

SUSHILA TIWARY AND OTHERS

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v.

ALLAHABAD BANK AND OTHERS

(Civil Appeal No.5224 of 2012)

JULY 16, 2012

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[G.S. SINGHVI AND SUDHANSU JYOTI
MUKHOPADHAYA, JJ.]

SERVICE LAW:

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Termination from service - Bank employee - Served charge-sheets and also prosecuted in criminal case - Conviction by trial court - Employee terminated from service - Acquittal by appellate court on benefit of doubt - Employee placed under suspension, and on conclusion of the inquiry, his services terminated - Held: In the instant case, Clause 19.3(d) of Bi-Partite Settlement, 1966 is applicable - Clause 19.3(d) read along with Notice dated 2.7.2001, makes it clear that the employee stood reinstated w.e.f. 21.7.1999, i.e. the date on which he was originally dismissed from service, and deemed to be continuing under suspension since then and, as such, was entitled to subsistence allowance and not the full pay and allowances - Bi-partite Settlement, 1966 - Clause 19.3(c), 19.3(d), 19.5(d) and 19.5(j).

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The husband of appellant no. 1, who was in the employment of the respondent Bank, was charge-sheeted by the Bank for certain acts of omission and commission and was also prosecuted before the criminal court. The trial court convicted him u/ss 468 and 477-A, IPC and sentenced him to RI for one year each under both the counts. Consequently, the employee was terminated from service by order dated 21.7.1999. He filed an appeal against his conviction, and the appellate court acquitted him giving him the benefit of doubt. The Bank ordered on

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A 2.7.2001 that the employee would be deemed to have been placed under suspension w.e.f. 21.7.1999. The charges against the employee were found proved and, ultimately, by order dated 16.6.2003, his services were terminated. During the pendency of the writ petition filed
B by the employee, he died and his legal heirs were substituted. The single Judge dismissed the writ petition and the Division Bench dismissed the appeal filed by the legal heirs.

C In the instant appeal, it was contended for the appellants that without reinstating the employee no departmental inquiry could be initiated and further, in view of Clause 19.3(c) of the Bi-partite Settlement, 1996, he was entitled to full pay and allowances minus the subsistence for the period of suspension.

D Dismissing the appeal, the Court

HELD: 1.1 Clause 19.3(c) of the Bi-Partite Settlement, 1966 applies to the cases where the employee is acquitted during the trial. On the other hand, Clause
E 19.3(d) applies to the cases where the convicted employee prefers an appeal or revision application against his conviction and is acquitted. Under Clause 19.3(d) if an employee applies to the management for reconsideration of his case on acquittal, the management
F is required to review his case and may either reinstate him or proceed against him under the provisions set in Clauses 19.11 and 19.12 relating to discharge, the period up-to-date for which full pay and allowances have not been paid being treated as one of suspension. [para 13]
G [568-F-G]

H 1.2 In the instant case, the employee was convicted and sentenced by the trial court u/ss 468 and 477-A IPC. He was acquitted by giving benefit of doubt in the criminal appeal. In such case, he was liable to be

proceeded under Clause 19.3(d). The appellants cannot derive of the benefit of Clause 19.3(c) [para 14] [569-A-B] A

1.3 If Clause 19.3(d) is read along with the notice dated 2.7.2001, it is clear that the employee stood reinstated w.e.f. 21.7.1999, i.e., the date on which he was originally dismissed from service and deemed to be continuing under suspension since then. This Court, therefore, holds that he was entitled for subsistence allowance and not the full pay and allowances. There is no illegality in the order of termination or the orders passed by the single Judge and the Division Bench of the High Court. [para 15-16] [569-E-G] B C

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5224 of 2012.

From the Judgment & Order dated 03.05.2010 of the High Court of Patna in L.P.A. No. 762 of 2010. D

Mohit Kumar Shah for the Appellants.

Dhruv Mehta, Yashraj Singh Deora, Rajesh Kumar, Shri Ram Krishna for the Respondents. E

The Judgment of the Court was delivered by

SUDHANSU JYOTI MUKHOPADHAYA, J. 1. Delay condoned. Leave granted. F

2. This appeal has been preferred by the Legal Heirs of the original writ petitioner, Shri Ravindra Nath Tiwary (hereinafter referred to as "Shri Tiwary") against the judgment dated 3rd May, 2010 passed by the Division Bench of the Patna High Court in L.P.A. No.762 of 2010, whereby the Division Bench dismissed the appeal and affirmed the order passed by the learned Single Judge wherein the order of termination passed against Shri Tiwary was affirmed. G

3. Appellant No.1, Sushila Tiwary is the wife and appellant H

A Nos.2 to 5, Rajesh, Priyanjali, Sudhansu and Himanshu are the sons and daughter of Shri Tiwary.

