
(1988) 10 PAT CK 0014

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 690 of 1988

Krishna Nand Choudhary

APPELLANT

Vs

Punjab National Bank and another

RESPONDENT

Date of Decision : 05-10-1988

Acts Referred:

Constitution of India, 1950 — Article 137, 226, 26, 32

Citation : (1989) PLJR 930

Hon'ble Judges : S.B. Sanyal, J

Bench : Single Bench

Advocate : Basudev Prasad and Sunil Kumar, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sanyal, J.—In this writ application, the petitioner who is an employee of Punjab National Bank, seeks quashing of Annexure 15(i) along with its enclosure dated 21/22nd May, 1985, by which the appellate authority has reduced the punishment of dismissal of the petitioner from Bank's service to that of major penalty of reduction of his salary by two stages in the time scale, in which he is at present placed, and further ordered that he will not be entitled to any salary for the period he remained under suspension except subsistence allowance payable to him in terms of rules, as also Annexure 9 dated 26th December 1986 by which his representation has been dismissed in view of the judgment of the Supreme Court in writ Petition No. 795 of 1985 filed by the petitioner. His further prayer is to quash the entire departmental proceeding initiated against him and to pay all the emoluments consisting of pay, house rent, medical allowance, encashment of leave travel concession facility along with interest. He has further prayed to quash his suspension from 26.7.1976 to 10.6.1986 and to grant him cost of litigation, quantified at Rs. 50,000/- He has also asked for declaring Regulation 12(4) of Punjab National Bank Officer Employees (Discipline and Appeal) Regulations, 1977 (hereinafter to be referred to as "Regulations") to be ultra vires, illegal and without jurisdiction, etc, This case has a very chequered

career. I will, therefore, state the relevant facts for deciding the points raised and pressed before me.

The petitioner was a Branch Manager, Grade "B" Officer in the Punjab National Bank. On 26.7.1976, he was suspended and was served with a chargesheet on (29.7.1977)/(2.8.1977) by the Regional Manager of the Bank at Patna. There were five charges which were served upon him, and on petitioner's denial of the charges, a departmental inquiry was initiated. The petitioner was found guilty of some of the charges and his services were terminated on 14th September, 1978. As against the order of termination of the service, the petitioner preferred a writ petition, bearing C.W.J.C. No. 1896 of 1979, and the High Court quashed the order of termination and allowed the writ petition by judgment and order dated 1st of September, 1981. The High Court, however, gave the following direction :

We may, however, observe that if the Disciplinary authority is so advised and it still wants to pursue the matter, it shall be at liberty to frame charges in accordance with law and in consonance with the regulations and afford a reasonable and effective opportunity of being heard to (he petitioner and thereafter pass appropriate orders Till., such an inquiry is not made and the petitioner's services not terminated in consequence of any future proceeding, the petitioner will be deemed to continue in the service of the Bank which will entitle him to all the emoluments and other consequential benefits to which he would otherwise have been entitled under his condition of service. (Annexure 21)." As against this order, the Bank moved the Supreme Court by a Special Leave to Appeal (Civil) No. 8197 of 1981, which was dismissed by an order dated 9.11.1981 (Annexure 22). On 30.11.1981, the petitioner filed a writ petition in this Court bearing C.W.J.C. No. 4264 of 1981, challenging his re-suspension on 14.11.1981 with effect from 14.9.1978 in terms of Regulation 12(4) of the Regulations and initiation of a fresh proceeding against him. The said writ petition was dismissed by this Court on merit on 30.11.1981. It was observed that there is no legal infirmity in the impugned order as passing of such an order is permissible under Regulation 12(4) of the Regulations. It was further observed that Regulation 12(4) is not ultra vires in view of the decision of the Supreme Court in Khem Chand Vs. Union of India (UOI), . The petitioner filed another writ petition, bearing C.W.J.C. No. 5203 of 1984, for quashing the departmental proceeding which was initiated in the year 1981 also continuing suspension from 26.7.1976 and to consider his case for promotion pending departmental proceeding. This Court refused to quash the departmental proceeding and the order of suspension, but directed to conclude the departmental proceeding within four months from the date of the der viz. 15.3.1985 (Annexure 2). As against this order of the High Court the Bank moved the Supreme Court in SLP (Civil) No. 5807 of 1985, but the Supreme Court by its order dated 19th April, 1985, disposed of the SLP by extending the period of completion of the departmental proceeding against the petitioner by two months (Annexure 3).

