

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S
C I V I L A P P E A L N O (s) . 3 8 6 3 O F 2 0 0 6

PUN J A B N A T I O N A L B A N K & A N R .

Appellant (s)

V E R S U S

K A M D A S M A N D A L R A T R E

Respondent(s)

(With office report)

Date: 0 2 / 0 8 / 2 0 0 7 This Appeal was called on for hearing today.

C O R A M :

H O N ' B L E M R . J U S T I C E H . K . S E M A
H O N ' B L E M R . J U S T I C E L O K E S H W A R S I N G H P A N T A

For Appellant(s)

Mr. Amarendr a Shar a n, ASG
Mr. Dhruv Mehta, Adv.
Mr. Harshva rdh an Jh a, Adv.
Mr. Yashr a j Singh Deora, Adv.
for M/S K.L. Mehta & Co.,Adv.

For Respondent(s)

Mr. T.L.V. Iyer, Sr. Adv.
Mr. T.G. Narayan a n Nair,Adv.

UPON hearing counsel the Court made the following
O R D E R

T his appeal is allowed. The impugned order of the learned
single Judge is hereby set aside. The Writ Petition preferred by the
respondent stands dismissed. No costs.

(Ravi P. Verma)
Court Master

(Gyan Bhati a)
Court Master

[Signed order is placed on the file]
I N T H E S U P R E M E C O U R T O F I N D I A

C I V I L A P P E L L A T E J U R I S D I C T I O N

C I V I L A P P E A L N O . 3 8 6 3 O F 2 0 0 6

PUN J A B N A T I O N A L B A N K & A N R .
(S)

.....A P P E L L A N T

Versus

K A M D A S M A N D A L R A T R E
(S)

.....R E S P O N D E N T

O R D E R

This appeal has been preferred by the Punj ab National Ban k
against the order dated 1 5 / 1 2 / 2 0 0 5 passed by learned single Judge of
the High Court of Chhattisgarh at Bila spur in Writ Petition
No.

507 1 / 2 0 0 0 . By the impugned order, the learned single Judge quashed the charge-sheet dated 2 4 / 0 4 / 2 0 0 0 framed against the respondent by the Ban k for the purpose of holding a departmental enquiry.

At the outset, Mr. T.L.V. Iyer, learned senior counsel appearing on behalf of the respondent, brought to our notice orders dated 05/0 2 / 2 0 0 7 , 15/1 2 / 2 0 0 6 & 18/0 8 / 2 0 0 6 passed by this court in various appeals remanding the case to the High Court with a direction to the petitioner to file writ appeals in those cases before the Division Bench. No doubt, the writ appeal is now revived by an enactment of the State in the High Court of Madhya Pradesh and High Court of Chhattisgarh. According to Mr. Iyer, therefore, this case, being filed

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against the order of the learned single Judge, the appellant Ban k be directed to file a writ appeal before the Division Bench of the High Court of Chhattisgarh. We have considered this submission. But in this case, leave has already been granted by this Court on 1 8 / 0 8 / 2 0 0 6 despite of earlier orders passed by this Court. We, therefore, proceed to hear the appeal on merit.

Briefly stated, the facts are as follows.

The respondent was an employee in the appellant's Ban k. At the relevant time, he was officiating as Head Cashier. An FI R was lodged against the respondent under Section 4 0 8 I PC for criminal breach of trust of bank money. After the conclusion of the trial, the respondent was convicted by the trial court and sentenced to RI for one year and to pay a fine of Rs. 5, 0 0 0 / - . On appeal preferred by the respondent, the trial Court judgment was upset by the Third Additional Sessions Judge, Raipur. The respondent was acquitted of all the charges levelled against him by an order dated 2 5 / 1 0 / 1 9 9 9 . It is unfortunate that the

State has not preferred any appeal before the High Court.

Pursuant to the order of acquittal, respondent was reinstated on 10/04/2000 and he joined on 20/04/2000.

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Thereafter, a departmental proceeding was initiated against him vide charge-sheet dated 24/04/2000. Aggrieved thereby, the respondent preferred Writ Petition before the learned single Judge. Learned single Judge, after hearing the counsel on both sides, has recorded a finding in paragraph 17 of the judgment which reads as under:-

"17. I am in respectful agreement with the observations of the Division Bench in Jeevanprakash P anduranga Mokashe's case (supra). Accordingly, I am of the considered opinion that the respondent/ Bank has no power to take recourse to second option i.e. to proceed against the petitioner for disciplinary action after having exercised its powers to reinstate the petitioner on acquittal by the appellate court in criminal appeal."

On the aforesaid reasoning, the charge-sheet dated 24/04/2000 was quashed and the Writ Petition was allowed. Mr. Iyer has invited our attention to Clause 11 of the Bipartite agreement entered into between the Bank and the employee which suggests that the Bank shall either reinstate the employee or proceed against the employee relating to discharge. According to Mr. Iyer, since the Bank has reinstated the respondent on 10/04/2000, the Bank is estopped from proceedings with the departmental proceedings against the respondent by framing the

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charge sheet on 24/04/2000. In our view, this contention of Mr. Iyer is totally unacceptable.

As held by the Constitution Bench of this Court in Managing Director, ECI L, Hyderabad & Ors. Vs. B. Karunakar & Ors., (1993) 4 SCC 727, the purpose of reinstating an incumbent is to initiate a fresh

enquiry and thereafter, during the departmental proceeding, the employer is entitled to place the employee under suspension.

During the pendency of this appeal, the appellant bank filed I.A.

No.2 which was allowed by this Court on 11 / 05 / 2006 in terms of the following order:-

"I.A. No.2 is allowed to the extent that the petitioner would be entitled to initiate and complete the departmental proceedings in accordance with law but would not pass the final order till the disposal of the special leave petition."

Thereafter, while granting leave, this Court, on 18 / 08 / 2006, passed the following order:-

"Leave granted.

Hearing of the appeal be expedited.

Liberty to mention.

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The interim order passed on 11th of May, 2006 restraining the appellant to pass the final order till disposal of the petition is modified to the extent that the appellants would be at liberty to pass the final order which would be subject to the outcome of this appeal. The respondent would be at liberty to file an appeal in the event the Enquiry Officer decides against him. I.A. 3 stands disposed of accordingly."

On perusal of the above extracted order passed by this Court on 18/08 / 2006, this appeal practically stands allowed. Mr. Amarendr a Shar a n, learned ASG makes a submission and not disputed by Mr. Iyer that in terms of our orders dated 11 / 05 / 2006 and 18 / 08 / 2006 the departmental proceeding was continued against the respondent and after termination of the proceedings the respondent was held guilty. A final order has been passed by the disciplinary authority on 24 / 08 / 2006 against the respondent imposing a penalty of "bringing down to two stage lower in the scale of pay in terms of para 6(e) of Bipartite Settlement dated 10 / 04 / 2002". In view of the fact that the final order of punishment has been passed against the respondent, the only remedy left to the respondent is to file an appeal against the order of imposing

penalty. Even on merit also, we have found sufficient force in the contention of Mr. Shar a n, learned ASG that the impugned order of the High court is not legally sustain able.

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For the reasons aforestated, this appeal is allowed. The impugned order of the learned single Judge is hereby set aside. The Writ Petition preferred by the respondent stands dismissed. No costs.

.....J .
(H.K. S E M A)

New Delhi;
August 0 2, 2 0 0 7 .

.....J .
(LO K E S H W A R S I N G H P A N T A)