B 4. Shri Tiwary was working as Special Assistant in the Allahabad Bank, Arah Branch(hereinafter referred to as "the Bank"). He was suspended on 11th June, 1990 for certain acts of omission and commission and proceeded departmentally under Clause 19.5(d) and 19.5.(j) of the first Bi-partite Settlement 1966. Two charge-sheets dated 30th June, 1990 and 13th October, 1990 were served on him. The Bank also decided simultaneously to prosecute Shri Tiwary in a criminal case for the criminal act and lodged an FIR with the Arah Police Station. After trial Shri Tiwary was convicted in the criminal case on 19th April, 1999 by the Sub-Divisional Judicial Magistrate(SDJM), Bhojpur. He was ordered to undergo RI for one year for the offence punishable under Section 468 IPC and D RI for one year for the offence punishable under Section 477(A) IPC.

E 5. In view of the conviction in the criminal case, the Assistant General Manager, Regional Office, Patna, who was the disciplinary authority, by invoking provisions of Clause 19.6(a) of the Bi-partite Settlement, 1966 dismissed Shri Tiwary from the services of the Bank by order No.8/99 dated 21st July, 1999 after giving opportunity of personal hearing to Shri Tiwary.

F Against the order of conviction Shri Tiwary preferred an appeal in the Court of the Additional District and Sessions Judge, Bhojpur, who by judgment dated 6th February, 2000, after giving benefit of doubt, had acquitted Shri Tiwary from the charges. After the acquittal Shri Tiwary approached the Bank and informed that he has been acquitted in criminal case by G the Appellate Court. The Bank on receipt of such intimation, invoked Clause 19.3(c) of the Bi-partite Settlement and by order No.1/126 dated 2nd July, 2001 ordered that Shri Tiwary will be deemed to have been placed under suspension from H the date of original order of dismissal, i.e., 21st July, 1999 and

shall continue to remain under suspension until further order. It was further ordered that during the period of suspension he will be entitled to subsistence allowance on the same scale as was getting just prior to his dismissal dated 21st July, 1999. The Assistant General Manager, Regional Office, Patna who was the disciplinary authority brought the aforesaid facts to the notice of Shri Tiwary and informed that his Headquarters has been fixed at Arah.

6. In the departmental enquiry, Shri Tiwary did not choose to participate. Once, he appeared before the Enquiry Officer but later on he again absented and refused to appear. Shri Tiwary moved before the Patna High Court against the order of suspension and revival of departmental proceedings by filing a writ petition, C.W.J.C. No.11479 of 2001. In the said writ petition, in view of the statement made on behalf of the Bank that the departmental enquiry has already been concluded and the Enquiry Officer has already submitted the report, Shri Tiwary withdrew the writ petition on 5th March, 2003 with liberty to raise all the pleas, in case, the order of disciplinary authority goes adverse to him.

7. The disciplinary authority noticed that Shri Tiwary refused to appear before the Enquiry Officer and remained absent. Therefore, the Enquiry Officer had to submit ex parte reports on 3rd September, 2002 and 9th September, 2002 separately for the two different chargesheets. In both the departmental proceedings all the charges against Shri Tiwary were found true. In this background, a second show-cause notice was issued to Shri Tiwary by the disciplinary authority by order dated 31st March, 2003 and it was proposed as to why his services be not terminated by paying three months' pay and allowances in terms of Clause 3(d) of the Memorandum of Settlement dated 10th April, 2002. Shri Tiwary was advised to appear in person with or without his Defence Representative before the disciplinary authority, the Assistant General Manager, Regional Office, Patna for personal hearing on 16th May, 2003. Pursuant to such notice, Shri Tiwary appeared before the

A disciplinary authority on 16th May, 2003 with his Defence Representative. The objections as raised by him were recorded by the disciplinary authority and after going through the chargesheets, Enquiry Repots and the objections raised by Shri Tiwary the disciplinary authority terminated the services of Shri Tiwary by order dated 16th June, 2003.

8. Against the order of termination, Shri Tiwary filed the writ petition before the Patna High Court in C.W.J.C. No.12429 of 2005. During the pendency of the said writ petition before the learned Single Judge, Shri Tiwary died and was substituted by his Legal Heirs. After hearing the parties, learned Single Judge by judgment dated 3rd September, 2008 taking into consideration the gravity of charges and the fact that the amount which was alleged to be embezzled was deposited by Shri Tiwary with the Bank, pursuant to the order of this Court dated 8th July, 2008 in Criminal Appeal No. 1019 of 2008, refused to entertain the writ petition and dismissed the same. The Division Bench of the Patna High Court affirmed the said decision and dismissed the L.P.A. by the impugned judgment.

9. Learned counsel appearing on behalf of the appellants herein submitted that without reinstating the original writ petitioner, no departmental enquiry could be initiated. Further, in view of Clause 19.3(c), the original writ petitioner was entitled to full pay and allowances minus the subsistence allowance and all other privileges for the period of suspension which was denied to him.

