(2001) 05 KAR CK 0004

In the Karnataka High Court

Case No : Writ Petition No. 5253 of 1999

A. Vamana Acharya APPELLANT

Vs

Syndicate Bank, Head Office, Manipal RESPONDENT

Date of Decision : 28-05-2001

Acts Referred:
Penal Code, 1860 (IPC) — Section 25, 405, 463

Citation : (2002) 92 FLR 541 : (2001) ILR (Kar) 4896 : (2001) 3 KCCR 1889 : (2001) 2 LLJ 1184

Hon'ble Judges : Chidananda Ullal, J

Bench : Single Bench

Advocate : Sri C. Shashikantha, for the Appellant; Sri Prabhu, for M/s. Tukaram S. Pai, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner herein, a retired Officer of the respondent-Bank in filing the instant writ petition he has challenged the charge-sheet bearing No. 3/ PD:IRD:DA.3/PSN/98, dated 19-9-1998, copy at Annexure-D to writ petition, inasmuch as he prayed that the same be quashed.

2. The petitioner herein is represented by Sri C. Shashikantha, whereas the respondent-Bank is represented by Sri Tukaram S. Pai.

3. It is the case of the petitioner that he had joined the services of the respondent-Bank as long back as in the year 1957 as a Clerk and he was promoted to the cadre of an Officer in the year 1962. That he was further promoted as Manager and thereafter, as Senior Manager and finally he was promoted as a Divisional Manager (Scale-IV) in the year 1990 and thus at the point of his retirement from service of the respondent-Bank on 31-1-1995 on attaining the age of superannuation, he was working as a Chief Manager in Chandni Chowk Branch at New Delhi of the respondent-Bank. That he had unblemished service career in the respondent-Bank all through and the

respondent-Bank had also accredited him with certificate of good performance, evidenced by letter dated 5-9-1973 issued by the respondent-Bank, copy at Annexure-A to writ petition. It was also his case that during his career as an Officer of the respondent-Bank, he was also the Office-bearer of the Syndicate Bank Officers'' Organisation which was a trade union of the Officers registered under the Indian Trade Union Act and affiliated to Bharatiya Mazdoor Sangh. That there was some union rivalry and because of that, to discredit him, the respondent-Bank had subjected him to harassment even after his retirement.

4. That, during the year 1993 there came the Pensionary scheme in the respondent-Bank and thus, a scheme called Syndicate Bank Employees (Pension) Regulation, 1993 came to be promulgated in draft form and as per the said draft Regulation, the petitioner had given an option for pensionary benefit by his option dated 23-9-1994 addressed to the respondent-Bank, copy at Annexure-II to the objection statement filed by the respondent-Bank. That thereafter, there came in force what was called the Syndicate Bank Employees Pension Regulations, 1995, henceforth in brief referred to as the ''Pension Regulations, 1995'' and that the same came into force with effect from 29-9-1995. That in consonance with the said scheme in the Pension Regulations, 1995 and in consideration of the option the petitioner had given earlier on 23-9- 1994, copy at Annexure-II to objection statement, the petitioner was granted with regular pension at certain rate per month. Then came the charge-sheet dated 17-9-1998 issued by the Enquiry Officer, one L.B. Reddy, the General Manager of the respondent-Bank alleging certain charges, the Charges 1 and 2 alleging that during the tenure as Chief Manager at Chandni Chowk Branch, New Delhi, he had unduly accommodated a party and exposed the Bank to the risk of a pecuniary loss to an extent of Rs. 16.52 lakhs. The charge-sheet was also accompanying the statement of imputation of misconduct and further the details with regard to the alleged loss caused by him to the respondent- Bank.

5. The petitioner had challenged the said charge-sheet, copy at Annexure-D to writ petition on various counts as set out in Grounds 20 to 35 in the writ petition. Among the grounds set out, it was the case of the petitioner that the charge-sheet issued was totally arbitrary, illegal and opposed to the service jurisprudence and the principles of natural justice and that the Pension Regulations, 1995 was not at all applicable to the case of the petitioner in issuance of the charge-sheet, copy at Annexure-D to writ petition, inasmuch as, according to him, he being a retired official of the respondent-Bank he could not be proceeded with in issuance of the charge-sheet. He had also contended in the ground thereof that Annexure-D, charge-sheet came to be issued in violation of Articles 14 and 21 of the Constitution of India.

