(1989) 03 DEL CK 0071

In the Delhi High Court

Case No : Civil Writ Petition No. 2739 of 1985

Bank of Maharashtra APPELLANT

Vs

O.P. Singla and another RESPONDENT

Date of Decision : 02-03-1989

Acts Referred:

Citation : (1989) 38 DLT 433 : (1989) LabIC 1833 : (1990) 1 LLJ 124 : (1989) RLR 173

Hon'ble Judges : Mahesh Chandra, J

Bench : Single Bench

Advocate : N.C. Sikri, Ramji Srinivasan, V.P. Chaudhary and Sushma Sachdeva, for the Appellant;

Judgement

1. In this writ petition, Bank of Maharashtra (hereinafter referred to as "the Bank"), has challenged the award dated 14th August, 1985, of the Central Government Industrial Tribunal, New Delhi (hereinafter referred to as "the Tribunal").

2. Brief facts are that Shri Krishna Kanhaiya (hereinafter referred to as "the workman") has joined the service of the bank in its Chandni Chowk Branch as peon and was later transferred to Branch Officer, Meerut, in Uttar Pradesh and was in course of time posted as daftly in accordance with his seniority. His Pradesh and terminated-vide order No. AXI/ST/477/83 dated 17th January, 1983. An industrial dispute was raised on his behalf and it was referred, vide Order No. L. 12012/280/83-D. II(A) dated 30th March, 1984, for adjudication to the Tribunal in the Following terms :

"Whether the action of the management of Bank of Maharashtra in terminating the services of Shri Krishna Kanhaiya is justified ? If not, to what relief the workman is entitled ?"

IT would not be out of place to mention here that prior to the termination of his services the workman was served with a charge sheet on 28th September, 1981 on the following allegations :

"(a) On 3rd March, 1981 he refused to clean the table/chair of the branch;

(b) On 14th June, 1981, the refused to sit late for overtime;

(c) He refused to wear uniform on different dates;

(d) Without prior information he remained absent on 11th July, 1979, 27th July, 1979, 16th August, 1979 28th September 1979 in 1979 and 15th July, 1981 to 25th July, 1981 in 1981".

An enquiry into the said charges was instituted, and while the said enquiry was still pending, the services of the workman were terminated on 17th January 1983, in terms of para 522(1) of the Sastry Award for alleged loss of confidence. In the said reference the Tribunal held that the termination of services of the workman was unjustified and the workman was ordered to be reinstated in service with full back wages and continuity of service by the impugned award.

3. It has been contended by Mr. Sikri, learned counsel for the bank, that the services of the workman were terminated by the bank under para 522(1) of the Sastry Award for loss of confidence and during the course of pendency of the reference before the Tribunal, an application was moved by the bank to examine Shri V. K. Sakhuja, hand writing expert, to prove that certain complaints alleged by customers were in fact scribed by the workman himself and that was the cause why his services were terminated by the bank and that it was a case of loss of confidence in the workman, but the said application was dismissed, vide orders dated 5th June, 1985, by the Tribunal and as such the Tribunal had misdirected itself in rejecting the application which had prejudiced the case of the bank and consequently the award is liable to be set aside.

4. It has not been disputed by learned counsel for the workman that certainly application by the bank was rejected as submitted, but what is contended by Mr. Chaudhary, learned counsel for the workman, is that bank was not entitled to lead evidence before the Tribunal as the termination of service was in the nature of discharge simplicities and not by way of punishment on account of any misconduct. Even otherwise, paras 12 and 13 of the award would itself show that certainly the bank had filed the said application which was rejected by the Tribunal. In these circumstances it would be appropriate to reproduce the order of termination of services of the workman at this stage.

It reads as under :

"In terms of the provisions under paragraph 522(1) of Sastry Award, the bank has decided to terminate the services of Shri Krishna Kanhaiya, working as sub-staff at Meerut Branch, Meerut, U.P. (now under suspension), with effect from the date of this order on him.