It was further contended by the learned counsel for the appellants that the High Court ought to have considered that the departmental enquiry had been conducted and concluded ex parte, hence in all probability, it would have been fair enough to grant at least one more opportunity to the legal heirs of the delinquent to participate in the departmental enquiry and prove the innocence of the delinquent. It was also contended that the High Court ought to have considered that the impugned order of dismissal is void, having been passed without their being

any master and servant relationship existing at the time of passing of the order against the delinquent in absence of order of reinstatement.

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10. Per contra, according to the learned counsel appearing for the respondents, in view of order dated 2nd July, 2001 Shri Tiwary was deemed to have been reinstated and in terms of Clause 19.3(d) Shri Tiwary was deemed to be on duty of the Bank from the date order of suspension was issued.

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11. We have considered the respective submissions and also perused the relevant provisions of Bi-partite Settlement.

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12. 'The disciplinary action and procedure' of the Bank are guided by Chapter 19 of Bi-partite Settlement, 1966. As per Clause 19.3(b), if an employee of the Bank is convicted in a criminal case, such employee may be dismissed from service from the date of his conviction or may be inflicted with lesser form of punishment depending on gravity of charges. Clauses 19.3(c) and 19.3(d) relate to action which is to be taken by the disciplinary authority, in case an employee is acquitted during the trial or pursuant to an order passed in an appeal or revision. Relevant Clause 19.3(c) and Clause 19.3(d) read as follows:

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"19.3(c) If he be acquitted, it shall be open to the management to proceed against him under the provisions set out below in Clauses 19.11 and 19.12 infra relating to discharges. However, in the event of the management deciding after enquiry not to continue him in service, he shall be liable only for termination of service with three months' pay and allowances in lieu of notice. And he shall be deemed to have been on duty during the period of suspension, if any, and shall be entitled to the full pay and allowances minus such subsistence allowances as he has drawn and to all other privileges for the period of suspension provided that he be acquitted by being given the benefit of doubt he may be paid such portion of such pay and allowances as the management may deem proper, and the period of his absence shall not be treated

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A as a period spent on duty unless the management so direct.

B 19.3(d) If he prefers an appeal or revision application against his conviction and is acquitted, in case he had already been dealt with as above and he applies to the management for reconsideration of his case, the management shall review his case and may either reinstate him or proceed against him under the provisions set below in Clauses 19.11 and 19.12 infra relating to discharge, and the provision set out above as to pay, allowances and the period of suspension will apply, the period upto date for which full pay and allowances have not been drawn being treated as one of suspension. In the event of the management deciding, after enquiry not to continue him in service, the employee shall be liable only for termination with three months' pay and allowance in lieu of notice, as directed above."

E 13. The above reproduced provisions represent the intention of the Bank and the Union to determine as to what steps the disciplinary authority requires to take in case an employee who is accused in a criminal case is acquitted during the trial or such employee after conviction is subsequently acquitted in an appeal or revision. Clause 19.3(c) applies to the cases where the employee is acquitted during the trial. On the other hand, Clause 19.3(d) applies to the cases where the convicted employee prefers an appeal or revision application against his conviction and is acquitted. Under Clause 19.3(d) if an employee applies to the management for reconsideration of his case on acquittal, the management is required to review his case and may either reinstate him or proceed against him under the provisions set in Clauses 19.11 and 19.12 relating to discharge, the period up-to-date for which full pay and allowances have not been paid being treated as one of suspension. In the event of management deciding, after enquiry, not to continue in service, the employee shall be liable only for

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■ termination with three months' pay and allowances in lieu of A
■ notice.

14. Reverting to the facts of this case, we find that Shri Tiwary was acquitted during the trial for the offence under Section 468 IPC and Section 477 (A) IPC and was ordered to undergo RI for one year each for both the Sections. He was acquitted by giving benefit of doubt in the criminal appeal. In such case, Shri Tiwary was liable to be proceeded under Clause 19.3(d) and, thereby, the appellants cannot derive of the benefit of Clause 19.3(c) of the Bi-partite Settlement. B

The disciplinary authority by its notice dated 2nd July, 2001 passed the following order: C

"As such, it is ordered that Shri Tiwary will be deemed to have been placed under suspension from the date of original order of dismissal i.e. 21.07.1999 and shall continue to remain under suspension until further order. During the period of suspension, he will be entitled to subsistence allowance on the same scale as he was getting just before his dismissal on 21.07.1999." D

15. If Clause 19.3(d) is read along with the notice dated 2nd July, 2001, it is clear that Shri Tiwary stood reinstated w.e.f. 21st July, 1999, i.e., the date on which he was originally dismissed from service and deemed to be continuing under suspension since then. For the said reasons, the stand taken by the appellants that Shri Tiwary was not reinstated before the departmental proceedings is fit to be rejected and we hold that he was entitled for subsistence allowance and not the full pay and allowances as called for. E

16. We find no illegality in the order of termination or orders passed by the learned Single Judge and the Division Bench of the Patna High Court. They do not call for any interference. In absence of any merit, the appeal is dismissed but there shall be no order as to costs. F

R.P. Appeal dismissed. G

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