

(2003) 05 MP CK 0089

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4633 of 2001

Amer Jeet Sharma

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 02-05-2003

Acts Referred:

Canara Bank Service Code — Rule 21(3)(b)
Constitution of India, 1950 — Article 226, 227
Penal Code, 1860 (IPC) — Section 420

Citation : (2004) 1 MPLJ 176

Hon'ble Judges : S.P. Khare, J

Bench : Single Bench

Advocate : B.K. Pandit, for the Appellant; V.S. Shrotri with Ashish Shrotri for Respondent Nos. 2 to 11, for the Respondent

Final Decision : Allowed

Judgement

S.P. Khare, J.

This is a writ petition under Articles 226 and 227 of the Constitution of India for a direction to the respondents to treat the period of suspension of the petitioner as period spent on duty and to pay the salary and allowances for that period.

It is not in dispute that the petitioner was appointed as a clerk in Canara Bank on 24-4-1972 and posted to Jabalpur Branch. Criminal case was registered against the petitioner in Crime No. 208 of 1980 by the Police Station Lordganj, Jabalpur. It was u/s 420, Indian Penal Code. It was registered on the complaint of A.K. Bhatia to the effect that the accused obtained an amount of Rs. 10,000/- from him on the representation that he would double this amount. He did not do so. The police after investigation submitted the charge sheet in the Court of Additional Chief Judicial Magistrate, Jabalpur and it was registered as Criminal Case No. 1099 of 1980. As a result of this criminal case, the petitioner was placed under suspension by the Bank by order dated 28-3-1980 with effect from 14-3-1980, the date on which the petitioner was arrested by the police. The

suspension was revoked by order dated 22-7-1985 as there was no likelihood of its early disposal. The revocation order is Annexure R-2. It is stated there in that "period of suspension however, shall not be treated as one spent on duty and hence will not be reckoned for any purpose whatsoever and shall depend on the final outcome of the criminal proceedings against him." In the year 1985 there was an accidental fire in the court room and the record of the above mentioned criminal case was burnt and an attempt was made to re-construct the file but it could not be done as it was expressed by the police that it is not in possession of any document in connection with that case. On a petition u/s 482, Criminal Procedure Code registered as M. Cr. C. No. 6246 of 1995, the proceedings of the criminal case were quashed by this Court by order dated 17-9-1998. A copy of that order is Annexure R-3. No departmental inquiry was initiated against the petitioner nor any specific order was passed by the authorities of the bank, after the termination of the criminal case, to the effect whether the period of suspension was to be treated as a period spent on duty or not and whether the petitioner would be entitled to salary and allowances during the period of suspension. The petitioner was not given any notice by the Bank in that connection. The petitioner applied for voluntary retirement under the Special Voluntary Retirement Scheme. His application was accepted by the Bank by order dated 7-3-2001 (Annexure R-4) and the petitioner was allowed to retire.

The petitioner's case is that the criminal prosecution u/s 420, Indian Penal Code launched against him by the police was without any basis and the report of the complainant was false. According to him there was no trial in the criminal case in which he could establish his innocence. It is also pleaded by him that there was no inquiry by the bank to prove misconduct alleged against him or for the purpose of taking a decision whether the period of suspension should be treated as the period spent on duty or not. In short, the grievance of the petitioner is that, the veracity of the report of the complainant was never tested in any inquiry or trial and therefore, in the absence of any order of the bank to this effect he is entitled to be treated on duty during the period of his suspension.

The case of the respondents No. 2 to 11 is that the petitioner was suspended because he was arrested by the police and the criminal prosecution was launched against him. The suspension of the petitioner was revoked, as there was no likelihood of early decision in the criminal case. It is submitted that the bank is not in any way responsible for the involvement of the petitioner in the criminal case and therefore, the petitioner is not entitled to be treated on duty during the period of suspension and he is also not entitled to any salary or allowance for that period.

The point for determination is whether the petitioner is entitled to be treated on duty during the period of suspension and he is entitled to salary and allowances for that period.

The learned counsel for both the sides has been heard. Reliance has been placed on rule 21(3)(b) of the Canara Bank Service Code by the learned counsel for the

respondents. This rule is as under:

Rule 21(3)(b)

(3) If on a prosecution instituted against an employee under clause (2) of this Regulation:

(b) The employee is acquitted; it shall be open to the Deputy General Manager of Circle Office/International Division/Inspection Department/the Assistant General Manager of Personnel Wing, Head Office, to proceed against him under the provisions set out hereinabove regarding misconducts. If after enquiry it is decided not to continue the employee in service, he shall be liable only for termination of service with three month's pay and allowances in lieu of notice, and he shall be deemed to have been on duty during the period of suspension, if any, and shall be entitled to full pay and allowances minus such subsistence allowance as he has drawn and all other privileges for the period of suspension. Provided that if the employee be acquitted by being given the benefit of doubt, he may be paid such portion of such pay and allowances as the Deputy General Manager of Circle Office/ International Division/Inspection Department/The Assistant General Manager of Personnel Wing, Head Office, may deem proper, and the period of his absence shall not be treated as period spent on duty unless the Deputy General Manager of Circle Office/International Division/ Inspection Department/The Assistant General Manager of Personnel Wing, Head Office, so directs.

