
(2013) 01 KL CK 0014
In the High Court Of Kerala
Case No : Writ Petition (C) No. 8284 of 2005

A.M. Joshy

APPELLANT

Vs

The Canara Bank and Another

RESPONDENT

Date of Decision : 21-01-2013

Acts Referred:

Citation : (2013) 2 KLJ 83

Hon'ble Judges : B.P. Ray, J

Bench : Single Bench

Advocate : P.K. Vijayamohanan and M.P. Prabhanandan, for the Appellant; M.C. Sen, Sr. SC and M.P. Sreekrishnan, SC, for the Respondent

Final Decision : Disposed Off

Judgement

B.P. Ray, J.—Heard learned counsel for the petitioner and Sri. M.C. Sen, the learned senior Standing Counsel appearing for the first respondent Bank.

2. The petitioner is aggrieved by Ext. P5 order of dismissal from service issued by the first respondent and the award passed by second respondent/the Labour Court, Kozhikode holding that the action of the management of Canara Bank in dismissing the service of the petitioner is legal and justifiable.

3. Prayers in this writ petition are as follows:

- i) to issue a writ of certiorari quashing Ext. P5 order of dismissal and Ext. P9 award of the second respondent Labour Court;
- ii) to declare that the penalty of dismissal from service ordered under Ext. P5 is disproportionate to the gravity of the charges under Exts. P1 and the petitioner is entitled for reinstatement with continuity of service at back wages;
- iii) to issue a writ, order or direction directing the second respondent to decide on the dispute taking note of the disproportional of the penalty under Ext. P5.

4. Learned counsel for the petitioner submits that the charge levelled against the

petitioner is absence without leave. According to the petitioner, he was compelled to avail leave because of his health problems. The management also admitted the fact that the petitioner submitted leave applications supported by Medical Certificates after the leave period. It is submitted by the learned counsel that the initiation of the disciplinary proceedings and the imposition of the maximum penalty of dismissal from service are not at all warranted to the facts and circumstances of the case.

5. Learned counsel for the petitioner challenges the order of dismissal on the ground of proportionality. It is the admitted fact that the petitioner had 21 years of service at the time of his dismissal from service. As a result of the penalty, none of the terminal benefits are given to him. He is otherwise entitled to pensionary benefits. By this time, he has completed the age of 60 and therefore there is no scope for his reinstatement.

6. Learned counsel for the first respondent/Bank submits that Ext. P9 award is justifiable and the findings of the Labour Court are in tune with the well settled law on the issue. While exercising the powers u/s 11A of the Industrial Disputes Act, the Labour Court considered the pleadings and evidence before it in detail and also considered the previous punishments imposed on the petitioner for the very same misconduct. The Labour Court has also appreciated the considerate approach of the first respondent towards the petitioner and came to a conclusion that the dismissal of the petitioner with effect from 16-6-1995 is legal and justified.

7. It is also submitted that during the 20 years of service of the petitioner he had absented for more than 7 years and 7 months. As on 20-4-1994 petitioner's absence for 699 days was treated as leave on loss of pay and his absence for 1332 days was treated as unauthorised absence without leave. During the period the petitioner had also availed other categories of leave to the extent of 786 days. As the petitioner continued his habitual absence during 1993-94 period Ext. P1 charge sheet was issued to him. After conducting a domestic enquiry the punishment of dismissal from service was imposed on the petitioner which was the subject matter of I.D. (C) No. 25/97.

8. I have gone through the materials available on record. Ext. P3 Enquiry Report reveals the charges levelled against the petitioner and the findings of the Enquiry Officer. They are quoted below for ready reference:

The gist of the charges levelled against Sri. A.M. Joshi in the above charge sheet, is as follows:

Sri. A.M. Joshi is in the habit of absenting from duties frequently and unauthorisedly, in violation of the leave rules of the Bank. His frequent and continuous absenteeism had adversely affected the smooth and normal functioning of the Branch. He has also been issued with Charge sheets thrice for unauthorized absence and after the enquiries, he was found guilty in all the cases and punishment of "warning" and "stoppage of increment for a period of

six months without cumulative effect" were imposed on him.