6. The respondent-Bank had opposed the writ petition. Accordingly, it filed a detailed objection statement as against the petition on 26-3-199.9 and among other things, they contended that the charge-sheet in question was issued by the Competent Authority of the respondent-Bank and under the provisions of

Regulations 43 to 45 read with Section 48 of the Pension Regulations, 1995 read with Regulation 6 of Syndicate Bank Officers/Employees Discipline and Appeal Regulations, 1976, henceforth in brief referred to as the ''Appeal Regulations, 1976''. That the petitioner when he was working as Chief Manager in Syndicate Bank, Chandni Chowk Branch, New Delhi, retired after attaining superannuation on 31-1-1995 and that, just a few days earlier to his date of retirement, the petitioner has committed irregularities on 20-10-1994, 24-10-1994, 20-1-1995 and on 31-1-1995 and the acts of misconduct included arranging of certain financial facilities to M/s. Biren Manufacturing Company (Cables) Private Limited at the cost of the Bank and therefore caused loss to the Bank and the act also included undue accommodation to certain parties by issuing of no objection certificate for change of Bankers without obtaining prior permission from the Competent Authority and thereby allowing the said customer of the Bank to open account in some other Bank, facilitating diversion of funds from the respondent-Bank, thus causing pecuniary loss to it to an extent of Rs. 16.42 lakhs along with interest thereof. That the petitioner having taken the pensionary benefit by way of pension under the Pension Regulations Act, 1995 it was not available for him to challenge the action on the part of the respondent-Bank under certain other part of the said regulation. That there was no violation of Articles 14 and 21 of the Constitution, that the respondent-Bank had caused for issuance of charge-sheet, copy at Annexure-D to writ petition in consonance with law and as such, the same is not available for the petitioner to challenge the same before this Court, particularly when he had not challenged the validity of the very Pension Regulations, 1995 in filing the instant writ petition.

7. I heard both the learned Counsels for the petitioner Sri Shashikantha on the one side and the learned Counsel Sri Tukaram S. Pai appearing for the respondent-Bank at length. They urged the respective side of their case as set out as above. Let apart, both the sides had filed authorities.

8. The learned Counsel for the petitioner Sri Shashikantha had cited the following authorities, in all numbering 16:

1. P. Balakotaiah Vs. The Union of India (UOI) and Others, ;

2. Hukam Chand etc. Vs. Union of India (UOI) and Others, ;

3. Purshottam and Another Vs. State of Madhya Pradesh, ;

4. Bakul Cashew Co. and Others Vs. Sales Tax Officer Quilon and Another, ;

5. Union of India and Others Vs. Dr. S. Krishna Murthy and Others, ;

6. Secretary, Karnataka Industrial Co-operative Bank Ltd. Vs. State of Karnataka, ;

7. G.K. Thirunarayana Iyengar Vs. State of Karnataka, ;

8. Union of India (UOI) and Others Vs. J. Ahmed, ;

9. Glaxo Laboratories (I) Ltd. Vs. Presiding Officer, Labour Court, Meerut and Others, ;

10. A.L. Kalra Vs. Project and Equipment Corporation of India Ltd., ;

11. Rasiklal Vaghajibhai Patel Vs. Ahmedabad Municipal Corporation and Another, ;

12. K.L. Verma v Union of India and Others;

13. M.D. Parmar Vs. Y.B. Zala and Another, ;

14. Selvaraj v K.M. Nandagopal;

15. State of Andhra Pradesh Vs. N. Radhakishan, ;

16. Indo Nissin Foods Ltd. Vs. Union of India,

9. He had also placed reliance on Administrative Law by S.P. Sathe, 5th Edition, Vol. I.

10. From the side of the respondent-Bank, Sri Tukaram Pai had placed reliance on the following decisions:

1. Union of India and Others Vs. Shri B. Dev, ;

2. Rajendra and Others Vs. State of Rajasthan and Others, .

11. Right here I have to observe that it is not necessary for me to advert to any of the authorities, for in my considered view, the instant writ petition can be disposed of on admitted facts.

