(2010) 12 AHC CK 0163

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6889 of 1992

Anand Ram Nagar APPELLANT

Vs

Banaras State Bank Ltd., Varanasi and Another RESPONDENT

Date of Decision : 22-12-2010

Acts Referred:

Citation : (2010) 12 AHC CK 0163

Hon'ble Judges : Devendra Pratap Singh, J

Final Decision : Dismissed

Judgement

Devendra Pratap Singh,J.

1. Heard learned counsel for the parties.

2. The petitioner was working as Accountant in the respondent Bank and when the strong room was opened on 24.1.198, it was detected that Rs.one lac was short which led to filing of a first information report and after obtaining explanation of the petitioner, a charge sheet was issued to him alleging dereliction of duty. The petitioner submitted his reply and after due enquiry, he was found guilty and thus, his services were dispensed with vide order dated 30.3.1990. He preferred a departmental appeal and thereafter a review but both were dismissed vide orders dated 16.7.1990 and 30.10.1990, respectively.

3. Aggrieved, he preferred this petition where an interim order was granted staying the termination of the petitioner. In pursuance of which, the petitioner continued in service and received salary. But the criminal court convicted the petitioner vide judgement and order dated 24.7.1999 and consequently, second termination order dated 27.7.1999 was passed based on the conviction. However, an appeal preferred by the petitioner against his conviction was allowed vide order dated 29.5.2000 acquitting the petitioner from the charges.

4. The petitioner has challenged the orders dated 30.3.1990, 16.7.1990, 30.10.1990 and 27.7.1999.

5. Learned counsel for the petitioner has urged that once the finding of the criminal court has attained finality to the effect that the money was never short in the bank strong room, the very basis of the proceedings against him ceases to exist. It is also urged that in this very incident the Branch Manager was also charge sheeted but he was let off with a minor punishment. It is further urged that the finding recorded by the criminal court may over ride the finding recorded in the disciplinary enquiry.

6. Lastly, it is urged that since the petitioner has now retired, the extreme punishment of dismissal, on the facts of this case, was not warranted.

7. Before considering the argument of the learned counsel for the petitioner, it would be appropriate to examine the nature of the charges framed against the petitioner in the departmental enquiry and before the criminal court.

8. The petitioner was the second senior most officer in the Branch and as the Branch Manager was busy in other work, he was deputed for closing strong room on 23.1.1989 and in pursuance thereof, he allegedly checked the cash book and signed in lieu thereof showing a closing balance of Rs.6,64,454.24. However, when the strong room was opened in the morning of 24.1.1989 for verification in front of an Inspector of the Reserved Bank of India, the cash was allegedly found short by Rs.one lac consisting of 10 packets of Rs.100/ denomination but there was no tempering of the lock. After seeking his explanation, it was primafacie found that the petitioner had not verified the cash before closing it and as such the following charge was framed against him.

?Dereliction of duties which is an act detrimental to the interest of the bank [clause 3(i) of Officers Employees Conduct] Regulations, 1986?

9. However, before the Criminal Court, the petitioner was charged under Section 406 and 409 IPC and convicted for an offence under Section 409 IPC vide order dated 24.7.1999 but the appeal was allowed vide order dated 29.5.2000. It would be appropriate to quote section 409 IPC which is as under:

?Criminal breach of trust by public servant, or by banker, merchant or agent Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breech or trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

10. Apparently, the charge against the petitioner before the departmental enquiry and before the criminal court is entirely different. It is apparent that before the criminal court the petitioner was charged for criminal breach of trust. The nature of evidence to prove the respective charges is also entirely different. While proving criminal breach of trust, it is imperative to prove mensrea to cause loss to the Bank but in the departmental charge sheet only factum of negligence

in exercise of his official duties has to be proved. Thus, assuming, that the criminal court has acquitted the petitioner with the finding that there was, in fact, no shortage but if the petitioner had not followed the standard operating procedure while verifying the cash and closing the strong room, he would still be guilty of dereliction of duty. It is admitted to the petitioner, during the departmental enquiry, that he did not physically verify the position of the cash before signing the closing balance in the strong room, which is the standard normal procedure. Therefore, it cannot be said that if the petitioner has been acquitted on charge under section 409 IPC, he should be absolved of the charge framed by the Bank. The finding of the criminal court would not over ride the findings recorded in the departmental enquiry. The petitioner has relied upon a decision of the Apex Court rendered in the case of G.M. Tank v. State of Guarat and others, [2006 SCC (L&S) 1121] to contend that the acquittal in the criminal trial would render the departmental findings unsustainable. No doubt if the two charges are identical, the findings of the criminal court would have predominance over those in the departmental proceedings, but that is not the case here. The facts in Tank''s case (Supra) are entirely different. The incumbent in that case was charged for the offence of acquisition of moveable and immovable property disproportionate to his known sources of income. This was the also the precise charge before the criminal court under Prevention of Corruption Act, 1947. Therefore, the ratio rendered therein would not apply to the present case. To the contrary, it has consistently been held in several decisions, including in the case of Suresh Pathrella v. Oriental Bank of Commerce, [AIR 2007 SC 199] that acquittal in a criminal case would be no bar for drawing up disciplinary proceedings against the delinquent officer. In this case, the allegation against the incumbent was that he had defrauded the customer and the Bank of Rs. Ten lacs but he was acquitted in the criminal case on the ground that no loss to the Bank had occurred. Nevertheless, the Supreme court held that it would be no ground to hold that he could not be punished in the departmental enquiry if it is found that he misconducted himself in not complying with the normal operating procedure. Therefore, the argument that merely because the petitioner has been acquitted in the criminal charge, the termination order ought to be set aside, cannot be sustained.

11. So far as the argument that it was only a minor dereliction coupled with the fact that the petitioner has already retired, the penalty of dismissal would be too harsh when compared with the minor punishment awarded to the Branch Manager. The case of the Branch Manager is entirely different and it cannot be compared with that of the petitioner who was the person responsible for physically verifying the cash before signing and closing the books. An Accountant in a Bank holds a position of trust and even a minor dereliction or negligence may not only cause immense harm to the Bank but even its reputation as being custodian of the people''s wealth. The petitioner being the officer assigned to close cash and the strong room, should have first verified the information contained in the cash book with actual position of the strong room by physical

verification before signing it. The Apex Court in the case of Suresh Pathrella (Supra) itself has held that in the case of Bank employees, even if no loss is caused to the Bank, cannot be a ground to take a lenient view for proved misconduct especially when there was no malafide or violation of principles of natural justice. In such cases, consistent view of the Apex Court has been that the courts need not interfere. A Division bench in the case of D.S. Bishnoi v. State Bank of India and others, [2004 (1) AWC 640] has held that highest degree of standards or devotion to duty and integrity are required to be maintained in order to maintain public confidence in the case of Banks and the courts should not interfere in findings of fact recorded by the Enquiry Officer. Merely because the petitioner has retired, the nature of misconduct cannot be watered down especially when the High Court is not permitted to reappreciate the evidence which has been considered by the Enquiry Officer.

12. However, since the second termination order dated 27.7.1999 is based merely on the conviction of the petitioner which has been set aside in appeal, the order dated 27.7.1999 is bound to be quashed.

13. For the reasons above, this petition succeeds partly to the extent as aforesaid but is rejected for the other reliefs claimed.

14. In the circumstances of the case, no order as to cost.