In spite of the above, he has not corrected himself and continued with indiscriminate and frequent absenteeism. Till the issuance of the present charge sheet, his absence for 699 days on various occasions were treated as leave on loss of Pay and absence for 1332 days were treated as unauthorized and one without leave and hence on loss of pay. He has also availed other categories of leave to the extent of 786 days till the date of present charge sheet. During the period from 7-10-92 to 8-10-1993, he absented for 294 days (on 22 occasions) and the same were treated as unauthorized, one without leave and hence on loss of pay.

As he remained away from duties from 11-10-93 without prior permission or sanction of leave, our Chundale Branch had sent a telegram and a Registered AD letter, instructing him to report for duty immediately. However, he did not report for duty. On the contrary, he submitted an application (dtd. 16-11-1993) requesting for 33 days leave on medical grounds from 11-10-93 to 12-11-93. As he did not report for duty on expiry of the above leave, our Chundale Br. again sent a telegram and a Registered AD letter, instructing him to report back for duty immediately. Since he failed to report for duty in spite of the above instructions, our Staff Section (Workmen), CO., Trivandrum, had sent a telegram and Regd. AD letter (No. TSW 12439 T. 13 MKN dt. 17-12-93) instructing him to report back for duty immediately. He reported for duty on 18-12-93 only and submitted an application requesting for leave from 17-11-93 to 17-12-93 on medical grounds. However, he did not submit any leave application for his absence from 13-11-93 to 16-11-93.

He continued to remain absent during the following periods, without prior permission or sanction of leave. The leave applications in all these cases were submitted only on rejoining duties.

- 1) 20-12-93 to 03-01-94
- 2) 05-01-94 to 22-01-94
- 3) 25-01-94 to 08-02-94

Since he remained absent from duties in violation of leave rules of the Bank, all his above absences were treated as one without leave and hence on loss of pay.

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In view of the above, I hold him guilty of all the charges levelled against him in the Charge Sheet TSW 8/94 T. 37 dated 20-04-1994 (MEX-1).

I also hold him guilty of the charges that

a) by his action in remaining away from duties frequently and unauthorisedly in violation of leave rules and instructions given to him by the superior authorities, he has willfully disobeyed the lawful and reasonable orders of the persons placed

in authority over him and committed Gross misconduct within the meaning of Chapter XI, Regulation 3, Clause (d) of Canara Bank Service Code.

b) by his action in having absented from duties without adhering to the leave rules inspite of the action taken and punishment imposed on three previous occasions, he also committed Gross Misconduct within the meaning of Chapter XI, Regulation 3, Clause (1) of Canara Bank Service Code.

c) his above actions being prejudicial to the interests of the Bank, he has also committed Gross Misconduct within the meaning of Chapter XI, Regulation 3, Clause (m) of Canara Bank Service Code.

9. The question for consideration in this case is whether the punishment is disproportionate to the charge levelled against the petitioner. The main contention canvassed by the learned counsel for the petitioner is that the punishment imposed by the respondent/Bank is disproportionate to the gravity of the charges levelled against the petitioner. For his unauthorised absence earlier there was cut of an increment. Therefore, the petitioner cannot be punished again for earlier unauthorised absence from service. Per contra, learned Senior Counsel for the respondent Bank argued that the charge levelled against the petitioner even though minor misconduct, amounts to gross misconduct as the petitioner was punished earlier three times on the same allegation.

