A BANSHI DHAR

v.

STATE OF RAJASTHAN AND ANR.

OCTOBER 31, 2006

B [S.B. SINHA AND MARKANDEY KATJU, JJ.]

Service Law:

C *Backwages—Entitlement of—Workman placed on suspension pursuant to allegation of grave criminal misconduct—On conviction by Trial Court, dismissed—Acquittal by Appellate Court, though meanwhile workman reached age of superannuation—Held: Entitlement to back wages not automatic even when order of dismissal found invalid—On facts, not a fit case for grant of back wages having regard to the fact that the workman had been paid retiral* D *benefits—Prevention of Corruption Act—Section 5(1)(d) Penal Code, 1860—Section 161.*

Appellant was placed under suspension on allegations of grave criminal misconduct. His services were subsequently dispensed with as he was convicted by a Trial Court under Section 5(1)(d) of the Prevention of Corruption Act read with Section 161, IPC. Appellant was however acquitted by the Appellate Court, though on the date of passing of the judgment of acquittal, Appellant had already reached his age of superannuation.

Appellant filed writ petition before the High Court which, though denying him back wages, permitted him to claim pensionary benefits before the concerned authority. On application of the Appellant, he was directed to be paid his entire pensionary benefits by the said authority.

The question which arose for consideration in the present appeal is whether in a situation of this nature, Appellant is entitled to payment of back wages.

Dismissing the appeal, the Court

HELD: 1. It is now a trite law that judgment of acquittal itself would not have exonerated him of the charges levelled against him. He could have been

proceeded against in a departmental proceeding. Departmental proceedings, however, could not be held as on the date of passing of the judgment of acquittal, he had already reached his age of superannuation. [82-G-H; 83-A]

Manager, Reserve Bank of India, Bangalore **v.** *S. Mani and Ors.*, **[2005] 5 SCC 100 and** *Commissioner of Police, New Delhi* **v.** *Narender Singh*, **[2006] 4 SCC 265, relied on.**

2.1. No hard and fast rule can be laid down in regard to grant to back wages. Each case has to be determined on its own facts. [82-F]

2.2. The High Court refused to exercise its discretionary jurisdiction. There is no reason for this Court to take a different view. Grant of back wages, it is well settled, is not automatic. Even in cases where principles of natural justice have been held to have not been complied with, while issuing a direction of reinstatement, this Court had directed placing of the delinquent employee under suspension. Even in relation to the industrial disputes, this Court, in many judgments, has held that back wages need not be granted automatically although the order of termination passed against the concerned workman was found to be invalid. The instant case is not a fit case, having regard to the fact that the appellant has been paid the retiral benefits, where this Court should interfere. [83-C; 84-E-G]

Managing Director, ECIL, Hyderabad and Ors. **v.** *B. Karunakar and Ors.*, **[1993] 4 SCC 727;** *South Bengal State Transport Corpn.* **v.** *Sapan Kumar Mitra and Ors.*, **[2006] 2 SCC 584;** *U.P. State Brassware Corpn. Ltd. and Anr.* **v.** *Uday Narain Pandey*, **[2006] 1 SCC 479 and** *Municipal Council, Sujanpur* **v.** *Surinder Kumar*, **[2006] 5 SCC 173, relied on.**

Ranchhodji Chaturji Thakore **v.** *Superintendent Engineer, Gujarat Electricity Board, Himmatnagar (Gujarat) and Anr.*, **[1996] 11 SCC 603;** *Union of India and Ors.* **v.** *Jaipal Singh*, **[2004] 1 SCC 121 and** *Baldev Singh* **v.** *Union of India and Ors.*, **[2005] 8 SCC 767, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4400 of 2005.

From the Judgment and Final Order dated 1.8.2003 of the High Court of Judicature for Rajasthan at Jodhpur in D.B. Civil Special Appeal (Writ) No. 225/2003.

K.S. Bhati for the Appellant.

A Navin Kumar Singh (for Aruneshwar Gupta) for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. Appellant was a Patwari working at village Minda in the year 1976. On an allegation that he had sought illegal gratification, on or B about 13.7.1976, a complaint was lodged in the office of Deputy Superintendent of Police, Anti-Corruption, Jaipur (Rural) that the appellant had asked for illegal gratification. A raiding party laid a trap on the said date and he was found to have accepted illegal gratification. Pursuant thereto he was prosecuted for alleged commission of an offence under Section 5(1)(d) of the Prevention of Corruption Act read with Section 161 of the Indian Penal Code. He was C placed under suspension. He was convicted under Section 5(1)(d) of the Prevention of Corruption Act read with Section 161 of the Indian Penal Code by reason of a judgment dated 25.02.1985 passed by the Special Judge (A.C.D.) in criminal case No. 17 of 1979. He was dismissed from service in terms of the said judgment of conviction by an order dated 3.10.1987.

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The appellant preferred an appeal against the said judgment of conviction and sentence and by reason of a judgment and order dated 16.01.2001, the said appeal was allowed. The appellant, thus, stood acquitted.

In the meanwhile, i.e., in the year 1998, the appellant reached his age E of superannuation. Having been acquitted in the criminal proceeding, he filed a writ petition before the High Court of Rajasthan which was marked as SB Civil Writ Petition No. 3111 of 2002. By an order dated 19.02.2003, a learned Single Judge of the High Court directed that in the event the appellant files a representation before the competent officer with regard to pension, the same may be considered within a period of three months therefrom. An appeal F preferred thereagainst was dismissed by reason of the impugned order passed by the Division Bench.

