

(2023) 04 PAT CK 0023

In the Patna High Court

Case No : Letters Patent Appeal No. 655 Of 2019 In Civil Writ Jurisdiction Case
No. 6748 Of 2011

Ashok Kumar Sinha

APPELLANT

Vs

State Bank Of India

RESPONDENT

Date of Decision : 04-04-2023

Acts Referred:

State Bank of India Officers' Service Rules, 1992 — Rule 67(j), 68(6)
Indian Penal Code, 1860 — Section 120B, 409, 420, 467, 468, 471
Prevention of Corruption Act, 1988 — Section 13(1)(c), 13(1)(d), 13(2)
Payment of Gratuity Act, 1972 — Section 4, 4(1), 4(6)

Citation : (2023) 04 PAT CK 0023

Hon'ble Judges : Ashutosh Kumar, J; Harish Kumar, J

Bench : Division Bench

Advocate : Arvind Kumar Tewary, Chittranjan Sinha, Binod Bihari Sinha, Ajay
Dutt Mishra

Final Decision : Dismissed

Judgement

1. Heard Mr. Arvind Kumar Tewary, the learned Advocate for the appellant and Mr. Chittranjan Sinha, the learned Senior Advocate for the State Bank of India.
2. The General Manager, the appointing authority, dismissed the appellant in terms of Rule 67 (j) of the State Bank of India Officers' Service Rules (in short the Rules) vide his order dated 14.12.2009. The period of suspension was directed to be treated as "not on duty". Apart from this, the appointing authority/disciplinary authority, on finding that losses incurred by the State Bank of India (in short the Bank) was because of the misdeeds of the appellant, directed for forfeiture of the gratuity in its entirety, but not exceeding the loss amounting to Rs. 16,05,130.06/-.
3. This order of dismissal and forfeiture of gratuity has been affirmed by the Chief General Manager-cum-Appellate Authority and the learned Single Judge, who vide his judgment and order dated 28-03-2019 has sustained the afore-

noted orders by a detailed reason.

4. While assailing the judgment impugned, Mr. Tewary has primarily raised objection to the forfeiture of the gratuity in its entirety.

5. It appears from the records that the appellant was a direct recruit as Probationary Officer in the Bank and at the time when the departmental proceeding was initiated against him, he was Officiating as Deputy General Manager (Credit) as also the Officiating Manager (PB) of Samastipur Branch of the State Bank of India. During the tenure of his service period from 05.08.2003 to 27.05.2006, he was alleged to have committed serious financial irregularities constituting misconduct in terms of the Rules of the Bank.

6. The appellant was put on suspension and a departmental proceeding was initiated against him. Almost simultaneously, a criminal case also was lodged against him by the C.B.I. vide RC Case No. 17A/2006 (Special Case No. 14A/2006) for the offences under Sections 120B, 420, 409, 467, 468 and 471 of the Indian Penal Code and Section 13 (2) read with Section 13 (1) (c) (d) of the Prevention of Corruption Act, 1988.

7. Another criminal case was registered vide RC Case No. 18A/2006 (Special Case No. 15A/2006) by the C.B.I. on 30-06-2006 against the appellant and two others.

8. The appellant was alleged to have kept several loan documents at his residence and had manipulated salary slips with a view to sanction personal loans of higher limits beyond the eligibility of the borrowers. The other charges against him were that a number of personal loan accounts were opened with lower limits and only after a few months, loans for higher limits were sanctioned and earlier loan accounts were closed with the amount of fresh loans while the borrowers were not eligible for the enhanced amount and that a number of housing loan accounts were authorized in the Bank Master System under his I.D. without sanction having been recorded on such loan application forms.

9. Specific instances of personal loan account of one Anandi Yadav was pointed out where against a sanctioned limit for a lower amount, Rs. 1,80,000/- has been disbursed. There were no appraisal reports or sanction of the loan documents and several saving bank withdrawal forms had been passed for payment by the appellant without observing the K.Y.C. norms. The appellant had also obtained seventy three spurious documents of personal loan with a view to fraudulently utilized them at a later dates. With respect to the housing loans also, specific instances were cited to indicate that huge irregularity was committed by him. Even with respect to debiting amounts in the general account, there were serious lapses.

10. While framing charge against the appellant, he was found that the above acts of omission and commission by him was likely to put the Bank to substantial loss as well as decline in the reputation of the Bank. The loss suffered by the Bank

was quantified as Rs. 16,05,130.06/- which account, as assessed, might increase if all the accounts opened during his tenure would have been taken into consideration.

11. Out of a total number of twenty charges levelled against the appellant, fifteen were proved, whereas four were partially proved. Only one allegation could not be proved.

12. Based on such enquiry report, the appellant was visited with the punishment of dismissal as noted above. The period of suspension was treated as "not on duty" and forfeiture of the entire gratuity amount, which, in the estimation of the Bank, approximated to Rs. 3,50,000/- only against the actual loss of Rs. 16,05,130.06/-.