10. Chapter XI of the Canara Bank Service Code deals with disciplinary action. As per Chapter XI, Regulation 3, Clause (1) of Canara Bank Service Code defines gross misconduct as follows:

Misconduct may be either gross misconduct or minor misconduct. Gross misconduct means any of the acts or omission on the part of an employee:

(a) knowingly making a false statement in any return, report declaration, statement, bill or information submitted or given in the course of his employment in the Bank;

(b) engaging in any trade, business, profession or calling outside the scope of his employment in the Bank, in contravention of Regulation 3 of Chapter VI of this Code;

(c) breach of the obligation of secrecy imposed on him by Regulation 4 of Chapter VI of this Code, or the disclosure of any secret or confidential information in contravention of the said Regulation;

(d) willful insubordination or disobedience of lawful and reasonable orders of the management or of persons placed in authority over him;

(e) willful slowing down in the performance of work;

(f) giving or taking a bribe or illegal gratification from a customer or an employee of the Bank;

(g) gambling or betting on the premises of the Bank;

- (h) speculation in stocks, shares, securities or any commodity whether on his own account or that of any other person;
- (i) gross negligence that is to say negligence involving or likely to involve the bank in serious loss;
- (j) willful damage or attempt to cause damage to any property of the Bank or of any of its customers;
- (k) drunkenness or riotous or disorderly or indecent behavior in the premises of the Bank;
- (l) habitual doing of any act which amounts to minor misconduct habitual meaning a course of action taken or persisted in notwithstanding that at least on three previous occasions censure or warnings have been administered or adverse remarks have been entered against him;
- (m) doing any act which is prejudicial to the interest of the Bank;
- (n) abetment or instigation of any acts or omissions mentioned in clauses (a) to (m) above;
- (o) knowingly making a false statement in any document pertaining to or in connection with his employment in the bank;
- (p) resorting to unfair practice of any nature whatsoever in any examination conducted by the Indian Institute of Bankers or by or on behalf of the Bank and where the employee is caught in the act of resorting to such unfair practice and a report to that effect has been received by the Bank from the concerned authority;
- (q) resorting to unfair practice of any nature whatsoever in any examination conducted by the Indian Institute of bankers or by or on behalf of the Bank and in cases not covered by the above clause (p) and where a report to that effect has been received by the Bank from the concerned authority and the employee does not accept the charge.

11. Regulation 4 deals with punishments. An employee found guilty of gross misconduct may be awarded any of the following punishments:

- a) he may be warned;
- b) he may be censured;
- c) he may have an adverse remark entered against him;
- d) he may have his increments stopped;
- e) he may have his pay reduced to the next lower stage upto a maximum period of two years in case he had reached maximum in the scale of pay;
- f) he may have his special allowance withdrawn;
- g) he may be dismissed;

h) he may have his misconduct condoned and be merely discharged.

12. In the findings of the Enquiry Officer, petitioner's ailment has not been disbelieved. Petitioner was in the habit of taking leave without prior approval of the authorities and this was the charge against him. Learned counsel for the petitioner has relied upon the following decisions wherein the Apex Court has taken a lenient view by converting the dismissal to compulsory retirement. In *Jagdish Singh Vs. Punjab Engineering College and Others*, held as follows:

In recent times, there is an increasing evidence of this perhaps well meant but wholly unsustainable tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of the courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability.

13. In *State Bank of Bikaner and Jaipur Vs. Nemi Chand Nalwaya*, the apex court held as follows:

we are, therefore, of the view that the High Court was not justified in quashing the punishment and directing reinstatement with back wages and consequential benefits. In fact, the order of the High Court directing back wages amounts to rewarding a person who has been found guilty of a misconduct. However, having regard to the fact that the proven charge did not involve either misappropriation or fraudulent conduct and the other circumstances of the case, we are of the view that the punishment of dismissal should be substituted by compulsory retirement, which does not involve reinstatement

14. Learned counsel for the respondent Bank has also relied on various decisions such as *Devendra Swamy Vs. Karnataka State Road Transport Corpn.*, and *Sita Dayanandan Vs. State of Kerala* and Another

15. Therefore, taking a lenient view in the matter and taking into account the fact that absence of the petitioner from service was not willful but due to ailing health which is beyond the control of the petitioner, I modify the punishment from dismissal to one of compulsory retirement and direct that all consequential benefits shall be disbursed to the petitioner within three months from the date of receipt of a copy of this judgment. The impugned orders are set aside.

Writ petition is disposed of.