

(2022) 09 TEL CK 0016
In the Telangana High Court
Case No : Writ Petition No. 21516 Of 2002

M.Krupakar

APPELLANT

Vs

Regional Manager, Central Bank Of India

RESPONDENT

Date of Decision : 01-09-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Indian Penal Code, 1860 — Section 381, 420, 472

Citation : (2022) 09 TEL CK 0016

Hon'ble Judges : C.V.Bhaskar Reddy, J

Bench : Single Bench

Advocate : J M Naidu, C V Rajeeva Reddy

Final Decision : Dismissed

Judgement

1. This writ petition has been filed seeking to issue a writ of Mandamus declaring the action of respondent No.1 in denying the backwages to the petitioner on the basis of the proceedings dated 16.02.2002 issued by respondent No.2 as illegal and arbitrary and to consequently direct the respondents to pay backwages to the petitioner from the date of dismissal to the date of reinstatement into service as well as all other consequential benefits forthwith.

2. Brief facts necessary for disposal of the writ petition are stated as under:-

The petitioner was appointed as a Clerk in the respondents/Bank on 06.06.1983 and was promoted as a Scale-I Officer vide proceedings dated 29.06.1993. While the petitioner was working as a Branch Manager at Raiprol Branch, a Memo was issued on 05.04.1995 placing him under suspension, on the allegation that a central card belonging to a customer of Yeldurthy Branch was found missing during the transit of the registered cover and he was found misutilising the card. A complaint was also lodged with the police, Yeldurthy Police Station, and the same was registered as F.I.R.No.15 of 1997. Pending investigation by the police, disciplinary proceedings have been initiated against the petitioner and

departmental enquiry has been conducted, wherein the petitioner was found guilty of the charges leveled against him. Accordingly, the petitioner was dismissed from service vide proceedings dated 15.05.1996. Challenging the said dismissal order, the petitioner filed a writ petition i.e., W.P.No.18142 of 1996 before this Court and the learned Single Judge, after considering the enquiry report and having found that the enquiry was conducted strictly following the procedure contemplated under the Rules, has dismissed the writ petition vide order dated 27.11.1996. Aggrieved by the order of the learned Single Judge, the petitioner filed Writ Appeal i.e., W.A.No.30 of 1997. The Division Bench of this Court, after considering the entire material, has dismissed the writ appeal by upholding the order passed by the learned Single Judge and thereby confirming the order of dismissal passed against the petitioner. Aggrieved thereby, the petitioner filed S.L.P (Civil).No.9684 of 1997 before the Hon'ble Supreme Court and the same was dismissed with an observation that the prosecution as well as disciplinary proceedings were initiated on the same set of facts and in the event of prosecution being laid against the petitioner and in the event of his being acquitted by the Criminal Court, the petitioner shall be entitled for reinstatement as a consequence of the acquittal becoming final.

3. While the matter stood thus, the criminal proceedings registered against the petitioner ended in acquittal, vide orders in C.C.No.189 of 1997 dated 30.11.1999. The prosecution has carried the matter by way of Criminal Revision Case No.250 of 2000 and by order dated 06.03.2022 the revision was dismissed by this Court confirming the order of acquittal.

4. Thereafter, the petitioner was reinstated into service of the respondents/Bank and he joined the duty on 17.05.2002 at Jagitial Branch. The grievance of the petitioner is that despite several representations, he has not been granted consequential benefits like backwages, promotion etc. Hence, this writ petition.

5. The respondents/Bank filed a counter affidavit stating that the departmental enquiry was conducted against the petitioner as per the Rules for misutilisation of the credit cards of the customers, in the enquiry he was found guilty of the charges and as such, he was dismissed from service. Challenging the said dismissal order, the petitioner filed writ petition and writ appeal before this Court and this Court dismissed the same, having found that the enquiry proceedings initiated against the petitioner were in accordance with the Rules, in the enquiry the petitioner was found guilty and the Enquiry Officer recorded the evidence and considered the matter at length. As such, the impugned order does not warrant interference by this Court under Article 226 of the Constitution of India and prayed for dismissal of the writ petition.

