
(1991) 03 PAT CK 0025
In the Patna High Court
Case No : C.W.J.C. No. 444 of 1989 (R)

Badruddin

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 18-03-1991

Acts Referred:

Citation : (1991) 03 PAT CK 0025

Final Decision : Dismissed

Judgement

Satyabrata Sinha, J.—In this writ application, the petitioner has prayed for issuance of an appropriate writ for quashing the order dated 12-10-1988 passed by the respondent No. 2, as contained in Annexure-5 to the writ application whereby and where under the petitioner was inflicted with a punishment of reversion to Junior Management Grade at the lowest stage.

2. On 6-7-1989, an application for amendment of the writ application was filed wherein, the petitioner inter alia, also sought for quashing the notice dated 28-3-1989 passed by the Chief Vigilance Officer annexing therewith a minutes of the Reviewing Committee held on 23-3-1989 as contained in Annexure-6 to the writ application whereby and whereunder the aforementioned order passed by the respondent No. 2 was sought to be reviewed by the Reviewing Committee and the petitioner has been directed to show cause as to why a penalty of compulsory retirement shall not be imposed upon him.

3. The fact of the matter lies in a very narrow compass.

4. At all relevant times, the petitioner was holding the post of Branch Manager in Jugsalia branch of the respondent-Bank. A disciplinary proceeding was initiated as against the petitioner wherefor a statement of charges dated 18-7-1987 as contained in Annexure-1 to the writ application was served upon him.

5. In the said departmental enquiry, held for inquiring into the aforementioned charges levelled as against the petitioner, he was found guilty and by an order dated 12-8-1988 as contained in Annexure-3 to the writ application, the

respondent No. 3 inflicted a punishment of compulsory retirement upon the petitioner in terms of Rule 49(f) of the State Bank of India (Supervising staff) Services Rules (hereinafter called and referred for the sake of brevity of the Act said Rules).

6. The petitioner preferred an appeal as against the said order dated 12-8-1988 and by reason of the impugned order as contained in Annexure-5 to the writ application, as noticed hereinbefore, the respondent No. 2 converted the punishment of compulsory retirement to one of reversion to Junior Management Grade at the lowest stage.

7. After this writ application was filed, the petitioner came to learn that the reviewing authority proposed to review the order of the appellate authority and in that view of the matter, as noticed hereinbefore, the petitioner also questioned the review proceedings initiated by the Reviewing Authority aforementioned.

8. Mr. M.Y. Eqbal, the learned Counsel appearing on behalf of the petitioner has principally raised three fold contentions in support of this application.

The learned Counsel contended that Section 49 of the State Bank of India Act, 1955 does not envisage framing of a rule empowering any authority to review an order passed by the authority and thus Rule 51(3) of the said Rules is ultra vires, the provision of the Act.

9. The learned Counsel next contended that the impugned order as contained in Annexure-6 was passed mala fide and the said order was ante dated in view of the fact that although the said order purported to have been passed on 28-3-1989, the same was served upon the petitioner on 5-6-1989 i.e. upon expiry of a period of six months from the date of the order passed by the appellate authority (Annexure-5) i.e. 12-10-1988.

The learned Counsel in this connection has relied upon a decision of the Supreme Court in Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others, and in Bal Gobind Yadav v. Ramcharitra Dubey and Ors. XI 1988 BBCJ 177.

10. It was further submitted that in any event, the findings of fact arrived at by the respondent No. 2 would reveal that by reason of any act of the petitioner, the Bank did not suffer any monetary loss and thus no further action should be taken as against the petitioner.

11. The learned Counsel further submitted that the punishment imposed by the respondent No. 2, by reason of its order as contained in Annexure-5 to the writ application is also harsh, inasmuch as, the petitioner has merely been found guilty of negligence.

12. Mr. K.N. Prasad, the learned Counsel appearing on behalf of the respondents, on the other hand, submitted that Rule 51(3) can not be said to be ultra vires, the Act. It was further submitted that an order of review in terms of the Rules

aforementioned can be passed even suo moto and as the Reviewing Authority is in seisin of the matter, the grievances of the petitioner which have been made in this application, can also be looked into by the Reviewing Authority.

13. Section 49 of the State Bank of India Act reads as follows:

49. (1) The Central Government, in consultation with the Reserve Bank, may, by notification in the official Gazette, (make rules to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for--

(a) the procedure for the payment of compensation under this Act;

(b) the determination of persons to whom the said compensation shall be payable in all cases, including cases where shares in the Imperial Bank have been held by more than one person, or where they have been transferred before the appointed day but the transfer has not been registered or where the share holder is dead.

