
(2004) 11 KL CK 0017
In the High Court Of Kerala
Case No : W.A. No. 1020 of 2000

Joseph A.A.

APPELLANT

Vs

Union Bank of India and Others

RESPONDENT

Date of Decision : 02-11-2004

Acts Referred:

Citation : (2005) 1 ILR (Ker) 153 : (2005) 2 LLJ 697

Hon'ble Judges : K.P. Balachandran, J;J.B. Koshy, J

Bench : Division Bench

Advocate : M.R. Rajendran Nair, for the Appellant; A.S.P. Kurup, Standing Counsel, P. Balagangadhara Menon and B. Raghunandan, for the Respondent

Final Decision : Allowed

Judgement

J.B. Koshy, J.—Appellant/petitioner, an Ex-serviceman, while working as Armed Guard in the Panambilly Nagar Branch of the respondent Bank, was prosecuted on the allegation that he has stolen a signed blank cheque of customer of the Bank and then used it for his own purpose and he was convicted by the Chief Judicial Magistrate Court, Ernakulam. He was suspended by Exhibit P2 memo dated May 8, 1998. He was dismissed from service by Exhibit P3 order dated August 1, 1997 as he was convicted in the criminal case. No departmental enquiry was conducted against him. By Exhibit P4 appellate judgment dated September 4, 1997, he was acquitted. He made several representations like Exhibits P5 and P6 to the management for reinstatement. On February 3, 1998 by Exhibit P7 memo he was informed that it was decided by the management to reinstate him in service without pay and allowances for the intervening period and he was asked to await posting. Thereafter, he was posted only on February 18, 1998 by Exhibit P8. He rejoined service and by Exhibit P9 representation dated April 6, 1998, he requested for back wages. Since that was rejected, he approached this Court for back wages. The learned single Judge accepted the submission of the counsel for the Bank that Bipartite Settlement did not provide payment of back wages for the above period and held that he is not entitled for

back wages. The above finding is challenged before us.

2. According to the counsel for the appellant, he was acquitted by the criminal Court after having found that he is not guilty of the offence. In Exhibit P4 there is a clear finding that prosecution did not prove the case, that it was a cooked up story and the accused was made as a scapegoat and that there is no evidence to support the case of the prosecution. In the above circumstances, it is the submission of the appellant that he was illegally denied employment for a long period and he is entitled to for the same. The learned counsel for the Bank again reiterated that provisions of the Bipartite Settlement did not give him a right to get back wages for that period. It is also submitted that since he has rejoined duty without making protest, he is not entitled to claim back wages. Now we will consider the relevant clauses in the Bipartite Settlement.

3. Clause 19.3(c) and (d) are the relevant provisions, which are as follows:

"(c) If he be acquitted, it shall be open to the management to proceed against him under the provisions set out below in Clauses 19.11 and 19.12 *infra* relating to discharges. However, in the event of the management deciding after enquiry not to continue him in service, he shall be liable only for termination of service with three months" 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 the 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 allowances 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.

(d) If he prefers an appeal or revision application against his conviction and is acquitted, in case he had already been dealt with as above and he applies to the management for reconsideration of his case, the management shall review his case and may either reinstate him or proceed against him under the provisions set below in Clause 19.11 and 19.12 *infra* relating to discharge, and the provision set out above as to pay, allowances and the period of suspension will apply, the period up-to-date for which full pay and allowances have not been drawn being treated as one of suspension. In the event of the management deciding, after enquiry not to continue him in service, the employee shall be liable only for termination with three months" pay and allowances in lieu of notice, as directed above."

