

(2014) 01 GUJ CK 0074

In the Gujarat High Court

Case No : Special Civil Application No. 4098 of 2008

R.B. Patel

APPELLANT

Vs

Pachchim Gujarat VIJ Co. Ltd. and Others

RESPONDENT

Date of Decision : 07-01-2014

Acts Referred:

Constitution of India, 1950 — Article 12

Penal Code, 1860 (IPC) — Section 302 34

Citation : (2014) 01 GUJ CK 0074

Hon'ble Judges : A.J. Desai, J

Bench : Single Bench

Advocate : A.J. Shastri, for the Appellant; M.D. Pandya, for the Respondent

Final Decision : Dismissed

Judgement

A.J. Desai, J.—The common question of law arises in these two writ petitions for the determination is as under:

A dismissed employee, (dismissed pursuant to conviction by the competent court with regard to the offenses registered against him and particularly not at the instance of employer), if reinstated on account of an order of acquittal by appellate court, would be automatically entitled for back wages and all other consequential benefits, in absence of any Rules or Circulars framed or issued by the employer and particularly such employer is a "State" within the meaning of Article 12 of the Constitution of India?

Brief facts of these two writ petitions emerge from the record are as under:

1.1 That both the petitioners had joined in the service of respondent No. 4 Gujarat Electricity Board on different dates and were working on different posts. The petitioner of Special Civil Application No. 4098 of 2008 Mr. R.V. Patel had joined in the establishment of Gujarat Electricity Board (GEB) in April, 1980 and was subsequently promoted upto the post of Deputy Engineer and the petitioner of Special Civil Application No. 2934 of 2008 Mr. B.I. Patel had joined in the

establishment of the GEB in February, 1973 and was promoted upto the post of Deputy Superintendent (Accounts). Both the petitioners had retired from the service on attaining the age of superannuation.

1.2 A complaint came to be lodged by one Mr. Manilal Patel, Proprietor of M/s. Shriram Industries against both these petitioners and another accused for the offenses punishable under the Prevention of Corruption Act, 1988. Pursuant thereto, a raid was carried out by the concerned department and, ultimately, they were charged for the said offenses. A case was registered as ACB Case No. 2 of 1989 at Sessions Court, Mehsana. The learned Special Judge, who conducted the trial against these accused persons, came to the conclusion that all these accused persons were found guilty for the offenses levelled against them and, therefore, they were sentenced accordingly.

1.3 Pursuant to the conviction recorded by the learned Special Judge, a show cause notice was issued by the respondent - Board to the petitioners to show cause why they should not be penalized and dismissed from the service. After considering the reply of the petitioners, the Gujarat Electricity Board had passed an order dismissing both the petitioners from the service.

1.4 The petitioners of these two petitions had preferred appeals, being Criminal Appeals No. 711 of 1991 and 712 of 1991 respectively before this Court and challenged the conviction recorded by the Sessions Judge. Both the criminal appeals came to be finally heard in the year 2006 and by judgment and order dated 12.12.2006 the conviction recorded by the learned Sessions Court was set aside and both the petitioners were acquitted by this court.

1.5 Having received the order of acquittal from the appellate court i.e. from the High Court, the respondent No. 1 i.e. Pachchim Gujarat Vij Company Limited (since GEB was divided into different companies according to its geographical position) had passed different orders dated 20.6.2007 and reinstated both the petitioners in service, however, they were denied back wages and all other consequential benefits.

1.6 The challenge in these two writ petitions is the Order dated 20.6.2007 passed by respondent No. 1 - Gujarat Electricity Board, by which the petitioners have not been given the back wages and all other consequential benefits pursuant to their reinstatement in service.

1.7 Pursuant to the notices issued in the petitions, the respondents have appeared and filed their affidavit-in-reply and opposed grant of any relief as prayed by the petitioners. Several additional affidavits and also additional replies have been filed by the petitioners as well as by the respondents.

