

A THE MANAGEMENT OF RESERVE BANK OF INDIA,
NEW DELHI

v.
SHRI BHOPAL SINGH PANCHAL

B NOVEMBER 3, 1993.

[P.B. SAWANT, S. MOHAN AND S.P. BHARUCHA, JJ.]

Service Law

C *Reserve Bank of India (Staff) Regulation, 1948 : Regulations 39, 39(2), 46, 46(1) to 46(5), 47 and 47(1)—Suspension of employee on being arrested on criminal charge—Employee dismissed on conviction by trial court but acquitted by High Court giving benefit of doubt—Subsequently reinstated on award by Industrial Tribunal—Period of absence from duty between suspension and dismissal—Whether to be treated as absence on account of circumstances beyond control—Employee's entitlement to pay and allowances—Applicability of the principle 'No work; no pay'.*

E *Industrial Disputes Act, 1948 : Section 33-C(2)—Dispute regarding pay and allowances for the period between date of suspension and dismissal of an employee—Whether Labour Court has jurisdiction to decide the question.*

F The respondent was employed with the appellant-Bank. On 7th September 1974 a criminal case was registered against him under section 302, IPC and he was arrested on 18th September, 1974. Consequently, the appellant-Bank placed the respondent-employee under suspension under Regulation 46(1) of the Reserve Bank of India(Staff) Regulations, 1948. Subsequently, the employee was convicted by the Sessions Court for the offence under Section 304, Part I of the IPC and sentenced to 8 years' rigorous imprisonment. On receipt of the court's judgment, the appellant-Bank dismissed the respondent-employee from service w.e.f. 28th April, 1977 in terms of Regulation 46(3).

H On appeal, the High Court acquitted the respondent-employee, giving him the benefit of doubt. Relying on Regulation 46(4) the appellant-Bank refused to reinstate the employee on the ground that he had not earned an honourble acquittal.

The respondent-employee, raised an industrial dispute. The Tribunal held that Regulation 46(4) was invalid and improper and militated against the industrial jurisprudence, and that the dismissal was unjustified, and ordered the appellant-Bank to reinstate the respondent-employee with full back wages and to allow him continuity in service as if he was never dismissed from service. By its order dated 24th August 1983, the appellant-Bank reinstated the respondent-employee in service and treated him as on duty during the period from 28th April, 1977 the date of dismissal to 23rd August, 1983, the date of reinstatement and paid him admissible back wages for that period. The employee filed an application before the Central Government Labour Court under Section 33-C(2) of the Industrial Disputes Act claiming the difference between subsistence allowance during the period of suspension from 18th September, 1974 till the date of his dismissal and full pay and allowances which, were payable for the said period. He further claimed that he was also entitled to increments during the period he was under suspension. The Labour Court upheld the claim of the employee.

Aggrieved, the appellant-Bank preferred the appeal before this Court.

On the questions whether the order of suspension was automatically set aside on reinstatement and whether the management could not deal with the period of suspension according to the Regulations governing the service conditions. Allowing the appeal, this Court,

HELD : 1.1 An analysis of the relevant provisions of the Reserve Bank of India (Staff) Regulation, 1948 viz., Regulations 39, 46 and 47, shows the employee who is absent from duty on account of his arrest for debt or on a criminal charge or on account of his detention, is not to be considered to be absent on account of circumstances beyond his control. His absence throughout such period is to be treated as period spent on extra-ordinary leave when the absence is not followed by discharge, termination of service or dismissal, as the case may be. [596-A-B]

1.2 The regulations read together, leave no manner of doubt that in case of an employee who is arrested for an offence, his period of absence from duty is to be treated as not being beyond circumstances under his control. In such circumstances, when he is treated as being under suspension during the said period, he is entitled to subsistence allowance. How-

- A** ever, the subsistence allowance paid to him is liable to be adjusted against his pay and allowances if at all he is held to be entitled to them by the competent authority. The competent authority while deciding whether an employee who is suspended in such circumstances is entitled to his pay and allowances or not and to what extent if any, and whether the period is to be treated as on duty or on leave, has to take into consideration the circumstances of each case. It is only if such employee is acquitted of all blame and is treated by the competent authority as being on duty during the period of suspension that such employee is entitled to full pay and allowances for the said period. The regulations vest the power exclusively in the Bank to treat the period of such suspension on duty or on leave or otherwise. The power thus vested cannot be validly challenged. [597-C-G]

