

THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

WRIT PETITION No.4307 of 2024

ORDER:

The present Writ Petition is filed for the following relief:

“...to issue an appropriate writ order or direction, more particularly, one in the nature of Writ of Mandamus and set aside the Order Rc.No.131 of 2024 dated 23.01.2024 passed by Respondent No. 1 insofar as period of dismissal as Chief Executive Officer from 13.06.2011 to date of joining in Lower grade i.e. till 31.01.2024 is treated as Dies-non and no salary/remuneration for that period shall be paid as illegal arbitrary violative of Articles 14 and 21 of the Constitution of India contravention of Rule 19(ii) of The service rules and regulations of the Karimnagar Cooperative Urban Bank Ltd., Karimnagar and amounting to double penalty, and, Consequently direct the Respondent Nos. 1 and 2 to grant back wages from 13.06.2011 till date of joining in Lower grade i e till 31.01.2024 and pass...”

2. Heard Sri Baglekar Akash Kumar, learned counsel for the petitioner, Sri K. Vasudeva Reddy, learned Standing Counsel for respondents No.1 to 3, and learned Government Pleader for Services-III, appearing for respondents No.4 and 5.

3. Learned counsel for the petitioner submits that the petitioner was appointed as a Chief Executive Officer (CEO) of Karimnagar Co-operative Urban Bank Ltd., Karimnagar, on 23.02.1999 and that several allegations were made against him, as a result of which, 16 charges were framed. After conducting the enquiry, 12 (twelve) out of 16 (sixteen) charges were held to be proved against the petitioner by the Enquiry Officer and vide

Order dated 13.06.2011, petitioner was dismissed from service by respondent Nos.1 and 2. Aggrieved by the same, the petitioner approached the Appellate Authority, and the Appellate Authority, vide its Order dated 02.01.2012, upheld the said dismissal order. Aggrieved by the said order, the petitioner filed Writ Petition No.22240 of 2012 before this Court challenging the dismissal of service and the said Writ Petition was disposed of on 18.07.2023 holding that the punishment of dismissal of service imposed against the Petitioner is unfair and directed respondent Nos.1 and 2 to reconsider the punishment of dismissal from service within a period of 6 weeks from the date of receipt of the copy of the order.

4. Learned counsel for the petitioner further submits that the respondents herein have preferred an intra-court appeal before the Division bench of this Court vide W.A.No.881 of 2023 against the judgment dated 18.07.2023 in W.P.No.22240 of 2012 and the said Writ Appeal was dismissed by the Division bench of this Court vide order dated 08.09.2023, thereby, confirming the order of learned Single Judge of this Court in W.P. No. 22240 of 2012 and the same has attained finality.

5. Learned counsel for the petitioner further submits that the respondent No.1 vide impugned order bearing Rc.No.131/2024, dated 23.01.2024 has reduced the rank of the petitioner to a lower grade in service and is reinstated as Accountant/B.M. and respondent No.1 has treated the petitioner's period of dismissal from the Service from 13.06.2011 to the date of joining as the Accountant/B.M. (i.e. till 02.02.2024) as "*Dies-non*" and no salary/remuneration for that period shall be paid. While reinstating the petitioner into service, respondent No.1 had asked the petitioner to give an undertaking in writing that he would not claim any salary of service benefits for the said period.

6. Learned counsel for the petitioner further submits that since 2011, the petitioner was without any employment and being a physically challenged person, no one had given him any employment. Under those circumstances, the petitioner was compelled to join the service as the Accountant/B.M. from 02.02.2024. When the petitioner requested the respondents for salary, the respondents refused to take the petitioner underemployment, as such, under duress, he was compelled to give an undertaking in writing that he will not claim any salary

of service benefits from 13.06.2011 to the date of joining as the Accountant/B.M. (i.e., till 02.02.2024). Aggrieved by the impugned order bearing Rc.No.131/2024 dated 23.01.2024 insofar as a period of dismissal as Chief Executive Officer from 13.06.2011 to the date of joining in Lower grade, i.e., till 02.02.2024 is treated as "*Dies-non*" and no salary/remuneration for that period shall be paid, the present Writ Petition is filed.

