

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.366 of 2018

In

Civil Writ Jurisdiction Case No.7256 of 2009

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Devendra Kumar Sinha S/o Late Krishna Chandra Prasad Aged 54 years,
C/o Smt. Jai Shankar Prasad, Mangal Dip Apartment, Flat No. 22,
Patliputra Colony, P.S. Patliputra Colony, Town and District- Patna.

... ... Appellant/s

Versus

1. The State Bank Of India, Corporate Centre, Mumbai through the Chairman
2. The Dy. Manager, Director and Corporate Development Officer, State Bank of India, Corporate Centre, Mumbai
3. The Chief General Manager, State Bank of India, Local Head Office, West of Gandhi Maidan, P.S. Gandhi Maidan in the town and district Patna
4. The General Manager (Net Work II) State Bank of India, Local Head Office, West of Gandhi Maidan, P.S. Gandhi Maidan in the town and district Patna
5. The Dy. General Manager (Vig.) State Bank of India, LHO West of Gandhi Maidan, P.S. Gandhi Maidan in the town and district Patna
6. The Assistant General Manager (HR) State Bank of India, Local Head Officer, West of Gandhi Maidan, P.S. Gandhi Maidan in the town and district Patna
7. The Asst. General Manager (Adm.) State Bank of India, Administrative Office, Bhagalpur.
8. The Regional Manager (Region-5) State Bank of India, Regional Office, Bhagalpur.

9. The Chief Manager, State Bank of India, Godda Branch, Godda, District-Godda, Jharkhand.
10. The Union of India through the Secretary, Central Vigilance Commission, Satarkata Bhawan, General Pool Offices Complex, Block a. INA, New Delhi
11. The Chief General Manager, Reserve Bank of India, Department of Banking Operation and Disciplinary Proceeding Central Office, Shahid Bhagat Singh Road, Mumbai

.... ... Respondent/s

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Banking Regulation Act 1949 - S.10(1)(b)(I)

Appeal -Payment of back wages- employee of State Bank of India – detention – period of detention – reinstated – back wages – charged – criminal case instituted – acquitted – order passed on 4-1-2019 in I.A. No. 2133 of 2018 with LPA No. 366 of 2018 with reference to aforementioned cases – additional issue raised – similar benefit extended after acquittal -payment of back wages – offer made regarding back wages withdrawn – Learned Single Judge ruled – employee entitled to back wages – Appeal -Division Bench – Appeal upheld – entitled to back wages as compensation- bar on banking companies from employing or continue to employ person with criminal antecedent – convicted by a criminal court involving moral turpitude- employee not an employee during period of detention – not entitled to payment of salary etc. during that period – Supreme Court judgment referred -no merit in contention -Judgement of Apex Court binding – relying on same – not inclined to different view – Appeal lacks merit – Dismissed.

Referred:

State Bank of India v Md. Abdul Rahim (2013) 11 SC 67

Smt. Sushila Devi v State of Bihar 2002 (3) PLJR 86

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 11. The Chief General Manager, Reserve Bank of India, Department of Banking Operation and Disciplinary Proceeding Central Office, Shahid Bhagat Singh Road, Mumbai
- Respondent/s

Appearance :

For the Appellant/s	:	Mr. Chittaranjan Sinha, Senior Advocate Mr. Rajendra Prasad, Advocate Miss Surya Nilambari, Advocate
For the SBI	:	Mr. Rakesh Kumar Singh, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE**and****HONOURABLE JUSTICE SMT. ANJANA MISHRA****ORAL JUDGMENT****(Per: HONOURABLE THE CHIEF JUSTICE)****Date : 04-04-2019**

Heard Shri Chittaranjan Sinha, learned Senior

Counsel for the appellant and Shri Rakesh Kumar Singh for the



State Bank of India.

2. This matter had been heard twice on previous occasions. While considering the question raised with regard to the payment of back-wages for the period of detention being claimed after being reinstated and after being acquitted in a criminal case, the following order was passed by us on 4th January, 2019:-

"I.A. No. 2133 of 2018

Having heard Shri Sinha, learned Counsel for the appellant, and Shri Singh for the respondent Bank, we are satisfied that the delay has been sufficiently explained. The delay condonation application is allowed. The appeal shall be treated to be within time.

L.P.A. No. 366 of 2018

Heard Shri Chitranjan Sinha, learned Senior Counsel for the appellant, and Shri Rakesh Kumar Singh for the respondent State Bank of India. The appellant was dismissed from services on account of his involvement in criminal case and was ultimately convicted by the Trial Court. On appeal, he was acquitted by the High Court. After his acquittal he moved for payment of back wages for the period during which he remained out of services upon his discharge on account of conviction in the criminal case. This payment was not being made, as a result whereof he filed writ petition that has given rise to this appeal. The learned Single Judge, relying on the judgement of the Apex Court in the case of SBI Vs. Mohd. Abdul Rahim, (2013) 11 SCC 67, held that on account of Section 10(1)(b)(i) of the Banking



Regulation Act, 1949, the appellant was not entitled to any back wages.