The employer can either take disciplinary action or await the decision of the criminal proceedings. The provisions in the Bipartite Settlement enables the management to take disciplinary action even after his acquittal. But it provides that even in cases where management decided to terminate the services of an employee after taking disciplinary proceedings, he is entitled to full pay and allowances for the period of suspension minus such subsistence allowance he has

drawn as he was acquitted by the criminal Court. However, the management was given a discretion to deny portion of the back wages if, he is acquitted by giving benefit of doubt. Clause 19.3(d) says that even if his services are terminated after finding of conviction and in appeal he is acquitted on representation he can be reinstated. It further says that even in such cases, he is entitled to full pay and allowances for the period of suspension and thereafter, only for three months' pay and allowances. Therefore, the provisions are clear that even if in the disciplinary action the employee is found guilty and management decided to terminate his service, he is entitled to full pay and allowance except the subsistence allowance during the period of suspension. In this case, he was under suspension pending enquiry from May 8, 1996 to August 1, 1997. During that period he has got only subsistence allowance. In view of the terms and regulations of the Bipartite Settlement he is entitled to full pay and allowances for the above period after deducting the subsistence allowance already paid during the above period. It is true that he was dismissed by order dated August 1, 1997 because of the conviction made by the criminal Court. It cannot be stated that the employer was faulty in dismissing him. But it is to be noted that hearing about his conviction the employer was immediate in taking action against him. He was acquitted by Exhibit P4 order dated September 4, 1997. In spite of his representations, the Bank took its own time to reinstate him. In such circumstances he is entitled to back wages, from the date of acquittal only as held by the Supreme Court in Union of India (UOI) and Others Vs. Jaipal Singh,

4. Learned counsel for the management relied on the decision of the Apex Court in Smt. K. Ponnammamma Vs. State of Kerala and others, . In that case it was held that payment of back wages under the Kerala Service Rules is the discretion of the management. The above judgment is based on the provisions of the Kerala Service Rules where the employer is given the discretion to decide about granting of back wages. Considering the criminal charge, finding of acquittal etc. there the disciplinary authority exercised its discretion and denied the back wages. It was upheld by the Apex Court. Same is the decision in Ranchhodji Chaturji Thakore Vs. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar, (Gujarat) and another, .

5. In this case the appellate Court held that the case against the appellant was concocted and prosecution has no case against him and appellant was made a scapegoat. Here, according to the appellant, he was illegally denied employment, hence he is entitled to full back wages. It cannot be stated that he was illegally denied employment. As originally he was convicted, the employer was justified in dismissing him and since he was acquitted, he is entitled to be reinstated. Therefore, he is not entitled to back wages for the period from the date of dismissal till the date of acquittal. But from the date of acquittal, he is entitled to full back wages. As per the Regulations, even if the acquittal is on the benefit of doubt, they are bound to pay part of the back wages at the discretion of the management. That shows that there is a discretion left to the management in giving back wages after the date of acquittal, holding that the case is concocted.

The management also did not decide to conduct enquiry after the acquittal.

6. With regard to the claim for estoppel, the petitioner relied on the decision of the Supreme Court in *Sanat Kumar Dwivedi Vs. Dhar Jila Sahakari Bhoomi Vikas Bank Maryadit and Others*, . There the claimant was dismissed from service on March 8, 1976. Thereafter he was reinstated in service on condition that he will not get any back wages. He accepted that condition and rejoined duty. Much later he claimed back wages. The Supreme Court held that since he was reinstated with a specific condition that he was not entitled to back wages, he cannot claim after long delay. In this case, after acquittal he was reinstated not as a grace of the employer or by agreement with a condition that he will not be entitled to back wages. In other words, the order of reinstatement was not made with a condition that will be implemented only if he agreed with denial of back wages. But it is only stated that he will not be entitled to pay and allowances for that period, based upon the interpretation of the regulation. He claimed back wages immediately after the reinstatement. Therefore, it cannot be stated that a poor security guard, who was denied employment for a long time not for his fault, when given reinstatement, rejoined duty and then claimed back wages, is estopped from claiming back wages. In the above circumstances, we are of the opinion that he is entitled to wages during the period of suspension, after deducting subsistence allowance already drawn for the period he was under suspension pending enquiry, and full back wages from the date of acquittal till the date of reinstatement. But he will not be entitled to back wages from the date of dismissal till the date of acquittal.

7. The writ appeal is allowed to the above extent.