7. Learned counsel for the petitioner further submits that this Court, in W.P.No.22240 of 2012, held that the punishment given by the respondents is disproportionate to the allegations against the petitioner, therefore, the removal from service was found to be wrong. In view of the said removal from service, the respondents' denial back wages is unjust and arbitrary. He further submits that the petitioner already suffered punishment by lowering his rank from the post of Chief Executive Officer to the post of Accountant/B.M., and having imposed one punishment, and the respondents ought not to have imposed another punishment of denying back wages.

8. Learned counsel for the petitioner further submits that Rule 19(ii) of "The service rules and regulations of the

Karimnagar Cooperative Urban Bank Ltd., Karimnagar" does not provide for imposing of punishment of denying back wages. Therefore, in the absence of any provision, the imposition of punishment of denying back wages is contrary to Rule 19(ii) and obtaining the undue undertaking under duress is contrary to the Statutory Rule 19(ii).

9. Learned counsel for the petitioner further submits that the II Addl. Judicial Magistrate of First Class, Karimnagar, acquitted the petitioner, vide judgment dated 23.11.2022 in C.C. No.178 of 2013 wherein the same allegations as that of disciplinary proceedings through which the petitioner was dismissed from service where almost the same witnesses were examined, and the trial Court acquitted the petitioner. Therefore, denying the back wages to the petitioner is unjust, arbitrary and illegal.

10. Learned counsel for respondents No.1 to 3 filed counter by contending that pursuant to the orders passed by this Court the petitioner was reinstated into service by imposing the lesser punishment to that of dismissal from service i.e. the petitioner was reinstated as Accountant/B.M. in the Service of KCUB, on

reduction in rank to a lower grade in Service, while on reversion from the post of the Chief Executive Officer and that from 13.06.2011 to the date of joining in the lower grade in service or post is treated as "*Dies-non*" and no salary/remuneration for that period shall be paid to him. In fact, the petitioner also gave an undertaking on 02.02.2024 stating that, he will not claim any salary and other allowances from the Bank, duly observing "*Dies-non*" and also stated that he is giving this undertaking willfully under complete conscious and without any pressure.

10(i) It is further contended that out of 16 charges alleged against the petitioner, 12 were held proved by the Enquiry Officer. Having gone through the records this Court found that the charges alleged against the petitioner were rightly held proved, however, in so far as imposition of punishment was concerned, this Court held that it is disproportionate and directed the Bank authorities to reconsider the petitioner's case. Pursuant to the order passed by this Court, the respondents have considered the petitioner's case and reinstated him into service as an Accountant. As this Court directed the respondents to reconsider the petitioner's case, it cannot be construed as if he is entitled to be paid back wages.

When the petitioner was out of service and not rendered any service, the question of claiming back wages is not proper, more specifically, in view of the fact that, out of 16 charges, 12 were held proved, which has become final. This Court did not interfere with the order of dismissal but only directed the Bank authorities to reconsider the petitioner's case on the ground of disproportionality. Therefore, it is not open for the petitioner to claim back wages.

10(ii) It is further contended that the respondents have never obtained the undertaking from the petitioner under duress and that the petitioner was not in service till the date of his reinstatement pursuant to the order passed by this Court in W.P.No.22240 of 2012, he is not entitled to back wages. With regard to the judgment passed by the II Additional Judicial Magistrate of First Class, Karimnagar, in its judgment dt.23.11.2022 in C.C.No.178/2013, has nothing to do with the departmental proceedings, as imposition of punishment of dismissal, was based on the departmental proceedings.

10(iii) Lastly, it is contended that the petitioner, having joined as an Accountant/B.M., is not fair on the petitioner's part to file the present Writ Petition seeking back wages. In

fact, in the catena of judgments rendered by this Court and the Hon'ble Supreme Court held that "No work, no pay" and it is settled principle of law. Therefore, the 1st respondent treated the period from 13.06.2011 till the date of joining as "*dies-non*". Learned Single Judge in W.P. No.22240 of 2012, dated 18.07.2023, directed the respondents to reconsider the punishment of dismissal from service. However, they did not set aside the dismissal order. Therefore, at this juncture, claiming back wages by the petitioner for non-attending the work may not be justifiable in nature. The petitioner committed so many irregularities previously also and he was imposed with the punishments.

