
(2005) 08 P&H CK 0073

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 15519 of 2003

Bhag Singh

APPELLANT

Vs

Punjab and Sind Bank and Others

RESPONDENT

Date of Decision : 16-08-2005

Acts Referred:

Arms Act, 1959 — Section 25
Constitution of India, 1950 — Article 14
Industrial Disputes Act, 1947 — Section 33C(2)
Penal Code, 1860 (IPC) — Section 120B, 302, 307, 34, 397
Reserve Bank of India (Staff) Regulations, 1948 — Regulation 39, 46, 46(1), 46(2), 46(3)
Terrorist and Disruptive Activities (Prevention) Act, 1987 — Section 3

Citation : (2005) 141 PLR 861

Hon'ble Judges : S.S. Nijjar, J; Nirmal Yadav, J

Bench : Division Bench

Advocate : I.S. Sidhu, for the Appellant; J.S. Sathi, for the Respondent

Final Decision : Allowed

Judgement

S.S. Nijjar, J.—With the consent of the counsel for the parties, the writ petition is taken up for final disposal today at motion stage.

2. The petitioner, while working as a Clerk with the respondent-Bank, was arrested in a criminal case on 1.12.1988. He was placed under suspension by order dated 13.12.1988. After trial, the petitioner was acquitted by judgment dated 3.6.1998. On acquittal, the petitioner approached the authorities for reinstatement. He was reinstated on 27.9.1999. However, on the same date, he was served with the charge sheet on the same allegations/The petitioner participated in the department proceedings. The Enquiry Officer found Charge Nos. 1, 4 and 5 not proved. After examining the inquiry report, the disciplinary authority passed the following order on 1.2.2002:-

"I have examined the Inquiry Report and other relevant record submitted by the Inquiry Officer. I have noted the facts that the charge of divulging the

information by the CSE regarding movement of Bank's cash resulting in looting of Bank's cash and death of Shri Sukhdev Singh, Gunman has not been proved and further the arrest of CSE by the police has also not been substantiated. I also agree with the Inquiry Officer's finding about the recovered amount of Rs. 45,000/- from the house of CSE.

I have carefully applied my mind to all the facts and circumstances of the case and reached the conclusion that the acts of CSE mentioned in the charge sheet were without any mala fide intention and no connivance of the CSE is proved. Keeping in view the facts and circumstances of the case, I have decided to take a lenient view and impose a minor penalty of "Censure" in terms of Clause 19.8(a) of Bipartite Settlement (as amended upto date), be imposed on Shri Bhag Singh, Clerk, with "immediate effect."

3. The petitioner submitted an appeal against the aforesaid punishment of "Censure". The appeal was dismissed with the observations that the penalty awarded to the petitioner is in conformity with the misconduct committed by him. Thereafter, the petitioner submitted a representation for payment of full pay and allowances during the period he was illegally kept out of service. His claim was that he is entitled to the pay and allowances for the period of suspension from 13.12.1988 to 27.9.1999. The representation was, however, rejected by the respondents by passing the following order:-

"This is with reference to the representation of the above named for payment of back wages pertaining to the suspension period. In this regard, we may inform you that his request for the same has been declined by H.O.(P) under the provisions of Bipartite Settlement"

4. The respondents have filed a written statement. Although the impugned order does not state the provision under which the petitioner has been denied the payment of full pay and allowances, the respondents have sought to justify the same in the written statement. In paragraph 6 of the written statement, it is stated that the claim of the petitioner has been denied under Clause 19.3(c) of the Bipartite Settlement. The aforesaid Clause reads as under:-

19.3(c): If he be acquitted, it shall be open to the Management to proceed against him under the provisions set out below in Clauses 11 and 12 infra relating to discharges. However, in the event of the Management deciding after inquiry not to continue him 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 to all other privileges for the period of suspension provided that if he be acquitted by being given the benefit of doubt he may be paid such portion of such pay and allowance as the management may deem proper and the period of his absence shall not be treated as a period spent on duty unless the management so direct."

5. Mr. I.S. Sidhu, learned counsel appearing for the petitioner submits that the Inquiry Officer has categorically found that the acts of the petitioner mentioned in the charge sheet were without any mala fide intention and there was no justification for delaying the payment of full pay and allowances when the petitioner has been reinstated in service, on being acquitted by the Criminal Court.