(c) the manner of appointment of a direction under Clause (ca) or Clause (cb) of Sub-section (1) of Section 19, and all other matters connected therewith or incidental thereto.

14. The said Rules were framed in terms of the provision of the aforementioned Act.

15. From a bare perusal of the Sub-section 1 of Section 49 of the State Bank of India Act, it is evident that the same is of wide import.

The Rules were made by the Central Government in consultation with the Reserve Bank of India. The said Rules may provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of the said Act.

16. Section 43 of the said Act, provided:-

(1) The State Bank may appoint such number of officers, advisers and employees as it considers necessary or desirable for the efficient performance of its functions, and determine the terms and conditions of their appointment and service.

(2) The Officers, advisers and employees of the State Bank shall exercise such powers and perform such duties as may be entrusted or delegated to them by the Central Board.

17. The said provisions, therefore, envisages determination of the terms and conditions of the appointment of officers and employees and their services.

18. The matters relating to making enquiry into the charges levelled as against the employees thus falls within the purview of Section 43(1) of the Act.

19. Rule 3(w) of the Rules reads as follows:

Disciplinary Authority", "Appellate Authority" and "Reviewing Authority" meant respectively the authorities specified as such by the Executive Committee from time to time.

20. Section 1 of the Chapter 6 provides for the matter relating to the conduct of the employee.

Section 2 of the said Chapter which embraces within its fold Rules 49 to 52 provides for the matters relating to discipline and appeal.

Rule 49 lays down the penalty which may be inflicted upon the employees.

Rule 50 lays down the procedure for enquiry.

Rule 51(1) provides that an employee may make an appeal to the appellate authority against an order imposing upon him any of the penalties specified in Rule 49 or against the order of suspension refer to Rule 50-A.

21. Rule 51(3) reads as follows:-

Notwithstanding anything contained in this Section, the Reviewing Authority may call for the record of the case within six months of the date of the final order and, after reviewing the case, pass such orders thereon as it may deem fit:

Provided that--

(i) if the enhanced penalty, which the Reviewing Authority proposes to impose, is a major penalty specified in Clauses (e), (f), (g) or (h) of Rule 49 and an enquiry as provided under Sub-rule (2) of Rule 50 has not already been held in the case, the Reviewing Authority shall direct that such an enquiry be held in accordance with the provisions of Sub-rule (2) of Rule 50 and thereafter consider the record of the enquiry and pass such orders as it may deem proper;

(ii) if the Reviewing Authority decides to enhance the punishment but an enquiry has already been held in accordance with Sub-rule (2) of Rule 50, the Reviewing Authority shall give show cause notice to the employee as to why the enhanced penalty should not be imposed upon him and shall pass final order after taking into account the representation, if any, submitted by the employee.

22. Sub-rule 3 of Rule 51 thus comes within the purview of powers of the Appellate Authority. The power of review is in effect and substance is a power of revision which can either be exercised suo moto or at the instance of any party.

23. The power of Reviewing Authority thus is not a power which is conferred upon an authority to review his own order.

Such a provision, therefore, in my opinion, falls within the ambit of Section 49(1)

of the State Bank of India Act.

24. In *Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others*, , the Supreme Court was considering a case where Vice-Chancellor had no power to review under the statutes of the University or under the U.P. State University Act, 1973. In that situation, it was held:

It is now well established that a quasi judicial authority cannot review its own order, unless the power of review is expressly conferred on it by the statute under which it derives its jurisdiction. The Vice-Chancellor in considering the question of approval of an order of dismissal of the principal, acts as a quasi judicial authority. It is not disputed that the provisions of the U. P. State Universities Act, 1973 or of the Statutes of the University do not confer any. Power of review on the Vice-Chancellor. In the circumstances, it must be held that the Vice-Chancellor acted wholly without jurisdiction in reviewing her order.

25. In *Bal Govind Yadav v. Ramcharitra Dubey and Ors.* 1988 BBCJ 177, I was considering a matter u/s 107 of the Bihar & Orissa Municipal Act, and in that connection, it was held that in absence of any power of substantive review, no authority acting under Statute has power to review its earlier order.

26. Such is not the position here.

As noticed hereinbefore, the jurisdiction of the Reviewing Authority is in effect and substance, an appellate jurisdiction, subject to the conditions and limitations imposed therein.

