

State Bank of India & Another

v.

Mohammed Abdul Rahim

(Supreme Court Of India)

HON'BLE MR. JUSTICE SURINDER SINGH NIJJAR HON'BLE MR.
JUSTICE RANJAN GOGOI

Civil Appeal No. 5472 Of 2013 | 15-07-2013

Ranjan Gogoi, J.

1. Leave granted.

2. This appeal is directed is directed against the judgment and order dated 22.02.2012 passed by the Division Bench of the High Court of Judicature at Madras, Maduraj Bench in Writ Appeal (MD) No.1715 of 2011, affirming the order passed by the learned Single Judge in a writ petition filed by the writ petitioner i.e. the respondent in the present appeal. The High Court, for the reason assigned, has taken the view that the respondent/writ petitioner was entitled to the benefit of back wages for the period that he had remained out of employment following his conviction in a criminal charge.

3. The relevant facts are as hereunder:

The respondent/writ petitioner while working as a Assistant (Accounts) in the State Bank of India at Thanjavur Branch was convicted of the offences under Section 498A of the Indian Penal Code, 1860 (for short 'the IPC") and Section 4 of the Dowry Prohibition Act, 1961 on 03.11.1997. Following the aforesaid conviction, he was discharged from the service by a order dated 07.06.1999. Aggrieved by the conviction, the respondent had filed an appeal which was allowed by the learned Sessions Judge, Ramanathapuram by order dated 22.02.2002. The order of acquittal, on a plain reading, appears to be based on the finding that the prosecution had failed to prove its case beyond reasonable doubt.

4. Thereafter, on a demand being raised, the respondent was reinstated in service on 07.11.2002. However, back wages for the period that he had remained out of service was not granted. Aggrieved by the aforesaid action of the appellant-bank, the respondent filed the writ petition (W.P.No.8079 of 2005) in question seeking the relief of back wages for the period he was kept out of employment i.e. from 07.06.1999 (date of discharge from service) upto 07.11.2002 (date of reinstatement). As already noticed, the learned Single Judge of the High Court having granted the aforesaid relief which was affirmed in the Letters Patent Appeal filed by the appellant herein, this appeal, by special leave under Article 136 of the Constitution, has been filed.

5. We have heard learned counsel for the parties.

6. Learned counsel for the appellant has drawn the attention of the Court to the provisions of Section 10(1)(b)(i) of the Banking Regulation Act, 1949 (for short "the Act") and contends that there was a legal bar for the appellant-bank to continue to employ the respondent after his conviction by the criminal court for the offence under Section 498A IPC and Section 4 of the Dowry Prohibition Act, 1961. Learned counsel has also placed reliance on several judgments of this Court to demonstrate that grant of back wages may not be permissible in a situation where an employee, who is dismissed from service on the basis of an order of conviction in a criminal case, is reinstated in service following the reversal of the conviction. Specifically the judgments of this Court in Ranchhodji Chaturji Thakore Vs. Superintendent Engineer, Gujarat Electricity Board, Himmathanagar (Gujarat) and another. [(1996) 11 SCC 603] Union of India and others. Vs. Jaipal Singh [(2004) 1 SCC 121], Baldev Singh Vs. Union of India and others. [(2005) 8 SCC 747] and Bansi Dhar Vs. State of Rajasthan and another. [(2007) 1 SCC 324] have been relied upon by the learned counsel for the appellant in support of the contention noticed above.

7. On the other hand, learned counsel for the respondent has relied on the norms under the Sastry Award governing disciplinary action in respect of employees of the public sector banks. Pointing out the relevant clauses of the Sastry Award, it is argued that upon the acquittal of the concerned employee from a criminal charge it is open for the appellant-bank to initiate a departmental proceeding which, admittedly, in the present case was not so done. Learned

counsel has pointed out that in such a disciplinary proceeding. if the charges against the acquitted employee are found to be substantiated, necessary disciplinary action can be invoked. However, in that event the concerned employee would be entitled to the benefit of full pay during the suspension period, if any. In the present case, as the provisions of the Sastry Award were not invoked and no departmental proceeding was initiated, the acquittal of the respondent has attained finality and, in effect would wipe out the initial conviction thereby entitling the respondent to back wages. Learned counsel for the respondent has also pointed out that in the decisions relied upon on behalf of the appellant-bank the basis for denial of back wages is the incarceration of the employee in custody following his arrest and conviction which disabled the employee from rendering any service whatsoever. In the present case the respondent was on bail all along. It is, therefore, argued that the ration of the decisions relied upon would not apply to the facts of the present case.

