

(2016) 02 J&K CK 0050

In the Jammu And Kashmir High Court

Case No : LPASW No. 210 of 2001 and MP No.269 of 2001

Central Bank of India

APPELLANT

Vs

Sunita Gupta

RESPONDENT

Date of Decision : 29-02-2016

Acts Referred:

Citation : (2016) 3 JKJ 178

Hon'ble Judges : Mr. N. Paul Vasanthakumar, CJ. and Mr. Bansi Lal Bhat, J.

Bench : Division Bench

Advocate : Mr. Sunil Sethi, Sr. Advocate with Mr. Ravi Abrol, Advocates, for the Appellant; Mr. M.P. Sharma, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Date,Mode,Nature of Entry,Amount,Account No.,Ledger No.

01.01.87,By cash,Credit,"Rs.20,000/-",10329,13

22.01.87,To Self,Debit,"Rs.20,000/-",10213,13

02.02.87,By Cash,Credit,"Rs.20,000/-",10213,13

27.02.87,To Self,Debit,"Rs.20,000/-",10395,13

28.02.87,By Cash,Credit,"Rs.20,000/-",1039,13

11.03.87,To Self,Debit,"Rs.20,000/-",10480,13

11.04.87,By Cash,Credit,"Rs.20,000/-",10480,13

3. The writ petitioner requested appellant No.2 for extending personal hearing which was also granted on 18.04.1997. The writ petitioner,,,,,

appeared on 18.04.1997 and filed written submissions. The defence of the writ petitioner was that after earning acquittal in the criminal case on,,,,,

16.12.1994, he submitted joining report along with copy of acquittal order on

17.01.1995 and requested to release the full salary from the date of",,,,,
suspension i.e. 04.02.1988 followed by reminder dated 23.03.1995 and prayed
for re-instatement. The disciplinary authority on the basis of,,,,,
proved charges by order dated 27.05.1997, dismissed the writ petitioner from
service with effect from 03.06.1997, which order was challenged",,,,,
with a prayer for re-instatement w.e.f. 04.02.1988 i.e. from the date of
suspension.,,,,,,

4. Learned Single Judge allowed the writ petition on the ground that the criminal
court having acquitted the writ petitioner in respect of the very,,,,,
same allegation and the writ petitioner having not been given proper opportunity
to defend the departmental proceedings set aside the order of,,,,,
dismissal and gave liberty to the appellants to proceed further in the matter.,,,,,

5. Learned senior counsel for the appellants contended that acquittal order
passed by the criminal court is only on benefit of doubt and not on,,,,,
merits, thus there is no bar to conduct departmental proceedings and proceeding
were initiated and the writ petitioner was given several",,,,,

opportunities, still he delayed the proceedings. Therefore, the Enquiry Officer
submitted his findings holding that the charges are proved. The Writ",,,,,
Court has erroneously interfered with the said order as if proper opportunity was
not given and set aside the order of punishment with liberty.,,,,,

6. The said order was stayed by this Court during the pendency of LPA.
Therefore, no enquiry could be conducted and during pendency of the",,,,,
appeal, the writ petitioner also died and his LRs were brought on record.",,,,,

7. Learned counsel for the respondents submitted that since writ petitioner is no
more, conducting of fresh enquiry is not possible and the order of",,,,,
dismissal having been set aside, legal heirs are entitled to get monetary
benefits.",,,,,

8. The point, which arises for consideration in this appeal is as to whether the
writ petitioner in the appeal having embezzled a sum of Rs.20,000/-,",,,,
who faced criminal proceedings, which were ended in acquittal on benefit of
doubt, is entitled to seek re-instatement, particularly when",,,,,
departmental enquiry was conducted separately and finding of guilt was recorded
after affording opportunities to participate in enquiry for seven,,,,,
times, opportunities to cross-examine three times and he chose to submit only
written brief without denying the charges.",,,,,

