant is one on merits and for reasons specifically recorded therefore it operates as a binding precedent as well. On going through the same, we are in respectful agreement with the view taken in Ranchhodji [(1996) 11 SCC 603 : 1997 SCC (L&S) 491] . If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest of or by the department itself, perhaps different considerations may arise. On the other hand, if as a citizen the employee or a public servant got involved in a criminal case and if after initial conviction by the trial court, he gets acquittal on appeal subsequently, the department cannot in any manner be found fault with for having kept him out of service, since the law obliges a person convicted of an offence to be so kept out and not to be retained in service. Consequently, the reasons given in the decision relied upon, for the appellants are not only convincing but are in consonance with reasonableness as well. Though exception taken to that part of the order directing reinstatement cannot be sustained and the respondent has to be reinstated in service, for the reason that the earlier discharge was on account of those criminal proceedings and conviction only, the appellants are well within their rights to deny back wages to the respondent for the period he was not in service. The appellants cannot be made liable to pay for the period for which they could not avail of the services of the respondent. The High Court, in our view, committed a grave error, in allowing back wages also, without advertent to all such relevant aspects and considerations. Consequently, the order of the High Court insofar as it directed payment of back wages is liable to be and is hereby set aside.”

36. In the instant case, as already observed above, criminal prosecution of the respondent started not at the behest of the appellant but on a complaint lodged by an individual, Mr.Gurcharan Singh and therefore, even if the respondent has been acquitted on appeal, the appellant cannot in any manner be found responsible for keeping the respondent out of service for the reason



that Section 10(1)(b)(i) of the Act, 1949 mandates that a person who has been convicted by a criminal court, cannot continue in employment of a banking company. Thus the ratio laid down in *Jaipal Singh (supra)* for denying the respondent the benefit of counting the period in question, as period having spent on duty, in our considered opinion, will fully apply.

37. Regard may be had in this respect to yet another judgment of Hon'ble Supreme Court in *Sukhdarshan Singh v. State of Punjab, (2024) 14 SCC 531* where Hon'ble Supreme Court has held that in terms of the rules applicable therein, where there is an order of dismissal and thereafter, the employee concerned is reinstated, the authority concerned is to pass an order as to whether the period from the date of suspension or from the date of dismissal till reinstatement of the employee, is to be treated as the period spent on duty for any purpose. Hon'ble Supreme Court further holds that in a situation where Appellate Authority finds termination of services of an employee to be illegal, it would not *ipso facto* inevitably follow that employee will become entitled to claim the salary for the entire period, consequent upon his being found to be entitled to be reinstatement and that this is a matter for the authority to decide. Paragraph 24 of *Sukhdarshan Singh (supra)* is extracted herein below:

“24. Rule 15(v)(f) indeed contemplates that when there is a dismissal, removal, compulsory retirement or reduction to a lower service inter alia and there is an order of reinstatement, the authority is to pass an order as to whether the period from the date of suspension or from the date of his dismissal, removal or compulsory retirement till the date of his reinstatement, is to be treated as a period spent on duty for any purpose. This gives a clear indication that upon an order being passed by the appellate authority finding the termination of employee to be illegal and leaves it there, it would not ipso facto inevitably follow that the employee will become entitled to claim the salary for the



entire period consequent upon his being found to be entitled to reinstatement. This is a matter for the authority to decide.”

38. On a careful reading of the judgments referred to herein above, the principle of law which can be deduced is that in case order of reinstatement of an employee is passed on his acquittal in the criminal case by the Appellate Court, such an employee will not *ipso facto* be entitled for salary or any other benefit for the period he was placed under suspension or for the period he was out of employment on account of his dismissal for the reason of his conviction by the Trial Court. Such legal principle, in our opinion, is clearly applicable in the facts of the instant case having regard to Rule 68A(8)(ii) read with Rule 68A(7)(i) of the Service Rules and Section 10(1)(b)(i) of the Act, 1949. As already observed above, Rule 68A(7)(i) of the Service Rules mandates that if an officer has been convicted of a criminal charge, a penalty specified in Rule 67 of the Service Rules shall be imposed on him. Thus, Rule 68(7)(i) of the Service Rules mandated the appellant to impose the penalty as is specified in Rule 67, where dismissal is one of the penalties specified. Similarly, Section 10(1)(b)(i) of the Act, 1949 also mandates discontinuance of employment from the bank of an employee who is convicted of a criminal offence.

39. Accordingly, the reasons of the respondent having been kept out of employment are not attributable to the appellant and therefore, in terms of the law, as discussed above, he was neither entitled to the salary for the period in question, nor can such period be counted as period spent on duty for the purposes of pensionary and retiral benefits, to which the respondent would otherwise have been entitled to.



40. Learned Single Judge though, adopts the reasoning given by Hon'ble Supreme Court in the judgments quote and extracted in the impugned judgment and order, has denied the benefit of payment of salary for the period in question, however, the benefit of this period has been extended to the respondent for the purposes of re-fixation of his pensionary and terminal benefits.