2. Learned Advocate Mr. A.J. Shastri appearing for the petitioners in both the petitions has vehemently argued that when Mr. R.B. Patel (Petitioner of SCA No. 4098 of 2008) has been given clean acquittal and Mr. B.I. Patel (Petitioner of SCA No. 2934 of 2008) has been acquitted on benefit of doubt, the respondents

ought to have given back wages and all consequential benefits to the petitioners. He would submit that it was incumbent upon the respondents authorities to give the effect of the acquittal order in its true letter and spirit and ought to have treated the case as if there was no dismissal of the petitioners from the service and ought to have given back wages and all other consequential benefits to them.

2.1 It was argued that as far as Mr. R.B. Patel is concerned, since he was dismissed from the service, he was deprived of the actual promotion from 1988 and thereafter other promotions like Executive Engineer, etc. when his juniors were considered and promoted to the post of even Executive Engineer during this period. He would submit that the petitioners are not at fault at all for not serving the respondents and, therefore, they were entitled for back wages and all consequential benefits.

2.2 Learned Advocate Mr. Shastri for the petitioners relying upon the Service Regulations of the Gujarat Electricity Board and particularly relying upon Rule-241 of the said Service Regulations would submit that the Board had not followed the Rule and passed the order of reinstatement in a mechanical way. He would submit that Rule-241 of the said Service Regulations specifically casts a duty upon the officer to consider the case of the dismissed employee and pass a specific order with regard to pay and allowances to be paid to such employee for the period of his absence from duty etc., whether or not the said period shall be treated as period spent on duty. He has also relied on sub-rule (2) of Rule-241 of the said Service Regulations and placing emphasis on it, he would submit that when the petitioners have been fully acquitted by a competent court, they were, in fact, entitled for full pay and allowances as if they were not dismissed or removed from the service. By taking me through the memo of petitions and the rejoinders filed by the petitioners, he has tried to establish that the Department had prejudice against these petitioners by not treating them at par with similarly situated employee who has been given full back wages and other consequential benefits after his reinstatement in service. By relying upon the instance of Mr. R.J. Patel, he would submit that the petitioners ought to have treated them at par with Mr. R.J. Patel, who has been given full back wages and other consequential benefits on his reinstatement in service.

2.3 Another contention raised by Mr. Shastri, learned Advocate for the petitioners is that breach of principle of natural justice committed by the respondents by not affording any opportunity of being heard before passing the impugned order dated 20.6.2007 by which back wages and other consequential benefits have been refused to them. He would submit that the petitioners were required to be heard before passing any adversary order which would result into a huge financial loss to them for no fault on their part.

2.4 In support of his submission Mr. Shastri, learned Advocate for the petitioners, has relied upon number of judgments. By relying upon a decision of the Hon'ble Apex Court in the case of Brahma Chandra Gupta Vs. Union of India (UOI), he would submit that the petitioners are entitled for 100% back wages and all other

consequential benefits. By relying upon a decision of the Rajasthan High Court and confirmed by the Hon"ble Apex Court in the case of Jaipur Vidyut Vitran Nigam Ltd. and Others Vs. Nathu Ram, learned Advocate Mr. Shastri would submit that the facts of the said case wherein the appellant - Nigam which is engaged in distributing of electricity in the State of Rajasthan like the respondent-Board in the present case, would be binding and, therefore, as held by the Apex Court in the aforesaid decision, the present petitioners would be entitled for back wages and all other consequential benefits.

2.5 By relying on another decision of this Court in the case of M.V. Chauhan Vs. State of Gujarat, Mr. Shastri, learned Advocate for the petitioners, would submit that the authorities ought to have passed the order impugned in the present petitions only after giving an opportunity of being heard to the petitioners and accordingly he would submit that the respondent - Board shall be directed to consider the case of the petitioners with regard to the back wages and all other consequential benefits the period for which they were absent.

2.6 Mr. Shastri learned Advocate, for the petitioners, by relying upon another decision of the Division Bench of this Court in the case of Ramsunder Shamlal Vs. Y.B. Jhala or his successor, Commissioner of Police and Others, would submit that the petitioners are entitled for back wages and other consequential benefits since they were acquitted from the charges levelled against them, for which they were dismissed from service and subsequently reinstated by the respondents.

