
(2015) 11 P&H CK 0060

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. Nos. 5076 of 2012 and 5605 of 2013

K.C. Sareen and Others

APPELLANT

Vs

Punjab National Bank and Others

RESPONDENT

Date of Decision : 20-11-2015

Acts Referred:

Banking Regulation Act, 1949 — Section 10(1)(b), 10(1)(b)(i)
Dowry Prohibition Act, 1961 — Section 4
Penal Code, 1860 (IPC) — Section 120-B, 302, 34, 420, 498A
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)

Citation : (2016) 181 PLR 106

Hon'ble Judges : Hemant Gupta and Raj Rahul Garg, JJ.

Bench : Division Bench

Advocate : Damanpreet Kaur, Advocate for Arjun Partap Atma Ram, Advocate, for the Appellant; Saurav Verma, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Hemant Gupta, J.—This order shall dispose of aforementioned two writ petitions i.e. CWP No. 5076 of 2012 and 5605 of 2013, raising identical question of law and facts.

2. The petitioners in CWP No. 5076 of 2012 were appointed as Clerks with the respondent - Bank in the year 1982. Pursuant to an FIR lodged in the year 1995 for the offences under Sections 420 /120-B read with Section 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988, the petitioners were convicted by the learned Special Judge on 27.05.1999. On the basis of such order of conviction, the petitioners were served with a show cause notice tentatively deciding to award the punishment of "Dismissal from Service" in terms of para 19.6(a) of the Bipartite Settlement dated 19.10.1966. It is, thereafter, on 11.06.1999, an order of dismissal of service was passed against the petitioners. The petitioners filed an appeal against the judgment of conviction dated 27.05.1999. The said appeal was dismissed by this Court on 22.12.2005. Aggrieved against the judgment of this Court, separate appeals were filed by the petitioners before the

Hon"ble Supreme Court. The said appeals were allowed vide common order dated 24.11.2010 passed in Criminal Appeal No. 410 of 2006 titled "K.C. Sareen v. SPE, CBI, Chandigarh & others", when it was observed as under:

"Having heard learned counsel for the parties and having gone through the record of the case, we are of the opinion that, on the facts of the case, the material on record does not establish the case of the prosecution beyond reasonable doubt. Therefore, the appellant is acquitted of the charges leveled against him.

The impugned judgment and order of the High Court is set aside. The appeal is allowed accordingly."

3. It is, thereafter, the petitioners submitted representations for reinstatement in service. The petitioners were reinstated on 23.02.2011, but the petitioners were not found entitled to any back-wages and related benefits as a natural or necessary consequences of such reinstatement. The petitioners submitted representations for payment of the back-wages and other consequential benefits. However, the representations of petitioner No. 1 and petitioner No. 2 were rejected on 01.04.2011 and 09.04.2011 respectively. Aggrieved against the action of the respondent - Bank, the petitioners filed the present writ petition.

4. Initially, the writ petition was being heard by the learned Single Bench, but the petitioners thereafter sought amendment in the writ petition, so as to challenge the vires of Section 10(1)(b)(i) of the Banking Regulation Act, 1949. Since there was a challenge to the statutory provisions, the matter was placed before the Division Bench in terms of the Rules of this Court.

5. The relevant provision of the Banking Regulation Act, 1949 i.e. Section 10(1)(b)(i) reads as under:

"10. Prohibition of employment of managing agents and restrictions on certain forms of employment:

(1) No Banking company -

(a) shall employ or be managed by a managing agent; or

(b) shall employ or continue the employment of any person:--

(i) who is, or at any time has been, adjudicated insolvent, or has suspended payment or has compounded with his creditors, or who is, or has been, convicted by a criminal Court of an offence involving moral turpitude;

xx xx"

6. The stand of the respondent - Bank in the written statement is that acquittal of the petitioners is not honourable, as they have been acquitted by giving them benefit of doubt, which is totally different from the facts and circumstances in respect of the acquittal of Madan Lal, another co-accused with the petitioners. The respondents relied upon a judgment of Hon"ble Supreme Court reported as

State Bank of India and Another Vs. Mohammed Abdul Rahim, .

7. On the other hand, CWP No. 5605 of 2013 is preferred by another co-accused, who was acquitted by learned Special Judge, but convicted by this Court vide judgment dated 22.12.2005. However, in further appeal, the Hon''ble Supreme Court passed an order of acquittal.

