

*(Supreme Court Of India)*

*N. Selvaraj*

*v.*

*Kumbakonam City Union Bank Ltd. & Another*

*C. A. Nos. 5217 & 5218 of 2002 | 06-12-2005*

*H.K. Sema, J.*

*1. The challenge in this appeal is as to the order of the High Court directing to make fresh enquiry and denying back wages to the appellant.*

*2. By this common judgment, we propose to dispose of these two appeals, as they arise out of common judgment. Civil Appeal No. 5217 of 2002 is filed by the employee and cross appeal being Civil Appeal No. 5218 of 2002 is filed by the management.*

*3. Briefly stated the facts are as follows:*

*The appellant joined his services in the respondent Bank as Messenger on 24-1-1977. He was confirmed in the said post on 30-11-1977. On 31-3-1987, a criminal case was instituted against him under S.381 IPC on a complaint filed by the cashier of the Bank alleging that the appellant had stolen a bundle of notes of the denomination of Rs 100 amounting to Rs 10,000 from the cash counter. By order dated 18-4-1987 the appellant was placed under suspension in contemplation of a departmental enquiry. As it would appear from the various representations, the appellant requested the authority that since criminal proceedings were pending against him, departmental enquiry may be postponed till the disposal of the criminal case. Taking this contention, the appellant didnot participate in the departmental enquiry, despite repeated reminders to do so, resulting in passing of an order of ex parte enquiry. On conclusion of enquiry, the enquiry officer found him guilty of the charge. Consequently, he was dismissed from the service on 6-10-1987. He carried an unsuccessful appeal before the Deputy Commissioner of Labour, Trichy, Tamil Nadu under the Shops and Establishments Act. Aggrieved thereby the appellant filed a writ petition before the learned Single Judge which favoured him by setting aside the order of dismissal.*

*4. Thereafter, the respondent Bank filed a writ appeal before the High Court. The Division Bench of the High Court after hearing the parties dismissed the writ appeal with the following observation:*

*"Therefore, while we agree with the order of the learned Single Judge in giving an opportunity to the first respondent herein to face the departmental enquiry afresh, we direct that the first respondent herein will not be entitled to get the benefit of back wages for the period out of employment including continuity of service for retirement benefit at later stage in the event of succeeding in the departmental enquiry initiated against him."*

5. Aggrieved thereby the appellant preferred the present appeal solely on the ground that back wages were denied to him.

6. This Court on 19-8-2002 granted leave in both the petitions and observed that the *de novo* enquiry as directed by the High Court shall proceed and the enquiry officer will make the final order but the disciplinary authority will not pass the consequential orders until further orders of this Court. As it would appear, pursuant to the said order, the enquiry was conducted and the enquiry officer submitted a final report dated 15-2-2004 holding the appellant guilty of the charges levelled against him. However, in view of the order passed by this Court as referred to above, the final order is yet to be passed. It is contended by the learned counsel for the appellant that since the criminal court acquitted him, continuity of departmental enquiry is not justified and he should be directed to be paid all the back wages on the basis of the acquittal recorded by the criminal court. We are not at all convinced by this contention. By now, it is well settled principle of law that the standard of proof between the criminal trial and the departmental proceedings is quite different. In criminal trial the standard of proof is proof beyond all reasonable doubt, whereas in the departmental proceedings it is preponderance of probability which is taken into consideration. It is also to be noted that in continuation of the earlier order passed by this Court as referred to above, the suspension of the appellant is continuing subject to the final decision that may be made on the basis of a second enquiry. It is now well settled principle of law that pay and allowances including back wages will depend on the outcome of the second enquiry to be decided by the disciplinary authority in accordance with the relevant financial rules. (See *Managing Director, ECIL v. B. Karunakar* (1993 (4) SCC 727 : 1993 SCC (L&S) 1184 : 1993 (25) ATC 704).

7. In the present case, admittedly the second enquiry report has been submitted on 15-2-2004 holding the appellant guilty of the charges, although no final order has been passed pursuant to the interim order passed by this Court on 19-8-2002.

8. We hold that the payment of back wages, if any, shall be subject to the final outcome of the decision of the disciplinary authority on the basis of the second

*enquiry report. We also make it clear that the appellant will be at liberty to challenge the final order that will now be passed if it adversely affects him.*

*9. In this view of the matter we do not find any infirmity in the order passed by the High Court.*

*10. This appeal being devoid of merits is accordingly dismissed.*

*11. Civil Appeal No. 5218 of 2002*

*12. In view of the above order, this appeal has become infructuous and it is accordingly dismissed.*