12. It is not in dispute before me that the petitioner had opted for pension under the Pension Regulation Scheme, evidenced by his own representation dated 23-9-1994 produced by the respondent-Bank as at Annexure-II to the objection statement. It is also not in dispute before me that under the Pension Regulations, 1995 which had admittedly come into force on 29-9-1995, the petitioner had taken the pensionary benefits and thus became a pensioner to draw a pension at certain rate (not disclosed by either side) from the corpus of the Pension Fund created under the Pension Regulations, 1995, copy whereof is produced as Annexure-I to the objection statement of the respondent-Bank. If it is true that the petitioner herein is the pensioner under the Pension Regulations, 1995, I do not think it is available for him to challenge the other part of the regulation, more particularly with reference to the case in hand. In Regulations 42 to 56 that occurred in Chapter IX, General Conditions, it was with vehemence argued by the learned Counsel for the petitioner that his party had not committed any misconduct, much less, a grave misconduct to be issued with a charge-sheet, copy at Annexure-D to writ petition, that too after a lapse of 5 long years. In this context, I feel it appropriate to set out the Regulations 42 to 48 of the Regulations which are part of Chapter IX of the Pension Regulations. To quote, the same read as hereunder:

"42. Pension subject to future good conduct.--Future good conduct shall be an implied condition of every grant of pension and its continuance under these regulations.

43. Withholding or withdrawal of pension.--The Competent Authority may, by order in writing, withhold or withdraw a pension or a part thereof, whether permanently or for a specified period, if the pensioner is convicted of a serious crime or criminal breach of trust or forgery or acting fraudulently or is found guilty of grave misconduct:

Provided that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the minimum pension per mensem payable under these regulations.

44. Conviction by Court.--Where a pensioner is convicted of a serious crime by a Court of law, action shall be taken in the light of the judgment of the Court relating to such conviction.

45. Pensioner guilty of grave misconduct.--In a case not falling under Regulation 44 if the Competent Authority considers that the pensioner is prima facie guilty of grave misconduct, if shall; before passing an order, follow the procedure specified in Syndicate Bank Officer Employees'' (Discipline and Appeal) Regulations, 1976 or in Settlement as the case may be.

46. Provisional Pension.--(1) An employee who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued, a provisional pension, equal to the maximum pension which would have been admissible to him, would be allowed subject to adjustment against final retirement benefits sanctioned to him. upon conclusion of the proceedings, but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld, etc., either permanently or for a specified period.

(2) In such cases the gratuity shall not be paid to such an employee until the conclusion of the proceedings subject to the decision of the proceedings. Any recoveries to be made from an employee shall be adjusted against the amount of gratuity payable.

Explanation.--In this Chapter.--(a) the expression ''serious crime'' includes a crime involving an offence under the Official Secrets Act, 1923 (19 of 1923);

(b) the expression ''grave misconduct''; includes the communication or disclosure of any secret official code or password or any sketch, plan, model, article, note, document or information, such as is mentioned in Section 5 of the Official Secrets Act, 1923 (19 of 1923) which was obtained while holding office in the Bank so as to prejudicially affect the interests of the general public or the security of the State;

(c) the expression ''fraudulently'' shall have the meaning assigned to it u/s 25 of the Indian Penal Code, 1860 (45 of 1860);

(d) the expression ''criminal breach of trust'' shall have the meaning assigned to it u/s 405 of the Indian Penal Code, 1860 (45 of 1860);

(e) the expression ''forgery'' shall have the meaning assigned to it u/s 463 of the Indian Penal Code, 1860 (45 of 1860).

47. Commutation of pension during departmental or judicial proceedings.--An employee against whom departmental or judicial proceedings have been instituted before the date of his retirement or a person against whom such proceedings are instituted after the date of his retirement shall not be eligible to commute a fraction of his provisional pension, or pension, as the case may be, authorised under these regulations during the pendency of such proceedings.

