

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2012

CORAM:

THE HONOURABLE MR.JUSTICE K.CHANDRU

W.P.Nos.24660 of 2002,  
6101 of 2008

S.Krishnamurthy

.. Petitioner in W.P.No.24660/2002

State Bank of India

Ambedkar Trade Union (Reg.No.2329/MDS)

Rep. By its General Secretary,

No.635, Rani Ammai Street,

Periyar Nagar,

Chennai - 600 039.

... Petitioner in W.P.No.6101/2008

Vs.

1.State Bank of India,

Represented by its

Chief General Manager,

Local Head Office,

Chennai Circle,

College Road, Chennai - 600 006.

2.Assistant General Manager

Region II, State Bank of India,

Zonal Office,

Tiruchirapalli 620 008.

... Respondents in W.P.No.24660/2002

3.The Presiding Officer,

Central Government Industrial Tribunal

Cum Labour Court,

I Floor, B Wing,

No.26, Haddows Road,

Shastri Bhavan, Chennai - 600 006.

4.Deputy General Manager,

State Bank of India,

Region II, Zonal Office,

Mc.Donalds Road,

Tiruchirapalli 620 001.

...Respondents in W.P.No.6101/2008

W.P.No.24660 of 2002 filed under Article 226 of the Constitution of India praying for a writ of certiorari Mandamus, calling for the concerned records from the 2nd respondent, quash the order of the 2nd respondent dated 18.10.1996 and order dated 9.1.2002 in so far as para 6 of the same as it denies the petitioner backwages, attendant benefits for the period from the date of discharge till the date of reinstatement as illegal,

arbitrary, contrary to law and consequently direct the respondents to pay the petitioner backwages, attendant benefits and all other benefits from 18.10.1996 being the date of discharge till date of reinstatement i.e 15.01.2002

W.P.No.6101 of 2008 filed under Article 226 of the Constitution of India praying for a writ of Certiorari, to call for the concerned records from the 1st respondent quash the award dated 22.08.2007 passed by the 1st respondent Tribunal in I.D.No.6 of 2006.

For Petitioner :Mr.Balan Haridas (in both Wps)

For Respondents :Ms.Kala Ramesh for R1 & R2  
for M/s.P.Sukumar  
in W.P.No.24660 of 2002  
Mr.K.Sankaran for R2  
in W.P.No.6101 of 2008

#### C O M M O N O R D E R

W.P.No.24660 of 2002 was filed by the workman S.Krishnamurthy, who working as Messenger in the State Bank of India (for short SBI), seeking to challenge the order of the Assistant General Manager, SBI, Zonal Office, Tiruchirapalli dated 09.01.2002 in so far as Paragraph 6 as it denies the workman the benefit of backwages, attendant benefits from the date of discharge till the date of reinstatement as illegal and for a consequential direction to pay backwages, and all other attendant benefits from 18.10.1996 being the date of discharge till date of reinstatement i.e 15.01.2002.

2. That writ petition was admitted on 11.07.2002. On notice, a counter affidavit has been filed by the respondent SBI dated 17.10.2003. Pending the writ petition, an application in W.P.M.P.No.33913 of 2012 was filed for interim direction to pay back wages and other attendant benefits. This Court rejected the said application on the ground that the relief claimed in the main writ petition and the Miscellaneous petition was one and the same.

3. The workman was initially convicted under Section 420 IPC with the punishment of 6 months rigorous imprisonment with a fine of Rs.1000/- by the learned Judicial Magistrate, Tiruthuraipundi vide judgment dated 24.06.1996. Therefore, the Management by an order dated 18.10.1996 discharged the workman from service. The workman informed the Bank that he had filed an appeal against the said order before the Additional Assistant Judge, Nagapattinam in C.A.No.41 of 1996.

4. Thereafter, the workman filed Criminal Revision Case No.758 of 1996 before this Court. This Court permitted the workman to compound the offence and he was acquitted by an order dated 15.07.1999. On the strength of the same, the workman wrote to the Management that since the offence has been compounded, there was no

conviction on record and hence requested to reinstate him in service with all benefits. As there was no reply, the workman filed W.P.No.22539 of 2001 seeking for a direction to pass orders on his representation dated 20.12.1989. This Court disposed of the writ petition by order dated 21.11.2001 and directed the Bank to consider his representation.

5. It was pursuant to the same, the Bank passed the impugned order dated 09.01.2002. In paragraphs 4 to 6 , it was stated as follows:-

"4. It is observed that you were permitted by the Honourable High Court to "compound the offence with PW1" and consequently acquitted of the charges in the above referred criminal case.