2.7 Mr. Shastri, learned Advocate for the petitioners has also relied upon several decisions of various High Courts wherein back wages and other consequential benefits have been granted to the employees consequent to their acquittal from the charges levelled against them by higher courts and submitted that the present petitioners have been acquitted from the charges by this Court in Criminal Appeals and, therefore, they are entitled to get the back wages and all other consequential benefits.

2.8 Mr. Shastri, learned Advocate, for the petitioners would argue that the petitioners were prosecuted at the behest of the respondent - employer since sanction to prosecute them were granted by the respondent-Board and, therefore, when an employee is dismissed on the ground of conviction and subsequently reinstated in service, failing in proving the offence levelled against the employee, the respondent-Board is bound to reinstate such employee in service with full back wages and all other consequential benefits. He would further submit that the stand taken by the respondents that the Board is not responsible for their absence from duty be discarded and both the petitions be allowed and the prayers made therein be granted.

3. On the other hand, learned Senior Counsel Mr. M.D. Pandya, appearing for the respondents has vehemently submitted that the contentions raised by the petitioners and supported by the decisions relied upon by them are not applicable in the facts and circumstances of the present case. He would submit

that a proprietor of a private company lodged a complaint under the provisions of the Prevention of Corruption Act against three persons including the petitioners and pursuant to the same, the Investigating Agency after having found sufficient material against them, filed charge sheet before the competent court. The Sessions Court, relying on the material placed by the Investigating Agency, framed charges and thereafter on completion of trial, the accused were found guilty for the charges levelled against them and accordingly convicted. He would submit that the filing of a complaint is not at all at the behest of the respondents and a private complaint has been investigated by the concerned Agency. Neither the Board nor any of its Officials filed any complaint for the wrong done by the petitioners before any criminal court. All the accused were tried independently without any assistance from the Board and, therefore, it cannot be said that the respondent - Board had initiated any action, like filing of criminal complaint, for which they were tried and convicted. Giving sanction, cannot be treated that the trial took place at the behest of the respondents.

3.1 Mr. Pandya, learned Senior Counsel, would submit that the Board has followed its own regulations and had reinstated the petitioners in service and did not grant any benefits like back wages and other consequential benefits since none of the petitioners have worked for the Board. He had relied upon several decisions and would submit that in absence of no fault on the part of the employer, the principle of "no work no pay" would be applicable and, therefore, the Board has rightly refused to give them any benefits the period for which they were absent. He would submit that the decisions cited by learned Advocate for the petitioners would not be applicable, particularly, in absence of any specific Rule or Circular issued by the Board about dealing with the suspended or dismissed or removed employee in case of his acquittal by a competent court. He has placed heavy reliance on the decisions of the Apex Court in the case of Virender Kumar, General Manager, Northern Railways, New Delhi Vs. Avinash Chandra Chadha and others, in the case of A.P.S.R.T.C. and Another Vs. S. Narsagoud, in the case of Ranchhodji Chaturji Thakore Vs. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar, (Gujarat) and another, in the case of Union of India (UOI) and Others Vs. Jaipal Singh, in the case of Baldev Singh Vs. Union of India (UOI) and Others, in the case of Banshi Dhar Vs. State of Rajasthan and Another, and in the case of Corp. Mithilesh Kumar @ Mithilesh Singh Vs. Union of India, as reported at 2010 (13) Scale, 98. By relying upon the above referred decisions, Mr. Pandya would submit that, ordinarily, an employee would be entitled for such back wages, if, he had worked on that post and not in his absentia.

3.2 In the alternative, Mr. Pandya, learned Senior Counsel for the respondents, argued that even otherwise, the petitioners have failed to establish that during the period of dismissal i.e. from 1992 to 2007, they have not been gainfully employed somewhere else and, therefore, they would not be entitled for the benefits as demanded by them. In support of this submission, Mr. Pandya, learned Senior Counsel has relied upon a decision of the Apex Court in the case

of Allahabad Jal Sansthan Vs. Daya Shankar Rai and Another, and in the case of Muir Mills Unit of N.T.C. (U.P) Ltd. Vs. Swayam Prakash Srivastava and Another, By relying upon a decision of the Larger Bench of the Hon''ble Apex Court in the case of General Manager, Haryana Roadways Vs. Rudhan Singh, Mr. Pandya would submit that it was not a wrongful dismissal of the petitioners from the service by the respondent - Board since they were convicted by the Trial Court after full-fledged trial and, therefore, they would not be entitled for the benefits demanded by them.