8. Before delving into the contentious issues arising from the arguments advanced, the issue with regard to the applicability of the provisions of the Sastry Award may be dealt with in the first instance. According to us, the said provisions do not have any special significance inasmuch as there can be no doubt on the proposition that on the very same facts that give rise to a criminal offence it is always open to the employer to initiate a departmental proceeding which option the employer may or may not exercise. In the event the employer chooses to initiate a departmental proceeding, it would be open for such an employer to take disciplinary action against the erring employee if the charged levelled are found to be substantiated notwithstanding the acquittal of the employee in the criminal case that may have been lodged against him. This is on the principle that standard of proof in a criminal case and a departmental proceeding is different. However, in a case where the employer chooses not to initiate a departmental proceeding and acts only on the basis of the conviction in the criminal prosecution, he would be bound by the final verdict in the same, i.e., in case of a reversal. The provisions of the Sastry Award, relied upon on behalf of the respondent, therefore, does not in any manner alter the basic principles surrounding the initiation of a criminal action and a departmental enquiry on the same set of facts and the consequences thereof.

9. In the present case, the respondent was acquitted by the appellate court. There can be no manner of doubt that the said acquittal would relate back and the initial order of conviction would stand obliterated. On that basis, there can be no

manner of doubt that the substratum of the cause that had led to the respondent's dismissal/discharge in the present case had ceased to exist. The same would entitle him to be reinstated in service, an act that has been duly performed by the appellant-bank.

10. The issue relating to entitlement to back wages, however, stands on a somewhat different footing. While in *Ranchhodji Chaturji Thakore (supra)*, *Jaipal Singh (supra)* and *Baldev Singh (supra)*, the basis of refusal of back wages by this Court would appear to be the inability of the employer to avail of the service of the employee due to his incarceration in jail, in *Banshi Dhar (supra)*, the refusal of back wages by this Court was in a situation largely similar to the case before us, namely, where the employee was all along on bail and was thus available for work. In *Banshi Dhar (supra)*, this Court answered the question against the employee by holding that grant of back wages is not automatic and such an entitlement has to be judged in the context of the totality of the facts of a given case. It is on such consideration that back wages was declined. In the present case, it will not even be necessary for the Court to perform the said exercise and delve into the surrounding facts and circumstances for the purpose of adjudication of the entitlement of the respondent to back wages in view of the provisions of Section 10(1)(b)(i) of the Act. The said provisions impose a clear bar on a banking company from employing or continuing to employ a person who has been convicted by a criminal court of an offence involving moral turpitude. No discussion as to the meaning of the expression 'moral turpitude' is necessary having regard to the nature of the offences alleged against the respondent, namely, under Section 498A of the IPC and Section 4 of the Dowry Prohibition Act, 1961. No doubt, the respondent was not in custody during the period for which he has been denied back wages in as much as the sentence imposed on him was suspended during the pendency of the appeal. But what cannot be lost sight of is that conviction of the respondent continued to remain on record until it was reversed by the appellate court on 22.02.2002. During the aforesaid period there was, therefore, a prohibition in law on the appellant-bank from employing him. If the respondent could not have remained employed with the appellant-bank during the said period on account of the provisions of the Act. it is difficult to visualise as to how he would be entitled to payment of salary during that period. His subsequent acquittal though obliterates his conviction, does not operate to retrospectively wipe out the legal consequences of the conviction under the Act. The entitlement of the respondent to back wages has to be judged on the

aforesaid basis. His reinstatement, undoubtedly, became due following his acquittal and the same have been granted by the appellant bank.

11. The respondent was acquitted on 22.02.2002; the demand for reinstatement was made by him on 22.04.2002 and he was reinstated in service by the appellant bank on 07.11.2002. On the view that we have taken, at the highest what can be said in favour of the respondent is that he is entitled to wages from the date he had lodged the demand for the same following his acquittal, namely, from 22.04.2002, until the date of his reinstatement, if the same has not already been granted by the appellant bank.

12. In the light of the above discussions, we allow the appeal and set aside the judgment and order dated 22.02.2012 passed by the Division Bench of the High Court of Judicature at Madras, subject to the observations made above.