9. It is well settled proposition of law that acquittal in criminal case has no bearing on the department proceedings. The Hon'ble Supreme Court in,,,,,

the decision reported in (2013) 1 SCC 598 [Deputy Inspector General of Police v. S. Samuthiram] considered the very issue regarding the,,,,,

effect of acquittal in a criminal case with respect to the punishment imposed in the departmental proceedings. In the said decision it is held that even,,,,,

if the Delinquent Officer is acquitted honourably, he is not entitled to claim reinstatement, unless the service rules provides so. In paragraphs 23, 26",,,,,,

& 28 the Hon'ble Apex Court held thus:-,,,,,

23. We are of the view that the mere acquittal of an employee by a criminal court has no impact on the disciplinary proceedings initiated by the",,,,,,

department.....,,,,,

26.....in the absence of any provision in the service rules for reinstatement, if an employee is honourably acquitted by a criminal court, no right is",,,,,,

conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by,,,,,

a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the",,,,,,

guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is",,,,,,

settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and,,,,,

preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up,,,,,

other witnesses since few of the other witnesses turned hostile etc.....,,,,,

28.....,,,,,

(b) In the decision reported in (2008) 5 SCC 554 (Usha Breco Mazdoor Sangh v. Management of Usha Breco Limited) in paragraph 22 of,,,,,

the Supreme Court held thus:-,,,,,

33. Before a departmental proceedings, the standard of proof is not that the misconduct must be proved beyond all reasonable doubt but the",,,,,,

standard of proof is as to whether the test of preponderance of probability has been met..."",,,,,,

The said decision has been followed by the Hon'ble Supreme Court in its decision reported as (2013) 7 SCC 685 [Commr. of Police v. Mehar,,,,,

Singh] and recently in (2016) 1 SCC 670 K. Mallesh v. K. Narender and ors. Thus, the writ petitioner rely on the acquittal on benefit of doubt",,,,,

rendered in criminal case.,,,,,

10. The scope of judicial review in disciplinary matters is very limited. If there is some evidence available and based on such evidence the,,,,,

disciplinary authority comes to a conclusion, the Courts are not expected to over turn the said decision on the ground of insufficiency of materials.",,,,,

The grounds on which the Disciplinary Authority's decision can be set aside are, on no evidence or for any violation of procedural safeguards to",,,,,

the delinquent officer, including the principles of natural justice. The Supreme Court in the decision reported in (2006) 6 SCC 794 (Union of",,,,,

India v. K.G. Soni) in paragraphs 14 and 15 held thus:-,,,,,

14....the court should not interfere with the administrators decision unless it was illogical or suffers from procedural impropriety or was shocking to",,,,,

the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case",,,,,

the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to,,,,,

that of the administrator. The scope of judicial review is limited to the deficiency in the decision making process and not the decision.,,,,,

15. To put it differently, unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the",,,,,

court/tribunal, there is no scope for interference. Further, to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment",,,,,

by recording cogent reasons in support thereof. In the normal course if the punishment imposed is shockingly disproportionate, it would be",,,,,

appropriate to direct the disciplinary authority or Appellate Authority to reconsider the penalty imposed.""",,,,,

Again in (2006) 1 SCC 63 (Karnataka Bank Ltd. v. A.L.Mohan Rao) and in several other decisions the Apex Court held that it is not for the,,,,,

courts to interfere in cases of gross misconduct if the Disciplinary Authority's decision is based on Enquiry Officer's report, which has been",,,,,

conducted in a fair and proper manner and a misconduct is proved.,,,,,

11. The question once the Banking establishment has lost confidence on its staff in the clerical cadre, whether reinstatement can be ordered to such",,,,,

staff, who is dealing with public money, was considered by the Supreme Court in the decision reported in 2007 AIR SCW 4136 :JT 2007 (8)",,,,,

SC 588 (Ramesh Chandra Sharma v. Punjab National Bank & another) in paragraph No.20 it is held thus;,,,,,