8. Before this Court, learned counsel for the petitioner(s) argued that the judgment referred to by the respondents in Mohammed Abdul Rahim's case (supra) is not applicable to the facts of the present case inasmuch as the services of the petitioners were dismissed without holding any departmental enquiry, but only on the basis of judgment of the criminal Court. Once the said judgment has been set aside on any ground whatsoever, the petitioners are entitled to wages for the period they were kept out of service for an action initiated by the respondents themselves. The judgment in Mohammed Abdul Rahim's case (supra) arises out of a fact where the criminal proceedings were not initiated at the instance of employer or in relation to conduct of the employee while working with the employer, but on account of criminal proceedings initiated for an offence under Section 498A IPC read with Section 4 of the Dowry Prohibition Act, 1961. For such conviction, the employer was not responsible and, therefore, the employer has not been rightly made responsible for payment of back-wages, whereas in the present case, the criminal proceedings have been initiated on a complaint moved by the respondent - Bank and the Bank has to prove the charges against the petitioners before the criminal Court. Thus, the petitioners would be entitled to all benefits for the action initiated by the Bank against the petitioners. Learned counsel for the petitioner(s) also relied upon two Division Bench judgments of this Court rendered in CWP No. 18691 of 2005 titled "Jai Bhagwan v. Dakshin Haryana Bijli Vitran Nigam Ltd. & others" decided on 11.03.2008 and CWP No. 11994 of 2007 titled "Chhinder Pal v. Commissioner, Municipal Corporation, Ludhiana & others" decided on 01.09.2008 apart from the judgment of Hon''ble Supreme Court reported as Joginder Singh Vs. Union Territory of Chandigarh, .

9. On the other hand, learned counsel for the respondent - Bank relied upon the judgments of Hon''ble Supreme Court reported as Ranchhodji Chaturji Thakore Vs. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar, (Gujarat) and another, ; Union of India (UOI) and Others Vs. Jaipal Singh, ; Baldev Singh Vs. Union of India (UOI) and Others, and Banshi Dhar Vs. State of Rajasthan and Another, .

10. Firstly, we will discuss about the challenge to the legality of Clause (i) of Section 10(1)(b) of the Bank Regulation Act, 1949. The said provision is prohibition of employment of a person, who is or has been convicted by a criminal Court of an offence involving moral turpitude. Such provision is applicable at the time of appointment of an employee that a person, who has been convicted, cannot be appointed by a Banking Company. After employment, the relationship is governed either by Bipartite Settlement or the Service

Regulations of the Bank. Section 10(1)(b)(i) is not applicable to an employee, who is said to have mis-conducted subsequent to his appointment or is convicted.

11. Still further, even if the said provision is applicable, the bar is in respect of engagement of a person convicted by a criminal Court for an offence involving moral turpitude. The petitioners were tried by a criminal Court. They were convicted by the trial Court as well as in appeal by this Court. However, the Hon"ble Supreme Court acquitted the petitioners. Once acquitted, the petitioners cannot be said to be convicted by a criminal Court for an offence much less of moral turpitude. Therefore, we find that the provisions of Section 10(1)(b)(i) are neither unreasonable or unwarranted nor even applicable to the facts of the present case.

12. Coming to the merits of the claim regarding wages for the period the petitioners were out of service, suffice is to state that the judgments referred to by the learned counsel for the respondents are all those cases, whereby the acquittal in a criminal case was initiated other than by the employer except in Banshi Dhar's case (supra). In Banshi Dhar's case (supra), the employee crossed the age of superannuation on the date of passing of the judgment of acquittal. The Court referred to Ranchhodji Chaturji Thakore's case (supra) to hold that grant of back-wages is not automatic. The Court has held that the grant of back-wages is required to be considered in each case. It has been held to the following effect:

"9. No hard-and-fast rule can be laid down in regard to grant of back wages. Each case has to be determined on its own facts. A grave charge of criminal misconduct was alleged against him. He was also found guilty of the delivering its judgment dated 16.01.2001 in SB Criminal Appeal No. 68 of 1985 inter alia held that the prosecution has not been able to prove that any demand had been made by him."

13. In the present case, the order of dismissal was passed solely on the basis of judgment of the criminal Court. Once the foundation of an order has been knocked down by a subsequent order of the Hon"ble Supreme Court, such order of dismissal is non-est for all purposes. The petitioners would be entitled to the salary for the period, they were kept out of service on account of an order of dismissal passed on the basis of an order of conviction, which order has since been set aside.

