(2016) 08 BOM CK 0110

In the Bombay High Court

Case No : Writ Petition No. 6718 of 2015

Amravati Zilla Parishad Shikshan Sahakari Bank Ltd. APPELLANT

Vs

Manohar RESPONDENT

Date of Decision : 19-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Co-operative Societies Act, 1960 — Section 91

Citation : (2016) 6 BCR 684 : (2017) 2 MhLJ 292

Hon'ble Judges : A.S. Chandurkar, J.

Bench : Single Bench

Advocate : Mrs. S.S. Wandile, Advocate, for the Respondent; Shri A.M. Ghare, Advocate, for the Petitioner

Final Decision : Disposed Off

Judgement

A.S. Chandurkar, J. - Rule. Heard finally with the consent of learned Counsel for the parties.

2. The petitioner is aggrieved by the adjudication of the claim for damages in lieu of reinstatement awarded to the respondent in the dispute filed by the respondent under Section 91 of the Maharashtra Co-operative Societies Act, 1961 [hereinafter referred to as the "said Act"].

3. The respondent was appointed on the post of clerk at the petitioner - Bank which is duly registered under the provisions of the said Act. The respondent was thereafter promoted to the post of Branch Manager. During his course of service, a departmental enquiry was conducted against him on charges of financial misappropriation. After issuing a show cause notice on 27-3-2000 and pursuant to the report submitted by the Enquiry Officer, the Bank terminated the services of the respondent on 28-4-2000. The respondent being aggrieved filed a dispute under Section 91 of the said Act before the Cooperative Court seeking a declaration that the resolution resulting in termination of his services was illegal. The relief seeking declaration that the respondent continued in service with

benefits of continuity and full back wages was also sought. This dispute was contested by the Bank and the reliefs sought by the respondent were opposed.

4. The Co-operative Court by judgment dated 16-6-2001 dismissed the dispute. The respondent filed an appeal before the Cooperative Appellate Court. This appeal was also dismissed on 3-5-2002. Being aggrieved the respondent filed Writ Petition No. 3819/2002 challenging the aforesaid adjudication. This Court by judgment dated 23-7-2013 came to the conclusion that the charge-sheet issued to the respondent was without legal authority, as the same was issued by a person who was not competent to do so. On that basis, the order of termination dated 28-4-2000 based on the resolution passed by the Board of Directors dated 23-4-2000 was set aside. This Court further held that the respondent not being a "workman" was not entitled for relief of reinstatement with back wages. It was found that the respondent had superannuated during pendency of the writ petition on 30-4-2013. Liberty was granted to the respondent to seek damages for wrongful termination and in lieu of reinstatement.

For that purpose, the dispute filed by the respondent was restored and he was permitted to apply for amendment of the dispute with a further liberty to the parties to lead evidence in support of their respective stands.

5. Pursuant to the aforesaid order, the respondent amended the dispute claiming damages in view of reinstatement.

According to the respondent, he was getting salary of Rs. 13,850/- per month when his services were terminated. If the respondent would have retired on reaching the age of superannuation, he would have got salary of Rs. 34,660/- per month. According to him, the total amount of salary which he would have earned was Rs. 52,02,000/-. By seeking damages of Rs. 10,00,000/- on account of mental pain and agony, the respondent claimed a total amount of Rs. 62,02,000/- as damages. This claim was opposed by the Bank. The respondent examined himself and justified the amount of damages claimed by him. The Co-operative Court held that the respondent was entitled to receive damages equivalent to the salary which he would have got if his services had not been terminated. By the order dated 11-8-2014, the respondent was held entitled to an amount of Rs. 36,75,153/- with interest at 12% per annum. This amount was determined on the basis of his monthly salary of Rs. 34,660/-.

The petitioner being aggrieved by the aforesaid award approached the Cooperative Appellate Court. By judgment dated 30-9-2015, the Cooperative Appellate dismissed the appeal preferred by the Bank and confirmed the award passed by the Cooperative Court. Being aggrieved the petitioner has filed the present writ petition.