- D** 1.3 During the period of suspension, the employee renders no work. He is absent for reasons of his own involvement in the misconduct and the Bank is in no way responsible for keeping him away from his duties. The Bank, therefore, cannot be saddled with the liability to pay him his salary and allowances for the period. That will be against the principle of 'no work, no pay' and positively inequitable to those who have to work and earn their pay. As it is, even during such period, the employee earns subsistence allowance by virtue of the Regulations. [597-F-G]

- E** 1.4 The Labour Court while acting under Section 33-C(2) of the Industrial Disputes Act has no jurisdiction to decide the question whether the period from the date of suspension till the order of dismissal is to be treated as period on duty with full pay and allowances. [597-B]

- F** CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 554 of 1986.

From the Judgment and Order dated 29.3.85 of the Delhi Central Government Labour Court in L.C.A.No. 275 of 1983.

- G** Harish Salve and H.S. Parihar for the Appellant.

K.T. Anantaraman for M/s. Khaitan & Co. for the Respondent.

The Judgment of the Court was delivered by

- H** SAWANT, J. The respondent-employee was employed with the appellant-Bank in its New Delhi Office as Coin/Note Examiner, Grade-II

having joined service on 5th March, 1969. On 7th September, 1974 a Criminal case was registered against him under Section 302, Indian Penal Code (IPC) and he was arrested for the offence on 18th September, 1974. On his arrest, the Bank placed him under suspension under Regulation 46 (1) of the Reserve Bank of India (Staff) Regulations, 1948 (hereinafter referred to as the 'Regulations'). On 13th December, 1976, the employee was convicted by the Sessions Court for the offence under Section 304, Part 1 of the IPC and sentenced to 8 years' rigorous imprisonment. On receipt of the court's judgment, the Bank dismissed the employee from service w.e.f. 28th April, 1977 in terms of Regulation 46(3) of the Regulations. In appeal filed by the employee against his conviction, the High Court on 21st November, 1977 acquitted him of the offence, giving him the benefit of doubt.

2. The Bank relied on Regulation 46(4) of the Regulations and refused to reinstate the employee in service on the ground that he had not earned an honourable acquittal of the offence. The respondent-employee, therefore, raised an industrial dispute which was decided on 19th May, 1983, by the Central Government Industrial Tribunal. By the said award, the Industrial Tribunal held that Regulation 46 (4) was invalid and improper and militated against industrial jurisprudence as developed and applied by the courts in the country. The Tribunal further held that the dismissal was unjustified and quashed the same and ordered the Bank to reinstate the employee with full back-wages and to allow him continuity in service as if he was never dismissed from service.

3. After the award of the Tribunal, the Bank reinstated him in service by its order of 24th August 1983 and treated him as on duty during the period from 28th April, 1977 to 23rd August, 1983 and paid him admissible back-wages for that period. The employee received Rs. 1,00,421.74 towards back-wages for the said period.

4. Thereafter, the employee filed the present application before the Central Government Labour Court under Section 33-C(2) of the Industrial Disputes Act (hereinafter referred to as the 'Act') claiming difference in the amount paid to him as subsistence allowance during the period of suspension from 18th September, 1974 till the date of his dismissal, viz., 28th April, 1977 and full pay and allowances which, according to him, were

- A payable for the said period. He further claimed that he was entitled to increments during the period he was under suspension and prayed for arrears of salary on that account also. He also claimed that his pay on reinstatement had to be fixed taking into account the increments earned by him between the date of his suspension and dismissal. Thus the
- B employee claimed Rs. 34,742.75 in all as shown by him in his application. The Bank contested the claim and asserted that the suspension had followed the employee's arrest and it was effective from 18th September, 1974 till 27th April 1977 during which period he was paid his subsistence allowance. The Bank also contended that the Tribunal's award had not
- C allowed him full payment of the period of suspension and that the period of suspension continued to be governed by the Office Order dated 28th April, 1977 which read as follows :

- D "The order of suspension passed in respect of Shri Bhopal Singh Panchal, Coin/Note Examiner Grade-II, placing him under suspension with effect from the afternoon of 18th September, 1974 pursuant to Regulation 46 (1) of the Reserve Bank of India (Staff) Regulations, 1948 vide this office order No. 593/74-75 dated October 11, 1974, is revoked with effect from the forenoon of 28th April, 1977. The period of suspension has been regularised in the following manner, namely,

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- (a) 18th September to : by grant of ordinary leave
5th October 1974
- (b) 6th October 1974 to : by grant of extraordinary
27th April 1977 leave without pay and
allowances, not counting
for increment."
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- G The Labour Court negatived the Bank's objection and upheld the claim of the employee and granted an amount of Rs. 33, 281.50, which was agreed to by the Bank as the correct amount if the employee's claim was accepted. It is this order of the Labour Court dated 29th March, 1985 which is impugned in the present appeal.