6. Learned counsel appearing for the respondents submits that the respondents have rightly rejected the claim of the petitioner in view of Clause 19.3 (c) of the Bipartite Settlement. The aforesaid Clause would be applicable to the facts and circumstances of this case.

7. We are of the opinion that the petitioner is a victim of unfortunate circumstances, which are not of his making. We may notice some of the salient facts. Two criminal cases were registered against the petitioner on the basis of F.I.R. No. 185 dated 10.12.1988 and F.I.R. No. 152 dated 25.11.1988 (Annexures P-1 and P-2). In both the cases, he was acquitted by the Designated Court, Sangrur. In the trial held on the basis of F.I.R. dated 10.12.1988, the trial court, whilst acquitting the petitioner, observed as follows:-

"6. In this case the charge against the accused persons is that on 10.8.88 they had assembled in the area of V. Ghabdan armed with deadly weapons and were making preparation for dacoity and they were holding a meeting and talking about the same. None of the witnesses examined by the prosecution has repeated the words uttered by each of the accused. It cannot be believed that the secret informer heard their talks and he told the talks to the police and when I.O. came to the spot, they repeated the same utterance. It cannot be believed that accused will be holding a meeting near the main road where they can easily be spotted. There is no independent corroboration. The prosecution case rests solely on the testimony of official witnesses. The accused have been involved in two other cases also one u/s 302 I.P.C. read with Section 34 I.P.C., 307/34 I.P.C, 397 I.P.C, 120B I.P.C. and Section 3 T.A.D.A. Act and the other u/s 25 Arms Act wherein they have been acquitted today. No weapon has been shown to have been recovered from the accused in this case, nor the recovered weapons have been produced at the time of statement of I.O. or other P.M. From all this I am of the considered view that the prosecution has not been able to prove the charge against the accused beyond the reasonable doubt. The accused is entitled to benefit of doubt and acquitted." Records be consigned. Pronounced Sd/- Addl. Judge. 3.6.98 Designated Court, Sangrur"

8. F.I.R. No. 152 was under Sections 307/34, 307, 120B I.P.C. 302/34 I.P.C, read with Section 3 of the T.A.D.A. Act, 1987. During trial, 22 witnesses were examined by the prosecution. Again the petitioner has been acquitted with the following observations:-

"The prosecution case was that on 25.11.88 Varinder Singh Cashier handed over currency notes of Rs. 1.5 lacs to Shri Bharpur Singh Cashier for depositing the

same at Bhawanigarh Branch of the bank. Bharpur Singh Cashier alongwith Sukhdev Singh gunman went on Scooter No. PAS-4995 for depositing the amount and when they reached near bus stop Jhunerri three Sikh gentlemen came from behind on scooter and brought near the scooter of Bharpur Singh and fired shot hitting Sukhdev Singh Gunman on right temple and when he fell down some more shots were fired. Sukhdev Singh was killed, Bhupinder Singlrwas injured. This Bhupinder Singh Cashier did not support the prosecution version. He is injured and star witness of the prosecution. He was declared hostile and even in his cross examination prosecution could not bring anything in its favour. None of the remaining witnesses whose evidence has been discussed has stated that accused Bhag Singh, Mohinder Singh were involved in the crime in any manner. The witnesses even did not identify them in Court. In these circumstances I hold the prosecution has failed to> bring home the charge to the accused beyond any reasonable doubt. The accused are, therefore, given benefit of doubt and are acquitted of the charge framed against them. They are on bail and their bail bonds are discharged. Records be consigned. Pronounced 2.6.98 Sd/- Addl. Judge. Designated Court, Sangrur."