Before we advert to the contentions raised by the appellant questioning the correctness or otherwise of the judgment of the learned Single Judge as also the Division Bench of the High Court denying him back wages, we may G notice that pursuant to or in furtherance of the said judgment dated 19.02.2003, he filed a representation before the Collector and the said authority by an order dated 25.11.2004 directed:

"The first appointment of Sh. Vanshidhar was made on 22.10.60 in the H Office of Tehsildar, Nagore and on 3.10.87, he was dismissed from his

service. Accordingly, the service tenure of Sh. Vanshidhar comes to 26 years, 11 months and 13 days. This service tenure comes within the pensionable service category.

Therefore, while allowing the representation dated 6.8.04 submitted by Sh. Vanshidhar, Ex. Patwari, I think it proper to allow the pension benefit to him under the provisions of Rajasthan Pension Rule, 1996.

Therefore, in the light of aforesaid all facts and circumstances, the pensionary benefit of Sh. Vanshidhar, Ex. Patwari is hereby allowed and it is directed that in compliance of the Circular No. F 10/35/Vitta/ Niyam 96/R.S.R. 2/03 dated 04.02.03 of the Finance Department the case shall be forwarded to the Finance Department for necessary action."

Mr. K.S. Bhati, learned counsel appearing on behalf of the appellant, submitted that it being not a case where he had remained in custody for alleged commission of an office which prevented him from attending the duties, he could not have denied back wages. It was urged that the decision of this Court in *Ranchhodji Chaturji Thakore* v. *Superintendent Engineer, Gujarat Electricity Board, Himmatnagar (Gujarat) and Anr.*, [1996] 11 SCC 603 was wrongly applied by the High Court as the appellant therein was convicted for an offence under Section 302 read with Section 34 of the Indian Penal Code. In *Ranchhodji Chaturji Thakore* (supra) this Court opined:

"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 its own backdrop. 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

A not entitled to payment of back wages. The learned Single Judge and the Division Bench have not committed any error of law warranting interference."

It was contended that the decision of this Court following the said dicta in *Union of India and Ors.* v. *Jaipal Singh,* [2004] 1 SCC 121 and *Baldev* B *Singh* v. *Union of India and Ors.,* [2005] 8 SCC 767 being based on the same reasonings, must also be held to be not applicable in the instant case.

The appellant had all along remained under suspension for eleven years. He undoubtedly received subsistence allowance during the said period.

C It may be true that the reason for long pendency of the trial or the criminal appeal filed by him may not be attributed to his acts of omission and commission but the fact remains that the entire period between 13.7.1976 and the date when he reached his age of superannuation he did not work. He was placed under order of suspension validly from 1976 to 2.10.1987. Legality of D the order of dismissal on the basis of the judgment of conviction and sentence dated 25.2.1985 has also not been questioned. It is true that his services were dispensed with as he had been convicted in a criminal case involving grave misconduct. On his acquittal, he was to be reinstated in service. He has been directed to be paid his pensionary benefits. The entire period during which he remained under suspension, thus, would be considered for calculating his E pensionary benefits. Continuity of his service has also not been denied to him. The only question which arises for consideration, as noticed hereinbefore, is as to whether in a situation of this nature back wages should have been granted to him.

No hard and fast rule can be laid down in regard to grant to back wages. F Each case has to be determined on its own facts. A grave charge of criminal misconduct was alleged against him. He was also found guilty of the charges levelled against him by the Special Judge. The High Court while delivering its judgment dated 16.01.2001 in S.B. Criminal Appeal No. 68 of 1985 *inter alia* held that the prosecution has not been able to prove that any demand had G been made by him.

It is now a trite law that judgment of acquittal itself would not have exonerated him of the charges levelled against him. He could have been proceeded against in a departmental proceeding. [See *Manager, Reserve Bank of India, Bangalore* v. *S. Mani and Ors.,* [2005] 5 SCC 100 and *Commissioner*

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of Police, New Delhi v. *Narender Singh,* [2006] 4 SCC 265] A

Departmental proceedings, however, could not be held as on the date of passing of the judgment of acquittal, he had already reached his age of superannuation. The learned counsel may be right that the decisions of this Court referred to hereinbefore involved the respective appellants therein on charge of murder under Section 302 of the Indian Penal Code, but, as noticed, B it has also been laid down that each case has to be considered on its own facts. The High Court refused to exercise its discretionary jurisdiction having regard to the aforementioned decision of this Court in *Ranchhodji Chaturji Thakore* (supra). We do not see any reason to take a different view. Grant of back wages, it is well settled, is not automatic. Even in cases where C principles of natural justice have been held to have not been complied with, while issuing a direction of reinstatement, this Court had directed placing of the delinquent employee under suspension.

In *Managing Director, ECIL, Hyderabad and Ors.* v. *B. Karunakar and Ors.,* [1993] 4 SCC 727 : AIR (1974) SC 1074, this Court opined: D

> "Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show E how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The F Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal G appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following H

A the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the B back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be C reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry D from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law."

[See also *South Bengal State Transport Corpn.* v. *Sapan Kumar Mitra and Ors.*, (2006) 2 SCC 584]

E Even in relation to the industrial disputes, this Court, in many judgments, has held that back wages need not be granted automatically although the order of termination passed against the concerned workman was found to be invalid. [*U.P. State Brassware Corpn. Ltd. and Anr.* v. *Uday Narain Pandey,* [2006] 1 SCC 479 and *Municipal Council, Sujanpur* v. *Surinder Kumar,* [2006] F 5 SCC 173]

We, therefore, are of the opinion that it is not a fit case, having regard to the fact that the appellant has been paid the retiral benefits, where we should interfere with the impugned judgment. The appeal is dismissed. No costs.

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B.B.B. Appeal dismissed.