- H 5. The short question that falls for consideration is whether the order of suspension is automatically set aside on the reinstatement and whether

the management cannot deal with the period of suspension according to the Regulations governing the service conditions. We may, in the first instance, refer to the relevant Regulation on which the Bank has relied, viz., Regulation 46 which reads as under :

"46. Employees arrested for debt or on criminal charge - (1) An employee who is arrested for debt or on a criminal charge or is detained in pursuance of any process of law, may, if so directed by the competent authority, be considered as being or having been under suspension from the date of his arrest, or, as the case may be of his detention, upto such date or during such period, as the competent authority may direct. In respect of the period in regard to which he is so treated, he shall be allowed the payment admissible to an employee under suspension under sub-regulation (4) of Regulation 47.

(2) Any payment made to an employee under sub-regulation (1) shall be subject to adjustment of his pay and allowances which shall be made according to the circumstances of the case and in the light of the decision as to whether such period is to be accounted for as a period of duty or leave:

Provided that full pay and allowances will be admissible only if the employee -

(a) is treated as on duty during such period; and (b) is acquitted of all blame or satisfies the competent authority, in the case of his release from detention or of his detention being set aside by a competent court, that he had no been guilty of improper conduct resulting in his detention.

(3) An employee shall be liable to dismissal or to any of the other penalties referred to in Regulation 47 if he is committed to prison for debt or is convicted of an offence which in the opinion of the competent authority, either involves gross moral turpitude or has a bearing on any of the affairs of the Bank or on the discharge by the employee of his duties in the Bank; the opinion in this respect of the competent authority shall be conclusive and binding on the employee. Such dismissal or other penalty may be imposed as from the date of his committal to prison or conviction and nothing in

A Regulation 47 shall apply to such imposition.

(4) Where an employee has been dismissed in pursuance of sub-regulation (3) and the relative conviction is set aside by a higher court and the employee is honourably acquitted, he will be reinstated in service.

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Explanation : In this Regulation committal or conviction shall mean committal or conviction by the lowest court or any appellate court.

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(5) Where the absence of an employee from duty without leave or his overstay is due to his having been arrested for debt or on a criminal charge or to his having been detained in pursuance of any process of law, the provisions of Regulation 39 shall also apply, and for the purposes of that Regulation as so applied, the employee shall be treated as having absented himself without leave or, as the case may be, overstayed, otherwise than under circumstances beyond his control."

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The other regulations which need to be considered in this connection are Regulations 39 and 47. The relevant provisions of the said Regulations are as follows :

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"39. Employees not to be absent from duty without permission or be late in attendance. (1) An employee shall not absent himself from his duties without having first obtained the permission of the competent authority, nor shall he absent himself in case of sickness or accident without submitting a sufficient medical certificate :

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Provided that in the case of temporary indisposition the production of a medical certificate may, at the absolute discretion of the competent authority, be dispensed with.

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(2) An employee who absents himself from duty without leave or overstays his leave, except under circumstances beyond his control for which he must tender a satisfactory explanation, shall not be entitled to draw any pay and allowances during such absence or overstay and shall further be liable to such disciplinary measures as the competent authority may impose. The period of such absence or overstay may, if not followed by discharge under

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Regulation 22 or termination of services under Regulation 25 or dismissal under Regulation 47, be treated as period spent on extra ordinary leave." A

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"47. (1) x x x x x x B

(4) An employee may be placed under suspension by the officer empowered to pass the final order under this regulation. During such suspension, he shall receive subsistence allowance equal to -

(i) his substantive pay plus twenty-five per cent thereof, for first six months of suspension; C

(ii) his substantive pay plus fifty per cent thereof for next six months of suspension; and

(iii) his substantive pay plus seventy five per cent thereof for the period of suspension beyond one year. D

Provided that the enhanced rate of subsistence allowance prescribed under sub-clauses (ii) and (iii) shall be admissible only if the enquiry is not delayed for reasons attributable to the concerned employee or any of his representatives. E