9. In both the cases, inspite of the clear observations that there was no evidence against the petitioner, the trial court observes that the accused are given benefit of doubt and acquitted of the charges framed against them. Relying on the aforesaid observation, the respondents have denied the benefit of full pay and allowances to the petitioner. In our opinion, the mere use of the expression "benefit of doubt" or "not proved beyond reasonable doubt" by the trial Court or the appellate court, cannot be permitted to convert an acquittal on the ground of no evidence, to something less than that. The concepts of "Honourable Acquittal", "fully exonerated" or "acquitted of blame" are all unknown to the Criminal Procedure Code, 1973. Therefore, the term "benefit of doubt" cannot detract from the impact of the acquittal. A similar view has been expressed by this Court in the case of Jagmohan Lal Vs. State of Punjab and Others, as follows:-

"J.N. Kaushal, J,

(3) In my opinion, the relevant Rule is 7.5. The heading under which this rule has been framed is "Suspension During Pendency of Criminal Proceedings etc." The rule reads like this:-

"7.5 A servant of Government against whom proceedings have been taken either for his arrest for debt or on a criminal charge or who is detained under any law providing for preventive detention should be considered as under suspension for any periods during which he is detained in custody or is undergoing imprisonment and not allowed to draw any pay and allowances (other than any subsistence allowance that may be granted in accordance with the principles laid down in Rule 7.2) for such periods until the final termination of the proceedings taken against him or until he is released from detention and allowed to rejoin duty, as the case may be. An adjustment of his allowances for such period should

thereafter be made according to the circumstances of the case, the full amount being given only in the event of the officer being acquitted of blame or (if the proceedings taken against him were for his arrest for debt), of its being proved that the officer's liability arose from circumstances beyond his control or the detention being held by the competent authority to be unjustified."

There is no doubt that the rule contemplates the payment of the full amount only in the event of the officer being acquitted of blame. The stand of the Government indicated in Annexure "D" was in these words-

".....According to Rule 7.5 *ibid* full amount has to be given only if the official is acquitted of the blame. The words of blame" are not redundant. As the petitioner was given benefit of doubt it cannot be said that he was acquitted of "blame". In the circumstances, the petitioner is not entitled to his full pay and allowances for the period of suspension."

The interpretation which has been put by the Government on the rule is incorrect. The blame which attached to the petitioner was that there was a criminal charge against him under which he was standing his trial. The moment he is acquitted of the charge, he is acquitted of the blame. In criminal law, the Courts are called upon to decide whether the prosecution has Succeeded in bringing home the guilt to the accused. The moment the court is not satisfied regarding the guilt of the accused, he is acquitted. Whether a person is acquitted after being given a benefit of doubt or for other reasons, the result is that his guilt is not proved. The Code of Criminal Procedure does not contemplate honourable acquittal. The only words known to the Code are "discharged" or "acquitted". The effect of a person being discharged or acquitted is the same in the eyes of law. Since, according to the accepted notions of imparting criminal justice, the Court has to be satisfied regarding the guilt of the accused beyond a reasonable doubt, it is generally held that there being a doubt in the mind of the court, the accused is acquitted..."

"It is futile to expect a finding of either honourable acquittal or complete innocence in a judgment of acquittal. The reason is obvious; the criminal Courts are not concerned to find the innocence of the accused. They are only concerned to find whether the prosecution has succeeded in proving beyond a reasonable doubt the guilt of the accused."

10. A Division Bench of this Court, of which one of us (S.S. Nijjar, J.) was a member, has earlier considered the term of "benefit of doubt" in the case of Shashi Kumar v. Uttri Haryana Bijli Vitran Nigam through its Managing Director, Panchkula and Anr. 2005(1) S.L.R. 659. It has been held as under:-

"A perusal of the order passed by the respondents removing the petitioner from service shows that the respondents had passed the same basing it purely on the conviction of the petitioner. The order states that in view of the conviction, the petitioner is removed from service on account of conduct which led to his conviction. Excepting for the aforesaid sentence, the order does not elude to any

