

Before K. Kannan, J.

ANEEP DEWAN AND OTHERS,—Petitioners

versus

PUNJAB FINANCIAL CORPORATION,—Respondent

CWP No. 16403 of 2010

3rd February, 2012

Constitution of India, 1950 - Art. 226- Reinstatement - Petitioners proceeded against in criminal cases - Suspended from service - Suspension confirmed during pendency of cases - Independent departmental action not initiated - Petitioner acquitted in criminal cases by the Trial Court - Thereafter legal notice for reinstatement - Demand not accepted by saying that State had prepared appeals against acquittal and they were pending - Writ petition allowed holding that where an employee is not terminated from service but only suspended on account of pendency of a criminal case, the moment an acquittal order is passed, the blot against the employee ceases.

Held, that in a case where the employee is not terminated from service but suspended on account of the pendency of a criminal case, the moment an acquittal order is made, then the blot against the employee must be taken as having ceased and such an employee is entitled to consideration for revocation of the order of suspension. The learned counsel for the respondent contends that an appeal is a continuation of proceedings and, therefore, till the final conclusion of the matter before the High Court leading to the honourable acquittal, no employee can demand reinstatement. In my view, this argument is fallacious, for, in a case of a conviction and pendency of an appeal at the instance of the employee/accused placed under suspension, even a suspension of Criminal Court sentence never operates as a stay of the finding of the guilt against an accused. In such a situation, the fact that a person may obtain a bail or stay of sentence does not operate as a stay of conviction. On the other hand, if a person is acquitted, a prosecution of an appeal cannot lead to the initial charge as operating against an employee to deny to him continuance in employment. It is only the reversal

of the judgment at the higher forum resulting in conviction that can constitute a ground for allowing either a suspension or a termination possible, if the Rules so permitted. In this case, when all the petitioners were acquitted after a criminal trial, a pendency of an appeal ought not to make a difference, unless the Rules themselves provide that the mere prosecution of a criminal case could be a ground for suspension. I have not been shown such Rules that allow such a type of suspension. I have already pointed out that there is no departmental action pending against the employees.

(Para 3)

Maninder, Advocate, for Mr. R.K. Chopra, Senior Advocate, *for the petitioners.*

G.S.Bal, Advocate, *for the respondent.*

K. KANNAN, J. (ORAL)

(1) The petitioners seek for a direction for reinstatement in service forthwith on acquittal in a criminal case, the pendency of which was the basis for suspending the petitioners. It is an admitted case that after the petitioners were proceeded with in a criminal case after lodging FIRs No.27 and 30, dated 17.03.1994, they had been placed under suspension and the suspension has been continued during all this period when the case was pending. It is again an admitted fact that the respondent did not choose to take any independent departmental action and rested the suspension order wholly on the lodging of FIRs and the prosecution to criminal case against the petitioners.

(2) It is now stated that after trial of the criminal cases, they have been acquitted. The petitioners have issued a legal notice on 23.02.2007 seeking for their reinstatement. The petitioners' demands have not been accepted and when the writ petition has been filed, the response is that the State has preferred the appeals against the orders of acquittal and the appeals are pending before this Court. While the petitioners' reliance is on Regulation 40 of the Staff Regulations that allows for a reinstatement in service where a conviction is set aside and an employee is acquitted honourably, the counsel for the respondent would want this Rule to be applied to a situation where the employee is acquitted honourably and not

when an employee merely had the benefit of doubt for acquittal. To me, the issue is more fundamental, for, even without reference to Regulation 40, case ought to be considered, although the petitioners have anchored their pleas for reinstatement on Regulation 40.

(3) In a case where the employee is not terminated from service but suspended on account of the pendency of a criminal case, the moment an acquittal order is made, then the blot against the employee must be taken as having ceased and such an employee is entitled to consideration for revocation of the order of suspension. The learned counsel for the respondent contends that an appeal is a continuation of proceedings and, therefore, till the final conclusion of the matter before the High Court leading to the honourable acquittal, no employee can demand reinstatement. In my view, this argument is fallacious, for, in a case of a conviction and pendency of an appeal at the instance of the employee/accused placed under suspension, even a suspension of Criminal Court sentence never operates as a stay of the finding of the guilt against an accused. In such a situation, the fact that a person may obtain a bail or stay of sentence does not operate as a stay of conviction. On the other hand, if a person is acquitted, a prosecution of an appeal cannot lead to the initial charge as operating against an employee to deny to him continuance in employment. It is only the reversal of the judgment at the higher forum resulting in conviction that can constitute a ground for allowing either a suspension or a termination possible, if the Rules so permitted. In this case, when all the petitioners were acquitted after a criminal trial, a pendency of an appeal ought not to make a difference, unless the Rules themselves provide that the mere prosecution of a criminal case could be a ground for suspension. I have not been shown such Rules that allow such a type of suspension. I have already pointed out that there is no departmental action pending against the employees.

(4) There shall be a direction for revocation of the order of suspension as a consequence to the judgment acquitting the petitioners in the criminal case lodged against them.

(5) The writ petition is allowed to the above extent.

J.S. Mehndiratta