

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 5217 OF 2002

N. SELVARAJ

Appellant (s)

VERSUS

MANAGEMENT, KUMBAKONAM CITY UNION BANK LTD&ANR

Respondent(s)

(With office report)

WITH Civil Appeal NO. 5218 of 2002

(With appln. for C/delay in filing rejoinder and with prayer for interim relief)

Date: 06/12/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE H.K. SEMA

HON'BLE MR. JUSTICE B.N. SRIKRISHNA

For Appellant(s)

Mr. Ambrish Kumar, Adv.

For Respondent(s)

Mr. Balaji Srinivasan, Adv.

Mr. V. Sudeer, Adv.

Mr. S. Srinivasan, Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeals are dismissed in terms of the signed order.

(Ganga Thakur)

(Prem Prakash)

PS to Registrar

Court Master

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5217 OF 2002

With Civil Appeal No.5218/2002

N. Selvaraj
Appellant(s)

...

Versus

Management, Kumbakonam City
Respondent

...

Union Bank Ltd. & Anr.

J U D G M E N T

SEMA, J.

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.

By this common judgment, we propose to dispose of these two appeals,

as they arise out of common judgment. Civil appeal No.5217/02 is filed by the

employee and cross appeal being Civil Appeal No.5218/02 is filed by the

Management.

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 Section 381 IPC on a

complaint filed by the cashier of Bank alleging that the appellant had stolen a

bundle of notes 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 criminal case. Taking this contention, the appellant did not

participate in the departmental enquiry, despite of repeated reminders to do so,

resulting passing of order of ex-parte enquiry. On conclusion of enquiry, the

enquiry officer found him guilty to the charge. Consequently, he was dismissed

from the service on 6.10.1987. He carried unsuccessful appeal before the Deputy

Commissioner of Labour, Trichy and Tamil Nadu under Shops & Establishment

Act. Aggrieved thereby the appellant filed writ petition before the learned single

Judge which favoured him by setting aside the order of dismissal. Thereafter, the

respondent Bank filed 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 backwages 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."

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

This Court on 19th August, 2002 granted leave in both the petitions

and observed that the denovo 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 15th February, 2004 holding the appellant

guilty of the charges levelled against him. However, in view of the order passed by

this Court as referred 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 backwages 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 are quite different. In criminal trial

the standard of proof is proved beyond all reasonable doubt, whereas in the

departmental proceedings it is preponderance as 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 above, the suspension of the appellant is continuing

subject to the final decision that may be made on the basis of second enquiry. It is

now well settled principle of law that pay and allowances including backwages will

depend on the outcome of the second enquiry to be decided by the disciplinary

authority in accordance with relevant financial Rules. See (Managing Director

ECII, Hyderabad and Ors. Vs. B. Karunakar & Ors. 1993(4)SCC 727)

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

19th August, 2002.

We hold that the payment of backwages, 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 affect him.

In this view of the matter we do not find any infirmity in the order

passed by the High Court.

This appeal being devoid of merits is accordingly dismissed.

Civil Appeal No.5218/02

In view of the above order, this appeal has become infructuous and it

is accordingly dismissed.

.....J.

(H.K. SEMA

)

.....J.

.....

(B.N. SRIKRIS

HNA)

New Delhi,

December 6, 2005.