circumstances which could be related to the conduct of the petitioner leading to the conviction. Therefore, in our opinion, the impugned order is liable to be quashed on this short ground as it has been passed, without taking into consideration the relevant material. In any event, the petitioner having been acquitted in appeal, the justification of the order of removal no longer existed. The High Court has ordered the acquittal of the petitioner after threadbare examination of the evidence. It has been noticed that the complainant, Puran Singh PW-8 was the owner of 8-1/2 killas of land situated in village Jundla. He further stated that about two years prior to the recording of the statement in Court on 5.8.1997, he had gone to the office of Vigilance Department and reported against Haryana State Electricity Board Officer Natha Ram for demanding Rs. 7500/-. This amount had been demanded for installation of new transformer as old transformer was overloaded and his tubewell meter was not functioning properly. He also stated that he had earlier paid Rs. 3200/- to Natha Ram." He further stated that Junior Engineer of his feeder was Sukhbir Singh Malik. He then categorically stated that he did not know Shashi Kumar, the petitioner. It was also stated by him that the petitioner never remained Junior Engineer of his feeder. He never demanded any amount from him nor he paid any amount to him. This witness was declared hostile, but nothing useful emerged from his cross-examination. In fact in the cross-examination, he further admitted that there was a scuffle among HSEB employees and the police employees. He reiterated that he did not pay any amount to the petitioner. Therefore, the High Court concluded that according to the statement of the complainant, the petitioner did not know the complainant nor did the petitioner demand any amount from him. Even the trap witness PW2 in the cross-examination admitted that he was an employee of the Vigilance Department, Karnal. He had remained posted as a Peon for the last 10 to 15 years at Karnal. He further admitted that he had joined 3-4 raids with the Vigilance Officer. Therefore, the High Court came to the conclusion that PW was not an independent witness as he was under the control of DSP (Vigilance). The High Court relied on a judgment of the Supreme Court in the case of State of Madhya Pradesh v. J.B. Singh, 2000 CrL.J. 4591 wherein it has been held that an offence under the Prevention of Corruption Act would not be established unless there is evidence to prove the act of demand of illegal gratification. Relying on the aforesaid ratio of law, the petitioner has been acquitted. In such circumstances, it can hardly be said that the acquittal of the petitioner is not honourable".

(Emphasis supplied)

11. The expression "honourable acquittal" has been considered by a Division Bench of the Madras High Court in the case of The Union of India Vs. Jayaram Damodhar Timiri, . In that case, Rajamannar, C.J. delivering the judgment observed as under:-

"There is no conception like "honourable acquittal" in Criminal P.C. The onus of

establishing the guilt of accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is entitled to be acquitted.

Clause (b) of Article 193 of the Civil Service Regulations which says that when a Government servant who was under suspension is honourably acquitted, he may be given the full salary to which he would have been entitled if he had not been suspended applies only to the case of departmental inquiry.

Where the servant was suspended because there was a criminal prosecution against him, and he was acquitted therein, and reinstated he is entitled under the general law, to the full pay during the period of his suspension. To such a case Article 193(b) does not apply."

12. As noticed earlier, the petitioner has been acquitted in both the criminal cases as there was no evidence of his participation in any undesirable activity. Therefore, the petitioner was reinstated in service. Thereafter, the Bank, in exercise of its powers under Clause 19.3(c) of the Bipartite Settlement served a charge sheet on the petitioner. Full departmental enquiry was held. The petitioner participated in the enquiry proceedings. The charges levelled against the petitioner were as follows:-

"Reg: Chargesheet.

It has been noticed that you while working as Clerk at B/O Gharanchon had divulged the information regarding movement of Bank Cash resulting in looting of Bank's cash and death of Shri Sukhdev Singh Gunman on 25.11.88, while a sum of Rs. 1,50,000/- was being remitted to B/O Bhawanigarh through Shri Bharpur Singh Sodhi, Cashier, escorted by Shri Sukhdev Singh, Gunman.

Further, you were arrested by the police and a police party led by then Inspector of Police Shri Joginder Singh recovered a sum of Rs. 45,000/- (part amount of looted cash) from your residence on 11.12.1988.

Your above said act is an act of "Gross Misconduct" in terms of meaning of the Clause 19.5(b) and 19.5(j) of Bipartite Settlement dated 19.10.1966 (as amended upto date), which read as under:

"Clause 19.5(b) Unauthorised disclosure of information regarding the affairs of the bank or any of its customers or any other person connected with the business of the bank which is confidential or the disclosure of which is likely to be prejudicial to the interests of the bank;

AND

Clause 19.5(j) doing any act prejudicial to the interest of the bank or gross negligence or negligence involving or likely to involve the bank in serious loss.