5. Please therefore note that your reinstatement in service is without prejudice to the Bank's right to initiate suitable disciplinary action against you for your involvement in criminal offence.

6. Also please note that you will not be paid any back wages or any other attendant benefits for the period from the date of discharge till the date of reinstatement."

6. Aggrieved by the para 6 extracted above, the writ petition came to be filed. Subsequent to the filing of the writ petition, the Management issued a show cause notice on 02.12.2003 alleging that he had violated the service rule while he was working as a Messenger at Thiruthuraipundi branch, for pecuniary advantage by abusing his position as an employee; he had not returned or informed about the fate of the unused cheque leaves, when the Savings Bank Account maintained in his name at Thiruthuraipundi Branch was closed; one of the customer by name R.Natarajan of Korkkai entered the Branch premises with an intention to remit Rs.35,000 in his account on 05.12.1991, whereas, the workman had intercepted him and prevented him from doing so; he had misled him and convinced him to lend the said amount to him; he had issued a cheque dated 06.01.1992 for a sum of Rs.35,000/- to R.Natarajan without any operative account; when the said cheque was presented for payment/collection, the same was returned for the reason that his account was already closed. He also remained absent unauthorisedly from 18.09.1996.

7. The workman sent a reply dated 31.12.2003 alleging that criminal case was foisted against him and therefore, he was unable to attend office from 18.09.1996. With reference to the transaction with one Natarajan, it was stated that he had taken the amount for domestic expenses. The incident never arose in the bank premises. The cheque was given to him on an earlier occasion. The cheque was misused by Natarajan even though he was aware that the account was closed. The criminal case registered against him already ended in acquittal.



8. Notwithstanding the explanation of the workman, the Bank by an order dated 06.04.004 held that he was liable to be penalised for issuing a cheque without any operative account. Therefore, he was asked to show cause as to why punishment of Censure should not be imposed on him. The workman gave his explanation once again. Notwithstanding the same, after conducting a personal enquiry, in terms of Clause 8(a) of the Memorandum of Settlement dated 10.04.2002, punishment of Censure was imposed on him. The petitioner preferred appeal to the Appellate Authority. The Appellate Authority, by an order dated 22.09.2004 rejected the appeal as there was no dispute regarding issuance of cheque to one Natarajan without any operative account.

9. It was thereafter the case of the workman was taken up by State Bank of India Ambedkar Trade union and an industrial dispute was raised before the Assistant Commissioner of Labour, Central. The said Conciliation Officer after due notice to the Management and after conducting conciliation meeting, as he was not able to bring about any mediation sent a failure report to the Government of India. The Government of India through Ministry of Labour vide order dated 30.01.2006 referred the following dispute for adjudication by the Central Government Industrial Tribunal cum Labour Court (for short CGIT):-

"Whether the action of the imposition of punishment of censure on Sri.S.Krishnamurthy, Messenger, State Bank of India is legal and justified? If not, what relief is the workman entitled for?"

10. The said dispute was registered as I.D.No.6 of 2006 and notice was issued to both sides. The Trade Union filed a claim statement dated 16.03.2006. The Management filed a counter statement dated 29.05.2006. Before the Tribunal, on behalf of the workmen, the affidavit and petition in W.P.No.24660 of 2002 was filed as Ex.W1. On the side of the Management, 16 documents were filed and marked as Exs.M1 to M16. The Tribunal by the impugned Award dated 22.08.2007 held that imposition of punishment of Censure was legal and justified and dismissed the dispute.

11. The CGIT recorded the following finding in Para 7 of its Award:-

"But even though the learned counsel for the petitioner argued that the same set of facts were alleged in the criminal proceedings and also before the domestic enquiry and though it is alleged that the Hon'ble High Court has acquitted the concerned employee from the charge under Section 420 IPC, I find the acquittal is not an honourable one. By meaning "honourable one", it only means that it is not an acquittal which free from any doubt and when the Hon'ble High Court has permitted the concerned employee to compound the offence that means he has

settled the issue with the complainant. Therefore, I find though it is alleged on behalf of the petitioner union that the concerned employee was acquitted on merits, it is not a honourable acquittal and therefore the decision relied on by the learned counsel of the petitioner is distinguishable. Even though, in this case it is alleged that there is a delay of 13 years after the incident, the charge memo was issued to the concerned employee, the charge memo was issued only after the reinstatement of the concerned employee and even in the order of reinstatement, the Respondent/Management has reserved their rights to initiate disciplinary action against the concerned employee, the concerned employee has not questioned the reservation made by the Respondent /Management. As such, I find the initiation of disciplinary proceedings against the concerned employee cannot be said to be illegal. Though the concerned employee alleged that he has made the admission of the charges in the questionnaire only on the insistence of the disciplinary authority and he has made this admission not out of his free will. He has not disputed this admission even before the Appellate Authority. In such circumstances, this dispute made by the concerned employee only as an after thought and it is clear that he has admitted all the charges made against him and only after the punishment was imposed by the Respondent/Management, he has made this allegation only in the Claim Statement."