6. The petitioner also filed a reply affidavit denying the allegations in the counter affidavit stating that the charges framed in the criminal case and the departmental proceedings are based on the same set of allegations, he was reinstated into service consequent upon the honourable acquittal and therefore, as per the judgment of the Hon'ble Supreme Court in S.L.P (Civil).No.9684 of

1997, he is entitled for backwages from the date of dismissal till the date of reinstatement into service.

7. Sri J.M.Naidu, learned counsel for the petitioner, submits that the departmental proceedings and criminal proceedings are based on the same set of allegations and on the same set of facts, the criminal proceedings registered against the petitioner ended in acquittal and the same has attained finality and therefore, the petitioner is entitled for backwages from the date of dismissal till the date of reinstatement into service. In support of his contention, learned counsel relied upon a judgment of the Hon'ble Supreme Court in the case of M. Paul Anthony vs. Bharat Gold Mines Ltd. AIR 1999 SUPREME COURT 1416 and a judgment rendered by this Court in W.P.No.1982 of 2011 (A.D.Srinivas vs. The Senior Divisional Manager, LIC of India, decided on 03.08.2016).

8. Per contra, Sri C.V. Rajeeva Reddy, learned counsel appearing for the respondents/Bank vehemently argued that the standard of proof in domestic enquiry and enquiry in criminal case is different and mere acquittal in the criminal proceedings does not entitle the delinquent for exoneration in the disciplinary proceedings. He further argued that in the case of the petitioner, the disciplinary authority as well as this Court have found that the charges levelled against him have been proved and there is no perversity in the findings recorded by the enquiry officer, only basing on the observation of the Hon'ble Supreme Court in the S.L.P., the petitioner was reinstated into service and as such, the petitioner is not entitled for back wages from the date of dismissal till the date of reinstatement and prays for dismissal of the writ petition.

9. In the case of M. Paul Anthony (1 supra) relied upon by the learned counsel for the petitioner, the Hon'ble Supreme Court, in paragraph 13, observed as under:-

"...Whereas in the departmental proceedings, where a charge relating to misconduct is being investigated, the factors operating in the mind of the Disciplinary Authority may be many such as enforcement of discipline or to investigate the level of integrity of the delinquent or the other staff, the standard of proof required in those proceedings is also different than that required in a criminal case. While in the departmental proceedings the standard of proof is one of preponderance of the probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubts. The little exception may be where the departmental proceedings and the criminal case are based on the same set of facts and the evidence in both the proceedings is common without there being a variance."

10. In W.P.No.1982 of 2011, on which again a reliance has been placed by the learned counsel for the petitioner, the learned Single Judge of this Court while allowing the writ petition has relied on the judgment of the Hon'ble Supreme Court in the case of Union of India vs. Jaipal Singh (2004) 1 SCC 121 and directed the respondent corporation to grant backwages to the petitioner from

the date of submission of representation till he was reinstated into service.

11. After considering the rival submissions made by the learned counsel for the parties and perusing the material on record, the moot question that falls for consideration in this writ petition is whether the petitioner is entitled for backwages from the date of dismissal till the date of reinstatement into service or not?

12. No doubt, the criminal case registered against the petitioner ended in acquittal. However, the petitioner committed a grave misconduct while working as a Branch Manager of Raiprol Branch and fraudulently utilised cards of customers for his pecuniary gain. The enquiry officer, on consideration of entire evidence, recorded finding that the charged officer has violated the Rules of the Bank and has manipulated the records in order to suit to his convenience and misutilised the amount and accordingly held that he was guilty of the charges. On the very same set of charges, F.I.R.No.15 of 1997 was registered on the file of the Yeldurthy Police Station and thereafter the same was numbered as C.C.No.189 of 1997. After trial, the petitioner was acquitted for the said charges, on the ground that the prosecution has given up the examination of crucial witnesses, there was absence of material evidence and in the absence of such material, the evidence adduced is not sufficient to prove the guilt of the petitioner for the offences punishable under Sections 381, 472 and 420 I.P.C. Against the order of acquittal, the respondent in the writ petition has filed a criminal revision case before this Court and this Court while dismissing the revision observed as follows:-

