

**(2006) 01 AHC CK 0065**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 30086 of 1999

Bishan Chand Gupta

APPELLANT

Vs

Chairman, Canara Bank & Ors.

RESPONDENT

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**Date of Decision :** 06-01-2006

**Acts Referred:**

**Citation :** (2006) 01 AHC CK 0065

**Hon'ble Judges :** V.C.Misra, J

**Final Decision :** Allowed

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## **Judgement**

V.C. Misra, J.—This writ petition has been filed by the petitioner seeking relief for disbursement of the difference of the full salary payable to him alongwith other emoluments after deducting the subsistence allowance actually paid to him during the suspension period from 2631992 to 1411994 on the ground that the petitioner was acquitted of the criminal charges framed against him on the first information report lodged under Sections 8 and 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 wherein he was implicated as an accused person in terms of the provisions of Rule12 Chapter XI of the Canara Bank Service Code, which were later on withdrawn by the State Government, and thereafter the respondents allowed him to continue with his service and revoked the suspension order. However, they did not pay the balance amount of the full salary.

2. Learned Counsel for the petitioner has submitted that declining the disbursement of the difference of the full salary payable to the petitioner for the period of his suspension is wholly arbitrary and illegal as the petitioner had not been even put on trial and prior to that the prosecution had asked for withdrawal of the case against him which was duly allowed by the Court and was not a case where the accused had been acquitted after being given a benefit of doubt or due to shortcoming in evidence and was thus, therefore, entitled under law his full salary and emoluments.

3. Sri Tarun Verma learned Counsel for the Bank has submitted that the

petitioner had been suspended not on the basis of any disciplinary proceedings having been initiated by the Bank but was due to his own conduct and the Bank had no option but to put him under suspension as per the provisions of Rule 12 Chapter XI of the Canara Bank Service Code, the relevant portion of which reads as under :

12. (1) Pending initiation of an enquiry or pending an enquiry under this Chapter an Enquiring Officer may, if he thinks fit, and shall, if so directed by the Deputy General Manager of Circle Office/International Division/Inspection Department/The Assistant General Manager of Personnel Wing, Head Office, suspend the employee whose conduct is being enquired into. Such suspension, unless earlier terminated, shall be deemed to continue till and to terminate on the passing of an order exonerating him or imposing a punishment on him.?

Therefore, the question of the payment of difference of the balance amount of full salary did not arise, as he was not entitled to the same. In this respect, in support of his arguments he has relied upon the judgments in the cases of *Ranchhodji Chaturji Thakore v. Superintending Engineer, Gujarat Electricity Board, Himmat Nagar, Gujarat & Anr.*, 1997 SCC (L&S) 491, and *Hukmi Chand v. Jhabhua Cooperative Central Bank Ltd., Jhabhua (MP) & Anr.*, 1998(2) LBESR 666 (SC) : 1998 (2) CLR 230. In both these cases the petitioner had been dismissed/terminated from services and had been reinstated on the directions of the Court. The Hon'ble Apex Court has held that during the period of dismissal or termination the petitioner would not be treated to be on duty and therefore, was not entitled in normal course for the payment of back wages or the salary.

4. Shri Tarun Verma has also relied upon the case of *Krishnakant Raghunath Bibhavnekar v. State of Maharashtra & Ors.*, JT 1997 (3) SC 726, wherein it has been held that under Rule 72 of the Maharashtra Civil Services Rules, 1991 the consequential benefits cannot be a matter of course but are subject to discretion of the disciplinary authority and it would be deleterious to maintenance of discipline if a person suspended on valid considerations is given full back wages as a matter of course on his acquittal. It was further held that the appellant was not entitled to be treated on duty during the suspension for the purpose of pension etc. However, in this very judgment their Lordships have in para 4 held that the disciplinary authorities, may enquire into conduct unless the selfsame 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.

5. Learned Counsel for the petitioner has submitted that the petitioner remained in jail from 31/1/1990 to 15/1/1990 during this period no suspension order was passed but after he had been released, the suspension order was passed on 26/3/1990.

6. I find that the decisions in the first two cases do not apply to the facts of the present case as they relate to the question of dismissal whereas in the present

case the petitioner was under suspension and was duly paid his suspension allowance treating him to be in continuity in service. The decision of third case cited above also does not apply to the present case as the petitioner who has been suspended was not on valid considerations but had been given a clean chit and all the charges had been withdrawn before he could be put on trial. More so, nothing prevented the respondents from proceeding with the inquiry into the alleged misconduct which was rightly not proceeded on the said self same conduct which was subject of said charge as he was found not to have committed any offence at all.

7. In my view, the petitioner is entitled to disbursement of the difference of the full salary and emoluments payable to him after adjusting the suspension allowance actually paid, alongwith all other consequential benefits from the date, which they became due and payable.

8. Under the above said facts and circumstances of the case, the writ petition is allowed with no order as to costs.