48. Recovery of pecuniary loss caused to the Bank.--(1) The Competent Authority may withhold or withdraw a pension or a part thereof, whether permanently or for a specified period, and order recovery from pension of the whole or part of any pecuniary loss caused to the Bank'' if in any departmental or judicial proceedings the pensioner is found guilty of grave misconduct or negligence or criminal breach of trust or forgery or acts done fraudulently during the period of his service:

Provided that the Board shall be consulted before any final orders are passed:

Provided further that departmental proceedings, if instituted, while the employee was in service, shall, after the retirement of the employee, be deemed to be proceedings under these regulations and shall be continued and concluded by the authority by which they were commenced in the same manner as if the employee had continued in service:

Provided also that no departmental or judicial proceedings, if not initiated while the employee was in service, shall be instituted in respect of a cause of action which arose or in respect of an event which took place more than four years before such institution.

(2) Where the Competent Authority orders recovery of pecuniary loss from the pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of the employee:

Provided that where a part of pension is withheld or withdrawn, the amount of pension drawn by a pensioner shall not be less than the minimum pension payable under these regulations".

13. From the third proviso below Regulation 48 as above, it is clear therefrom that when no departmental or judicial proceedings was not initiated when the employee was in service, such a departmental or judicial proceedings shall be instituted in respect of a cause or causes which arose, or in respect of an event which took place more than 4 years before such institution. It is not the case of

the petitioner in filing the instant writ petition that the departmental proceedings came to be instituted in issuance of the charge-sheet at Annexure-D in respect of an event which had taken place more than 4 years before institution of the departmental proceedings, for admittedly, the institution of the departmental enquiry in issuance of the charge-sheet at Annexure-D was well in respect of an event which took place not more than 4 years before such institution.

14. In this context, it is pertinent to observe here that, that event which the respondent-Bank had alleged in issuance of the charge-sheet was in respect of certain irregularities stated to have been taken place on 4 relevant dates i.e., on 20-10-1994, 24-10-1994, 20-1-1995 and on 31-1-1995, when the petitioner admittedly attained the age of superannuation on 31-1-1995. Therefore, in my considered view, it could not be said that the initiation of the proceedings in question for recovery of pecuniary loss caused to the Bank under Regulation 48 of the Bank Regulations, 1995 was beyond period of limitation.

15. It was argued by the learned Counsel for the petitioner that the petitioner herein had not committed any misconduct, much less, grave misconduct. This argument of his is difficult for me to accept in view of the explanations (a) to (e) below clause (2) of Regulation 46 under the heading, ''Provisional Pension''. If we read explanation (b) below clause (2) of Regulation 46, the expression ''grave misconduct'' had been explained by way of inclusive definition and furthermore, if we read explanation (d) there further below, the criminal breach of trust had been explained as the one with the meaning as assigned to it u/s 405 of the Indian Penal Code.

16. As pointed out as above, if the petitioner had taken the Pension Regulations, 1995 as good for the purpose of earning the pension regularly under the scheme, he cannot call the provision in Section 48 in the matter of recovery of the pecuniary loss caused to the Bank as it had been alleged by the respondent-Bank as against the petitioner in issuance of the charge-sheet. That way, according to me, the petitioner cannot have the beneficial part to his advantage and the penal part thereof to his disadvantage as he appeared to have chosen to canvass before this Court in filing the instant writ petition while challenging the impugned charge-sheet issued by a Competent Authority appointed by the respondent-Bank.

17. At the cost of repetition I have to observe here that in filing the instant writ petition, the petitioner had not challenged the very Pension Regulations, 1995, and as such according to me, as long as he has not done that, I do not think it is available for him to recourse to the instant writ petition to challenge the impugned charge-sheet issued against him, which according to me was issued in consonance with the Pension Regulations, 1995.

18. In that view of the matter, I do not find any merit in the instant petition. However, the respondent-Bank is directed to hold the proposed enquiry either in Delhi or in Bangalore by giving an option thereto to the petitioner herein.

19. The writ petition therefore stands dismissed with the above observation. No cost.