You are required to submit your reply within ten days from the date of receipt of this chargesheet, failing which it will be presumed that you have nothing to say in your defence, and the Bank will proceed further in the matter as it deems fit.

Yours faithfully, Sd/- Disciplinary Authority, Zonal Manager.

13. The petitioner submitted a detailed reply. On consideration of the entire material, the Enquiry Officer framed the following issues:-

"1. Whether Shri Bhag Singh, C.S.E. divulged the information regarding movement of bank cash resulting in looting of banks cash and death of Shri Sukhdev Singh Gunman on 25.11.88.

2. Whether Shri Bhag Singh was arrested.

3. Whether a sum of Rs. 45,000/- was recovered from the house of Shri Bhag Singh on 11.12.1988.

4. Whether it was a part amount of the looted cash.

5. And whether while doing above acts, misconduct in terms of the meaning of the Clause 19.5(b) and 19.5(j) of Bipartite Settlement dated 19.10.66 (as After careful consideration of the entire evidence, the Enquiry Officer exonerated the petitioner. The findings of the Enquiry Officer as culled out from the Enquiry Report are as under-

"On behalf of the management the P.O. Shri R.S.Sethi produced 25 documents marked M-I to M-24. Misc.1 and four witness marked MW-1 to MW-4. The P.O. mainly relied on the management witnesses. In defence, the CSE/DR produced 23 defence documents marked D-I to D-23 but no witness during the proceedings. The P.O. could not conclusively prove that the CSE divulged the information regarding the movement of cash resulting in the looting of bank cash on 25.11.1988. All the management documents and witnesses produced by the P.O. gave elaborate description of the facts that, the cash of Rs. 1.50 lacs while being remitted from B.O. Gharachon to B/O Bhawanigarh on 25.11.88 by Shri B.S.Sodhi and S. Sukhdev Singh, Gunman, on a scooter was looted near village Jhanehri by three robbers. That in this robbery, Shri Sukhdev Singh, Gunman was killed. That subsequently, FIR was lodged by Shri B.S.Sodhi that the looted cash and gun were recovered and the suspects were arrested. But the B.O. could not produce a witness or documents which had reason to believe that CSE divulged the information about movement of cash on 25.11.1988" (Emphasis supplied)

On charges No. 3 and 4, it is held as follows:-

"3. The P.O. has proved through Newspaper clippings and more importantly through MW-4 Shri Joginder Singh Retd. S.P. and documents resulting to him that an amount of Rs. 45,000/- was found from the house of Shri Bhag Singh, CSE.

4. But the P.O. has failed to prove exclusively that the amount of Rs. 45,000/- found from the CSE's house was a part amount of looted cash.

The final verdict of the Enquiry Officer is as under:-

"I, therefore, hold that

1. The charge of divulging the information by the CSE regarding movement of bank cash resulting in looting of bank's cash and death of Shri Sukhdev Singh, Gunman on 25.11.88, while a sum of Rs. 1.50 lacs was being remitted to B/O Bhawanigarh from B/O Gharachon through Shri Bharpur Singh Sodhi cashier escorted by Shri Sukhdev Singh, Gunman.

NOT PROVED.

2. The CSE was arrested by the Police: PROVED

3. A police party led by then Inspector of Police Shri Joginder Singh recovered a sum of Rs. 45,000/- from the house of CSE.

PROVED WITH BENEFIT OF DOUBT.

4. The sum of Rs. 45,000/- recovered from the house of the CSE was part amount of the looted cash:

NOT PROVED.

5. The acts of CSE are acts of "Gross Misconduct" in terms of meaning of the Clause 19.5(b) and 19.5(j) of Bipartite Settlement dated 19.10.66.

