

(2013) 11 JH CK 0044
In the Jharkhand High Court
Case No : Writ Petition (S) No. 3435 of 2013

Surendra Prasad Rai

APPELLANT

Vs

The District Central Co-operative Bank Ltd.

RESPONDENT

Date of Decision : 11-11-2013

Acts Referred:

Citation : (2014) 1 JLJR 142

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Manoj Tandon, for the Appellant; M.K. Roy, for the Respondent

Final Decision : Dismissed

Judgement

S. Chandrashekhar, J.—Challenging order dated 16.05.2013 dismissing the petitioner from service, the present writ petition has been filed. The brief facts of the case as disclosed in the writ petition are that, the petitioner was appointed as clerk in the respondent-bank and by order dated 08.05.2002, the petitioner was dismissed from service. The petitioner preferred an appeal and the said appeal was allowed and the order of dismissal was recalled by the Administrator by order dated 24.03.2012. The petitioner was reinstated in service by the Managing-Director by order dated 04.04.2012. By order dated 19.03.2013, the petitioner was convicted for offences under Sections 467, 468, 420, 477A of the Indian Penal Code. A notice was issued to the petitioner by the Managing-Director by letter dated 20.03.2013. The petitioner submitted his representation on 21.03.2013 requesting the Managing-Director of the respondent-bank, not to take any action against him on the basis of his conviction in the criminal case. By representation dated 21.03.2013, the petitioner informed the Managing Director that he has preferred an appeal and till the time the appeal preferred by him is decided, no action should be taken against him. By order dated 16.05.2013, the petitioner has been dismissed from service.

2. Heard learned counsel for the parties and perused the documents on record.

3. Learned counsel appearing for the petitioner has submitted that the petitioner has been dismissed from service in exercise of power under provisions as contained in Clause 49 (j) of the bye-laws of the District Central Co-operative Bank Limited, Singhbhum West by the Managing-Director of the Bank, though the power of the Managing Director as enumerated in the bye-laws, does not include the power to pass any order of dismissal, discharge, removal, etc. in respect of the employees except those enumerated in item-iv.

4. Learned counsel appearing for the respondents has resisted the plea taken by the petitioner.

5. On perusal of the documents on record, it is apparent that the petitioner was initially dismissed from service by order dated 08.05.2002. However, on his appeal, order of dismissal was recalled by the Administrator by order dated 24.03.2012. The petitioner was reinstated by the order of Managing-Director by order dated 04.04.2013 on the condition that no back-wages would be admissible to the petitioner during the period of dismissal and the Management would be at liberty to take action against the petitioner on the conclusion of the criminal case. It further appears from the impugned order dated 16.05.2013, that by order dated 19.03.2013, the petitioner has been convicted in the criminal case and therefore, the order of dismissal dated 16.05.2013 was passed. It is well settled by a catena of judgments of the Hon"ble Supreme Court that an employee convicted in a criminal case cannot be retained in service and he does not have a right to continue in service. Although, after his acquittal the employee can be reinstated in the service by modifying the order of dismissal however, this also does not give an absolute right in the employee to seek reinstatement in service.

6. Adverting to the contention raised on behalf of the learned counsel appearing for the petitioner that the Managing-Director does not have the power to pass order of dismissal, discharge etc. from service in respect to category of employees to which the petitioner belongs, I am of the view that since the conviction of the petitioner by order dated 19.03.2013 by the Trial Court has not been denied by the petitioner and the petitioner himself made a representation to the Managing Director for not taking any action in the matter, the plea raised on behalf of the petitioner becomes academic. Further, the petitioner's appeal was allowed by the Administrator and he was reinstated in service by an order of the Managing-Director. The impugned order clearly states that the impugned order dated 16.05.2013 has been passed with the approval of the Administrator and therefore, the Managing-Director was competent to issue the impugned order dated 16.05.2013. I find no merit in the writ petition and accordingly, this writ petition is dismissed. However, dismissal of the present writ petition would not come in way of the petitioner, if he chooses to assail the order dated 04.04.2012 denying him the benefit of back-wages.