(2016) 01 P&H CK 0301

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 21712 of 2013

Jatinder Kumar — APPELLANT

Vs

Punjab Gramin Bank and Others — RESPONDENT

Date of Decision : 25-01-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 406, Section 498-A
Regional Rural Banks Act, 1976 — Section 3(1)

Citation : (2016) 01 P&H CK 0301

Hon'ble Judges : Rajiv Narain Raina, J.

Bench : Single Bench

Advocate : R.P.S. Rana, Advocate, for the Appellant; R.S. Bhatia, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Narain Raina, J.—1. The petitioner was dismissed from service of the Punjab Gramin Bank, Kapurthala where he was serving as a Field Supervisor after his parent Bank, i.e Gurdaspur Amritsar Kshetriya Gramin Vikas Bank, at Lakhna District Amritsar was amalgamated with the Regional Gramin Banks, in exercise of power conferred by Section 3(1) of the Regional Rural Banks Act, 1976. His services came to be governed by the Punjab Gramin Bank (Officers and Employees) Service Regulations 2005.

2. The petitioner was charge sheeted for committing offences under Section 498-A of the Indian Penal Code (IPC) and was committed to trial on May 28, 2009 by the Court of the learned Additional Sessions Judge, Jalandhar. He was in judicial custody from May 28, 2009 to June 10, 2009. He was admitted to bail on June 11, 2009. The result was that he was absent from duty on account of detention for the period of May 29, 2009 to June 10, 2009. After release on bail, he sought resumption of duty. Instead, the competent authority in the Bank dismissed the petitioner from service on August 5, 2009 invoking powers under Regulation 29 of 2005 Regulations.

3. Aggrieved by the dismissal order he approached this Court for quashing the order praying for reinstatement by filing CWP No. 15293 of 2009. On October 25, 2010, the petition was admitted for regular hearing. By that time, the petitioner had spent 28 years of service with the Bank. He was convicted by the trial Court. Against the judgment of conviction and sentence, the petitioner preferred Criminal Revision No. 1549 of 2009. His revision was accepted on October 19, 2011 by this Court and the petitioner was acquitted of the charges. The operative part of the order reads:-

"The revision petition is, accordingly, allowed. The conviction and sentence imposed on the petitioner is set aside. The petitioner is relieved of the consequences of trial".

4. After being acquitted honourably, the petitioner submitted a representation to the Bank on November 11, 2011 followed by a representation dated November 18, 2011 praying that he may be reinstated to service with back wages in terms of Regulation 29(4) which provision is to the following effect:-

"29(4). Where an officer or employee has been dismissed in pursuance of Sub-Regulation (3) and the relative conviction is set aside by a higher court and the officer or employee is honourably acquitted, he shall be reinstated in service."

5. The petitioner was not reinstated by the Bank on the premise that the matter involving his dismissal was sub judice before the High Court in the pending writ petition. He was advised to obtain orders from this Court in pending writ proceedings. Consequently, as advised by the employer he preferred an application on December 12, 2011 by way of C.M. No. 17547/17548 of 2011 in the writ petition seeking directions for reinstatement with back wages in terms of Regulation 29(4). The applications were heard with the main case and the writ petition was partially allowed. This Court held dismissal order dated August 5, 2009 cannot sustain and is liable to be quashed and the petitioner was ordered to be reinstated. As regards the consequential benefits, it was held that the petitioner was entitled to retain and maintain his seniority as well as notional pay fixation. However, this Court was pleased to grant liberty to the respondent-Bank to take a conscious decision with respect to the payment of back wages as per rules. In making of the order the petitioner would be entitled to an opportunity of hearing and a speaking order would have to be passed. In case, the petitioner is dissatisfied with the order to be passed liberty was granted to the petitioner to impugn the same before an appropriate forum.

6. The petitioner was called for hearing on August 6, 2012 by the competent authority to hear him on his claim for back wages for the period intervening between dismissal and reinstatement. He urged at the hearing that according to Regulation 22 the period of actual detention of an employee is restricted to the period of detention of the employee and this period is liable to be condoned or regularized by debiting from unavailed leave. He referred to the judgment of this Court in the Criminal Revision relieving him of consequences of conviction,

therefore, unavailed leave of more than 150 days could be adjusted against the absent period if any as the petitioner had been at all the times pressing that he is willing to offer his labour, if he was to rejoin. However, the claim was rejected vide order dated August 6, 2012 (Annexure P-7). Aggrieved by the order of the competent authority-cum-Chairman of the Bank, the petitioner filed an appeal before the Board of Directors raising various grounds in the appeal but no merit was found in the appeal and the same was dismissed vide resolution dated November 7, 2012 communicated to the petitioner on November 30, 2012 (Annexure P-9).

