

(1986) 10 RAJ CK 0037
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1710 of 1986

Bijendra Singh

APPELLANT

Vs

Administrator Sikar Kendriya Bank Ltd.

RESPONDENT

Date of Decision : 14-10-1986

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 149, 302

Citation : (1987) 1 WLN 145

Hon'ble Judges : Mahendra Bhushan Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mahendra Bhushan Sharma, J.—The main point for consideration in this writ petition is as to whether because of his acquittal by a Division Bench of this Court of the charge u/s 302/149, I.P.C. the petitioner is entitled for reinstatement, but because the learned Counsel for non-petitioners has raised preliminary objection that in view of Section 75 of the Rajasthan Co-operative Societies Act (for short "the Act") 1965, this writ petition should not be entertained, that point is to be decided first.

2. The facts are no longer in dispute. The petitioner was appointed as Branch Manager of Sikar Kendriya Sahkari Bank Ltd. Sikar in the year 1982. While he was serving as such, a First Information Report involving the petitioner for offence u/s 302/149 I.P.C. was filed in the Police Station. The petitioner was tried along with others u/s 302/149 by the learned Sessions Judge, Sikar and the said Judge under his judgment dated September 4, 1982 convicted and sentenced the petitioner u/s 302/149 I.P.C. The petitioner was dismissed from service as a result of his conviction as aforesaid and the dismissal order was made by the Bank on September 21, 1982. The petitioner filed an appeal against the conviction before this Court and a Division Bench of this Court under its judgment dated 13th May, 1986 while accepting the appeal set aside the

judgment of the learned Sessions Judge convicting and sentencing the petitioner u/s 302/149 I.P.C. and the petitioner was acquitted from the charge. After the acquittal as aforesaid, the petitioner approached the non-petitioner for his reinstatement but inspite of that and inspite of a notice dated July 18, 1986 of demand of justice, the petitioner was not reinstated.

3. The petitioner therefore, filed this writ petition seeking a direction from (his Court that the non-petitioners take the petitioner on duty and pay him all arrears of salary and other benefits.

4. On the preliminary objection it is contended by the learned Counsel for the non-petitioners that the present dispute between the Society and the petitioner is a dispute touching the business of the Society and as such should be referred to arbitration u/s 5(1) of the Act to the Registrar for the decision. In respect of his submission the learned Counsel has referred to the decision of this Court in the case of Rajasthan Co-operative Bank Ltd., Jaipur v. H.M. Gupta and Ors., reported in RLT 1981 Part IV 39 to which I was also a party. In the aforesaid case a view was taken that the subject "business" has to be interpreted in a wide sense, the dispute regarding termination of the Services of a paid employee other than the dispute regarding the disciplinary action taken by the Society would be a dispute touching the business of the Society. In that case the matter had been referred to the arbitrator, in which an award was given. The Bank challenged the award inter alia on the ground that the matter of termination of the services of a paid employee does not in any way touch the business of the Society and the Registrar lacks inherent jurisdiction u/s 61 of the Old Act, to refer the dispute to a Board of Arbitrators. Firstly that case has no application to the facts of the instant case. Secondly even if the matter might have been such which would be referred u/s 5(1) of the Act. to the Registrar for arbitration, it does not exclude the jurisdiction under Article 226 of the Constitution of India. Not with standing the fact that there is an efficacious alternative remedy available. In the facts and circumstances of a case, the Court may interfere in the extraordinary powers under Article 226 of the Constitution of India. It is only a self restraint that in matters where there is an efficacious alternative remedy available the courts do not invoke its powers under Article 226 of the Constitution of India. In a case where the facts are disputed, as in the present case, it can be no reason to ask the petitioner to raise a dispute u/s 5(1) of the Act.

5. In the instant case, it is not disputed that as a result of the conviction of the petitioner u/s 302/149 I.P.C. the services of the petitioner were terminated. In para 2,3 and 4 of the petition the petitioner has come out with a specific case that he was convicted u/s 302/149 I.P.C. by learned Sessions Judge, Sikar under his judgment dated 4th September, 1982 and his services were terminated by the Bank under its order dated September 29, 1982. It is also mentioned that the petitioner was acquitted by the Division Bench of this Court under its judgment dated May 13, 1986. In reply to the writ petition, the non-petitioners

have admitted paras 2,3 and 4 and such there cannot be any dispute that the petitioners was convicted and as a result thereof his services were terminated and that he has been acquitted on the charge u/s 302/149 I.P.C.

6. There can be hardly any dispute that in case the only ground of the termination of the services of the employee is that of his conviction of offence involving moral turpitude then as and when he is acquitted by the Criminal Court he should be reinstated unless the employer takes disciplinary proceedings and he has found guilty. Therefore the moment the petitioner was acquitted of a charge u/s 302/149 I.P.C. and he approached the non-petitioners and brought to their notice that he has now been acquitted he should have been reinstated. The Supreme Court in the case of Vidya Charan Shukla Vs. Purshottam Lal Kaushik, referred to the earlier case Manni Lal Vs. Parmai Lal and Others, and held that if the conviction & sentence are set aside by the appellate court, then the acquittal is effected retrospectively wiping out as if it never existed. Therefore, there cannot be any dispute that only the ground on which the services of the employees are dispensed with is that he has been convicted by Criminal Court on the charge involving moral turpitude and if in an appeal conviction is set aside, then the dismissal order should go and the Government Servant has to be reinstated. Applying the principles of these cases, to the petitioner an employee of the Bank, it can be said that the moment he was acquitted of the charge u/s 302/149 I.P.C. a Division Bench of this Court under its judgment dated May 30, 1986 his conviction and sentence were wiped out retrospectively. Therefore, the termination order dated September 29, 1982 on the ground of the conviction and sentence cannot stand. The petitioner approached the non-petitioners on May 30, 1986 and informed that he has been acquitted of the charges by this Court. He also served a notice for demand of justice. But the non-petitioner did not re-instate the petitioner in service. Therefore, in my opinion, it will not be in the interests of justice to order payment to him of all the arrears of salary and other benefits for the period from 21-9-1982 to 29th May, 1986 because the petitioner did not work during the period and because the petitioner did not challenge his dismissal earlier on the ground that because his appeal against conviction and sentence is pending only on the ground of his conviction, his service could not be dispensed with. But the petitioner will be Entitled to all other benefits of seniority, promotion, if any due to him under the rules.

7. Consequently, the writ petition is allowed and the order dated 21-9-1982 terminating the services of the petitioner is set aside. The non-petitioners are directed to re-instate the petitioner in service as Branch Manager the position he was occupying on the date of his dismissal. The non-petitioners are also directed to give consequential benefits except the salary for the period from 29-9-1982 to 29th May, 1986. The petitioner shall be entitled for all other benefits seniority, promotion and fixation etc., in accordance with the rules. The non-petitioners are directed to give all the benefits to the petitioner except the benefit of salary for the period from 29-9-1982 to 29th May, 1986 within a period of 2 months. So far as the re-instatement is concerned it is ordered with immediate effect. Costs

made easy.