6. Shri A.M. Ghare, the learned Counsel for the Bank stated that both the Courts misdirected themselves by granting damages in lieu of reinstatement by equating the same with the amount of salary which the respondent would have received had his services not been terminated. He submitted that the award of

damages on this premise would have the effect of granting full back wages which relief had been refused by this Court. It was urged that there was no evidence led by the respondent seeking damages except bringing on record the amount of salary that the respondent would have drawn had he been in service. The learned Counsel submitted that the departmental proceedings were held against the respondent on account of charges of financial misappropriation and the proceedings were set aside only on the technical ground that the charge-sheet had been issued by a person who was not competent to do so. Considering the responsible post held by the respondent, grant of such exorbitant damages would amount to granting premium for such misconduct. He submitted that the Hon''ble Supreme Court in O.P. Bhandari v. Indian Tourism Development Corporation Ltd., [(1986) 4 SCC 337] has found grant of salary and allowances from the date of termination till retirement in such circumstances to be unreasonable. He also relied upon the decision of the Hon''ble Supreme Court in State of Punjab & Ors. v. Dr. Harbhajan Singh Greasy [1996 (4) SCALE 195]. He, therefore, submitted that both the Courts erred in passing the impugned award.

7. Smt. S.S. Wandile, the learned Counsel for the respondent supported the impugned judgment. It was submitted that once it was found that the resolution dated 23-4-2000 and the consequent order of termination dated 28-4-2000 being illegal, it would be clear that the services of the respondent had been wrongly terminated. There being no reason whatsoever to terminate services of the respondent, he would be entitled to receive entire salary from the date of termination till his superannuation by treating him to be in service. The amount of salary that the respondent would have earned was not in dispute and, therefore, both the Courts were justified in granting such compensation in favour of the respondent. It was submitted that the Bank did not lead any evidence whatsoever to dispute the claim of the respondent. The learned Counsel further submitted that the respondent had been acquitted of the charge of misappropriation by the Court of the learned Judicial Magistrate First Class, Chandur Bazar as per the judgment in Regular Criminal Case No. 166/2000 dated 9-7-2013. It was, therefore, clear that the entire basis for proceeding against the respondent had ceased to exist and the grant of compensation in the form of salary for the period from the date of termination of services till retirement was the correct yardstick adopted by both the Courts.

The learned Counsel sought to support the impugned judgment by relying upon the judgments of the Hon''ble Supreme Court in Jasbir Singh v. Punjab and Sind Bank and others [(2007) 1 SCC 566], Novartis India Limited v. State of West Bengal and others [(2009) 3 SCC 124] and Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya & others [(2013) 10 SCC 324]. Reliance was also placed on the judgment of the Madhya Pradesh High Court in Writ Petition No. 606/2005 (District Central Cooperative Bank Limited v. Shri Madanlal S/o Bhanwarlal Udiya) decided on 22-4-2016. It was, therefore, submitted that no case was made out to interfere in writ jurisdiction.

8. The learned Counsel for the parties have been heard at length. I have given due consideration to the submissions urged on their behalf. In the earlier round of adjudication, this Court had held that the order of termination dated 28-4-2000 was illegal on the ground that the charge-sheet issued to the respondent had been issued by a person who was not authorised to issue the same. After denying the prayer for grant of relief of reinstatement with back wages, liberty was granted to the respondent to seek damages for wrongful termination and in lieu of reinstatement.

From the aforesaid adjudication, it is clear that the order of termination has been set aside on the ground that the departmental proceedings held against the respondent were without force of law. As the respondent was holding the post of Branch manager and he not being a "workman", he was dis entitled for the relief of reinstatement with back wages. In this back drop, the challenges as raised would have to be adjudicated.

9. The respondent by amending the dispute sought damages that were equivalent to the salary that he would have earned had he been in service till his superannuation. A chart showing entitlement to total salary of Rs.36,75,153/- for aforesaid period was placed on record. These figures were not disputed by the petitioner and the said relief came to be granted to the respondent.

If the claim for reinstatement with full back wages was specifically refused, it is difficult to comprehend as to how the respondent could be held entitled to receive damages in the form of salary which the respondent could have earned if he would have been in service. In other words, the relief of reinstatement with full back wages having been specifically denied to him, he has been granted full back wages in the form of damages. Relief that has been denied directly cannot be claimed indirectly. On this short ground, it is clear that both the Courts misdirected themselves by granting compensation in the form of full back wages. The impugned judgment results in miscarriage of justice to the petitioner and hence a case for interference under Article 227 of the Constitution of India has been made out.