3.3 Mr. Pandya, learned Senior Counsel, would further submit that sub-rule (1) of Rule-241 of the Service Regulations of the Board deals with the situation where the Board has to consider about the back wages, salary, etc. in case of reinstatement of an employee only when an employee is suspended, dismissed and/or removed from the service pursuant to a departmental inquiry initiated at the instance of the Board itself. These provisions are not applicable in the case of the present petitioners. Mr. Pandya, learned Senior Counsel, would submit that on close reading of this Chapter as well as the Regulations framed by the Board, it is clear that the Board has to pass a speaking order only in case where an employee has been dismissed or removed and/or suspended from the service pursuant to a departmental inquiry. He would further submit that it is not the case of the petitioners that their services were terminated pursuant to the departmental inquiry initiated by the Board but they were dismissed from the service as they were convicted at the end of the trial in a criminal complaint lodged by a private party and not at the behest of the Board. He would submit that sub-rule (2) of Rule-241 of the Service Regulations of the Board would be applicable when an employee has been fully exonerated, which would mean that, he has been exonerated from the charges levelled against him by the department itself or in the case of suspension that it was wholly unjustified, the employee shall be given the full pay and allowance to which he would have been entitled, had he not been dismissed, removed or suspended, as the case may be.

3.4 Mr. Pandya, learned Senior Counsel for the petitioners, would submit that in the case of Jaipur Vidyut Vitran Nigam Ltd. Vs. Nathu Ram (supra), the Rajasthan High Court and the Hon''ble Apex Court, relied on a specific Circular issued by the employer-Nigam itself, which deals with the back wages, etc in case of acquittal from criminal charges by a competent court. In the said case, the Rajasthan High Court directed the respondent-Nigam to make payment of pay and allowance to the petitioner, not less than what would have been admissible to him had he remained under suspension, from the date of termination to acquittal in criminal case and further ordered that the said period shall be treated as spent on duty without break in service. Feeling aggrieved, the respondent - Nigam preferred a Civil Appeal before the Hon''ble Apex Court which also came to be dismissed since the Apex Court had dealt with the Circular issued by the Nigam. Mr. Pandya, learned Senior Counsel, further argued that the Hon''ble Apex Court did consider the case of Ranchhodji Chaturji Thakore (supra) and by accepting the ratio laid down in the said case and also considering the

Circular issued by the Nigam, which deals with such a situation, confirmed the decision of the Rajasthan High Court. Mr. Pandya, learned Senior Counsel for the respondents would further submit that in the present case there is no such circular in existence or any regulations which would be applicable to the facts of the case of the present petitioners.

3.5 In respect to the contentions raised by the petitioners about not considering the petitioners at par with one Mr. R.J. Patel, Mr. Pandya, learned Senior Counsel, would submit that in the case of Mr. R.J. Patel, he was charge-sheeted by the Department and pursuant to the Departmental inquiry, his services came to be terminated. Mr. Pandya, learned Senior Counsel for the respondents would submit that he was fully exonerated from the charges levelled against him in the departmental inquiry and therefore his case was considered under Regulation-241 of the Board and all benefits were granted to him. Mr. Pandya, learned Senior Counsel, for the respondents therefore submitted that the facts of the present case are not comparable with the case of Mr.R.J. Patel.

3.6 As far as the contention raised by the petitioners with regard to breach of natural justice is concerned, Mr. Pandya, learned Senior Counsel for the respondents, would argue that it has been held by the Hon''ble Apex Court in catena of decisions that such principle would not be applicable if it is found that it would be a futile exercise and it is required to be established that a person would be prejudiced if he is not heard before passing any adversary order. In support of his submission, he has relied upon a decisions of the Apex Court in the case of Ashok Kumar Sonkar Vs. Union of India (UOI) and Others, as well as in the case of Municipal Committee, Hoshiarpur Vs. Punjab State Electricity Board and Others, By relying on these decisions he would submit that each case has to be dealt with on its own facts and circumstances of the case and they cannot be put in a straitjacket formula and, therefore, if it is a futile exercise and there is no need to afford any hearing before passing any adverse order against such persons. Placing emphasis on the aforesaid decisions, Mr. Pandya, learned Senior Counsel for the respondents would submit that there is no substance in the present petitions and the same deserves to be dismissed.