13. Mr. Tewary has raised three issues to challenge the correctness of the judgment passed by the learned Single Judge affirming the punishment of dismissal and forfeiture of gratuity, namely, that two other officers of the Bank, i.e., the Branch Manager and the Accountant, were also subjected to departmental proceedings with identical charges. In accordance with Rule 68 (6) of the Rules of the Bank, a joint enquiry should have been held. Mr. Tewary laments that separate enquiries were held and both the other officers, referred to above, were visited with lesser punishment without any justification. The other ground is that the learned Single Judge did not accord sufficient importance to the arguments advanced on behalf of the appellant that no show-cause was served upon him with respect to quantum of punishment.

14. Lastly, it has been urged that the total gratuity amount could not have been forfeited for the services rendered by him before his suspension and ultimate dismissal from service.

15. Mr. Chittranjan Sinha appearing for the Bank has rebutted such contention of the appellant and has submitted that the two other officers who have been visited with lesser punishment were understrappers, whereas the appellant held a high post and that from his possession, many loan documents were recovered, which were safely kept at his residence, indicating that he was the lynch pin in the entire process of financial bungling. He has further submitted that there was no flaw in the decision making process or the decision itself as the appellant had been given good opportunity to defend himself in the departmental proceeding.

16. Mr. Sinha has referred to the decisions rendered in Regional Manager, U.P. SRTC, Etawah and Ors. Vs. Hoti Lal and Anr. : 2003 SC 1462; State Bank of India and Ors. Vs. Narendra Kumar Pandey : 2013 (2) SC 740; State Bank of India and Ors. Vs. Ramesh Dinkar Punde : 2006 (7) SCC 212 and Union of India and Ors. Vs. P. Gunasekaran : (2015) 2 SCC 610.

17. With reference to the afore-noted judgments, the learned Single Judge explored the possibility of judicial review of the orders passed by the disciplinary as well as appellate authorities, but did not find any legality to direct for any

departure from the findings given by the enquiry officer, the disciplinary and the appellate authorities. The learned Single Judge also did not find the punishment imposed on the appellant to be outrageous or unconscionable as compared to the magnitude of the illegalities perpetrated by him.

18. With respect to total forfeiture of the gratuity as part of the punishment, Mr. Sinha submits that the provisions contained in Section 4 of the Payment of Gratuity Act, 1972 (in short the Act) is followed in verbatim under the Rules of the Bank.

19. Section 4 (6) of the Act specifies that notwithstanding anything contained in Section 4 (1), the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused. For wholly or partially forfeiting the gratuity amount, two further conditions are required, namely, that the termination of the employee should be for any riotous or disorderly conduct or any other act of violence; or if the services of the employee has been terminated for any act which constitutes an offence involving moral turpitude, having committed by him while under employment.

20. On the basis of the afore-noted provision in the State Bank of India Rules, which follows Payment of Gratuity Act, 1972, it was asserted by Mr. Sinha that the disciplinary authority found from the records that the losses suffered by the Bank on account of irregularities committed by the appellant was to the tune of Rs. 16,00,000/-, whereas the total gratuity amount earned in accordance with the Act was only Rs. 3,50,000/-. Thus, it has been urged that none of the authorities committed any error in not interfering with such punishment as the losses were quantified, though not in a very scientific manner.

21. After having heard the counsel for the parties, we find that no other punishment could have been awarded to the appellant for the proved charges against him. A senior officer of the Bank, who is the custodian of the money of the Bank and, in turn, the money of the investors/depositors is not expected to commit such irregularities. These irregularities are not mere lapses in the performance of the duty but are deliberate acts which has caused serious losses to the Bank and personal gain to the appellant.

22. The contention of the appellant that the charges against the other officers were also identical is irrelevant for the purposes of assessing the proportionality of the punishment imposed upon him in accordance with his senior position in the Institution and lapses in almost all the areas of his work profile.

23. Though there does not appear to be any specific calculation of the losses, but with the loans having been given to ineligible loanees and higher limits having been approved by him and such loans having become bad, the losses are almost sure to accrue to the Bank. The number of charges levelled and proved against the appellant clearly signifies his dishonest intentions.

24. The gravest of all allegations, according to us, is his possession of approximately seventy three spurious documents of loan, safely stashed at his residence for being used in future towards his nefarious designs of duping the Bank.

25. In the afore-noted background, it cannot at all be inferred that the sentence imposed upon the appellant was unconscionable or outrageous for any interference by us. The forfeiture of the entire amount of gratuity earned by the appellant is also within the parameters of law as forfeiture could be within the extent of losses, which is far more than what the appellant has earned as gratuity during the period that he had served the Bank before his suspension and ultimate dismissal.

26. We find no merit in this appeal and the same is, accordingly, dismissed.

27. No order as to costs.