Shri Sinha has relied on the Division Bench Judgement in the case of General Manager (Region), Food Corporation of India Vs. Vijendra Kumar, reported in 2018 (1) PLJR 404, to urge that after considering the judgement in the case of State Bank of India Vs. Mohd. Abdul Rahim (Supra) the Division Bench held that on acquittal an employee would be entitled for back wages. In addition to the aforesaid argument, Shri Sinha has invited the attention of the Court to the supplementary affidavit dated 27th August, 2018 wherein it has been stated categorically that one Shri Brij Bhushan who was also similarly accused as the appellant in the criminal case and had been reinstated, has been awarded a lump sum monetary compensation vide an order dated 11th of February, 2015. He, therefore, submits that the appellant cannot be treated differently in the matter of payment of back wages or even otherwise to be considered for payment of any lump sum monetary compensation as has been done in the case of Brij Bhushan.

Learned counsel for the respondent Bank may file an appropriate affidavit in relation to the said allegation that has been brought on record, within 3 weeks.

The matter shall be listed for order thereafter on 28th of January, 2019."

3. An additional issue had been raised by the learned counsel for the appellant about a similar benefit having been extended after acquittal culminating in payment of



compensation to one Brij Bhushan Singh.

4. We had called upon the learned counsel for the Bank to inform us as to whether such benefits had been extended or not. An affidavit has been filed by the Bank bringing on record the letter of the Development Officer dated 13th March, 2019 stating clearly therein that the offer which had been made as compensation to the said employee has been withdrawn. Thus, the claim of parity with that of Brij Bhushan Singh no longer can be looked into in view of the aforesaid stand taken by the Bank.

5. Shri Sinha, therefore, reverted back to the original argument raised by him that in view of the principles that have been culled out by the Division Bench in the case of **General Manager (Region), Food Corporation of India Vs. Vijayendra Kumar [2018(1) P.L.J.R. 404]**, the same ratio deserves to be applied in the present case and the appellant having been acquitted, he is entitled to the payment of entire back-wages/compensation for the period he was out of service on account of such detention.

6. To understand the aforesaid argument as also the ratio of the judgments of the Apex Court referred to therein, we have also gone through the judgment of the learned single Judge



that was in appeal in the case of General Manager (Region), Food Corporation of India (supra). The judgment dated 16.09.2015 proceeds to consider the ratio of the judgment of the Apex Court in the case of **Union of India vs. Jaipal Singh [(2004) 1 SCC 121]** and **Ranchhodji Chaturji Thakore Vs. Superintending Engineer [(1996) 11 SCC 603]**. It is on the strength of these two judgments which were not in relation to any such issue arising out of Banking Regulation Act, 1949 that the learned single Judge culled out in paragraph 13, the following categories where payment of back wages could be made or otherwise denied:-

"13. The law, which emerges from the conjoint reading of the two decisions in case of Union of India & Others Vs. Jaipal Singh (supra) and Ranchhodji Chaturji Thakore (supra), is as follows:

(a) Where a person is convicted of a criminal crime and subsequently acquitted and the prosecution was not at the behest of the employer, the employee concerned would be within its right to deny the back wages.

(b) The employer cannot be made liable to pay for the period for which they could not avail the services of the employer, if the department cannot in any manner be faulted with for having kept him out of service.

(c) If an employee was initially convicted and subsequently acquitted and the prosecution was at the behest of the employer, then in such cases different considerations may arise, which may include



payment of back wages.

(d) There cannot be any strait jacket formula with respect to payment of back wages in case of subsequent acquittal after initial conviction and each cases would be required to be considered in its own backdrop."

7. After having laid down the aforesaid categories, the learned single Judge further quoted Rule 8(a) of the F.C.I. Staff Regulations, 1971 and then came to the conclusion that according to the said Rules as well, the employee was entitled to back wages. Paragraph 15 of the judgment of the learned single Judge is also extracted hereinunder:

"15. Besides this, I find that the Vigilance Manual and the Rule of department, namely, Rule 8 (a) of F.C.I. Staff Regulations, 1971 enjoins upon the Department to make payment of full pay and allowances other than conveyance allowances, in case the suspension or the action taken against or in case the employee is to be reinstated in service. Rule 8 (a) is quoted herein below for easy reference:

"8. When the suspension of an employee is held to be unjustified or not wholly justified; or when an employee has been dismissed or suspended is reinstated, the disciplinary, appellate or reviewing authority, as the case may be, whose decision shall be final, may grant to him for the period of his absence from duty:

(a) if he is honourably acquitted, the full pay and _____ allowances other than



conveyance allowance to which he would have been entitled, if he had not been dismissed or suspended, less the subsistence grant;"

8. When the matter was carried in appeal before the Division Bench in the case of General Manager (Region), Food Corporation of India (supra), it appears that the judgment in the case of **State Bank of India Vs. Mohd. Abdul Rahim [(2013) 11 SCC 67]** was also relied on, on behalf of respondent petitioner therein and thereafter the Division Bench proceeded to analyze the judgments and also made a reference to the case of Mohd. Abdul Rahim (supra) in paragraph No. 9 and upheld the order of the learned single Judge extracted hereinabove and dismissed the appeal.