4. I have heard learned Advocates appearing for the respective parties. It is not in dispute that the petitioners were made accused along with some other persons in a complaint lodged by one Mr. Manilal Patel, Proprietor of M/s. Shriram Industries since illegal demands were made by them for carrying out certain procedure which the Board has to follow. Having found sufficient material, the petitioners were chargesheeted and, ultimately, tried by the competent court and were convicted in the year 1991. Pursuant thereto, the respondent - Board had dismissed the petitioners from its services as per the Clause 7(c) of the Bombay State Electricity Board Employees Conduct, Discipline and Appeal Procedure when the petitioners were convicted for the offenses registered at the instance of a private party. Though, a sanction might have been issued by the higher officer of the Board for prosecuting it's employee under the Prevention of Corruption

Act, 1988, it cannot be said that the prosecution was initiated at the instance of the Board itself. There would be so many instances where the Board may have to file criminal prosecution against its employees, but, in the instant case, it is an admitted fact that neither the Board nor its Officers have taken any initiative to lodge a criminal complaint against the present petitioners. Therefore, it cannot be said that the petitioners who faced prosecution and ultimately convicted was at the instance of the Board. Therefore, in my opinion, in the present case, the petitioners have faced prosecution was not at the behest of the Board.

5. Now dealing with the submissions about the back wages, I would like to first deal with the judgment cited by learned Advocate on behalf of the petitioners in the case of Jaipur Vidyut Vitran Nigam Ltd. Vs. Nathu Ram (supra). In the said case, the accused was an employee of a similar Board and was tried for the offences under the Prevention of Corruption Act, 1988. He was, ultimately, acquitted by the competent court. Since the employee was not granted full back wages at the time of reinstatement, he had preferred a writ petition before the Rajasthan High Court, which was allowed by the learned Single of the said High Court. The employer-Jaipur Vidyut Vitran Nigam Limited preferred an appeal before the Hon'ble Apex Court challenging the decision of the Rajasthan High Court. Even after considering the decision in the case of Ranchhodji Chaturji Thakore (supra), it was held by the Apex Court that since the employer itself had issued a circular, which was not looked into by it, which deals with benefits to an employee who is acquitted from criminal charges and reinstated in service. By combined read of Regulation-41 of the Rajasthan State Electricity Board Employees' Service Regulations and the said Circular, the Hon'ble Apex Court found that the employee was entitled for back wages from the date of termination and further ordered that the said period shall be treated as spent on duty. The aforesaid aspect has been dealt with by the Hon'ble Apex Court in para-9 of the decision, which is reproduced here-in-below:

9. Secondly, it was contended that since the respondent had not worked during the period of dismissal, he was not entitled to any remuneration for the period mentioned herein-earlier. In support of this submission, the learned counsel for the Corporation had drawn our attention to two decisions of this Court in the case of Ranchhodji Chaturji Thakore Vs. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar, (Gujarat) and another, and Union of India (UOI) and Others Vs. Jaipal Singh, Before we deal with the aforesaid two decisions as relied on by the learned counsel for the Corporation, we may consider the Circular dated 3rd of September, 1975, issued by the erstwhile Rajasthan State Electricity Board, on which strong reliance was placed by the courts below, needs to be looked into. It cannot be disputed that the said circular itself was binding on the Corporation. Therefore, at this stage, we may reproduce the said Circular dated 3rd of September, 1975 as well as Regulation 41 of the Regulations which are as follows:

Sub: Action to be taken in cases where Board's employees are convicted on a

criminal charge by a competent court of law. The following procedure should be adopted in a case of conviction of a Board's employee by a Court of Law on a criminal charge:

(i) ...

(ii) ...