TO THE EXTENT CHARGES NO. 2 AND 3 PROVED AS ABOVE. (B.P.Singh) Enquiry Officer"

14. We have extracted the entire proceedings, merely to demonstrate the absurdity of the conclusion that the acts of petitioner are "acts of Gross Misconduct". Having completely exonerated the petitioner, the Enquiry Officer, in our opinion, acted arbitrarily in recording the conclusion at paragraph 5. In his response to the enquiry report, the petitioner pointed out that Enquiry Officer had exonerated him on Issues No. 1 and 4. Issue No. 2 only pertained to the arrest of the petitioner, which was matter of record. Since the petitioner had been acquitted, the arrest had become meaningless. Even issue No. 3 is accepted by the Enquiry Officer on "benefit of doubt". Here the concept of "benefit of doubt" has been made to stand on its head. Instead of the "benefit of doubt" going to the accused, it has been given to the prosecution. Issue No. 4 is not proved, i.e. the money recovered from the house of the petitioner was not a part of the amount looted from the Bank. From the above, it becomes abundantly clear from that the petitioner had been fully exonerated, except for the ipse dixit of Enquiry Officer at the end of the Enquiry report, as follows:-

"5. The acts of CSE are acts of "Gross Misconduct" in terms of meaning of the Clause 19.5(b) and 19.5(j) of Bipartite Settlement dated 19.10.66."

We may now reproduce the two Clauses:-

"19. (5) By the expression "gross misconduct" shall be meant any of the following acts of omissions on the part of an employee:

(b) unauthorised disclosure of information regarding the affairs of the bank or any of its customers or any other person connected with the business of the bank which is confidential or the disclosure of which is likely to be prejudicial to the interests of the bank;

(j) doing any act prejudicial to the interest of the bank or gross negligence involving or likely to involve the bank in serious loss."

15. A perusal of the aforesaid two Clauses makes it abundantly clear that the finding of "gross misconduct" against the petitioner cannot be justified either on facts or in law.

16. As noticed earlier, the Disciplinary Authority was pleased to "take a lenient view and impose a minor penalty of "Censure" in terms of Clause 19.8(a) of the Bipartite Settlement on the petitioner. Clause 8 empowers the Bank to punish an employee who is found guilty of minor misconduct. Clause 8(a) provides that the employee may be warned or censured. We are constrained to observe that we find absolutely no material on record which would justify the imposition of any punishment on the petitioner, including the punishment of "Censure". Faced with the punishment as noticed above, the petitioner submitted an appeal which has also been dismissed by the Appellate Authority by order dated 8.4.2002 (Annexure P-7). It was pointed out that Issue No. 3 was incorporated by the Enquiry Officer on his own. The actual charge in the charge-sheet stands "not proved", according to the findings of the Enquiry Officer. The Appellate Authority in its order merely observed that "the penalty awarded by the DA to the appellant is in conformity with the misconduct committed by the appellant" and the order of Disciplinary Authority is upheld.

17. Having considered the entire matter, we are of the opinion that the Enquiry Officer acted arbitrarily by giving a finding that the petitioner had committed gross misconduct. The Disciplinary Authority failed to apply its mind to any of the relevant facts and passed a wholly non-speaking order. The Appellate Authority merely compounded the illegalities committed by the Enquiry Officer and the Disciplinary Authority. To say the least, we are of the opinion that the entire proceedings are liable to be quashed on the ground that they are contrary to the Bipartite Settlement, apart from being in whole-sale violation of Article 14 of the Constitution of India. The petitioner had also submitted a representation seeking release of full back-wages alongwith all other consequential benefits from the date of suspension i.e. 13.12.1988. The representation was submitted on 23.7.2002. This representation was also rejected on 17.9.2002 by a cryptic order which had been reproduced in earlier part of the judgment. After the judgment of the trial Court had been delivered, it was incumbent on the respondents to examine the judgment and to come to a bona fide conclusion as to whether the judgment was to be accepted or proceedings were to be taken against the petitioner under Clauses 11 and 12 of the Bipartite Settlement. The respondents had proceeded against the petitioner under Clauses 11 and 12 of the Bipartite Settlement. A regular departmental enquiry was held. The petitioner

has been exonerated. Therefore, the question of imposition of punishment under Clause 5(b) or 5(j) of the Bipartite Settlement did not arise. We are of the considered opinion that the respondents have merely imposed the punishment of Censure on the petitioner to avoid granting the consequential benefits. Therefore, the orders of punishment passed against the petitioner (Annexures P-6 and P-7) are liable to be quashed being arbitrary and without jurisdiction.