27. It, therefore, cannot be said to be ultra-vires Section 49 of the State Bank of India Act.

28. However, it is well known that Reviewing Authority, in such a situation, should exercise its jurisdiction only in exceptional circumstances and with due care and caution. It is not in every case that the Reviewing Authority, should exercise its suo moto power and interfere with an order passed by an Appellate Authority in Sub-rule I of Rule 51 of the Rules casually or in a routine manner.

29. In this connection, it may be observed that in the counter affidavit filed on behalf of the respondents, it was stated that the reviewing authority purported to have exercised its jurisdiction suo moto; but from Annexure-6, it is evident that the said power was exercised in view of a Memorandum dated 28-2-1989 submitted by the Chief Vigilance Officer.

30. It further appears that the impugned notice, as contained in Annexure-6 to the writ application was issued upon considering the reasons states by the Chief Vigilance Officer in his aforementioned Memorandum dated 28-2-1989, but it does not appear that a copy of the said letter was served upon the petitioner.

31. In my opinion, the contention of Mr. Eqbal to the effect that the notice as contained in Annexure-6 to the writ application was issued mala fide or the same is ante dated document, can not be accepted on the basis of the materials on

record.

32. However, as at present advised, it will not be proper for this Court to make any comment thereupon inasmuch as, in my opinion, the petitioner can raise all contentions before the Reviewing Authority.

33. It is true that this Court in exercise of its writ jurisdiction under Article 226 of the Constitution may quash a notice ; but, it is well known that normally the High Court insists that all preliminary issue including the jurisdictional facts should be decided at the first instance by the authority itself.

Reference, in this connection may be made to the *The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others*, , wherein it was held:-

The High Court undoubtedly have jurisdiction to ask the Industrial Tribunal to stay its hands and to embark upon the preliminary enquiry itself. The jurisdiction of the High Court to adopt this course cannot be, and is indeed not disputed. But would it be proper for the High Court to adopt such a course unless the ends of justice seems to make is necessary to do so ? Normally the question of fact, though they may be jurisdictional facts to decision of which depends upon the appreciation of evidence, should be left to try be the Special Tribunal constituted for the purpose. If and after the Special Tribunal try the preliminary issue in respect of such jurisdictional facts, it would be open to the aggrieved party to take that matter before the High Court by a writ petitioner and ask for an appropriate writ Speaking generally, it would not be proper or appropriate that the initial jurisdiction of Special Tribunal to deal with these jurisdictional facts should be circumvented and the decision of such a preliminary issue brought before a High Court in its writ jurisdiction.

34. In *State of Uttar Pradesh Vs. Brahm Datt Sharma and Another*, , it was held;

When a show cause notice is issued to a Government servant under a statutory provision calling upon him to show cause, ordinarily the Government servant must place his case before the authority concerned by showing cause and the courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued palpably without any authority of law. The purpose of issuing show cause notice is to afford opportunity of hearing to the Government servant and once cause is shown it is open to the Government to consider the matter in the light of the facts and submissions placed by the Government servant and only thereafter a final decision in the matter could be taken. Interference by the Court before that stage would be premature.

35. In view of the aforementioned authoritative pronouncements of the Supreme Court of India, in my opinion, the petitioner should file his show cause before the Reviewing Authority.

36. So far as the contention raised by the petitioner in relation to the order passed by the Appellate Authority, as contained in Annexur-5, is concerned, although ex

facie, the same appears to have some substance, I am refraining from making any comment in relation thereto, as in my opinion, the petitioner can raise all his contentions as rightly submitted by Mr. K.N. Prasad before the Reviewing Authority itself. While the Reviewing Authority is exercising its power under Rule 51(3), it would, in view of the contention raised on behalf of the respondent shall also be entitled to consider the correctness or otherwise of the order passed by the respondent No. 2 as also the contention that the punishment inflicted by it upon the petitioner is not in consonance with Rule 49 of the Rules.

37. However, it goes without saying that the Reviewing Authority shall serve a copy of letter dated 28-3-1989 addressed to the Reviewing Authority by the Chief Vigilance Officer, which has been referred to by the Reviewing Authority in its minutes dated 28-3-1989.

38 The Reviewing Authority shall, if a prayer is made in that regard should also permit the petitioner to inspect and/or ask for copies and/or abstract from the relevant documents in order to enable him to file an effective show cause.

39. In the result, this application is dismissed with the observations and directions aforementioned.

In the facts and circumstances of the case, there will be no order as to costs.