11. Per contra, learned counsel for the petitioner vehemently argued that taking an undertaking by restraining the petitioner from approaching this Court under Article 226 of the Constitution is violative of petitioner's right to approach this Court and any undertaking restraining the party from initiating legal proceedings is void as per Section 28 of the Indian Contract Act, 1872 as held by the Hon'ble Supreme Court in ***Maharashtra Chess Association v. Union of India***¹.

¹ (2020) 13 SCC 285

12. Learned counsel for the petitioner further submitted that Rule 19(ii) of "The service rules and regulations of the Karimnagar Cooperative Urban Bank Ltd., Karimnagar" does not provide for imposing of punishment of "*dies-non* and no salary/remuneration." Therefore, in the absence of any provision, the imposition of punishment of "*dies-non* and no salary/remuneration" is contrary to the said Rule 19(ii), and he relied upon the judgment of the Hon'ble Supreme Court in ***Vijay Singh v. State of Uttar Pradesh*²**.

13. Learned counsel for the petitioner submitted that respondent No.1 has already imposed the punishment of reduction in rank to a lower grade, i.e.. from the post of Chief Executive Officer to the post of Accountant. It is further submitted that having imposed one punishment, the imposing of punishment of "*dies-non* and no salary/remuneration" amounts to "double punishment" and he relied upon the judgment of the Hon'ble Supreme Court in ***Lt. Governor, Delhi v. HC Narinder Singh*³** wherein it was held that imposing a second penalty based on the same cause of action would amount to "double jeopardy/double punishment.

² (2012) 5 SCC 242

14. Learned counsel for the petitioner further submitted that the petitioner was acquitted by the II Addl. Judicial Magistrate of First Class, Karimnagar, vide judgment dated 23.11.2022 in C.C. No.178 of 2013, wherein on the same allegations as that of disciplinary proceedings through which the petitioner was dismissed from service, where almost the same witnesses were examined, the trial court acquitted the Petitioner. Therefore, imposing a punishment of "*dies-non* and no salary/remuneration" is illegal.

15. A perusal of the order passed by this Court in W.P.No.22240 of 2012 reveals that the punishment imposed on the petitioner was disproportionate and that when allegations are made against two or more persons, the disciplinary proceedings should be initiated against all, but in the present case, the petitioner is alone is targeted. Aggrieved by the same, the respondent authorities approached the Division Bench of this Court and the Division Bench in W.A.No.881 of 2023, dated 08.09.2023, also confirmed the order passed by the learned Single Judge. Pursuant to these orders, the 1st respondent issued proceedings in Rc.No.131/2024, dated

³ (2004) 13 SCC 342

23.01.2024 to the petitioner, imposing the lesser punishment to that of dismissal from service, i.e. the petitioner is reinstated into service by lowering his rank from Chief Executive Officer to that of Accountant/B.M., and from 13.06.2011 to the date of joining i.e. 02.02.2024 in the lower grade in service or post is treated as "Dies-non" and no salary/remuneration for the said period was paid to the petitioner.

16. It is the contention of the petitioner that Rule 19(ii) of the "The service rules and regulations of the Karimnagar Cooperative Urban Bank Ltd., Karimnagar" does not provide for imposing of punishment of "*dies-non* and no salary/remuneration." A perusal of the said Rule reveals that the competent authority may impose the following penalties/punishment on employees found guilty of misconduct.

MAJOR PENALTIES:

- a) Dismissal from the service of the Bank
- b) Reduction in rank to a lower grade in service or post on lower time scale and compulsory retirement.

MINOR PENALTIES:

- a) Censure (b) Fine (c) withholding promotion (d) withholding of increment with or without cumulative effect and suspension.

In the above said Rule, nowhere mentioned with regard to non-payment of back wages and also taking of any undertaking from the employee. Therefore, in the absence of any provision, the imposition of punishment of "*dies-non* and no salary/remuneration" is contrary to the said Rule 19(ii) and the Hon'ble Supreme Court in **Vijay Singh** (2nd supra) held as under:

"21. Undoubtedly, in a civilized society governed by the Rule of Law, the punishment not prescribed under the statutory rules cannot be imposed..."

As such, the respondent authorities have violated their own rules; for that, the petitioner cannot be made scapegoat.