12. Assailing this Award, the writ petition came to be filed by the Trade Union to which the workman belonged. The said writ petition was admitted on 11.03.2008. On notice, a counter affidavit has been filed by the respondent Bank dated 06.06.2012. The original records were also summoned from the Labour Court and perused by this Court. सत्यमेव जयते

13. Heard the arguments of Mr.Balan Haridas, learned counsel for the petitioner in both writ petitions, Ms.Kala Ramesh, learned counsel appearing for the second respondent in W.P.No.24660 of 2002 and Mr.K.Sankaran, learned counsel appearing for the second respondent in W.P.No.6101 of 2008.

14. It was contended by Mr.Balan Haridas, learned counsel for the petitioner that when the Management initially reinstated the workman did not think to impose any penalty but merely denied backwages. It was only when the workman filed a writ petition challenging the said order in W.P.No.24660 of 2002 and after receiving notice, they issued a show cause notice on 02.12.2003. If the Management had reserved their right to take disciplinary action by order dated 09.01.2002, nothing prevented them from issuing a notice. Their deliberate attempt to initiate proceedings after 2 years by issuing show cause notice on 02.12.2003 is only

because they had no case in the first writ petition. In normal circumstances, the workman would be entitled for backwages with attendant benefits from the date of discharge till the date of reinstatement. In order to justify the denial of backwages, an attempt was made to issue show cause notice. After receiving the explanation, straightway order of penalty was passed namely 'Censure', so that they can take advantage that penalty of Censure will deprive the backwages for the said period. Once offence was compounded, it is an honourable acquittal. Further, the Management need not have waited to conduct an enquiry and they could have taken disciplinary action at the earliest. Taking disciplinary action after a period of 11 years is uncalled for.

15. In this context, the learned counsel reliance on the judgment of the Supreme Court in *Union of India and others v. Jaipal Singh* reported in 2004 SCC (L & S) 12 for contending that an employee if he is acquitted, he is entitled for backwages from the date of acquittal. He relied on the following passages found in paragraphs 4 and 5:-

"4. ...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 advertting 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."

Therefore, the learned counsel pleaded that the workman is entitled for backwages from the date of acquittal by this Court till he was restored to service namely from 15.07.1999 to 09.01.2002.

16. He also referred to a judgment of a Division Bench of this Court in Secretary, Vallalar Gurukulam Higher Secondary School, Vadalur v. District Educational Officer, Cuddalore reported in 2005 (3) LLN 1151 for reiterating his contention that the workman is entitled for wages even from the date of his discharge. Reference was made to the following passage found in paragraph 6:-

"6. Hence, it was open to the school management to take both kinds of proceedings against the teacher concerned, but it did not choose to institute departmental proceedings against him or issue him any departmental chargememo. The result was that there was only one proceeding against the teacher, i.e., criminal proceeding in which he has been acquitted. Once a person is acquitted in a criminal case, it has to be deemed that he never committed that offence. This is because every judgment operates retrospectively unless expressly made prospectively, unlike a legislation which normally operates prospectively unless expressly made retrospectively. Since the employee has been acquitted in the criminal case that judgment will operate retrospectively and it has to be deemed that the teacher concerned was never guilty of that offence. Consequently, he is entitled in his salary for the period of his unemployment and he is entitled to reinstatement."

17. Per contra, Mr.K.Sankaran, learned counsel for the Bank submitted that since the workman was convicted by the Criminal Court, he could not be retained in service in terms of Section 10 (1)(b)(1) of the Banking Regulation Act and hence, he was discharged. His appeal was also confirmed. Only this Court in Criminal revision having found that offence was compounded had acquitted the workman. The acquittal was not an honourable acquittal. He was reinstated in service without prejudice to take disciplinary action. After giving show cause notice, he was imposed with the penalty of Censure. The CGIT itself held that the acquittal is not an honourable one.

