

(2013) 07 MP CK 0388

In the Madhya Pradesh High Court

Case No : Writ Petition No. 2835 of 2004 (S)

Maresh Chand Gupta

APPELLANT

Vs

Bank of India and Others

RESPONDENT

Date of Decision : 25-07-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 420, 468

Citation : (2013) 07 MP CK 0388

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : D.S. Raghuvanshi, for the Appellant; Harshwardhan, Advocate for Respondent-Bank, for the Respondent

Final Decision : Dismissed

Judgement

Sujoy Paul, J.—The petitioner was working as Cashier-cum-Accounts Clerk with the respondent-Bank. He was served with a show cause notice dated 4.9.1982. It was alleged in the show cause notice that he procured employment as a SC candidate on the basis of a false caste certificate. The petitioner filed his reply on 11.9.1982 and denied the said allegation. Thereafter a termination order dated 4.11.1982 (Annexure P/8) was passed. It is stated that after inquiring about the genuineness of the document from the concerned office, it was found that no such certificate was issued and, therefore, on the basis of declaration dated 27.6.1976 of the petitioner his services were terminated. The petitioner through his union raised an industrial dispute which was ultimately referred to Central Government Industrial Tribunal-cum-Labour Court (CGIT). It was registered as Case No. CGIT/LC (R)(94)/85. After recording the evidence and hearing the parties, the Tribunal passed the award on 6.9.1990. The reference to the Tribunal was as under:-

Whether the action of the management of Bank of India Gwalior in relation of their Gwalior Branch in terminating the services of Shri M.C. Gupta, Cash-cum-Accounts Clerk with effect from 9.11.1982 is justified ? If not, to what relief is

the workman concerned entitled ?

The Tribunal answered the reference holding that the action of the employer-Bank of India in terminating the services of M.C. Gupta from 9.11.1982 is justified. He is not entitled to any relief. Petitioner through his union preferred a Writ Petition (M.P. No. 958/1991) (Annexure P/9) against the order of the Tribunal. The said petition was dismissed by this Court on 8.8.1997. It is not in dispute that the orders of the Tribunal and High Court, in absence of any further challenge, have attained finality.

2. Shri D.S. Raghuvanshi, learned counsel for the petitioner submits that the petitioner was subjected to a criminal case for offences under Sections 420 and 468 of IPC. It was alleged in the said criminal case that the petitioner has secured employment on the basis of a false fabricated scheduled caste certificate. The Criminal Court by order, Annexure P/11 dated 16.11.2000, exonerated the petitioner and, therefore, he is entitled to be reinstated. The petitioner has prayed for following relief in this petition:-

That, this Hon'ble Court will be pleased to direct the respondents No. 1, 2 and 3 that petitioner be reinstated back with full back wages and he should be given promotion following the NEXT BELOW RULES, along with the cost of the litigation. And any other suitable relief may kindly also be awarded as deemed fit in circumstances of the case.

3. The said relief is opposed by Shri Harshwardhan, learned counsel for the respondents, by relying following Supreme Court judgments:-

(i) M. Bhaskaran v. Union of India and Ors.

(ii) Director of Tribunal Welfare, Government of Andhra Pradesh Vs. Laveti Giri and another,

(iii) G. Sundarasan Vs. Union of India and another,

(iv) Balkrishna Singh Vs. The Indian Oil Corporation Ltd. and Others,

(v) Harpal Vs. The Presiding Officer, Labour Court VI and Another,

(vi) Union of India and others Vs. Shri Bihari Lal Sidhana,

On the strength of these judgments, it is stated that obtaining employment and enjoying a reserved category post on the basis of a false certificate amounts to ousting a genuine reserved category candidate from his constitutional right of consideration. On the basis of these judgments, it is stated that there is no illegality in the order and the only action which was required to be taken against the petitioner was to terminate his services. He further submits that the petitioner's termination has attained a finality and this petition is hit by the principle of res judicata. To bolster this submission, learned counsel for the respondents placed reliance on Devilal Modi, Proprietor, M/s. Daluram Pannalal Modi Vs. Sales Tax Officer, Ratlam and Others,

4. I have heard learned counsel for the parties and perused the record.

5. This is settled in law that a thing which cannot be done directly cannot also be done indirectly. This view was taken by the Supreme Court in catena of judgments including Dr D.C. Wadhwa and Others Vs. State of Bihar and Others, Petitioner assailed his termination order through his union in an industrial dispute. The Tribunal in its detailed order considered the evidence and upheld the termination order passed by the employer. This Court gave a stamp of approval to it in Misc. Petition No. 958/1991 (Annexure P/9). The only distinguishing feature on the strength of which it is contended by Shri Raghuvanshi that the matter deserves reconsideration is the subsequent judgment of acquittal dated 16.11.2000 (Annexure P/11).

6. The question is whether Annexure P-11 is of any assistance to the petitioner for the purpose of reinstatement.

7. At the cost of repetition, it may be mentioned that the parties led evidence before the Industrial Tribunal. After recording such evidence the Tribunal opined that the employer's action is lawful and justified. A minute reading of the order, Annexure P/11, passed in Criminal Case No. 88/1986 shows that petitioner is exonerated by giving him benefit of doubt. This is settled in law that if an employee is acquitted by giving benefit of doubt, it will not wipe out the disciplinary action or the termination order issued prior in time. The Apex Court has consistently taken this view in catena of judgments. Recently in The Deputy Inspector General of Police and Another Vs. S. Samuthiram, the Apex Court again opined as under:-

"In the absence of any provision in the service rules for reinstatement, if an employee is even honourably acquitted by a criminal court, no right is conferred on the employee to claim any benefit including reinstatement. The 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. 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. In the instant case, the respondent was not honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the T.N. Service Rules do not provide so.

(Emphasis Supplied)

8. Thus, on the basis of aforesaid analysis, it is crystal clear that the petitioner already through his union unsuccessfully challenged his termination which attained a finality till this Court. Thereafter, he wants the same relief on the basis

of order, Annexure P-1, which is of no assistance to him for the reasons stated above. Writ Petition is also barred by principle of res judicata. Petition is frivolous and devoid of any merits and substance. It is dismissed with Rs. 1,000/- (Rupees One Thousand) as costs.