ABC 2019 (III) 288 SC
ACQUITTAL & BAIL CASES

SUPREME COURT OF INDIA

(Deepak Gupta & Aniruddha Bose, JJ)
Civil Appeal No 4514 of 2010
(From Gujarat High Court)
Decided on 03 September 2019

YOGESH M. VYAS ***- Appellant(s).***

Versus

REGISTRAR, HIGH COURT OF GUJARAT & ANR.- Respondent(s).

Law Covered:- Removal from Service — Charges of corruption — High Court itself was aware that no case for imposing punishment was made out— View of the High Court — since the appellant had already been out of job for eight years & he was aged about 53 years, he should not be brought back in service after such a long time— Held, the charges had not been proved against the appellant — his honour & dignity required that he should be brought back into the service— the appellant has not committed any act unbecoming of a judicial officer— already passed the age of superannuation — lump-sum granted in lieu of back-wages. (Para 4)

Facts:- *The appellant, who was a Judicial Officer and was working as Civil Judge (JD) and JMFC. It was alleged that he granted seven bail orders against the provision of law and initially the allegations were of corruption against him. These allegations were enquired into and after inquiry it was held that there was no direct evidence to show that corrupt practice was done by the appellant but he had exercised jurisdiction not vested in him by enlarging the accused on bail in cases falling u/s 307 IPC. The enquiry officer also noted that there may be the possibility of the appellant having indulged in some corruption. Another allegation was that in a civil case, after granting ex parte order, he had vacated injunction the very next day without notice to the plaintiff. The appellant was visited with the penalty of compulsory retirement on the basis of the report submitted against him. The appellant filed a writ petition and in the writ petition the High Court came to the conclusion that no charge of corruption was made out against the appellant, however he was not taken back in the service. It was observed by the Apex Court that his honour & dignity required that he should be brought back into the service, however, considering that appellant had already passed the age of superannuation lump-sum granted in lieu of back-wages.*

Held:- A bare perusal of these two paragraphs clearly shows that the Division Bench of the High Court itself was aware that no case for imposing punishment was made out. It appears that the High Court was of the view that since the present appellant had already been out of job for eight years and he was aged about 53 years, he should not be brought back in service after such a long time. We are not inclined to agree with this view of the High Court. Once the High Court held that the charges had not been proved against the appellant, who was a judicial officer, his honour and dignity required that he should be brought back into the service. We hold that the appellant has not committed any act unbecoming of a judicial officer. Unfortunately, we cannot do so because now he has already passed the age of superannuation. Therefore, the only issue is how should the relief be molded? Should he be granted the entire back-wages with interest or can one lump-sum amount be granted as compensation? (Para-4)

Counsel:- ***For Appellant(s):*** *Sumita Ray, Adv.*

For Respondent(s): *Hemantika Wahi, Adv.*

O R D E R

1. The only issue in this case is what relief should be granted to the appellant.

2. The appellant, who was a Judicial Officer and joined judicial service on 09.11.1981 held various positions. During the period 15.06.1992 to 12.06.1994, the appellant was working as Civil Judge (JD) and JMFC, Visnagar. It is alleged that he granted seven bail orders against the provision of law and initially the allegations were of corruption against him. These allegations were enquired into and after inquiry it was held that there was no direct evidence to show that corrupt practice was done by the appellant but he had exercised jurisdiction not vested in him by enlarging the accused on bail in cases falling under Section 307 IPC. The enquiry officer also noted that there may be the possibility of the appellant having indulged in some corruption. Another allegation was that in a civil case, after granting ex parte order, he had vacated injunction the very next day without notice to the plaintiff. The appellant was visited with the penalty of compulsory retirement on the basis of the report submitted against him.

3. The appellant filed a writ petition and in the writ petition the High Court came to the conclusion that no charge of corruption was

made out against the appellant. The High Court, however, dealing with the issue of the nature of the misdemeanour of the appellant and the punishment to be imposed upon him, held as follows:

> "10. We may now refer to two cases, where no consent of the learned APP was recorded in the orders. In the bail application arising from FIR No.3 of 1994, the incident had taken place on account of dispute between the agriculturists. There was one contused lacerated wound of 1 cm and the other injuries were simple stick injuries. The blow attributed by Farsi was shown in the medical certificate as wound caused by a hard and blunt object. This incident also occurred when there was an altercation between the complainant and the accused when they were going with the cattle in the outskirts of the village at about 08:30 in the morning of 06.01.1994.
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> The other incident was in Misc. Criminal Application No.62 of 1993, where also there were cross complaints and the complaint of the accused was also lodged.
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> 11. Looking to the contents of the bail applications and the orders passed by the petitioner, it thus appears that while the seven cases under consideration did not fall in the excepted categories mentioned in the first proviso to Section 437(1), with the consent of the learned APP, the petitioner granted bail in five matters, where there were disputes between the complainant and injured witnesses who were agriculturists and the accused were also agriculturists. It is true that as per the decisions of the Apex Court and of the learned Single Judges of this Court, in such cases, the Magistrate should not have treated them as extraordinary or exceptional cases, but we do note the submission of the learned advocate for the petitioner that at the relevant time, i.e. in 1993-94, the Magistrates were passing such orders when, prima facie, they were satisfied that the offence did not amount to offence under Section 307 of IPC. It was on account of such approach on the part of the Magistrates that this Court on the administrative side had to establish a State Judicial Academy for imparting proper inservice training to the Magistrates to impress upon them that the Magistrate is not to grant bail for offences punishable with death or imprisonment for life unless the accused belongs to any of the excepted categories indicates in the first proviso to Section 437(1), or on an extraordinary occasion as observed in Gurucharan Singh's case (supra)"

4. A bare perusal of these two paragraphs clearly shows that the Division Bench of the High Court itself was aware that no case for imposing punishment was made out. It appears that the High Court was of the view that since the present appellant had already been out of job for eight years and he was aged about 53 years, he should not be brought back in service after such a long time. We are not inclined to agree with this view of the High Court. Once the High Court held that the charges had not been proved against the appellant, who was a judicial officer, his honour and dignity required that he should be brought back into the service. We hold that the appellant has not committed any act unbecoming of a judicial officer. Unfortunately, we cannot do so because now he has already passed the age of superannuation. Therefore, the only issue is how should the relief be molded? Should he be granted the entire back-wages with interest or can one lump-sum amount be granted as compensation?

5. We are of the considered view that since the appellant has not worked during all these years and this will lead to another round of litigation to decide what he was earning during this period, in lieu of awarding him back-wages, we direct that a lump-sum amount of Rs.20 lakhs be paid to the appellant. This amount to be paid within six months from today, failing which it shall carry interest at the rate of 9% per annum.

6. The appeal is allowed in the aforesaid terms.

Result:- Appeal allowed.

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ACQUITTAL & BAIL CASES

SUPREME COURT OF INDIA

(Deepak Gupta & Aniruddha Bose, JJ)

Criminal Appeal No. 1660 of 2010

(From Madhya Pradesh High Court)

Decided on 05 September 2019

HARI SINGH & ANR ***- Appellant(s).***

Versus

STATE OF MADHYA PRADESH ***- Respondent(s).***

Law Covered:- ***(A) Indian Penal Code, 1860 — Sections 294, 307, 323, 302, 341, 506 r/w 34 — Identity of the accused not linked clearly with the offence — Dying declaration not reliable — Delay in***