18. In support of his submissions, Mr. Sathi has relied on a judgment of the Supreme Court in the case of AIR 1994 552 (SC) and a Division Bench judgment of the Kerala High Court in the case of Kerala State Handloom Development Corporation Ltd. v. P. Nanu and Ors., 2003(4) S.L.R. 743. In our opinion, the aforesaid judgments are of no assistance to the respondents. In the case of Bhopal Singh Panchal (supra), the respondent employee was employed with the appellant-Bank. On 7.9.1974, a criminal case was registered against him u/s 302 I.P.C. and he was arrested, on 18.9.1974. On his arrest, he was placed under suspension, under Regulation 46(1) of the Reserve Bank of India (Staff) Regulation 1948 (hereinafter referred to as "the Regulations"). On 13.12.1976, he was convicted by the trial court u/s 34 Part I of the I.P.C. and sentenced to 8 years R.I. On receipt of the judgment, the Bank dismissed the employee from service w.e.f. 28.4.1977 in terms of Regulation 46(3). On November 21, 1977, the Appeal filed by the employee against his conviction was accepted by the High Court and he was acquitted by giving him the "benefit of doubt". The Bank relied on Regulation 46(4) of the Regulations and refused to reinstate the employee in service on the ground that he had not earned an honourable acquittal. The employee raised an Industrial Dispute which was decided on 29.5.1983. The Tribunal held that the dismissal was unjustified and quashed the same and ordered the Bank to reinstate the employee with full back-wages and allowed him continuity in service, as if he was never dismissed from service. The award was implemented by the Bank and the employee was reinstated in service on 24.8.1983. He was treated to be on duty and paid back-wages for the period April 28, 1977 to August 23, 1983. Thereafter, the employee filed an application before the Central Government Labour Court u/s 33-C(2) of the Industrial Disputes Act claiming a difference in the amount paid to him as subsistence allowance during the period of suspension from September 18, 1974 till the date of his dismissal viz. April 28, 1977. The Labour Court accepted the plea of the employee and granted an amount which was agreed to by the Bank as the correct amount, if the employee's claim was accepted. This award dated 29.3.1985 was challenged by the Bank before the Supreme Court. The question examined by the Supreme Court was as follows:-

"6. The short question that falls for consideration is whether the order of suspension is automatically set aside on the reinstatement and whether the management cannot deal with the period of suspension according to the regulations governing the service conditions..."

19. Regulation 46 deals with the employees arrested for debt or on criminal

charge. Under this Regulation, the employee is deemed to be under suspension from the date of his arrest upto such period as the competent authority may direct. For this period, he shall be allowed the payment admissible to an employee under suspension under Sub-Regulation (4) of Regulation 47. Regulation 46(2) further provides as follows:-

"46(2) Any payment made to an employee under Sub-regulation (1) shall be subject to adjustment of his pay and allowances which shall be made according to the circumstances of the case and in the light of the decision as to whether such period is to be accounted for as a period of duty or leave;

Provided that full and allowances will be admissible only if the employee- (a) is treated as on duty during such period; and

(b) is acquitted of all blame or satisfies the competent authority, in the case of his release from detention or of his detention being set aside by a competent court, that he had not been guilty of improper conduct resulting in his detention."

20. Regulation 46(5) was also considered by the Supreme Court which is as under:-

"46(5) Where the absence of an employee from duty without leave or his overstay is due to his having been arrested for debt or on a criminal charge or to his having been detained in pursuance of any process of law, the provisions of Regulation 39 shall also apply, and for the purposes of that Regulation as so applied, the employee shall be treated as having otherwise than under circumstances beyond his control."

21. Considering the aforesaid Regulations, the Supreme Court observed as follows:-

"9. Sub-regulation (2) of Regulation 46 then makes clear that the subsistence allowance paid to such employee under Sub-regulation (1) is subject to adjustment of the employee's pay and allowances. That adjustment is to be made according to the circumstances of each case and in the light of the decision taken by the competent authority as to whether the period of absence is to be treated as a period on duty or on leave. The proviso to Sub-regulation (2) then states that the employee shall be entitled to full pay and allowances only if two conditions are satisfied viz., that the competent authority has treated him as on duty during such period and he is acquitted of all blame when he is arrested for debt or in connection with a criminal charge, and when he is detained otherwise he satisfies the competent authority that he had not been guilty of improper conduct resulting in his detention. In other words, his acquittal even if it is without blame or his release from detention even if his arrest is not on account of improper conduct on his part, does not automatically entitle the employee to full pay and allowances. The competent authority has to pass an order in each case taking into consideration all circumstances to treat the period of absence as period on duty before full pay and allowances become admissible to the

employee."