9. Shri Sinha, learned Senior Counsel for the appellant contends that once the Division Bench has taken into consideration the judgment in the case of State Bank of India Vs. Mohd. Abdul Rahim (supra), then the same should also be treated to be a binding *ratio decidedi* for the purpose of the present case and this co-ordinate Bench should also prefer to follow the same, for which he relies on the observations made by the Division Bench in the case of **Smt. Sushila Devi Vs. State of Bihar [2002 (3) PLJR 86]**. Paragraph 15 which is extracted hereinunder:



"The Division Bench in the matter of **Dhrub Lochan Pradhan** (supra) at the very outset observed that the question involved in the said matter was not at all subject matter of dispute in the case of **A.K. Pradhan** (supra). The Division Bench observed that the Apex Court taking into consideration the facts of the said case issued a direction for regularization as the appellant of that case had completed seven years of service, which was to be reckoned from the date on which the institution was taken over. **In my considered opinion, when a judgment of the supreme Court has been interpreted by a Division Bench of this Court in a particular manner then the said interpretation would be binding upon all subsequent Division Bench and unless it is shown that the interpretation put by the earlier Division Bench is bad, illegal or irrational or deserves reconsideration by larger Bench of this Court, the interpretation cannot be avoided.**"

10. He further contends that on the facts of the present case, the appellant was entitled to the compensation/back wages on the basis of the principles that have been referred to hereinabove and have also been relied on by the Division Bench in the case of General Manager(Region), Food Corporation of India (supra) to arrive at the same conclusion.

11. Learned counsel for the respondent Bank, however, submits that the case of State Bank of India Vs. Mohd. Abdul Rahim (supra) is a direct ratio on the provisions of Section 10(1)(b)(i) of the Banking Regulation Act and was also



a case of the State Bank of India employee wherein it was held that if there is a statutory bar for an employee to continue in employment on account of detention or being prosecuted in a criminal case, then in that event no salary would be payable and the ratio of the said case, therefore, squarely applies in the facts of the present case. He further, therefore, submits that the judgment in case of General Manager(Region), Food Corporation of India (supra) had only made a passing reference to the case of State Bank of India Vs. Mohd. Abdul Rahim (supra), but the same cannot be stated to be a binding ratio insofar as the present case is concerned and is clearly distinguishable.

12. We have considered the submissions raised and there is no doubt that the judgment in the case of General Manager, Food Corporation of India (supra) clearly turned on the rule which was available for awarding back wages that has been indicated in paragraph 15 of the judgment of the learned single Judge as extracted hereinabove. That was not a case where there was any statutory bar and rather, to the contrary, there was a rule extending such benefit.

13. It is therefore evident that the case of General Manager (Region), Food Corporation of India (supra) which



was decided by a Division Bench had upheld that ratio in the light of the principles which the learned single Judge had extracted for the purpose of coming to the conclusion after taking aid of the Rule which was clearly applicable in that case.

14. In our considered opinion, a case is an authority on what it actually decides and not what logically follows from it. The abovequoted judgment of the learned single Judge, which has been upheld by the division Bench, on which heavy reliance has been placed, is an authority on Rule 8(a) of the Rules of the F.C.I. that were involved therein coupled with the principles that supported the said Rules. Neither the learned single Judge nor the Division Bench had adverted to Section 10(1)(b)(i) of the Banking Regulation Act, 1949 and, therefore, the said decision cannot be said to be a binding *ratio decidendi* on the facts of the present case where the 1949 Act is applicable and not the Rules of F.C.I. We clearly find that the judgment in the case of State Bank of India vs. Md. Abdul Rahim (supra), discussed the said Section and held that the provisions imposed a clear bar on a banking company from employing or continuing to employ a person who has been convicted by a criminal court in an offence involving moral turpitude. It was further observed that if the employee could not have remained an employee with the



appellant Bank during the period of detention or otherwise on account of the said provision of the Act, it was difficult to vilsualize as to how he would be entitled to payment of salary during that period. The subsequent acquittal, though obliterates his conviction does not wipe out the legal consequences of the conviction under the Act. The subsequent acquittal therefore will have no bearing keeping in view the provisions of Section 10(1)(b)(i) of the 1949 Act.

15. We, therefore, find that the judgment of the Apex Court in the case of State Bank of India Vs. Mohd. Abdul Rahim (supra) squarely applies on this case and, therefore, there is no merit in the aforesaid contention. In our opinion, what would be binding on this court would be the judgment of the Apex Court and, therefore, relying on the same, we do not find inclined to take a different view in the matter.

16. The appeal lacks merit and is accordingly dismissed.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Saif/-

AFR/NAFR	A.F.R.
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