(iii) If an appeal/revision against the conviction succeeds and Board's employee is acquitted, the order of dismissal, removal or compulsory retirement based on his conviction which no longer stands, becomes liable to be set aside. A copy of the judgment of the appellate Court should be immediately procured and got examined with a view to decide whether despite the acquittal, the facts and circumstances of the case are such as to call for the departmental inquiry against the Board's employee on the basis of the allegation on which he was previously convicted.

If it is decided that a departmental inquiry should be held, formal orders should be made:

(1) setting aside the order of dismissal, removal or compulsory retirement, and

(2) ordering such a departmental inquiry.

Such an order should also state that under Regulation No. 9 of the RSEB (CC and A) Regulations, 1962, the Board's employee is deemed to be under suspension with effect from the date of the dismissal/removal/compulsory retirement (A Standard Form-II is enclosed).

In case where neither of the aforesaid course is allowed, a formal order should be made setting aside the previous orders of dismissal, removal and compulsory retirement and reinstating him in service (A Standard Form No. III for such an order is enclosed).

The period between the date of dismissal etc. and the date on which he resumes duty should be dealt with under Regulation No. 41 of the Rajasthan State Electricity Board Employees' Service Regulations and in doing so he should be deemed to be entitled to full pay and allowances for the period from the date of his acquittal to the date of his reinstatement, such period being counted for duty for all purposes and for the period from the date of dismissal to the date of acquittal, he should not be allowed pay and allowances less than what would have been admissible to him had he remained under suspension.

5.1 For my consideration, Regulation-241 of the Service Regulations (Amended upto 30th November, 1983) of the Gujarat Electricity Board is reproduced here-in-below:

241 (1) When an employee of the Board who has been dismissed, removed or suspended, is reinstated, the authority competent to order the reinstatement shall consider and make a specific order.

(a) Regarding pay and allowances to be paid to the employee for the period of his absence from duty.

(b) Whether or not the said period shall be treated as period spent on duty.

(2) Where the authority mentioned in sub-rule (1) is of opinion that the employee has been fully exonerated or in the case suspension that it was wholly unjustified, the employee shall be given the full pay and allowance to which he would have been entitled had he not been dismissed, removed or suspended as the case may be.

(3) In other case i.e. when the suspension is not wholly unjustified or the employee has been partially exonerated, he shall be given such proportion of pay and allowance as the competent authority prescribe by a specific order.

(4) In case falling under clause (2), the period of absence from duty shall be treated as a period spent on duty for all purpose.

(i) In cases fall in under clause (3) the period of absence from duty shall not be treated as a period spent on duty unless such competent authority specifically directs that it shall be so treated for any specific purpose provided if the employee so desires, such authority may direct that the period of absence from duty shall be converted into leave of any kind due and admissible to the employee.

(6) If the employee is found to be guilty or partially guilty, he shall be liable to be punished according to the gravity of charge against him.

5.2 If the case on hand is perused, neither it is the case of the petitioners nor any material was produced by them which would go to suggest that similar circular has been issued by the Board to deal with the case when an employee who has been reinstated in service at the end of trial if any acquittal order is passed by a competent court. Regulation-241 of the Service Regulations of the Gujarat Electricity Board would not certainly be applicable and it cannot be said that acquittal means exoneration. The person would be exonerated from the charges levelled against him only in case of departmental inquiry and a person would be acquitted in case of criminal prosecution, Rule 241(2) is not applicable. Therefore, the principle laid down by the Apex Court in the case of Jaipur Vidyut Vitran Nigam Ltd. Vs. Nathu Ram (supra), would not be applicable in the facts and circumstances of the present case.

6. Another decision relied by Mr. Shastri, learned Advocate for the petitioners is the decision of this Court in the case of M.V. Chauhan Vs. State of Gujarat (supra). This Court has again relied upon a specific circular issued by the government itself which was read with Rule-152 of the Bombay Civil Services Rules, 1959. The relevant paragraph-5 of the said judgment is reproduced here-in-below.