2. The petitioner filed a contempt petition bearing M.J.C. No. 672 of 1985 for

violation of the order passed by the High Court on 1.8.1981 in C.W.J.C. No. 1896 of 1979, submitting that he is not being paid his dues as per judgment of the High Court and his suspension is being continued from 26.7.1976. This Court on 23.1.1986 ordered that under Clause 4 of Regulation 12, the petitioner's suspension could only be from the date of the original order of dismissal and removal and continue to remain under suspension until further orders. It was, therefore, ordered that the petitioner shall be entitled to all consequential benefits till 14th September, 1978, when he was originally dismissed, which was quashed, and from that date onward, he will be under suspension in view of further inquiry (Annexure 1). It may be stated here that as against the direction of this Court in M.J.C. No. 672 of 1985 decided on 23.1.1986, for violation of the order passed in C.W.J.C. No. 1896 of 1979 on 1.9.1981, the Bank moved the Supreme Court in Special Leave to Appeal (Civil) No. 3116 of 1986, and the Supreme Court while granting special leave ordered that the amount already deposited by the Bank will be withdrawn by the petitioner on condition of furnishing security to the satisfaction of the Registrar in the event of the appeal being allowed. Civil Appeal No. 1559 of 1986, however, was disposed of on 23.10.1986 because the petitioner had withdrawn the amount already deposited and the Bank gave an undertaking not to recover the amount back from the petitioner (Annexure 6).

On 21.11.1985, the petitioner was dismissed from service once again which led the petitioner to file another writ petition bearing C.W.J.C. No. 1860 of 1986, challenging the order of his dismissal, but this Court by order dated 24.4.1986 directed the petitioner to exhaust the remedy of filing an appeal under the Regulations. After the dismissal of C.W.J.C. No. 1860 of 1986 by the High Court, on the ground of alternative remedy, the petitioner filed a writ petition under Article 32 of the Constitution of India before the Supreme Court, which was registered as writ petition No. 795 of 1986. In this writ petition the petitioner challenged the order of his dismissal from service, but during the pendency of the said writ petition, the appeal filed by the petitioner was also disposed of on 21st May 1986 imposing the punishment already indicated above (Annexure 15).

3. The petitioner filed a supplementary affidavit in the pending writ petition before the Supreme Court, wherein he challenged the validity of the appellate order dated 21st May 1986 (Annexure 15) by marking it as Annexure 20 before the Supreme Court. The main grounds taken in the supplementary affidavit were inclusion of new charges, procedural lapses, the validity of Regulation 3(3) of the Regulations, deciding the appeal on inadmissible evidence by using statements of persons not examined in the departmental proceeding, the finding of the appellate authority being contradictory, not completing the inquiry within the time allowed by the Supreme Court in S.L.R. (Civil) No. 5807 of 1985 by order dated 29th April, 1985 (Annexure 3). Therefore, even though the charges were not proved, the petitioner has been put to sufferance by reduction of pay by two stages.

On 25.8.1986, the writ petition No. 795 of 1986 filed under Article 32 of the Constitution of India was dismissed. The Supreme Court passed the following order :

The writ petition is rejected. It will, however, be open for the management of the Punjab National Bank to consider, in the event of the petitioner showing marked improvement in the discharge of his responsibilities, whether the order of penalty imposed on him should not be superseded on a subsequent date prospectively. (Annexure 5)

The petitioner filed Civil Miscellaneous petition in the said Writ Petition No. 795 before the Supreme Court and the said Civil Miscellaneous Petition is disposed of as withdrawn with the following observations :

The petitioner who appears in person prays for permission to withdraw the Civil Miscellaneous Petition as he proposes to apply to the High Court for relief. The Civil Miscellaneous Petition is disposed of as withdrawn (Annexure 7).

Thereafter, the present writ petition has been filed in the High Court for the reliefs already indicated earlier.

4. The petitioner has submitted that he withdrew the Civil Appeal No. 1559 of 1986 as "The Hon"ble Chief Justice of India in a helpful gesture suggested the humble petitioner who appeared in person to raise all the issues first in this Hon"ble Court and advised him to withdraw the petition and passed the order "already extracted above."

