

ITEM NO.102

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COURT NO.7

SECTION XI

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). 7689 OF 2004

TULSI GRAMIN BANK & ANR

Appellant (s)

VERSUS

PANKAJESH

Respondent(s)

(With office report)

Date: 02/08/2006 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE H.K. SEMA

HON'BLE MR. JUSTICE R.V. RAVEENDRAN

For Appellant(s)

Mr. C. Mukund, Adv.

Mr. Pankaj Jain, Adv.

Mr. Bijoy Kumar Jain, Adv.

For Respondent(s)

Mr. Arvind Varma, Adv.

Ms. Vibha Datta Makhija, Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeal is partly allowed in terms of the signed order.

SINGH)	(RAVI P. VERMA)	(ANAND
Master	Court Master	Court

[Signed order is placed on the file]

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7689 OF 2004

TULSI GRAMIN BANK & ANR. APPELLANTS

Versus

PANKAJESH RESPONDENT

O R D E R

Heard the parties.

The challenge in this appeal is to the order dated 9.1.2004 passed by the Division Bench of the High Court directing the appellant to pay the salary of the respondent from the date of termination (18.3.1985) till the date of reinstatement

(27.7.1988) with interest at 12% p.a. within two months. It was further directed

that the respondent shall be given continuity of service and his salary should be

refixed taking into account his entire length of service from 1983 and arrears

arising thereof shall have to be paid within two months with interest at 12% p.a.

Few facts may be noted. The respondent joined the bank's service on

21.10.1983. On 5.2.1985, he was charge-sheeted for alleged misutilisation of funds

and unauthorised absence from duty. He was placed under suspension on

15.3.1985. However, no departmental proceedings was initiated against the

respondent but he was terminated from service with effect from 18.3.1985 by an

order dated 1.4.1985. The respondent challenged the said termination by filing a

writ petition. His writ petition was allowed on 18.7.1988 setting aside the order of

termination but reserving liberty to the appellant to proceed with the departmental

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enquiry, if so advised.

Pursuant to the order of the High Court dated 18.7.1988, the respondent

was reinstated on 27.7.1988. After enquiry, he was found guilty and imposed a

penalty of withholding of three increments. On appeal being filed, the appellate

authority reduced the withholding of three increments to two increments. By an

order dated 16.5.1997, the salary and increments during the period from 18.3.1985 till 26.7.1985 was denied to the respondent as he has not rendered any service in the Bank during that period.

Respondent challenged the order dated 16.5.1997 by filing another writ petition (CMWP 24597/1997) in which directions have been issued as stated above.

The present controversy revolves around the question as to whether the respondent, in the facts and circumstances of this case, is entitled to backwages from 18.3.1985, the date on which he was terminated, till his reinstatement on 27.7.1988. It has been urged by the counsel for the appellant that the principle 'no work no pay' would apply and the High Court should not have directed the appellant to pay to the respondent, the backwages for the period when he did not render any service to the Bank. It is further contended that the present case is not one where the employee has been exonerated and as the respondent has been found guilty and a penalty of withholding two increments has been imposed on the respondent, he was not entitled to any backwages.

This Court considered a similar question in Allahabad Jal Sansthan Vs. Daya Shankar Rai & Anr., JT 2005 (5) SC 112. This Court held that though earlier, award of full backwages was the usual result of reinstatement, but with the passage

of time the need had arisen to develop a pragmatic approach. It was also held that where the employee reinstated had not raised any plea or adduced any evidence that he had remained unemployed throughout the period from the date of termination to the date of reinstatement, interests of justice would be served by awarding 50% of backwages. The aforesaid principle has been reiterated again in Municipal Council, Sujapur Vs. Surinder Kumar, (2006) 5 SCC 173.

In this case also the respondent has not pleaded or adduced any evidence that he was not gainfully employed during the period during which he was out of service. As observed by this Court in Allahabad Jal Sansthan (supra), we are required to adopt a pragmatic approach keeping in view the interest of both the employer and the employee. While the action of the employer in terminating the services without any enquiry was illegal, any direction for reinstatement with full backwages, when the employee has subsequently been found guilty in an enquiry, may virtually amount to rewarding the guilty. In our view, in the facts and circumstances of the present case, if 50% of backwages is ordered to be paid w.e.f. 18.3.1985 to 26.7.1988 it will serve the ends of justice.

Accordingly, this appeal is allowed in part and the respondent shall be entitled 50% of backwages from 18.3.1985 to 26.7.1988. The respondent shall not, however, be entitled to any interest either on 50% of backwages or on any arrears payable on refixation of salary as a consequence of grant of continuity in service. In

the event of the appellant having paid any backwages in excess of 50%, or interest,
it shall be entitled to recover such amount from the respondent, without having to
take recourse to further proceedings.

.....J.

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(H.K. SEMA)

New Delhi;J.

August 2, 2006. (R.V. RAVEENDRAN)