7. Against both these orders, the petitioner has approached this Court in the present writ petition claiming back wages for the period from the date of dismissal till reinstatement. There is another matter which deserves notice arising out of the grounds of the appeal filed before the Board of Directors. The Bank did not find favour of use of some words and expressions used by the petitioner in his appeal to the Board of Directors as it was felt that they were couched in unparliamentary language. Offended, the bank launched a separate inquiry on this charge. The petitioner, the Bank said, should have used only legal words to assail the order of the Chairman if he felt that all aspects in his appeal were not considered by the competent authority in making the order.

8. To return to the main prayer, learned counsel for the petitioner dwells on Regulation 29 and reads it to his advantage. The provision deals with the effect of an employee arrested for debt or on a criminal charge. It provides as follows:-

"29. Officer or employee arrested for debt or on a criminal charge

(1) An officer or employee who is arrested for debt or on a criminal charge or is detained in pursuance of any process of law, may, if so directed by the competent authority be treated as being or having been under suspension from the date of his arrest or as the case may be, of his detention, upto such date or during such period as the competent authority may direct:

Provided that in respect of the period in regard to which he is so treated he shall be paid subsistence allowance as specified in Regulation 45.

(2) Any payment made to an officer or 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 pay and allowance shall be admissible only if the officer or employee-

(a) Is treated as on duty during such period and

(b) Is acquitted of all charges or satisfies the competent authority is case of his release from detention or his detention being set aside by the competent Court that he had not been guilty of improper conducting to his detention.

(3) (a) An officer or employee shall be liable to dismissal or to any of the other

penalties referred to in Regulation 38, if he is committed to prison for debt or is convicted of an offence which is in the opinion of the competent authority, either involves moral turpitude or has a bearing on any of the affairs of the Bank or on the discharge by the officer or employee of his duties in the Bank, the opinion is this respect of the competent authority shall be conclusive and binding on officer or employee.

(b) such dismissal or other penalty may be imposed as from the date of his committal to prison or conviction and nothing is regulation 38 shall apply to such imposition.

(4) Where an officer or employee has been dismissed in pursuance of Sub-Regulation (3) and the relative conviction is set aside by a higher Court and the officer or employee is honourably acquitted, he shall be reinstated in service.

(5) Where the absence of an officer or employee from duty is without leave or his overstayal is due to his having been arrested for debt or on criminal charge or to his having been detained in pursuance of any process of law the provisions of Regulation 22 shall also apply, and for the purpose of that Regulation as so applied the officer or employee shall be treated as having absented himself without leave or as the case may be, overstayed otherwise than under circumstances beyond his control."

9. Regulation 29(4) spells out the effect of honourable acquittal which shall lead to reinstatement in service. As to how the period of absence of duty is to be dealt with is regulated by the provisions of Regulation 22, which reads as follows:-

"22. Officer or employee not be absent from duty without permission or be late in attendance

(i) An officer or employee shall not absent himself from his duties without having obtained the permission of the competent authority, nor shall be absent himself in case of his sickness or accident without submitting a proper medical certificate,

(ii) And in case the officer or employee remains absent without leave or absent beyond the sanctioned leave, shall not be entitled to draw any pay allowances for the period of such absence of overstayal and shall be liable to such disciplinary measure as the competent authority may impose. Provided that the competent authority may condone such absence or overstayal if he is satisfied that the officer or employee has remained or overstayed his leave under circumstances beyond his control and direct that such absence or overstayal may be regularized by admissible leave."

10. It is not disputed that the petitioner actually worked with the Bank between October 15, 2009 to March 23, 2010. The date March 23, 2010 is relevant since stay was vacated by this Court while the actual period of detention was as stated earlier from May 28, 2009 to June 10, 2009 and for this period it is claimed that the same could be adjusted against outstanding relief which monetary aspect

was not considered by the authorities and should have been.

11. The sole issue which requires to be determined is whether the petitioner is entitled to back wages for the period between dismissal and reinstatement i.e. for a period of little over 6 months. It may be noted that when the criminal revision was admitted the sentence awarded to the petitioner was ordered to remain suspended during the pendency of the revision which left the petitioner to resume work. Bail was granted to the satisfaction of the CJM, Jalandhar. To recall facts, the criminal proceedings arose out of complaint dated 8.1.1996 filed by the petitioner''s wife Aruna Rani under Section 406, 498-A etc. of the IPC. The conviction was for two years with fine of Rs. 1,000/- which has been set aside by this Court acquitting the petitioner of the charge. Hence the petitioner is innocent of the allegation of dowry demand and breach of trust.