17. It is the contention of the petitioner that since he is a physically challenged person, since 2011, no one has given him any employment. In those circumstances, he was compelled to join the service as the Accountant/B.M. from 02.02.2024. When he insisted on salary, then the respondent authorities took an undertaking in writing from him under duress that he would not claim any salary or service benefits from 13.06.2011 to the date of joining as the Accountant/B.M. In contrast, the

contention of the respondents is that the petitioner himself gave that undertaking with his free will and consent and without any coercion. Here, it is pertinent to mention that no prudent person can give such an undertaking unless he is made to give the same, and any undertaking restraining the party from initiating legal proceedings is void as per Section 28 of the Indian Contract Act, 1872 as held by the Hon'ble Supreme Court in ***Maharashtra Chess Association*** (1st supra).

“ 9. It is a well settled principle of contract law that parties cannot by contract exclude the jurisdiction of all courts. Such a contract would constitute an agreement in restraint of legal proceedings and contravene Section 28 of the 4 [Indian Contract Act](#) 1872. However, where parties to a contract confer jurisdiction on one amongst multiple courts having proper jurisdiction, to the exclusion of all other courts, the parties cannot be said to have ousted the jurisdiction of all courts. Such a contract is valid and will bind the parties to a civil action.”

In view of the above, this Court is of the view that the petitioner has not given the said undertaking with his free will and consent, without any coercion, but it is made under duress.

18. It is the contention of the petitioner that respondent No.1 has already imposed the punishment of reduction in rank to a lower grade, i.e.. from post of Chief Executive Office to the post of Accountant and having imposed one punishment, the imposition of punishment of "*dies-non* and no

salary/remuneration" amounts to "double punishment/double jeopardy" and he relied upon the judgment of the Hon'ble Supreme Court in ***Lt. Governor, Delhi*** (3rd supra) wherein it is held that second penalty based on the same cause of action, would amount to double jeopardy. The petitioner further contended that he was acquitted by the II Addl. Judicial Magistrate of First Class, Karimnagar, vide judgment dated 23.11.2022 in C.C. No.178 of 2013 wherein on the same allegations as that of disciplinary proceedings through which the petitioner was dismissed from service; where almost the same witnesses were examined, the trial court acquitted the petitioner by observing that though the prosecution has examined PWs 1 to 7 at length, their testimonies inspire this Court that it is a fit case to extent reasonable benefit of doubt against the accused No.7/A. Rajaram Reddy (petitioner herein).

19. Learned counsel for the respondents submitted that there are umpteen judgments regarding "No work, no pay" and accordingly, prayed not to award any back wages to the petitioner. In the case on hand, as this Court rightly found that, the punishment of removal from service is disproportionate to the alleged allegations, and along with the

petitioner, some other persons are also involved in the allegations, but the petitioner was only targeted. The criminal case was also ended in acquittal against the petitioner. In those circumstances, the respondent authorities ought to have awarded a lesser punishment than removal from service. Had the respondent authorities imposed lesser punishment at the threshold, the petitioner would not have suffered a lot. Therefore, the contention of the learned counsel for respondents that the petitioner is not entitled to any back wages is rejected.

20. A perusal of the record shows that out of 16 charges, 12 were held to be proved against the petitioner by the Enquiry Officer, which only shows that a major portion of the charges were proved. Moreover, a perusal of the judgment in C.C.No.178 of 2013 shows that the petitioner was acquitted by giving the benefit of doubt, but not a clean acquittal. There is no dispute that the petitioner is a physically challenged person and he was out of employment during the period from 13.06.2011 to 02.02.2024 and though the petitioner requested for payment of back wages, the respondents have denied the back wages during the said period. As stated in previous paras,

in the absence of any provision, the imposition of punishment of "*dies-non* and no salary/remuneration" is contrary to the said Rule 19(ii) as held by the Hon'ble Supreme Court in **Vijay Singh** (2nd supra). In those circumstances, the petitioner cannot be declined of back wages. However, he is not entitled to get full payment of back wages.

21. Thus, the respondents are directed to pay back wages to the petitioner @ 50% of the net salary in the present post i.e. Accountant/B.M. from 13.06.2011 to 01.02.2024 within a period of two (02) months from the date of a copy of this order.

22. Accordingly, the Writ Petition is partly allowed. No order as to costs.

As a sequel, miscellaneous applications pending, if any, in this Writ Petition, shall stand closed.

NAMAVARAPU RAJESHWAR RAO, J

Date:27.02.2025
BDR