It is argued on behalf of the respondents that the effect of quashing of the prosecution of the petitioner by this Court is that the petitioner shall be deemed to have been acquitted by "being given benefit of doubt" and therefore, as per proviso to rule 21(3)(b) the petitioner is not entitled to be treated as on duty during the period of suspension. He has placed reliance on the decision of the Supreme Court in Krishnakant Raghunath Bibhavnekar Vs. State of Maharashtra and others, . On the other hand, it is argued on behalf of the petitioner that no inquiry was held by the authorities of the bank after the criminal prosecution of the petitioner was quashed by this Court and no order was passed after hearing the petitioner that the period of his suspension could be treated as the period spent on duty or not and therefore, in the absence of such order the bank cannot be heard to say now that the period of suspension is not to be treated as the period spent on duty.

According to Oxford Dictionary meaning of the word "quash" is: "to annul, to reject (by legal authority) as not valid". In the Law Lexicon by P.R. Aiyar edited by Justice Y.V. Chandrachud, meaning of the word "quash" has been stated: "to overthrow or annul; to make null and void; to throw out as invalid to put an end to a legal proceeding." Keeping in view this interpretation of the word "quash" the effect of quashing the prosecution of the petitioner by this Court is that such prosecution has come to an end. There has been no trial in the case and the prosecution has not proved the guilt of the accused. At the same time the

petitioner also could not get an opportunity to establish his innocence. In such a situation the bank as per rule 21(3)(b) could proceed against the petitioner under the provisions set out in the regulations regarding misconduct. It is clear that the bank had the option to hold a departmental inquiry against the petitioner in which either his guilt or innocence could be established. This regulation further provides that if after the inquiry it is decided not to continue the employee in service, he shall be liable for termination from service. But he shall be deemed to have been on duty during the period of suspension and shall be entitled to full pay and allowances. The proviso to rule 21(3)(b) comes into play when the acquittal is by "giving benefit of doubt". This is not the case in which the petitioner has been acquitted by giving him the benefit of doubt. In case of acquittal based on benefit of doubt, the bank may still hold him liable for misconduct after proper inquiry or on the facts of the case may come to the conclusion that the acquittal of the employee does not fully exonerate him from misconduct and pass a reasoned and speaking order to show that the employee cannot be treated as on duty during the period of his suspension. In the present case, it is admitted; no inquiry has been held against the petitioner after his criminal prosecution was quashed. There was no inquiry and no notice to the petitioner even for the limited purpose for ascertaining whether the period of his suspension could be treated as on duty or not. No order was passed by the authorities of the bank in this respect. In the order dated 22-7-1985 by which the suspension order was revoked it is mentioned that the period of suspension shall not be treated as one spent on duty and will not be reckoned for any purpose whatsoever and shall depend on the final outcome of the criminal proceedings against him. Therefore, it was envisaged that the question whether the period of suspension should be treated as the period spent on duty or not was to be considered after final outcome of the criminal proceedings. But there was no consideration in this respect after the quashing of the prosecution of the petitioner by this Court.

The Supreme Court has clearly held in *Krishnakant Raghunath Bibhavnekar Vs. State of Maharashtra and others*, that two courses are open to the disciplinary authority, viz., it may enquire into misconduct unless, the self-same conduct was subject of charge and on trial the acquittal was recorded on a positive finding that the accused did not commit the offence at all; but acquittal is not on benefit of doubt given. Appropriate action may be taken thereon. Even otherwise, the authority may, on reinstatement after following the principle of natural justice, pass appropriate order including treating suspension period as period of not on duty (and on payment of subsistence allowance etc.). It follows from this ruling that the decision to forfeit the pay and allowances for the period of suspension and to treat that period as not spent on duty is to be taken after hearing the petitioner and there must be a specific order in that behalf. As already stated no such action was taken by the bank in this respect. Therefore, now at this late stage it cannot be said that the petitioner is not entitled to be treated on duty for the period of his suspension or he should be denied the salary for that period. In

AIR 1994 552 (SC) although the rules were different the general principle which has been laid down is that the competent authority has to pass an order in each case taking into consideration of all circumstances to treat the period of absence as period on duty before full pay and allowances become admissible to the employee. (Page 556). It is repeated at page 558 that 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. The same principle has been reiterated in Depot Manager, Andhra Pradesh State Road Transport Corporation, Hanumakonda Vs. V. Venkateswarulu and Another, etc. etc., . It is stated that the competent authority is bound to examine each case and if it comes to the conclusion that the employee concerned is not entitled to full salary for the period of suspension then the authority "has to pass a reasoned order after affording an opportunity to the employee concerned". No such step was taken in the present case.

In the result the petition is allowed. The respondents No. 2 to 11 are directed to treat the petitioner as on duty during the period of his suspension from March, 1980 to August, 1985 and to pay his salary and allowances for that period as if he was in service. That period will also be treated as on duty for the purpose of Special Voluntary Retirement Scheme.