Provided further that if no penalty under clauses (b), (c), (d) or (e) of sub-regulation (1) is imposed the employee shall be refunded the difference between the subsistence allowance and the emoluments which he would have received." F

The provisions of the Regulations show that Regulation 46 is a self-contained provision for dealing with an employee's absence from duty when he is arrested either for debt or on a criminal charge or when he is detained in pursuance of any process of law. Sub-regulation (1) of that Regulation suggests that when the employee is absent from duty on account of any of the three reasons mentioned there, he may be considered as being under suspension from the date of his arrest or his detention till such date as the competent authority may direct in that behalf. The sub-regulation further provides that when the competent authority directs his suspension, the employee is entitled to such subsistence allowance as is admissible to H

- A the employee under suspension under sub-regulation (4) of Regulation 47. Regulation 47 thus comes in the picture only for the purpose of determining the amount of subsistence allowance payable to such employee and further only when the competent authority directs that such employee should be treated as being under suspension during the period of his absence.

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- Sub-regulation (2) of Regulation 46 then makes clear that the subsistence allowance paid to such employee under sub-regulation (1) is subject to adjustment of the employee's pay and allowances. That adjustment is to be made according to the circumstances of each case and in the light of the decision taken by the competent authority as to whether the period of absence is to be treated as a period on duty or on leave. The proviso to sub-regulation (2) then states that the employee shall be entitled to full pay and allowances only if two conditions are satisfied, viz., that the competent authority has treated him as on duty during such period and he is acquitted of all blame when he is arrested for debt or in connection with a criminal charge, and when he is detained otherwise he satisfies the competent authority that he had not been guilty of improper conduct resulting in his detention. In other words, his acquittal even if it is without blame or his released from detention even if his arrest is not on account of improper conduct on his part, does not automatically entitle the employee to full pay and allowances. The competent authority has to pass an order in each case taking into consideration all circumstances to treat the period of absence as period on duty before full pay and allowances become admissible to the employee.

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- Sub-regulation (3) of the said regulation then gives power to the competent authority to inflict on such employee any of the penalties mentioned in Regulation 47 (1) which includes the penalty of dismissal. The employee becomes liable to such penalty under two circumstances, viz., if he is (i) committed to prison for debt or (ii) convicted of an offence which in the opinion of the competent authority either involves gross moral turpitude or has a bearing (a) on any of the affairs of the Bank or (b) on the discharge by the employee of his duties in the Bank. The sub-regulation further makes it clear that the opinion of the competent authority in this respect shall be conclusive and binding on the employee. The sub-regulation then states that the dismissal or the other penalty that may be imposed on the employee, may be so imposed from the date of his committal to

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prison for debt or from the date of his conviction, as the case may be. The conviction referred to in this sub-regulation is the conviction by the first or the lowest court or any appellate court.

Sub-regulation (4) of the said regulation states that when an employee has been dismissed on account of his conviction by the lower court, he is entitled to be reinstated in service if (a) the conviction is set aside by the higher court and (b) the employee is honourably acquitted. A mere acquittal does not entitle an employee to reinstatement in service. The acquittal has to be an honourable one.

Sub-regulation (5) of the said regulation then prescribes the manner in which the absence from duty of such employee will be treated. It states that when the absence of such employee is without leave or is on account of his overstay of leave, the provisions of Regulation 39 shall apply to such absence. Further, while applying the provisions of Regulation 39, such absence of the employee shall be treated as not being under circumstances beyond the employee's control. Sub-regulation (2) of Regulation 39 lays down the procedure for treating the absence of the employee from duty. According to this procedure, an employee who absents himself from duty without leave or overstays his leave, is not entitled to draw any pay and allowances during such absence or overstay. The only exception to this rule is when the employee's absence without leave or his overstay is under circumstances beyond his control for which circumstances, again, he has to tender a satisfactory explanation. As has been pointed out earlier, sub-regulation (5) of Regulation 46 expressly makes it clear that the absence of an employee who is arrested for debt or on a criminal charge or who is detained, is not to be treated as an absence on account of circumstances beyond his control. Regulation 39 (2) then makes it clear that if such absence or overstay of the employee is not followed by discharge under Regulation 22 or termination of services under Regulation 25 or dismissal under Regulation 47, it is to be treated as period spent on extra-ordinary leave. Since sub-regulation (5) of Regulation 46 states that the provisions of Regulation 39 shall apply to the employee whose absence is on account of his arrest for debt or a criminal charge or on account of his detention, it follows that such absence would also have to be treated as period spent on extra-ordinary leave when the absence is not followed by discharge, termination of service or dismissal, as the case may be.