5. Mr. Basudev Prasad appearing on behalf of the Bank raised a preliminary point that this writ petition is not maintainable and is barred by res judicata, since, the petitioner seeks to raise the same question for quashing the appellate order, which was dismissed on merit by the Supreme Court in an earlier writ petition filed before it under Article 32 of the Constitution of India. According to the learned counsel, even though originally the writ petition under Article 32 of the Constitution confined to the second order of dismissal of the petitioner by the original authority, but the petitioner subsequently amended his writ before the Supreme Court for quashing the appellate order as well which was passed during the pendency of the writ petition. He further submitted that the initiation of the second departmental proceeding as also vires of Regulation 12(4) of the Regulations was also challenged before this Court in C.W.J.C. No. 4264 of 1981, and that too, was dismissed by this Court. Therefore the petitioner cannot be permitted to challenge the second departmental proceeding as also the order passed by the appellate authority.

6. The petitioner, in reply to the said preliminary objection, submitted that the order of the Supreme Court is not a speaking order and therefore, it cannot be held to be res judicata in the instant writ petition. He also contended that his writ petition before the Supreme Court was abridgement of his fundamental right, whereas the writ petition under Article 226 of the Constitution envisages a larger

jurisdiction, including the violation of statutory right as also violation of the direction of this Court passed in earlier judgment. Both parties have relied on various decisions of the Supreme Court on this aspect of the issue which will be adverted to later.

7. Most of the petitioner's contentions, both pre and post dismissal order of 2.11.1985 before this Court or before the Supreme Court are repetition of the same old story of various legal infirmities touching the very initiation of the second departmental proceeding under Regulation 12(4) of the Regulations and/or the re-initiated departmental inquiry and its report vitiated by perversity, breach of principles of natural justice, so on and so forth. The impugned appellate order dated 21.5.1986 (Annexure 15) was assailed before the Supreme Court in Writ Petition No. 795 of 1986 by way of supplementary affidavit, even though it was initially directed against the order of dismissal dated 21.11.1986. The petitioner repeat ted the same contentions as were raised in C.W.J.C. No. 4264 of 1981, which was dismissed on 30.11.1981, C.W.J.C. No. 1960 of 1986, dismissed on 24.4.1986 and C.W.J.C. No. 5203 of 1984 disposed of on 15.3.1985.

The main attack of the appellate order of the disciplinary authority in the supplementary affidavit filed by the petitioner in the pending writ petition before the Supreme Court was on the ground of it being non-speaking, extension of charges is beyond the scope of further inquiry as envisaged under Regulation 12(4) of the Regulations, legal validity of Rule 3(3) of the Conduct Rules, procedural lapses, error of judgment, reliance upon inadmissible evidence and not concluding the departmental proceeding within the time fixed by the Supreme Court in SLP No. 5807 of 1983 dated 29.4.1985 and the charge proved does not justify the punishment of reduction of pay by two stages in the present time scale.

8. Before this Court, on amongst others, the petitioner, who appears in person, has strenuously urged a new point. The attack being that part of the appellate judgment (Annexure 15/1) which directs :

(a) "However, he will not be entitled to any salary for the period he remained under suspension except subsistence allowance payable to him in terms of the rules."

(b) "Further, he should not be given independent charge of office for a period of three years from the date of the order.

The petitioner submits that direction (a) by the appellate authority is in violation of the decision of this Court in C.W.J.C. No. 1896 of 1979 dated 1st September, 1981, which attained finality when the SLP No. 8197 of 1981 was dismissed by the Supreme Court on 8.11.1981. He also submits that this part of the direction is even violative of the Regulations, because even though the suspension was of an interim nature, it has been imposed by the appellate authority by way of punishment, which punishment is not provided for in the Regulations. Under the Regulations, suspension can only be finally sustained when an order of dismissal

and removal is passed.

9. In order to appreciate this particular point urged by the petitioner, I would like to extract the directions contained in the said C.W.J.C. No. 1896 of 1979, even though I may be guilty of repeating it, as also Regulations 4 and 12.

if the disciplinary authority is so advised and it still wants to pursue the matter, it shall be at liberty to frame charges in accordance with law and in consonance with the regulations and afford a reasonable and effective opportunity of being heard to the petitioner and thereafter pass appropriate orders. Till such an inquiry is not made, and the petitioner's services not legally terminated in consequence of any proceeding, the petitioner will be deemed to continue in the service of the Bank which will entitle him to all the emoluments and other consequential benefits to which he would otherwise have been entitled under his conditions of service.

Penalties.--The following are the penalties which may be imposed on an officer employee for acts of misconduct or for any other good and sufficient reasons.

Minor Penalties.--

- (a) Censure;
- (b) Withholding of increments of pay with or without cumulative effect;
- (c) Withholding of promotion;
- (d) Recovery from pay or such other amount as may be due to him of the whole or part of any pecuniary loss caused to the bank by negligence or breach of orders.