22. The aforesaid observations of the Supreme Court make it abundantly clear that the competent authority had passed an order under the aforesaid Regulation by taking into consideration the circumstances of the case. It may, however, be noticed that in the aforesaid case, the Supreme Court was not dealing with a situation where the employee had been reinstated on being acquitted and thereafter subjected to departmental enquiry, like in the present case. The employee had been reinstated on receipt of the award of the Labour Court. Thereafter, the employee had moved the Labour Court u/s 33-C(2) of the Industrial Disputes Act, 1947. The Supreme Court, therefore, considered the question as to whether the period from the date of suspension i.e. September 18, 1974 till the order of dismissal i.e. April 28, 1977 is to be treated as a period spent on duty with full pay and allowances. Answering the aforesaid question, the Supreme Court held as follows:-

"15... 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...."

23. The aforesaid observations clearly indicate that it was incumbent on the respondents to weigh all the facts and circumstances of the case in coming to an appropriate conclusion. It was necessary for the respondents to consider that the criminal court in both the cases had acquitted the petitioner as there was no evidence against him. Even the enquiry officer has given a clear finding that the P.O. could not produce any witness or document to show that the petitioner had divulged the information about movement of cash on 25.11.1988. Thus, the petitioner was clearly entitled to all the consequential benefits having been completely exonerated in the departmental proceedings. In the case of Kerala State Handloom Development Corporation Ltd. (supra), the Division Bench followed the observations of the Supreme Court and held that the acquittal of the employee was not an honourable acquittal. In coming to the aforesaid conclusion, the Division Bench examined the order of acquittal. Relevant part of the order of the trial Court reads as follows:-

"So, the evidence adduced in this case is not sufficient to come to a conclusion that the accused in this case have falsified the accounts and they have also forged the documents in order to commit offences charged against them. Therefore, the evidence on record is not conclusive to come to a conclusion that the accused are guilty of offences charged against them. Moreover, in this case a civil suit is pending for the realisation of the amount with respect to the supply of yarn, dyes and chemicals by virtue of the bills relied on by the prosecution. In the light of the pendency of the suit a genuine doubt is created in the mind of

this court as to whether the offences charged against the accused is real. So, benefit of doubt arisen out of the evidence adduced in this case will certainly go to the accused."

24. It was in view of the aforesaid findings that the Division Bench held that the employee had not been honourably acquitted. We have extracted the relevant part of the judgment given by the trial court in the present case. A perusal of the same would show the use of the expression by the learned trial court that the prosecution has failed to bring home the charge to the accused beyond any reasonable doubt, would not obliterate the earlier discussion of the trial Court which clearly established that there was no evidence against the petitioner which would tend to show that the petitioner was involved in any undesirable activities. Therefore, the observations made by the Division Bench in the case of Kerala State Handloom Development Corporation Ltd. (supra), would not be applicable to the facts and circumstances of the present case.

25. This apart, as noticed earlier, the respondents had opted to proceed against the petitioner under the Bipartite Settlement. Once the Enquiry Officer has given the Enquiry Report, no further reliance could have been placed on the judgment of the Criminal Court in support of the plea that the petitioner has been acquitted by the trial court by giving benefit of doubt. The false implication of the petitioner having been fully established before the Enquiry Officer, the respondents acted wholly without jurisdiction in not granting him all the consequential benefits from the date he was illegally suspended till he was re-instated.

26. In view of the above, the writ petition is allowed. Orders (Annexures P-6, P-7 and P-9) are quashed. Furthermore, a writ in the nature of Mandamus is issued directing the respondents to release the full pay and allowances to the petitioner for the period of suspension from 13.12.1988 to 27.9.1999 by treating the period to the spent on duty. The petitioner shall also be entitled to all other consequential benefits such as promotions, increments and seniority etc. No costs.