A The above analysis of the relevant provisions of the Regulations, therefore, shows, firstly, that the employee who is absent from duty on account of his arrest for debt or on a criminal charge or on account of his detention, is not to be considered to be absent on account of circumstances beyond his control. His absence throughout such period is to be treated as
B period spent on extra-ordinary leave when the absence is not followed by discharge, termination of service or dismissal, as the case may be. In the present case, respondent-employee was arrested for criminal offence under section 302, IPC. He was, however, convicted by the Sessions Judge on 13th December, 1976 under Section 304, Part I, IPC. After the copy of the
C judgment of the Sessions Judge become available he was dismissed from service w.e.f. 28th April, 1977. The order passed by the Bank on that day has been reproduced above. By that order the Bank, among other things, revoked the order of suspension and treated the period of suspension from (a) 18th September, 1974 to 5th October, 1974 as on ordinary leave and the period (b) from 6th October, 1974 to 27th April, 1977 as on extra-ordinary
D leave without pay and allowances and as a period not counted for increment. When the High Court acquitted the respondent-employee by its order of 21st November, 1977 giving the benefit of doubt, the Bank rightly refused to reinstate him in service on the ground that it was not an honourable acquittal as required by Regulation 46 (4).

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The employee then raised an industrial dispute and the Industrial Tribunal, as stated above, by its award dated 19th May, 1983 directed his reinstatement in service with full back wages and continuity in service as if he was never dismissed from service. While doing so, the Tribunal also held
F that Regulation 46 (4) was invalid. It is not necessary for us in these proceedings to decide as to whether the Tribunal had jurisdiction to hold the sub-regulation invalid. The Bank, for reasons which are not known, did not prefer any further proceedings against the said award and by its order of 24th August, 1983 reinstated the employee treating him as on duty
G during the period from 28th April, 1977, i.e., the date of his dismissal, till 23rd August, 1983 and paid him admissible back wages for that period. As a matter of fact, in view of Regulation 46 (5) read with Regulation 39 (2) even if the employee was reinstated in service, it was competent for the Bank, in the circumstances of the case, to treat the employee as having
H absented *himself* without leave and to treat the said period as being spent

on extra-ordinary leave, as explained above. However, since the Bank has already implemented the award, the only question that falls for our consideration in the present application under Section 33-C (2) of the Act is whether the period from the date of suspension, i.e. 18th September, 1974 till the order of dismissal, i.e. 28th April, 1977 is entitled to be treated as a period on duty with full pay and allowances.

We have already pointed out the effect of the relevant provisions of Regulations 39, 46 and 47. The said regulations read together, leave no manner of doubt that in case of an employee who is arrested for an offence, as in the present case, his period of absence from duty is to be treated as not being beyond circumstances under his control. In such circumstances, when he is treated as being under suspension during the said period, he is entitled to subsistence allowance. However, the subsistence allowance paid to him is liable to be adjusted against his pay and allowances if at all he is held to be entitled to them by the competent authority. The competent authority while deciding whether an employee who is suspended in such circumstances is entitled to his pay and allowances or not and to what extent, if any, and whether the period is to be treated as on duty or on leave, has to take into consideration the circumstances of each case. It is only if such employee is acquitted of all blame and is treated by the competent authority as being on duty during the period of suspension that such employee is entitled to full pay and allowances for the said period. In other words, the Regulations vest the power exclusively in the Bank to treat the period of such suspension on duty or on leave or otherwise. The power thus vested cannot be validly challenged. During this period, the employee renders no work. He is absent for reason of his own involvement in the misconduct and the Bank is in no way responsible for keeping him away from his duties. The Bank, therefore, cannot be saddled with the liability to pay him his salary and allowances for the period. That will be against the principle of 'no work, no pay' and positively inequitable to those who have to work and earn their pay. As it is, even during such period, the employee earns subsistence allowance by virtue of the Regulations. In the circumstances, the Bank's power in that behalf is unassailable.

Further, the Labour Court while acting under Section 33-C (2) of the Act had no jurisdiction to decide the said question. Since the Labour Court in the present case took upon itself the task of deciding the said question,

A it clearly exceeded its jurisdiction. The order of the Labour Court is, therefore, liable to be set aside.

In the circumstances, we allow the appeal and set aside the impugned order of the Labour Court. There will, however, be no order as to costs.

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N.P.V.

Appeal allowed.