10. In O.P. Bhandari (supra), the appellant therein was holding the post of Manager in a hotel when his services were terminated. The Regulation providing for giving a simple notice of ninety days or by paying salary for the notice period while doing away with the services of a permanent employee was found to be illegal. In that context, the Hon''ble Supreme Court considered the question as to whether it was obligatory to direct reinstatement when the concerned Regulation was found to be void. A distinction was noticed on the basis of the post held by the concerned employee. It was observed that where the employee belonged to the higher level in the managerial cadre, in public interest the management could not be thrusted with such personnel in whom for reasonable grounds it did not have trust or faith. In that context, it was observed that reasonable compensation could be directed to be paid in lieu of reinstatement. In the facts of said case, it was found that the services of the appellant therein were

terminated eight years prior to his superannuation. It was observed that granting salary and allowances for this period of eight years was unreasonable. The Hon''ble Supreme Court proceeded to award compensation equivalent to 3.33 years service including allowances as admissible. This decision is, therefore, an authority on the aspect for determination of compensation in lieu of reinstatement when the employee concerned is from a higher level in the managerial cadre.

11. In Jasbir Singh (supra), the services of a peon were terminated on the ground that he had forged the signature of a depositor. The said employee was acquitted in criminal proceedings. It was found that despite failure in the civil proceedings as well as criminal proceedings, the services of the said peon were terminated. Hence, an order of reinstatement with back wages and continuity of service came to be passed. It is to be noted that the employee therein was holding the post of peon.

In Novartis India Limited (supra), while considering the aspect of back wages in relation to a sales representative, the Hon''ble Supreme Court did not interfere with the direction to pay full back wages. In Deepali Gundu Surwase (supra), the manner in which the back wages are to be awarded in the case of wrongful termination of services has been laid down. It has been observed that in case of wrong termination of service reinstatement with continuity in service was the normal rule. The appellant therein was a teacher. Similarly, the respondent in District Central Cooperative Bank Ltd. [supra] was working as an Accountant.

12. In the present case, the respondent was holding a responsible post of Branch Manager. Departmental proceedings were held against him on the charge of financial misappropriation.

Though it is true that the respondent has been acquitted of the criminal charge, it cannot be lost sight of that the relief of reinstatement with full back wages stands denied to him in the earlier adjudication that has attained finality. As the respondent not a "workman", he was not held entitled to the aforesaid relief. In this background, therefore, I am inclined to follow the law as laid down by the Hon''ble Supreme Court in O.P. Bhandari (supra) but with some slight modification.

13. In O.P. Bhandari (supra), two relevant facts that can be noted are that the period of service that could have been rendered from the date of termination till the date of superannuation was of eight years. Another factor that was taken into consideration was that in the year 1986, the rate of interest prevailing was 15% per annum. After taking these factors into account, the compensation was determined as being equivalent to 3.33 years salary.

In the present case, the date of termination from service is 28-4-2000 while date of superannuation is 30-4-2013.

Thus, this period is of almost thirteen years. Another factor to be taken note of is that the current rate of interest is 9% per annum.

Considering the fact that the petitioner is a Cooperative Bank, in my view, compensation equivalent to five years salary on the basis of the last pay and allowances drawn by the respondent would be reasonable compensation to which the respondent would be entitled on the basis of the decision of the Hon''ble Supreme Court in O.P. Bhandari (Supra). The decisions relied upon by the learned counsel for the respondent are found distinguishable on facts.

14. As a sequel to the aforesaid findings, the following order is passed:

(1) Award passed by the Cooperative Court in Dispute No. 576/2000 dated 11-8-2014 and confirmed by the Cooperative Appellate Court in Appeal No. 43/2014 dated 30-9-2015 is partly modified. The respondent is held entitled to receive compensation equivalent to five years salary including allowances drawn by him. This amount would be determined on the basis of his last drawn salary.

(2) The respondent would also be entitled to the amount of provident fund and other retirement benefits as per his service conditions that would be computed on the basis of the payments that would be made to him as per clause (1).

(3) The respondent has been permitted to withdraw an amount of Rs. 5,00,000/- deposited in this Court as per order dated 23-3-2016. Time of three months is granted to the petitioner to make the balance payment in terms of this order. The petitioner would be at liberty to withdraw the amount of Rs. 5,00,000/- along with interest accrued to enable it to make necessary payments to the respondent.

(4) Rule is made absolute in aforesaid terms with no order as to costs.