Major Penalties:

- (e) reduction to a lower grade or post, or to a lower stage in time scale;
- (f) compulsory retirement;
- (g) removal from service which shall not be a disqualification for future employment;
- (h) dismissal which shall ordinarily be a disqualification for future employment;

Explanation : The following shall sot amount to a penalty within the meaning of this regulation, namely :--

- (i) withholding of one or more increments of an officer employee on account of his failure to pass a prescribed departmental test or examination in accordance with terms of appointment to the post which holds;
- (ii) stoppage of pay of an officer employee at the efficiency bar in a time scale, on the ground of his unfitness to cross the bar;
- (iii) non-promotion, whether in an officiating capacity or otherwise, of an officer

employee, to a higher grade or post for which he may be eligible for consideration but for which he is found unsuitable after consideration of his case;

(iv) reversion to a lower grade or post, of an officer employee officiating in a higher grade or post, on the ground that he is considered, after trial, to be unsuitable for such higher grade or post, or on administrative grounds unconnected with his conduct;

(v) reversion of his previous grade or post, of an officer employee appointed on probation to another grade or post, during or at the end of the period of probation, in accordance with the terms of his appointment or rules or orders governing such probation;

(vi) reversion of an officer employee to his parent organisation in case he had come on deputation.

(vii) termination of service t-

(a) of an officer employee appointed on probation, during or at the end of the period of probation, in accordance with the terms of this appointment, or the rules or orders governing such probation.

(b) of an officer employee appointed in a temporary capacity otherwise than under a contract or agreement, on the expiration of the period for which he was appointed, or earlier in accordance with the terms of his appointment;

(c) of an officer employee appointed under a contract or agreement, in accordance with the terms of such contract or agreement; and

(d) of an officer employee on abolition of post.

(viii) retirement of an officer employee on his attaining the age of superannuation in accordance with the rules and orders governing such superannuation;

(ix) termination of employment of a permanent officer employee by giving 3 months' notice or on payment of 3 months' pay and allowances in lieu of notice.

(x) termination of employment of an officer employee ON medical grounds, if he is declared unfit to continue in bank's service by the bank's medical officer.

Regulation 12 of the Regulations deals with suspension and it reads as under :

12. Suspension.--(1) An officer employee may be placed under suspension by the competent authority--

(a) where a disciplinary proceeding against him is contemplated or is pending, or

(b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial.

(2) An officer employee shall be deemed to have been placed under suspension

by an order of the competent authority-- (a) with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise for a period exceeding fortyeight hours".

(b) with effect from the date of conviction, if in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding fortyeight hours and is not forthwith dismissed or compulsorily retired consequent to such conviction.

Explanation. --The period of fortyeight hours referred to in clause (b) of this sub-regulation shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall, be taken into account.

(3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon an officer employee under suspension is set aside in appeal or on review under these regulations and the case is remitted for further inquiry or action or with any directions, the order of the suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon an officer employee under suspension is set aside or declared or rendered void in consequence of or by a decision of a Court of law, and the disciplinary authority on consideration of the circumstances of the case decides to hold further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the officer employee shall be deemed to have been placed under suspension by the competent authority from the date of the original order of dismissal) removal or compulsory retirement and shall continue to remain under suspension until further orders.

(5) (a) An order of suspension made or deemed to have been made under this regulation shall continue to remain in force until it is modified or revoked by the authority competent to do so.

(b) An order of suspension made or deemed to have been made under this regulation may at any time be modified or revoked by the authority which made or is deemed to have made the order."

The petitioner has contended that the second suspension of the petitioner from 14.9.1978 till the appellate order passed on 21.5.1986 was by interim measure as a departmental inquiry for the purpose of his dismissal and/or removal was under consideration. He has also contended that suspension by way of punishment is not provided for under the Regulations, By the appellate order dated 21.5.1986, the suspension of the petitioner has been revoked by the appellate authority, but a punishment has been imposed by depriving him of full salary and other consequential benefits to which he is entitled to both under the

Regulations as well as under the judgment of this Court in C.W.J.C. No. 1986 of 1979.

10. Mr. Basudev Prasad, learned counsel appearing for the Bank, has contended that the petitioner cannot assail any part of the appellate order, his right being barred either by the general principles of *res judicata* or constructive *res judicata*, in view of the dismissal by the Supreme Court of Writ Petition No. 705 of 1986 on 25.8.1986. The petitioner in reply submitted that the Court do not exist to legalise any injustice on technical grounds. He further contended that the order of the Supreme Court is not a speaking order and this question being a question of violation of statutory right and/or judgment of this Court, cannot be held to be barred by constructive *res judicata*, since, the scope of Writ Petition No. 595 of 1986 under Article 32 of the Constitution of India was confined to breach of the fundamental right only.