41. As already stated above, as to how such a period relating to an employee, who remains out of employment, is to be treated after his reinstatement, has to be left to the discretion of the competent authority. In the instant case the competent authority of the appellant while passing the order of reinstatement dated 25.03.2011 on his acquittal from conviction in the criminal case by the Appellate Court, also clearly stated that the respondent shall not be paid salary and allowances for the period he remained under suspension/out of service and that such period will also not be counted as service for all purposes including calculation of terminal benefits. The discretion exercised by the competent authority is based on the facts and circumstances of the case. It is to be noticed that acquittal of the respondent in the criminal case cannot be termed to be a clear and clean acquittal; rather is acquittal from the criminal charge is based on benefit of doubt as is apparent from a perusal of the appellate order passed by this Court whereby, he was acquitted of the criminal charges.

42. We may reiterate that the order of reinstatement dated 25.03.201 was accepted by the respondent pursuant to which he joined the services of the appellant, without any objection or protest to the condition stipulated therein that the period during which the respondent remained under suspension/out



of service, shall not be counted as period spent on duty for all purposes including for calculation of terminal benefits.

43. The respondent, accepting the order of reinstatement dated 25.03.2011 joined the services under the appellant, continued to serve the appellant and superannuated from the service of the appellant on 30.11.2011, that too after suffering a penalty of reduction in rank in the disciplinary proceedings which were initiated against him *vide* charge sheet dated 08.06.2002. During the entire period the respondent served the appellant on his reinstatement *vide* order dated 25.03.2011, he did not challenge the condition embodied in the order of reinstatement dated 25.03.2011 that the period he remained under suspension/out of service will not be counted as period spent on duty by him for all purposes, including calculation of terminal benefits.

44. Learned Single Judge while arriving at the conclusion that the period in question shall be treated as continuous service for the purposes of pensionary and retiral benefits payable to the respondent has relied upon judgments of this Court in ***Vinod Kumar v. State (NCT of Delhi), 2023 SCC OnLine Del 6011*** and ***Jagannath Naik v. State, 2023 SCC OnLine Del 1543***. However, so far as ***Vinod Kuma (supra)*** is concerned, the claim put forth by the employee was for counting such a period for assessing and granting seniority. Similarly, ***Jagannath Naik (supra)*** is also related to fixation of pay, promotion and seniority etc.

45. This Court in ***Jagannath Naik (supra)***, however, came to the conclusion that such a period will be treated to be continuation on duty and the employee shall be entitled to get consequential benefits of fixation of pay, promotion and seniority etc., for the reason that in the said case it was



established that the employee concerned was kept away from duty due to his dismissal from service and that he was not willfully away from duty. The said case is, thus, distinguishable on facts for the reason that in the instant case Section 10(1)(b)(i) of the Act, 1949 read with Rule 68(7) of the Service Rules mandated the appellant to impose the penalty of dismissal on his conviction by the Trial Court and, therefore, reason for the respondent having been kept out of service is not attributable to the appellant.

46. As already stated above, the rules applicable in the instant case gives the sole discretion to the competent authority of the appellant, who is the employer, to determine as to how the period in question is to be dealt with and whether or not such period has to be taken into consideration for the purposes of continuous service of the respondent, so as to enable him to seek the benefit of calculating the pensionary and retiral benefits.

47. In the judgments which have already been quoted above, Hon'ble Supreme Court has discussed the rationale for vesting such a power with the competent authority of the employer. In the instant case, the competent authority of the appellant has exercised such discretion, which in our opinion, is based on the totality of the facts and circumstances of the case, especially, keeping in view the fact that acquittal of the respondent in the criminal case by the Appellate Court was not a clean acquittal, rather, it was based on benefit of doubt. In such a situation, in our opinion, once the competent authority of the appellant exercised its discretion denying the benefit of the period in question being treated to be period spent on duty and consequently, denying him the benefit of such period for the purposes of computing the pensionary and retiral benefits, any interference by the Court



2026:DHC:722-DB



in exercise of its jurisdiction under Article 226 of the Constitution of India would be uncalled for. The discretion exercised by the competent authority of the appellant, in this case, is based on relevant facts, and therefore, for this reason as well, interference in such a discretionary decision of the appellant is unwarranted.

48. For the discussions made and reasons given above, the impugned judgment and order dated 31.10.2023 passed by the learned Single Judge to the extent it directs the appellant to count the period in question as period of service without any break and to re-fix the pensionary and retiral benefits of the respondent accordingly by treating the period as having been spent on duty, is hereby set aside and the appeal stands allowed.

49. The pending application stands disposed of.

50. There will be no order as to costs.

(DEVENDRA KUMAR UPADHYAYA)
CHIEF JUSTICE

(TEJAS KARIA)
JUDGE

JANUARY 30, 2026/MJ

LPA 141/2024

Page 22 of 22