“On a perusal of the entire evidence, I am of the considered view that the learned Magistrate has rightly in strong words has deprecated the approach of the prosecution in giving up the crucial witnesses, including the evidence JFCM, Narsapur, who recorded the 164 Cr.P.C statement of the accused. However, the learned Magistrate acquitted the accused-1st respondent herein for want of evidence. I totally agree with the view taken by the trial Court. No Court can convict a person without there being any evidence. When the prosecution itself fails to let in cogent and unimpeachable evidence, the Courts cannot convict the accused, except expressing its anguish and sympathy. In the case on hand this is what was done by the learned Magistrate and even this Court is of the view that without there being any evidence, it is not proper or possible to convict the accused-1st respondent herein”.

13. Further, the Hon’ble Supreme Court in the recent judgment rendered in the case of Union of India vs. Sitaram Mishra (2019) 20 SCC 588 held as follows:-

“14. The fact that the first respondent was acquitted in the course of the criminal trial cannot operate ipso facto as a ground for vitiating the finding of misconduct which has been arrived at during the course of the disciplinary proceedings. The High Court, in our view, has drawn an erroneous inference from the decision of this Court in M. Paul Anthony v. Bharat Gold Mines Ltd. The High Court adverted

to the following principle of law laid down in the above judgment:

"13...While in the departmental proceedings the standard of proof is one of preponderance of the probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt. The little exception may be where the departmental proceedings and the criminal case are based on the same set of facts and the evidence in both the proceedings is common without there being a variance."

14. Law is well settled so far as granting of backwages to the employees who are reinstated into service consequent upon the order of acquittal passed by Criminal Court. In the present case, the departmental enquiry was conducted and the petitioner was dismissed from service. Admittedly, the petitioner was involved in grave charges i.e., misutilisation of cards amounts. Even though the Criminal Court has acquitted the petitioner on the ground that the prosecution has miserably failed to present the case, the petitioner was found guilty of the charges of misconduct in the departmental enquiry, after thorough examination of evidence.

15. In the departmental proceedings, standard of proof is one of preponderance of probabilities, wherein in the criminal proceedings, charge has to be proved by the prosecution beyond any reasonable doubt. Since the prosecution has given up examining the crucial witnesses, benefit of doubt has been given to the petitioner for passing the acquittal order. Mere acquittal of an employee by Criminal Court has no impact on the disciplinary proceedings initiated by the Department. Further, the claim of the petitioner that he was honourably acquitted by the competent Criminal Court and he is entitled for backwages is not tenable in law, as the acquittal order of the petitioner was not on full consideration of prosecution evidence and the prosecution has miserably failed to prove the charges levelled against him, in view of giving up examination of crucial witnesses. Further, the departmental proceedings are more prominent to the incident when compared to the criminal proceedings and findings recorded by the Criminal Court will have no effect on the previously concluded domestic enquiry. The petitioner, who allowed the findings in the domestic enquiry and the punishment by the disciplinary authority to attain finality, cannot after several years, claim the backwages basing on the acquittal order passed by the Criminal Court. Since the charges levelled against the petitioner are grave in nature and the enquiry officer has found that the petitioner has misutilised the central cards for personal gains and the said enquiry findings have attained finality, on dismissal of the writ petition and the writ appeal, and the said findings were also confirmed by the Hon'ble Supreme Court, the observation of the Supreme Court in the S.L.P for reinstatement of the petitioner does not entitle him to claim backwages from the date of dismissal till the date of reinstatement into service. Therefore, I find no merits in the writ petition.

16. The writ petition is accordingly dismissed.

As a sequel, miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.