..... Once the employer has lost the confidence in the employee and the bona fide loss of confidence is affirmed, the order of punishment must be",,,,,

considered to be immune from challenge, for the reason that discharging the office of trust and confidence requires absolute integrity. A necessary",,,,,

implication which must be engrafted on the contract of service is that the servant must undertake to serve his master with good faith and fidelity. In,,,,,

a case of loss of confidence, reinstatement cannot be directed. Granting such an employee the relief of reinstatement would be ""an act of misplaced",,,,,

sympathy which can find no foundation in law or in equity."" (vide Air India Corporation, Bombay v. V.A. Ravellow, AIR 1972 SC 1343; The",,,,,

Binny Ltd. v. Their Workmen, AIR 1973 SC 1403; Kamal Kishore Lakshman v. Management of M/S Pan American World Airways",,,,,

Inc & Ors., AIR 1987 SC 229; Francis Kalein & Co. Pvt. Ltd., v. Their Workmen, AIR 1971 SC 2414; Regional Manager Rajasthan",,,,,

SRTC v. Sohal Lal, (2004) 8 SCC 218 and Bharat Heavy Electricals Ltd. v. M. Chandrashekhar Reddy &Ors., 2005 AIR SCW",,,,,

1232),,,,,,

In Kanahaiya Lal Agrawal & ors. v. Factory Manager, Gwalior Sugar Co. Ltd. (2001) 9 SCC 609, the Hon'ble Supreme Court laid down",,,,,

the test for loss of confidence to find out as to whether there was bona fide loss of confidence in the employee, observing that, (i) the Workman is",,,,,

holding the position of trust and confidence; (ii) by abusing such position, he commits act which results in forfeiting the same; and (iii) to continue",,,,,

him in service/establishment would be embarrassing and inconvenient to the employer, or would be detrimental to the discipline or security of the",,,,,

establishment. Loss of confidence cannot be subjective, based upon the mind of the management. Objective facts which would lead to a definite",,,,,

interference of apprehension in the mind of the management, regarding trustworthiness or reliability of the employee, must be alleged and proved.""",,,,,

12. The writ petitioner having served in the Bank, which is dealing with public money committed breach of trust and lost the confidence of the",,,,,

Bank for continuing in service. In the departmental proceedings, he was given full opportunity, which the writ petitioner failed to avail and a finding",,,,,

was recorded by the Enquiry Officer with regard to embezzlement, which reads thus:-" ,,,,,

Thus Mr. Gupta has been found guilty of all the charges mentioned in the charge-sheet no.RO:PRS:SPS:89:1217 dated 20.3.89 along with" ,,,,,

CORRIGENDUM RO:PRS:MJ:89:1770 dated 26.4.89. It has been proved that Mr. Gupta has pocketed the sum of Rs.20,000/- received from" ,,,,,

Sh. Satish Vaid holder of HSS Ac/ No.10329 being amount deposited by the party vide pay-in-slip a/c no.10329 dated 31.10.86 fvg. Sh. Satish ,,,,,

Vaid for Rs.20,000/- with a view to commit fraud and cheat the bank/ depositor.""." ,,,,,

13. It is relevant to point out that the writ petitioner failed to avail the opportunities given to him at the time of enquiry, hence he cannot contend" ,,,,,

that opportunity was not given to him. The only defence throughout was that having been acquitted in criminal case, he shall be reinstated in" ,,,,,

service. The said issue having been found against the writ petitioner the order of the Single Judge is liable to be set aside and LP appeal is allowed. ,,,,,

If deceased-writ petitioner was not paid subsistence allowance during the entire period of suspension, same shall be paid to his legal heirs namely" ,,,,,

respondent Nos.1 to 3 within a period of eight weeks from the date of receipt of copy of this order. ,,,,,

14. Appeal is allowed. No costs. ,,,,,