

(1996) 11 DEL CK 0044

In the Delhi High Court

Case No : Regular Second Appeal No. 18 of 1995

Bank of Maharashtra and Another

APPELLANT

Vs

Om Parkash Malvaliya

RESPONDENT

Date of Decision : 18-11-1996

Acts Referred:

Probation of Offenders Act, 1958 — Section 12

Citation : (1997) 2 ILR Delhi 135

Hon'ble Judges : Usha Mehra, J

Bench : Single Bench

Advocate : Jagat Arora and Naval Kishore, for the Appellant;

Judgement

Usha Mehra, J.

(1) Very interesting question has been raised in this appeal, namely (i) whether the appellant bank could dismiss the respondent from its service without holding domestic enquiry merely on his being convicted by a criminal Court? (ii) Could the bank invoke Clause 19.3 (b) of the Bipartite Settlement read with Section 10(I)(d) of Banking Regulation Act, 1949 for imposing a penalty of dismissal? (iii) Can the Civil Court Banking Regulation Act, 1949 for imposing a penalty grant declaration enforcing a contract? and finally (iv) whether due to the grant of "probation the respondent is protected" from the "disqualification" u/s 12 of the Probation of Offenders Act, 1958?

(2) To appreciate the points raised in this appeal, we may look to relevant facts necessary for the determination of the same. The respondent herein was appointed as Peon in the Bank of Maharashtra (appellant herein) on 7th June, 1972. Thereafter he was promoted as Daftari On 29th June 1977 he was arrested in a case u/s 110/112 and convicted u/s 117 of the Bombay Police Act. He was convicted and sentenced to a fine of Rs. 20.00. The revisional Court granted him the benefit under the Probation of Offenders Act. His sentence was converted to one of probation. In the meantime, the Bank on the basis of his conviction in that

criminal case under the Act dismissed him from service. This according to Bank was in terms of the Bipartite Settlement, 1966 read with Section 10(I)(d) of the Banking Regulation Act, 1949. The charge against the respondent was that he in drunken ammunition. In the meantime, the Bank on the basis of his convict with his superiors in the Bank premises. Before the Magistrate he pleaded guilty. Accordingly he was convicted and fined Rs. 20.00 His medical examination report showed that he had consumed liquor but was not intoxicated. He misbehaved in the office during working hours.

(3) After his conviction, the appellant relying on the provisions of Clause 19.3(b) of the Bipartite Settlement read with Section 10(I)(d) of the Banking Regulation Act, dismissed him from service without holding departmental enquiry. Respondent felt aggrieved. He filed a civil suit seeking declaration that his dismissal from service was bad as no departmental enquiry was conducted and that he had not incurred any disqualification to continue in service after he was granted benefit of Probation of Offenders Act. He should be deemed to be in service. The said suit was dismissed. Against dismissal the respondent herein filed an appeal. The First Appellate Court accepted his appeal. It is against this order of the First Appellate Court dated 14th November, 1994 that the present appeal has been preferred by the Bank thereby raising the above legal points.

(4) Before dealing with the merits of this case reference can be made to the relevant provisions of the Banking rules and regulations and the Act. Relevant Clauses of the Bipartite Settlement, 1966 and Banking Regulation Act, 1949 beside of Probation of Offenders Act are reproduced as under :-- Clause 19.2, 19.3(a) and 19.3(b) of the Bipartite Settlement :- 19.2-By the expression "Offence" shall be meant any offence involving in oral turpitude for which, an employee is liable to conviction and sentence under any provision of law. 19.3(a)- When in the option of the Management an employee, has committed an offence, unless he be otherwise prosecuted, the bank may take steps and prosecute him or get him prosecuted and in such a case he may also be suspended. 19.3(b)-If he be convicted, he may be dismissed with- effect from the date of his conviction or be given any lesser form of punishment as mentioned in Clause 19.6 below". Section 10(I)(d) of the Banking Regulation Act :- 10. Prohibition of employment of managing agents and restrictions on certain employment :- (1) No banking company- - (a) shall employ or managed by a managing agent, or (b) shall employ or continue the employment of any person. (i) who is, or at any time has been adjudicated insolvent or has suspended payment or has compounded with his creditors, or who is, or has been convicted by a criminal court of an offence involving in oral turpitude; or Section 12 of the Probation of Offenders Act, 1958. 12. Removal of disqualification attaching to conviction -Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of Section 3 or Section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law: Provided that nothing in this section shall apply to a person who, after his release under section, is subsequently sentenced for the original offence."