14. The judgment of Hon"ble Supreme Court in Jaipal Singh's case (supra) was directed against an order passed by this Court reported as Jaipal Singh v. Union of India & others 2002 (2) SLR 197. In the said case, Jaipal Singh was convicted for an offence under Section 302 IPC, but after acquittal, he was reinstated. The Hon"ble Supreme Court noticed the distinction between proceedings initiated by the department itself and by the third person. The Court held to the following effect:

"4.If prosecution, which ultimately resulted in acquittal of the person

concerned was at the behest of or by the department itself, perhaps different considerations may arise. On the other hand, if as a citizen the employee or a public servant got involved in a criminal case and if after initial conviction by the trial court, he gets acquittal on appeal subsequently, the department cannot in any manner be found fault with for having kept him out of service, since the law obliges a person convicted of an offence to be so kept out and not to be retained in service. Consequently, the reasons given in the decision relied upon, for the appellants are not only convincing, but are in consonance with reasonableness as well. Though exception taken to that part of the order directing reinstatement cannot be sustained and the respondent has to be reinstated in service, for the reason that the earlier discharge was on account of those criminal proceedings and conviction only, the appellants are well within their rights to deny back wages to the respondent for the period he was not in service. The appellants cannot be made liable to pay for the period for which they could not avail of the services of the respondent. The High Court, in our view, committed a grave error, in allowing back wages also, without adverting to all such relevant aspects and considerations. Consequently, the order of the High Court insofar as it directed payment of back wages is liable to be and is hereby set aside."

15. In Jai Bhagwan's case (supra), a Division Bench of this Court was considering Rule 7.5 of the Punjab Civil Services Rules, Volume I Part I, as applicable to Haryana. After considering the judgment of Hon'ble Supreme Court in Jaipal Singh's case (supra), the Bench concluded as under:

"Rule 7.5 of the Rules referred to by the petitioner deals with the suspension during the pendency of the criminal proceedings. The adjustment of the allowances for such period contemplated to be made according to the circumstances of the case will make the employer liable to make the payment of the back wages only if he was deprived of the wages for an action by the employer. In the present case, the custody of the petitioner was not on account of any act of the respondents. Therefore, the order passed by the authorities granting leave of the kind due for the period of detention is in fact in terms of Rule 7.5 of the Rules and in accordance with the principles of law enumerated by the Hon'ble Supreme Court."

16. In Chhinder Pal's case (supra), the Division Bench held as under:

"As discussed in Jai Bhagwan's case (supra), the cases of the employees claiming arrears fall in two categories. One is where an employee is suspended on account of disciplinary action initiated or contemplated by the employer. In such cases, on exoneration in the departmental inquiry proceedings, the employee shall be entitled to arrears of salary, but in case, where an employee is suspended on account of his involvement in a criminal case not at the instance of the employer, the employer cannot be saddled with the liability of payment of arrears of salary on the principle of "no work no pay", as such action was not initiated at the instance of the employer."

17. Another Division Bench of this Court Haryana Financial Corporation & another v. Balraj Goyal 2010 (2) ILR (P&H) 1030, has held to the following effect:

"8. A conjoint reading of aforesaid regulations would show that in case an employee is exonerated in departmental enquiry, then he is entitled to grant of full salary as if he has never been placed under suspension. Even in a case where he has suffered punishment of reprimand, as per provisions of clause (a) of sub-regulation (1) of Regulation 41, he would be entitled to full salary. The rationale behind these regulations is that suspension on exoneration of such an employee was not justified. Likewise, in a criminal case, which is covered by Regulation 40, if the proceedings have been terminated then in the event of his acquittal of all blame, then he must be treated as on duty during the period of his absence. However, if an employee has been initially convicted and the conviction is set aside by the higher court, then such an employee may be reinstated in service. It is evident that the same rationale permeates through Regulations 40 and 41, therefore, the view taken by the learned Single Judge does not suffer from any legal infirmity warranting interference by this Court."

18. In Ranchhodji Chaturji Thakore's case (supra), the Hon'ble Supreme Court has said that question of back wages would be considered only if the respondents have taken action by way of disciplinary proceedings and the action was found to be unsustainable in law and the employee was unlawfully prevented from discharging the duties. It is in that context, the conduct become relevant. The petitioner was not found entitled to back wages for the reason that he had involved himself in a crime and had disabled himself from rendering the service on account of conviction and incarceration in jail. It was again on the basis of conviction for an offence under Section 302 read with 34 IPC.

19. In view of the above, we find that the petitioners were not permitted to work on account of an action taken by the respondents solely based upon their trial in the criminal case. The conviction has since been set aside. Thus, the petitioners are entitled to wages from the date of dismissal till the date of their reinstatement in the facts of the present case. The respondents are directed to pay the arrears of back wages within a period of three months.

20. Consequently, both the writ petitions are disposed of.