5 In this connection, it will also be apposite to notice that expression "fully

exonerated" in the case where a person is being tried on a criminal charges and is acquitted requires consideration of the nature of acquittal. The government on its wisdom for maintaining uniformity has issued guidelines relevant for the present purpose that in what circumstances an acquittal on technical ground can be treated equivalent to acquittal on merit. The resolution of the government dated 2nd April, 1983, clause (5) reads that:

Where the acquittal by Court is on technical grounds, and if the government does not propose to go in appeal to a higher Court or to take further departmental action, action should be taken in the same manner as if the official has been acquitted by the Court on merits.

At least there is no dispute for the purpose of promotion, the acquittal in such event is treated to be a "full exoneration" and acquittal not merely on technical grounds.

6.1 In the present case, there is no such circular has been issued by the Board which would entitle the petitioners for back wages, etc.

7. Dealing with the submissions made by Mr. Shastri with regard to breach of principle of natural justice is concerned, I would like to reproduce paras 4, 5 and 6 of the Affidavit-in-reply filed by respondent No. 1-Board on 19.11.2011 here-in-below.

Paras 4, 5 and 6 of the affidavit-in-reply in Spl. C.A. No. 4098 of 2008:

4 Prior to his retirement, by order dated 27.2.2008 in accordance with the affidavit-in-rely filed by the then PO of erstwhile Gujarat Electricity Board in SCA No. 3485/88, the petitioner was deemed to have been considered as promoted as Deputy Engineer, with effect from 9.6.1988 and on that account was held eligible for arrears during the period from 9.6.1988 to 22.1.1992 and also eligible for revised fixation from the date of his reinstatement and arrears on that account by another order dated 10.4.2008. Chargesheet regarding disciplinary action against the petitioner dated 29.12.2007 was re-examined by the competent authority and in view of petitioner's retirement on reaching the age of superannuation, taking the lenient view was withdrawn by the competent authority.

5 The details of payments made to the petitioner regarding retirement dues and other arrears are as under:

6 The Regional Provident Fund Commissioner has sanctioned payment of pension of Rs. 948/- per month w.e.f. 1.3.2008. In view of the above, the only outstanding claim as per the petitioner is as regards the back wages during the period of date of termination to the date of reinstatement including the claim for higher grade which the petitioner claims to be entitled to as per GSO 334.

Paras 3, 4 and 5 of the affidavit-in-reply in Spl. C.A. No. 2934 of 2008:

3. I say and submit that the following payments have been made upon the

retirement of the petitioner:

4 The petitioner claims being entitled to back wages, consequential benefits and promotional benefits, etc. During the pendency of the petition, the petitioner has been granted higher grade for the post of Superintendent of Accounts w.e.f. 22.1.2008 and promotion to the post of Superintendent of Accounts on 9.3.2011.

7.1 These specific averments are not denied. However, the petitioners have claimed more than what has been awarded by the Board.

7.2 Reading this factual aspects mentioned in both the petitions and when the Board has dropped the charges which were initiated by the department, however, given benefit of promotion, etc as per his entitlement. Giving opportunity of hearing before passing the reinstatement order, in my opinion, would be a futile exercise since the Board had relied upon several decisions of the Apex Court which deal with the principle of "no work no pay" and, therefore, it was not necessary to afford hearing to the petitioners before passing the impugned order.

8. As far as back wages are concerned, in the case of Virender Kumar G.M. Northern Railways, (supra) the Hon"ble Apex Court has made certain observations in para-14 which is reproduced here-in-below:

13. As regards the emoluments of higher posts with retrospective effect, we find that the High Court had categorically denied the same to the respondents even on the basis of their claim to higher grades in Class III posts. Further, even the entitlement of the respondents to the higher grades in Class III posts as per the directions of the High Court was on the basis of the quota and rota rule which in itself is both inequitable and irrational. Time and again, the rule has been criticized on account of the absurd result to which it leads, viz., the deemed appointments have to be given to the concerned employees even from the dates when they were not in service and probably when they were still in their schools and colleges. We are informed across the Bar that this is the situation even with respect to some of the respondents herein. The quota and rota rule had to be worked out in the present case from the year 1954 as per the direction of the High Court and the Tribunal. There is, therefore, neither equity nor justice in favour of the respondents to award them emoluments of the higher posts with retrospective effect. It is for this reason that we are of the view that the decisions of this Court such as in P.S. Mahal and Others Vs. Union of India (UOI) and Others, directing the payment of higher emoluments with retrospective effect on account of the deemed promotions of earlier dates will not be applicable to the facts of the present case and have to be distinguished.