11. It is now almost a settled law that when Special Leave Petitions are dismissed against the order of a Tribunal, filing of a writ petition in the High Court against the award is not barred by the principles of *res-judicata* : See the case of *Workmen of Cochin Port Trust Vs. Board of Trustees of The Cochin Port Trust and Another*, . It is also the settled law that when a writ petition under Article 26 of the Constitution is dismissed on merit, it operates as *res judicata* in a subsequent suit : See *Gulabchand Chhotalal Parikh Vs. State of Bombay (Now Gujarat)*, . It is also correct that where a petition under Article 226 is dismissed in limine, without a speaking order, such dismissal would not constitute a bar of *res judicata* to a subsequent petition on the same cause of action. In the case of *Daryao and Others Vs. The State of U.P. and Others*, , it was held that when the petition filed in the High Court under Article 226 is dismissed not on merit but because of laches of the party applying for the writ or because the party had an alternative remedy available to it, then the dismissal of the writ petition would not constitute a bar to the subsequent petition under Article 32 . It was also held that if the order is on the merits, it would be a bar. In the case of *Hoshnak Singh v. Union of India and others* (A.I.R. 1979 SC 1328), the Supreme Court reiterated the observation made in *Daryao*'s case to the effect that:

If the petition is dismissed in limine without passing a speaking order, then such dismissal cannot be treated as creating a bar of *res judicata*. It is true that, *prima facie*, dismissal in limine even without passing a speaking order in that behalf may strongly suggest that the Court took the view that there was no substance in the petition at all, but in the absence of a speaking order it would not be easy to decide what factors weighed in the mind of the Court and that makes it difficult and unsafe to hold that such a summary dismissal is a dismissal on merit and as such constitutes a bar of *res judicata* against a similar petition filed under Article 32 .

(emphasis added).

It is, therefore, that when C.W.J.C. No. 1860 of 1986 was dismissed on the

ground of alternative remedy by this Court in view of the provision for appeal, the Supreme Court entertained the Writ Petition No. 795 of 1986, since, the dismissal of the writ petition by the High Court was not on merits.

12. The question that arises in the case is where a writ petition filed in the Supreme Court under Article 32 is dismissed on merits, could a writ petition under Article 226 of the Constitution against the same cause of action is maintainable on the same analogy. When the High Court dismisses on merit a writ petition under Article 226, no writ petition under Article 32 of the Constitution is maintainable, as held by the Supreme Court in the case of *Tilokchand and Motichand and Others Vs. H.B. Munshi and Another*, . In the case of *The Metal Corporation of India Ltd. and another v. Union of India and another* (AIR 1979 Cal 15), the Calcutta High Court took the view that notwithstanding the fact that the order of the Supreme Court dismissing the writ petition under Article 32 of the Constitution was not a speaking order, it was still an order on merits for the reason that the right to move the Supreme Court under Article 32 being itself a fundamental right, the Supreme Court would not reject the application on any other ground, namely, laches or the existence of alternative remedy. Therefore, the dismissal of the petition by the Supreme Court in limine, must be taken to be a dismissal on the ground that no fundamental right of the petitioner had been violated and therefore, a writ petition filed subsequently in the High Court is barred by *res judicata*. To the same effect is a Division Bench decision of the Delhi High Court in the case of *Ram Gopal v. Union of India* (1972 SLR 258). It was held that a reference to the order of the Supreme Court dismissing Civil Writ No. 27" of 1968 will show that though the petition was dismissed in limine yet in the circumstances, it has been held that it was dismissed on merit. It is not essential that the Supreme Court should give detailed order indicating reasons for dismissal before it can be held that the said writ petition was dismissed on merit" and having thus stated the law, the writ petition filed in the High Court under Article 226 of the Constitution was held to be barred by the principles of *res judicata*. The petitioner's contention that *Hoshnak Singh's* case supports his stand that the Supreme Court order under Article 32 being not a speaking one the petitioner cannot be shut out from re-agitating the matter under Article 226 of the Constitution, does not appear to be sound.