(5) A bare reading of Clause 19.3 (b) of the Bipartite Settlement makes it clear that if an employees of the bank is convicted, he may be dismissed with effect from the date of his conviction". This has to be read with Section 10(I)(d)(i) of the Banking Regulation Act which makes the position further clear. It says that the conviction if based on an offence involving moral turpitude only then such a person should be debarred from being engaged or allowed to continue in serves of the bank. Therefore, in order to debar an employee to continue in service after his conviction the Bank has to prove that, that conviction was because of his involvement in moral turpitude.

(6) Therefore, the question for consideration is whether the conduct of the respondent in the office premises where he came in drunken condition used abusive language, against his superiors, amounts to moral turpitude? Can this conduct attract the provisions of Section 10(I)(d)(i) of the Banking Regulation Act? The fact that respondent was convicted on these facts, and that be pleaded guilty are not in dispute .The learned counsel for. the respondent however, contended that respondent under wrong advise pleaded guilty. He further contended that even for argument sake it is accepted that the respondent under the influence of liquor misbehaved with his superiors in the office, that by Itself will not fall under the definition of "moral turpitude". That act of the respondent was only a petty offence. A petty offence cannot fall in the definition of "moral turpitude". Since the offence was petty hence A the respondent was prosecuted u/s 110/112 of the Bombay Police Act. For such an offence u/s 117 of the said Act maximum punishment is fine of Rs. 100.00 only. This shows it Was a petty offence. There was no question of involvement of "moral turpitude".

(7) Counsel for the appellant refuted these arguments and urged that "moral turpitude" has a wider concept. Indecent behavior in public would fall under the definition of "moral turpitude". So will be disorderly behavior in a street or in a public place or in an office. Since the respondent committed indecent behavior in the office, by using abusive language against Senior Manager, such behavior is nothing short of "moral turpitude". The very fact that respondent was convicted for offences u/s 110j 112 of the Bombay Police Act for his indecent behavior this by itself amounted to his involvement in "moral turpitude".

(8) To understand what is an indecent behavior reference can be had to Sections 110 and 112 of the Bombay Police Act, .1951 which are reproduced as under :

"SECTION 110 of the Bombay Police Act, 1951 110. Behaving indecently in public-No person shall wilfully and. indecently expose his person in any street or public place or within sight of and in such manner as to be seen from, any street or public place, whether from within any house or building or not or use indecent language or behave indecently or riotously, or in a disorderly manner in a street or place of public resort or in any office, station or station house."

SECTION 112 of the Bombay Police Act, 1951

112.Misbehaviour with intent to provoke a breach of the peace-No person shall

use in any street or public place any threatening, abusive or insulting words or behavior with intent to provoke a breach of the peace or v/hereby a breach of the peace may be occasioned.

FOR committing the offences mentioned in the above and other provisions of the Bombay Police Act, the sentence is provided u/s 117 of the said Act, which reads as under :

117. Penalties for offenders u/s 90 to 116- Any person who contravenes any of the provisions of Sections 99 to 116 [both inclusive] shall, on conviction, be punished with fine which may extend to [hundred rupees].

(9) From the harmonious reading of these provisions namely of Banking regulation Act, Bipartite Settlement, Probation of Offenders Act and of the Bombay Police Act, one can conclude that the Legislature, was conscious enough to treat the indecent conduct and behavior of an official in the office or in the public place as something not expected otherwise the discipline in the office and decency in the society nobody would bother. To curtail such like behavior and conduct the legislature made these behaviors and conduct as an offence. Using abusive language in the office to superior during office hours cannot be passed off as a joke. The mere fact that the offence committed incurred a lesser punishment by itself does not indicate that that offence did not have flavouring of "moral turpitude."

(10) Dictionary meaning of the word "moral" stands for "right and wrong conduct, virtues, moral lessons or principles" and "turpitude" stands for "wickedness". The Punjab High Court in the case of Durga Singh Vs. The State of Punjab, considering the facts defined what is "moral turpitude". It observed that :

THE term "moral turpitude" is rather vague one and it may have different meanings in different contexts. The term has generally been taken to mean to be a conduct contrary to justice, honesty, modesty or good morals and contrary to what a man owes to a fellow-man or to Society in general. It has never been held that gravity of punishment is to be considered in determining whether the misconduct involves moral turpitude or not.

(11) The test which can be applied for judging whether an offence does or does not involve "moral turpitude" can be summarised as follows : (1) Whether the act leading to a conviction was such as could shock the moral conscience of society in general; (2) whether the motive which led to the act was a base one; and (3) whether on account of the act having been committed the perpetrator could be considered to be of a depraved character or a person who was to be looked down upon by the society.