12. The related question is whether a conviction under Section 498-A of the IPC is an offence which involves moral turpitude and shows baseness and meanness of character contrary to good morals which has a bearing on the public face of the Bank and its reputation as also on the discharge of duties by the petitioner in the Bank. The conviction was recorded on November 20, 2006 which was upheld by the learned Sessions Judge on May 28, 2009. It is in this background that the dismissal order was passed on August 5, 2009.

13. The petitioner has annexed judgment P-2 of this Court which is the order passed on October 19, 2011. In the judgment and order it has been recorded that the complainant had settled the matrimonial dispute and differences between the parties and therefore, the Court inferred that the estranged wife would no longer rely on the allegations made in the complaint and would be deemed to have withdrawn or resiled from her previous stand that had led to the criminal trial. Thus, the matrimonial part of the matter has been compromised. The trial Court had not relied upon the compromise that the offence allegedly committed by the petitioner is not a compoundable offense. This Court explained the position relying on numerous decisions of the Court holding that in such circumstances the criminal proceedings would be an abuse of the process of law.

14. A reading of Regulation 29(4) of the Regulations leaves no manner of doubt that when the dismissal takes place under sub- Regulation (3) of Regulation 29 a conviction when set aside by a higher Court the employee is entitled to be reinstated in service. The regulation does not leave any discretion with the competent authority except in accordance with the Court verdict. It is settled position in law that when the regulation mandates reinstatement without any other qualification or rider then all natural consequences will follow or will deem in law to follow by legal fiction.

15. This Court when passed an order dated May 24, 2012 in CWP No. 15293 of 2009 left the question open to conscious decision with regard to payment of back wages. A reading of the order dated May 24, 2012 passed by this Court does not show that Regulation 29 was present in the mind of the Court when it passed the

order while observing that the petitioner would be entitled to retain and maintain his seniority as well as notional pay fixation. In the considered opinion of this Court is treated as a final on notional pay fixation then the liberty would not have been granted. It follows a priori that the issue with respect to back wages has to be decided de novo as per the regulations of the Bank and not on the personal notions of the competent authority determining the rights of the petitioner adverse to him.

16. I find nothing negative in the regulations cited before this Court depriving the petitioner of back wages much less for the period of six months and odd in this case since the dismissal did not take place by reason of the conduct which led to the conviction but simply on the mere fact of a conviction recorded by the trial Court which event has become non-existent due to acceptance of the criminal revision without any doubt expressed by the Court going beyond the acquittal. Merely because the matter was compromised on the matrimonial issue which forms sub stratum of the criminal complaint then an offence under Section 498-A of IPC is not to be viewed as a criminal offence involving a public wrong being essentially a dispute personal to the parties given criminal colour, one accusing the other defending himself to proclaim his innocence of the charge. If the petitioner was incarcerated in jail, it was in circumstances beyond his control and therefore, absent from duty or "overstayal" was because of Court action and Regulation 22 (ii) does not prohibit the period from being regularized by admissible leave. If leave was due and available to the credit of the petitioner in a service career spanning 20 years then the salary adjustment would serve the interest of justice to acquit the petitioner of the burden. It is in this manner Sub-Regulation 4 and 5 of Regulation 29 have to be read together covering both the issues of acquittal and absence from duty. Sub-Regulation 5 of Regulation 29 provides the bridge to tide over absence "otherwise then under circumstances beyond his control".

17. As a result of the above discussion, this Court is of opinion that the dismissal order has become non-est and a reading of the impugned orders passed by the disciplinary authority and the Board of Directors are misdirected, misconceived and therefore not sustainable in the eyes of law. I agree with the learned counsel for the petitioner that the orders have been passed in a casual and mechanical manner giving a go by to the legal provisions of the Regulations 2005 and on a careful analysis of the rule position, I have no doubt in my mind that the principle of ''no work no pay'' is not a correct doctrine to apply in this case because the petitioner never refused to offer his labour to the Bank after he was admitted to bail and faced the agony of a criminal trial launched by his wife which has been brought to naught by this Court in the criminal revision against the conviction and sentence awarded. In the view of this court the petitioner has been clearly wronged by grave misapplication of the relevant provisions of the regulations as noticed above.

18. For the reasons recorded, this petition is not found without substance and is

liable to be accepted and is accordingly allowed. As a necessary corollary the impugned orders dated August 6, 2012 (Annexure P-7) and of November 30, 2012 (Annexure P-9) are quashed on certiorari issued on the petition. The petitioner is held entitled to salary for the period claimed, that is, from October 15, 2009 to March 23, 2010. The petitioner is entitled to recover interest at the rate of 6% per annum from the respondent department accruing on the unpaid arrears of back salary. The same be calculated and paid to the petitioner within 8 weeks from the date of receipt of a copy of this order.