Apart from the reasons given in the case of the Metal Corporation of India Ltd. by the Calcutta High Court, in my opinion, the crux of the question is whether the writ petition has been dismissed either before the Supreme Court or in the High Court on merits so as to constitute the bar of *res judicata*. In all the cases cited at the bar, this aspect has been emphasised. If it is not discernible from the order that the case has been dismissed on merit, the bar of *res judicata* will not prevail either-in filing the writ petition before the Supreme Court or in the High Court.

13. This takes me to the consideration of the order passed in writ Petition No.

795 of 1986 which reads as follows :

The writ petition is rejected. It will, however be open for the management of the Punjab National Bank to consider, in the event of the petitioner showing marked improvement in the discharge of his responsibilities, whether the order of penalty imposed on him should not be superseded on a subsequent date prospectively.

14. Could it be said that this order is not passed on merits by the Supreme Court? I am of the firm opinion that even though the Court has not given detailed reason, but it did apply its judicial mind and dismissed the writ petition on merits. The petitioner, therefore, is shut out from challenging the appellate order afresh before this Court in the instant writ petition. The argument of the petitioner that he withdrew the Civil Miscellaneous Petition No. 1559 of 1986 on 26.11.1986 because of some observations of the Hon'ble the Chief Justice that his remedy lies before the High Court does not appear to be correct on the face of the order which reads as hereunder:

The petitioner who appears in person prays for permission to withdraw the Civil Miscellaneous Petition as he proposes to apply to the High Court for relief. The Civil Miscellaneous Petition is disposed of as withdrawn.

15. The amendment and/or supplementary affidavit filed before the Supreme Court challenging the appellate order does not show that this point was at all raised and brought to the notice of the Court, hut the petitioner could and ought to have raised this point as well. The principles of constructive res judicata even though may not be available in writ of habeas corpus (see Shri. Lallubhai Jogibhai Patel Vs. Union of India (UOI) and Others,), but it does apply to the kind of prayer made in this case. In the case of Devilal Modi, Proprietor, M/s. Daluram Pannalal Modi Vs. Sales Tax Officer, Ratlam and Others, , the Court after distinguishing their judgment rendered in The Amalgamated Coalfields Ltd. and Another Vs. The Janapada Sabha, Chhindwara, held:

If constructive res judicata is not applied to such proceedings, a party can file as many writ petitions as he likes and take one or two points every time. That clearly is opposed to considerations of public policy on which res judicata is based and would mean harassment and hardship to the opponent.

16. I am, therefore, afraid that this writ petition is not maintainable against the said order and is barred both by the principle of res judicata and constructive res judicata. It is true that the petitioner seems to have a case so far as it relates to his entitlement to full salary and all consequential benefits during the period of his second suspension from 14.9.1978 to 21.11.1985, both in view of the High Court judgment in C.W.J.C. No. 1896 of 1979 as also of the Punjab National Bank Officers Employees (Conduct) Regulations 1977, but the hand of this Court is fettered in view of the bar of constructive res judicata. The bar of res judicata cannot be held to be merely a technical ground, but founded upon sound public policy to attach finality to binding decisions of competent Court. As such the argument of the petitioner that the Courts do not exist to legalise injustice on

technical grounds, but to advance justice is inapt. The petitioner's remedy, if any, to obtain justice is to move the Supreme Court for review of its order under Article 137 of the Constitution of India on this question.

17. I have an impression that this point of the petitioner, who appeared in person, was lost in the woods and he missed his target because of the mess created before the Supreme Court by opening his mouth too wide. This Court also was faced with the same situation when was taken through the mass of orders and judgments of this Court and Supreme Court for the whole relief repeatedly claimed by him earlier. Their Lordships while dismissing the writ petition expressed the hope that the employer may re-consider the withdrawal of the punishment at a later stage. However, pecuniary loss which the petitioner has been subjected to by the appellate authority by deprivation of his full salary between the period 14.9.1978 and 21.11.1985, must be considerable. It may be stated that the petitioner has been ordered to be paid his full salary for the period 26.7.1976 to 14.9.1978 as per order of this Court in M.J.C. No. 672 of 1986 as against which Bank's SLP bearing No. 3116 of 1986 and Civil Appeal No. 1559 of 1986, allowing the petitioner to withdraw the amount deposited on Bank's giving an undertaking that the amount withdrawn without furnishing security will not be recovered by the Bank from the petitioner. The amount has already been paid to the petitioner, but the petitioner still contends that the amount deposited for the said period falls short of his actual dues. The Bank is directed to clear off the dues, if any, for the said period. In the result, this writ petition is dismissed subject to the observations made above but there will be no order as to costs.