
(1994) 01 BOM CK 0034

In the Bombay High Court

Case No : Appeal No. 530 of 1992 in Writ Petition No. 2057 of 1987

Bank of Baroda and Others

APPELLANT

Vs

Arvindkumar Hiralal Mehta

RESPONDENT

Date of Decision : 28-01-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1994) 01 BOM CK 0034

Hon'ble Judges : Ramesh Madhav Bapat, J;M.L. Pendse, J

Bench : Division Bench

Judgement

Pendse, J.—Bank of Baroda has preferred this appeal to challenge legality of judgment dated July 1, 1992 delivered by learned Single Judge in Writ Petition No. 2057 of 1987. By the impugned judgment, the trial Judge quashed the order of dismissal passed by Bank authorities against the respondent. The trial Judge directed the appellants to reinstate the respondent in service with benefit of continuity and full back wages, benefits facilities and perquisites. The facts which gave rise to the passing of the judgment are as follows :

2. The respondent joined the service of the appellants as a Clerk from December 11, 1964. In year 1981, the respondent was working as Head Cashier of Crawford Market Branch. On September 8, 1981, a large amount was entrusted to the respondent in the morning. At the end of Banking hours, it was found that there was a shortage of Rs. 1,00,000/-. On September 15, 1981, the Bank called upon the respondent to give an explanation for shortage of cash. On September 19, 1981, the respondent submitted explanation and claimed that he had reported the shortage and the work of Cashier was heavy and the respondent was working under tension. The respondent claimed that he had put in 16 years" service but could not explain how the amount of Rs. 1,00,000/- was found short. The explanation offered by the respondent was not accepted and the Bank decided to hold Departmental Enquiry and pending the enquiry, on October 5, 1981, the respondent was suspended.

3. On November 29, 1982, the respondent was served with charge - sheet. The charges framed were :

(a) Doing an act prejudicial to the interest of the Bank which amounts to gross misconduct under clause 19.5(j) of the Bipartite settlement, and

(b) Doing an act of gross negligence involving the Bank in serious loss which amounts to gross misconduct under clause 19.5(j) of Bipartite Settlement.

The charge-sheet sets out that the enquiry will be conducted by Mr. F. D'Souza, Officer, Bombay City Region and the delinquent will be permitted to be defended at the enquiry by a representative of a registered trade union. The enquiry officer recorded statement of various witnesses and after giving full opportunity to the delinquent to meet the charges, came to the conclusion that the charges were dully established by the material produced on record by Bank authorities. On the strength of the report of the Enquiry Officer, the Regional Manager who was the Disciplinary Authority passed order of dismissal of the delinquent from Bank's service by order dated November 19, 1985. The order of dismissal sets out that after receipt of the report, notice was issued to the delinquent setting out the proposed punishment and giving an opportunity of showing cause against the nature of the proposed punishment. The order then sets out that the Disciplinary Authority carefully considered the report and the explanation offered by the delinquent and came to the conclusion that penalty of dismissal is necessary on the facts and circumstances of the case. The delinquent carried an appeal against the order of penalty, as prescribed under the Rules, and the Assistant General Manager who is the appellate authority had carefully considered all the contentions raised by the delinquent and had come to the conclusion that the charges were duly established and the punishment imposed was absolutely proper.

4. The delinquent then challenged the order of dismissal by filing Writ Petition under Article 226 of the Constitution of India before the learned Single Judge sitting on the Original Side. Before the learned Single Judge, it was contended that the evidence on record was not sufficient to come to the conclusion that the charges were established. It was claimed the several facts of the evidence were not properly appreciated by the enquiry officer and the conclusion that the delinquent was guilty is not correct. The trial Judge examined the entire record and re-assessed the evidence, both oral as well as documentary, and came to the conclusion that the delinquent was neither negligent, nor was guilty of misappropriation of the amount. The trial Judge felt that the locking system of the cabin was not up to the mark and, therefore, the findings recorded by the Disciplinary Authority and the appellate authority were perverse. On the strength of these findings, the trial Judge disturbed the order passed by the Disciplinary Authority and directed the Bank to reinstate the delinquent in service with full back wages. The judgment of the learned Single Judge is under challenge.

5. Shri Talsania, learned counsel appearing on behalf of the Bank, submitted that

the trial Judge exceeded jurisdiction by re-assessing the evidence and disturbing the findings of fact recorded by the disciplinary authority and the appellate authority. The learned counsel further submitted that even while re-assessing the evidence, the trial Judge mis-read the evidence and out of misplaced sympathy disturbed the orders of the disciplinary authority and directed reinstatement of the delinquent. We find considerable merit in the submission urged by the learned counsel. It hardly requires to be stated that while exercising jurisdiction under Article 226 of the Constitution of India, it is not open for the learned Judge to re-appreciate the evidence and record findings contrary to what has been recorded by the disciplinary authority. The jurisdiction of the trial Judge in exercise of writ jurisdiction is extremely limited and the jurisdiction cannot be converted as an appellate authority. The contention of Shri Talsania that the trial Judge by merely observing that the findings of the disciplinary authority were perverse cannot proceed to re-assess the evidence is correct and deserves acceptance.