(12) It is not possible to lay down any abstract standard which constitutes moral turpitude. There are; certain criminal offences like theft, robbery, criminal breach of trust, misappropriation of property, which directly involve moral turpitude. In such cases, no elaborate investigation is required to find out the depraved

conduct of the delinquent employee. If the offence does not show any element of vileness, depravity and weakness of character of the offender the disciplinary authority is required to consider the facts and circumstances of the case to and out whether the motive which led to the conviction was deprave. It is a settled law that "moral turpitude" cannot be applied in its widest term. However, the ratio decidendi of the various cases indicate that the question whether a certain offence involves "moral turpitude" or not will necessarily depend on the circumstances in which the offence is committed. It is not in every punishable act that can be considered to be an offence involving moral turpitude. Any criminal conviction per se does not amount to "moral turpitude". So it follows that when an employee is convicted on criminal charge his dismissal cannot be automatic, unless, there is a by-enacting rule in that regard.

(13) Applying the tests to find out whether offence involved "moral turpitude" and as enumerated above, we have to see the facts and circumstances of this case i.e. whether the act committed by the respondent was such which in any way amounted to "moral turpitude". If so then u/s 10(1)(d) of the Banking Regulation Act, the appellant bank was within its right to dismiss him from services without holding an enquiry. Supreme Court in the case of *The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others*, in no uncertain words stated that if the rules permit automatic termination of service without holding an enquiry then the employer will be within its right to do so. Therefore, in order to attract the provisions of Section 10(1)(d) of the Banking Regulation Act, the appellant bank has to satisfy this Court that the conduct of the respondent was such which amounted to "moral turpitude". For this the facts which lead to the conviction of the respondent are not in dispute. Rather respondent pleaded guilty to the charge of his indecent behavior in bank premises during office hours and threatening and abusing his superiors. Appearing as Public Witness -1 he admitted that he was under the influence of liquor when he came to the bank. He threatened and abused the Manager under the influence of liquor. This indecent misbehaviour of the respondent led to police report as well as to the higher authorities. He was under the influence of liquor, this fact is supported by the medical examination report submitted by the police. It cannot be said that that indecent behavior of the respondent in the office premises during office hours whereby he not only abused the Manager of Bank but also threatened him physically would not amount to "moral turpitude". The use of the abusive language and threatening posture by an employee towards his superior during working hours in the presence of customers. What respect other employees would have for such a Manager whose Daftari could abuse him in their presence and in the presence of customers. Admittedly, there was no provocation except that respondent came to office under the influence of liquor. This indecent behavior must have been looked down upon by other employees in the office in particular and public who came to transact business in the bank in general. As already pointed out above "moral" stands for "right and wrong conduct". In this case the conduct and behavior of

the respondent was not only wrong but one which every one would look down upon. He had no right to go to the office during office hours after consuming liquor. Thereafter threaten his superior i.e. the Manager of the Bank. Use abusive language against him. Such behavior of an employee in the office during office hours in the gaze of the public cannot be but a case of perversity. If such a behavior cannot be called "moral turpitude" then I am afraid no other indecent behavior can be called "moral turpitude". Indecent behavior as defined u/s 11(of the Bombay Police Act induces use of indecent language in the office. As per respondent's own admission when he pleaded guilty to the charge that he did so under the influence of liquor, he was under the influence of liquor was no excuse to behave indecently. Consumption of liquor did not give him any license to use abusive language against his superior. His misbehaviour is fortified with his admission when he pleaded guilty before the criminal court. In fact the offence shows an element of weakness of character of the respondent Therefore, the disciplinary authority was not required to consider the facts and circumstances of the case afresh to find out whether the motive led to the conviction was deprave. Nor the disciplinary authority was required to hold an independent enquiry, particularly when the respondent himself accepted the facts leveled by way of charge and pleaded guilty of those charges. Thus I am of the considered view that the behavior of the respondent in the office involved "moral turpitude". There was nothing else to be proved before the enquiry authority. The facts being admitted the appellant bank was not required to hold departmental enquiry. In this regard, reference can be made to our own High Court in the case of Director of Postal Services and Anr. V. Daya Nand 1972 Slr Vol. 7 , where it was observed that :--