18. The learned counsel placed reliance on the judgment of the Supreme Court in Divisional Controller, Karnataka State Road Transport Corporation v. M.G.Vittal Rao reported in (2012) 1 SCC 442 for contending that disciplinary proceedings can be taken

notwithstanding the acquittal and the standard of proof in a departmental enquiry and criminal case are different inasmuch as the Management is entitled to rely upon their domestic enquiry proceedings for imposing penalty.

19. The learned counsel for the Bank also placed reliance on the settlement between the Bank and the Union dated 31.10.1979 for contending that an enquiry need not be held if Bank had issued show cause notice advising him of the misconduct and the punishment for which he may be liable for such misconduct and when the employee makes a voluntary admission of his guilt in reply to the show cause notice.

20. The learned counsel further submitted that effect of Section 320(8) will not apply to the case of the workman. However, it is stipulated under Section 320(8) of Cr.P.C that the composition of an offence under this Section 320 shall have the effect of an acquittal of the accused with whom the offence has been compounded.

21. In the present case, it is stated by the Bank that the petitioner in his personal hearing had admitted the charges. But in the explanation given to the Bank, there was no unequivocal admission made by the workman. In the order dated 22.06.2004, it is merely stated that Bank has considered the workman's oral/written submissions made during the personal hearing and hence hold him guilty of the charges. The Appellate Authority in his reasons appended to the order of rejection stated that the allegation stands proved that in as much as the cheque for Rs.35,000/- issued by him to R.Natarajan on 06.01.1992 was returned unpaid on 18.01.1992 for the reason 'Account has already been closed'. Hence, he had issued the cheque even when he was not having the account. Whereas the explanation given by the workman was that the cheque was taken away by the borrower even before closing of the account. It was held by the Appellate Authority, that it was not subject matter of the disciplinary action. This stand cannot be accepted.

22. The Appellate Authority in Paragraph 8 recorded as follows:-

"...However, as per provisions of the settlement, although the appellant did not request for any personal hearing, in order to afford him a reasonable opportunity and tender natural justice, a personal hearing was given to him on 07.06.2004. During the personal hearing the appellant regretted his actions. Thereafter, the Disciplinary Authority, on an independent assessment of the records of the case, taking into reckoning the gravity and nature of the charges, extenuating circumstances, took a lenient view and imposed on him the punishment of CENSURE in terms of clause 8(a) of the Memorandum of Settlement dated 10.04.2002."



23. Before the CGIT, the records of the personal hearing was not produced by the Management. Therefore, this Court in order to verify the same summoned the original records and found the said document do not find a place in the records submitted by them. Therefore, what the workman said during the personal hearing was not proved before the CGIT and by mere assertion before this Court in the counter affidavit does not help the case of the Management. After the effect of Section 320(8) of Cr.P.C still to contend that it was not an honourable acquittal, is a misnomer. Further, there was considerable delay viz., more than 11 years in taking action against the workman. The learned counsel for the workman is correct in stating that only after receiving notice in the writ petition of the year 2002, after a period of 21 months, the Management thought fit to initiate action only as a counter blast to deny him backwages. If it is one thing to state that the Bank is having power to initiate action even after acquittal but other thing to state that the action can be initiated any time as it pleases the Management. In the absence of the Management not proving that there was admission of the guilt by the workman during the personal hearing before the CGIT, this Court is unable to accept the stand of the Management.

24. Hence, both writ petitions will stand allowed. The order dated 09.01.2002 in so far as paragraph No.6 of the same stands aside. The impugned Award in I.D.No.6 of 2006 dated 22.08.2007 stands set aside and the punishment of 'Censure' stands deleted. The workman is entitled for backwages and other attendant benefits arising out of the same. No costs.

Sd/-  
Deputy Registrar

/true copy/

Sub Asst.Registrar

svki

To

1.The Chief General Manager,  
State Bank of India,  
Local Head Office,  
Chennai Circle,  
College Road, Chennai - 600 006.

2.Assistant General Manager  
Region II, State Bank of India,  
Zonal Office,  
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3.The Presiding Officer,  
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4.Deputy General Manager,  
State Bank of India,  
Region II, Zonal Office,  
Mc.Donalds Road,  
Tiruchirapalli 620 001.

1 cc to Mr.Balan Haridas, Advocate, SR.No.61168

1 cc to Mr.K.Sankaran, Advocate, SR.No.60815

1 cc to Mr. P.Sukumar, Advocate, SR.No.61671

Order in  
W.P.Nos.24660 of 2002,  
6101 of 2008

TMN {CO}  
TP/17.10.2012.



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