Shri Talsania submitted that even assuming that the trial Judge was entitled to examine the evidence, the conclusions recorded are entirely incorrect. The learned counsel submitted that the evidence clearly establishes that the delinquent was entrusted with large cash in the morning and at the end of the Banking hours, shortage of Rs. 1,00,000/- was found and for which the delinquent has no explanation. Shri Talsania pointed out that the mere suggestion during the enquiry that locking system of the cabin was not up to the mark is not sufficient to warrant the conclusion that the charges were not proved. The trial Judge observed that witnesses after witnesses deposed that the locking system of the cashier's cabin was defective. Shri Talsania points out that this is a wrong assumption of the trial Judge. Three witnesses, Deepak Shantilal Shah, Yeshwant Vishwanath Karhadkar and Shashikant Vishram Ambedkar were examined before the enquiry Officer. One of the witness stated that the locking system was not upto the mark but he had never complained about the same to the Bank authorities. The second witness claimed that he had complained orally and for which there was no material except his bare word. The Enquiry Officer very rightly realised that the employees were trying to protect the delinquent and refused to accept the claim that the locking system was defective. The delinquent examined himself before for Enquiry Officer and spoke nothing about the locking system being defective. In these circumstances, it is difficult to appreciate how the trial Judge in exercise of writ jurisdiction can conclude that the charges against the delinquent were not proved even though the delinquent could not give any explanation for shortage of cash of Rs. 1,00,000/-, because the locking system of the Cashier's cabin was not upto the mark. In our judgment, with respect, the finding of the trial Judge is entirely unsustainable and the judgment is required to be set aside.

6. Dr. Chandrachud, learned counsel appearing on behalf of the delinquent, found it extremely difficult to sustain the judgment of the learned Single Judge. The learned counsel urged that the judgment could be sustained on the ground that

principles of natural justice were violated while holding departmental enquiry. The learned counsel very fairly stated that this was not the ground which was agitated before the Single Judge or found favour while setting aside the order of the disciplinary authority. Dr. Chandrachud urged that the delinquent by letter dated February 23, 1983 informed the enquiry officer that the documents were not relevant and the presenting officer was not realign on those documents. Dr. Chandrachud submitted that failure to produce documents had caused prejudice of the interest of the had caused prejudice of the interest of the delinquent in defending the charges. We are unable to find any merit in the contention. The perusal of letter dated February 23, 1983 makes it clear that the information sought under six heads was wholly irrelevant to the departmental enquiry. The information was in respect of the following items :

1. Whether the Bank had lodged any complaint with the police in respect of the loss of Rs. 1,00,000/- ?
2. Whether the Bank Official had conducted investigation, and if so, copies of investigation should be furnished ?
3. The copies of correspondence exchanged between the Regional Office and the Branch in the matter of loss.
4. A copy of the General Insurance Policy taken by the bank in respect of loss of cash, etc.
5. The information as to whether the Insurance Company paid Bank's claim under the policy, and
6. Any information issued by the Regional Manager's Office to the Crawford Market Branch in respect of precautionary measures.

In our judgment, the information sought by the delinquent was wholly irrelevant for the purpose of enquiry. Dr. Chandrachud conceded that the Bank had lodged a complaint with the Police but the Police did not take any action thereupon. The Bank did not conduct any investigation but held departmental enquiry. The copies of the correspondence between the main office and the branch in respect of this loss is totally irrelevant to the question as to whether the charges were proved or has any bearing to the merits of the charges. Same is the case in respect of General Insurance Policy taken by the Bank in respect of loss of cash. Dr. Chandrachud urged that the insurance Company declined to make payment under the Police because the Company was not satisfied that the delinquent was at fault. It is entirely irrelevant as to what the Insurance Company felt about the default of the delinquent and whatever may be the reason for the Insurance Company not making the payment, that cannot have any hearing upon the issue as to whether the charges were established at the departmental enquiry. Even if the insurance Company had made payment, still that fact could not have concluded against the delinquent in respect of charges and equally non-payment cannot lead to the conclusion that the enquiry officer cannot hold the delinquent

guilty.

Dr. Chandrachud then submitted that the delinquent was in service for about 16 years and previously there was never any complaint about misappropriation of the amount. The submission surprises us because the person holding the responsible post of cashier cannot be one who has consistent record of misappropriating the amount. The post of the cashier is one of responsibility and trust and surely Bank authorities will not appoint a person with doubtful record. Dr. Chandrachud submitted that the punishment of dismissal is disproportionate to the charges levelled. We entirely dis-agree with the submission. In the first instance, it is not open for the Writ court to examine the propriety of punishment imposed. Secondly, on the facts and circumstances of the case, it is difficult for us to imagine what other punishment is possible. A person holding the post of cashier could not explain the shortage of Rs. 1,00,000/- and the Bank authorities cannot be faulted for dismissing such employee from service. In our judgment, the order passed by the disciplinary authority does not suffer from any infirmity and the learned Single Judge was in error in disturbing the said orders.

7. Accordingly, appeal is allowed and judgment dated July 1, 1992 delivered by learned Single Judge in Writ Petition No. 2057 of 1987 is set aside and the petition stands dismissed. The respondent shall pay the costs of the appellants throughout.