PROVISO(a) to Article 311(2) exempts the punishing authority from compliance with the giving of both these opportunities under Article 311(2). The reason for the dispensing with both these opportunities by proviso (a) seems to be following : Firstly, the accused person has a much better opportunity of rebutting the charges against him in a criminal trial as compared to a departmental inquiry. Secondly, the conviction on a criminal charge is generally a greater punishment than the departmental punishment of dismissal, removal, reduction in rank etc. As the accused had an opportunity to show cause why he should not be given an opportunity to show cause why he should not be convicted and sentenced by a criminal court it is thought needless that he should be given an opportunity to show cause against the lesser penalty of a departmental punishment such as a dismissal or removal. At any rate, for whatever reasons, the framers of the Constitution have decided by enacting proviso (a) that both the opportunities in Article 311(2) should be dispensed with. Whenever a Government servant is convicted of a criminal offence (unless in an exceptional case the charge is trivial or technical one like a traffic offence) the punishment of dismissal would be inflicted on the convict as a matter of course. It is only in theory that it is true that the punishing authority has to consider which particular punishment should be imposed on the convict person. In practice, however,

continuance of a convict in Government service would be always regarded as undesirable unless the conviction was for a "technical offence,

(14) Taking all these factors into consideration it can be said that since the respondent was involved in "moral turpitude", hence the disciplinary authority of the Bank was justified in dismissing him from service by invoking the provisions of Section 10(1)(d) of the Banking Regulation Act read with Clause 19.3 (b) of the Bipartite Settlement.

(15) The second question for consideration is whether the respondent is entitled to the protection as provided u/s 12 of the Probation of Offenders Act despite his having been convicted by a Criminal Court. To know what Section 12 of the Act says the same is reproduced as under :

12. Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of Section 3 or 4 "shall not suffer disqualification" attaching to a conviction for an offence under such law.

(16) The counsel for the respondent strenuously urged that once the respondent was afforded protection u/s 3 or 4 of the Probation of Offenders Act, the disqualification to continue in service came to an end. In this regard counsel has placed reliance on the decision of this Court in the case of Iqbal Singh Vs. Inspector-General of Police and Others, . In that the Court was dealing with the case of a Constable in Delhi Armed Police. The said petitioner had gone on leave to his village. There the occurrence took place as a result of which he was tried u/s 336/337 of Indian Penal Code. He was, however, given protection u/s 4 of the Probation of Offenders Act, 1958. The Court opined that the said petitioner was since found guilty and given benefit u/s 4 of , Probation of Offenders Act, hence he did not incur any such disqualification. He could not be dismissed from service on account of his conviction. The Court in that case was interpreting Rule 6.2(2) of the Punjab Police Rules, 1934. Under Punjab Police Rules there was no provision like that of Section 10(1)(d) of the Banking Regulation Act, which carves out disqualification of employment and restriction on continuous employment if a person is involved in "moral turpitude". Even under proviso (a) of Article 311(2) exemptions are provided for dispensing the opportunities. But the body of the proviso (a) of Article 311(2) of the Constitution of India is totally different than what is provided u/s 10(1)(d) of the Banking Regulation Act. Therefore, benefit of Section 12 of the Probation of Offenders Act as such would not be applicable to the facts and circumstances of this case. Reliance by the respondent to the decision of Punjab & Haryana High Court in the case of Punjab State Electricity Board V. Presiding Officer, Labour Court, Patiala and Anr. Labour Industrial Cases page 1511 (5) is of no help because Court therein was not dealing with provision like 10(1)(b).

(17) Andhra Pradesh High Court in the case of Zonal Manager & Disciplinary Authority, Indian Bank & Anr. V. Parupureddy Satyanarayan 1990 (2) Cri 75 . of course was dealing with the provisions of Section 10(1)(d) of the Banking

Regulation Act, viz-a-viz Section 4(1) and 4(2) of the Probation of Offenders Act. In that case the Court opined that a person convicted of an offence, but dealt with u/s 4 of the Probation of Offenders Act shall not suffer disqualification as contained in Section 10(1)(d) of the Banking Regulation Act for continuing in service. However, in the latest decision of the Supreme Court in the case of Karam Singh V. State of Punjab & Anr. 1996 Flr (72) Sc 765 , Supreme Court while dealing with Section 12 of the Probation of Offenders Act confirmed its earlier decision in the case of Union of India V. Bakshi Ram reported in 1990 (6) Fir 571 and held that though Section 12 gives a right to the delinquent, it does not wipe out the offence and it would be a disqualification attached to the conviction. The authorities would be entitled to take that factor into consideration in imposing punishment of removal from service. In that case the penalty of dismissal from service was altered into one of removal from service. Therefore, the observation of the Supreme Court that though Section 12 protects or gives right to the delinquent, but it does not wipe out the official and the disqualification remains attached. Therefore, in view of the latest pronouncement of the Supreme Court in the case of Karam, Singh (Supra) it can be safely said that the protection which the respondent has relied on Section 12 of the Probation of Offenders Act is of no help because the question of disqualification attached to the offence will continue.

(18) UNDER these circumstances applying the ratio of Karam Singh (Supra) I accept the appeal, however, modify the penalty of dismissal from service into one of removal from service.