It is true that the appellant-Railways had failed to give correct effect to the decision dated July 30, 1975 of the High Court in L.P.A. No. 220 of 1972, and had kept the matter hanging till this day for no fault of the respondents. The High Court by its said decision had directed the appellant-Railways to prepare a seniority list within three months from the date of the decision, and also to proceed to make further promotions in the higher grades in accordance with law,

rules and orders in force from time to time. But it is equally true that during all these years the higher posts were not vacant and were manned by others, and the appellant-Railways had paid the incumbents concerned the emoluments of the said posts. The respondents have not actually worked in the said posts and, therefore, on the principle of "no work no pay" they will not be entitled to the higher salary. Hence, we give no directions in this behalf and leave it to the appellant to give such relief as they may deem fit.

8.1 In the case of Ranchhodji Chaturji Thakore (Supra) the Hon''ble Apex Court dealing with similar case made certain observations in paragraph-3 which is reproduced below:

3 The reinstatement of the petitioner into the service has already been ordered by the High Court. The only question is: Whether he is entitled to back wages? It was his conduct of involving himself in the crime that was taken into account for his not being in service of the respondent. Consequent upon his acquittal, he is entitled to reinstatement for the reason that his service was terminated on the basis of the conviction by operation of proviso to the statutory rules applicable to the situation. The 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 he was unlawfully prevented from discharging the duties. In that context, his conduct becomes relevant. Each case requires to be considered in his own backdrops. In this case, since the petitioner had involved himself in a crime, though, he was later acquitted, he had disabled himself from rendering the service on account of conviction and incarceration in jail. Under these circumstances, the petitioner is not entitled to payment of back wages. The learned Single Judge and the Division Bench have not committed any error of law warranting interference.

8.2 In the case of Rancchodji Chaturji Thakore (supra), the petitioner had faced the trial for the offenses punishable under Sections 302 read with Section 34 of the Indian Penal Code, for which he was acquitted. In the case of Union of India Vs. Jaipal Singh (supra) by relying on the decision in case of Ranchhodji Chaturji Thakore (supra) it was observed that when the department was not concerned about the criminal case, the employer cannot be made liable to pay for the period for which the employer could not avail the services of the employee. Paragraphs 4 and 5 of the said decision are relevant for the purpose of deciding the present case, which are reproduced here-in-below:

4. On a careful consideration of the matter and the materials on record, including the judgment and orders brought to our notice, we are of the view that it is well accepted that an order rejecting a SLP at the threshold without detailed reasons therefore does not constitute any declaration of law by this Court or constitute a binding precedent. Per contra, the decision relied upon by the appellant is one merits and for reasons specifically recorded therefore it operates as a binding precedent as well. On going through the same, we are in respectful agreement with the view taken in Ranchhodji. 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.

5. The respondent will be entitled to back wages from the date of acquittal and except for the purpose of denying the respondent actual payment of back wages, that period also will be counted as period of service, without any break. The reinstatement, if not already done, in terms of the order of the High Court will be done within thirty days from today.

8.3 The Hon'ble Apex Court has again considered the same in the case of Baldev singh (supra). The principle laid down in the said case grant of back wages would not be an automatic result of acquittal but it depends upon each case. Again, the Apex Court has relied upon the case of Ranchhodji Chaturji Thakore (supra).

9. In view of the above discussions as well as in the backdrop of the present case, the common question of law formed by this Court at the beginning of the present judgment and order is answered as under:

In absence of any specific Rule framed by the Institution or Circular issued by it, an employee who faced criminal prosecution not at the behest of the institution would not be entitled for any back wages or any other consequential benefits, the period for which he was not working with the employer, on his reinstatement in service on account of acquittal by a competent court in a criminal case.

In the result, both the petitions deserve to be rejected and are rejected accordingly. Rule in both the petitions is discharged.