In accordance with the above-referred provisions of Sastry Award he will be paid three months'' emoluments in lieu of notice. He shall be paid retrenchment compensation in view of the provisions of law."

5. In this behalf, it has been submitted by Mr. Sikri that it was not necessary for the bank to mention in the order that the services were being terminated for loss of confidence as it was open to the bank to have recourse to para 522(1) of the Sastry Award because of loss of confidence and reference to para 522(1) of the Sastry Award was sufficient for the purpose. It has further been submitted by Mr. Sikri that from the very beginning the case of the bank had been that the services of the workman were terminated for loss of confidence. In support, Mr. Sikri has drawn my attention to annexure R-3, which is the "failure of the conciliation report" dated 26th July, 1983, submitted by the Assistant Labour Commissioner (C). In the second para thereof it has been mentioned that ".... the management terminated the services of the workman concerned in terms of para 522(1) of Sastry Award as the felt that the workman concerned had made some false documents and had committed an act of forgery and as such his continuance in bank service was not desirable due to loss of confidence". Likewise reference has been made to the affidavit (annexure P-10) of Shri S. Neelakanthan, staff officer of the bank, filed before the Tribunal and para 16 thereof shows that it has been stated therein as under :

"Para. 16 : That it is a well known fact that banking industry is a very sensitive one and an employee who indulges in acts of forgery has no right to continue in the employment of bank. Consequently, the bank lost confidence in the workman and services of the concerned workman were terminated by an order dated 17th January, 1983, in terms of para. 522(1) of the Sastry Award".

6. For that matter, a reference to the award itself would show that the case before the Tribunal also was that the bank had terminated the services of the workman for loss of confidence under para 522(1) of the Sastry Award and the Tribunal had, in fact, disposed of the reference in that light. In para. 13 of the award, the Tribunal has observed that "by my order dated June 5, 1985, I held that the management could not lead evidence to establish workman''s misconduct before this Tribunal when the termination of service was not on the basis of proved misconduct but only on the ground of loss of confidence ....". In para, 16 again, the Tribunal has observed that "in this particular case the ground of loss of confidence in Krishna Kanhaiya, a daftly, fails to inspire any confidence". Lastly, in para. 17 of the award, the Tribunal has observed that, "I am clearly of the opinion that the management action of termination of service of Shri Krishna Kanhaiya on the ground of loss of confidence does not inspire confidence ......".

7. Let us consider the matter from yet another angle. Para. 521 of the Sastry Award provides for termination of service of a bank employee for misconduct and reads as under :

"521. A person against whom disciplinary action is proposed or likely to be taken should, in the first instance, be informed of the particulars of the charge against him; he should have a proper opportunity to give his Explanation as to such particulars. Final orders should be passed after due consideration of all the relevant facts and circumstances. With this object in view we give the following directions :

(1) By the expression "offence" shall be meant any offence involving moral turpitude for which an employee is liable to conviction and sentence under any provision of law.

(2)(a) When in the opinion of the management an employee has committed an offence, unless he be otherwise prosecuted, the bank may take steps to prosecute him or get him prosecuted; and in such a case, he may also be suspended.

(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 sub-paragraph (5) below.

(c) If he be acquitted, it shall be open to the management to proceed against him under the provisions set out below in sub-paragraphs (9) and (10) infra relating to discharge. However, in the event of the management deciding after enquiry not to continue him in service, he shall be liable only for termination of service with three months'' pay and allowances in lieu of notice. And he shall be deemed to have been on duty during the period of suspension, if any, and shall be entitled to the full pay and allowances minus such subsistence allowance as he has drawn and at all other privileges for the period of suspension; provided that if he be acquitted by being given the benefit of doubt he may be paid such portion of such pay and allowances as the management may deem proper, and the period of his absence shall not be treated as a period spent on duty unless the management so directs.

(d) If he prefers an appeal or revision application against his conviction and is acquitted, in case he had already been dealt with as above, and he applies to the management for reconsideration of his case, the management shall review his case and may either reinstate him or proceed against him under the provisions set out below in sub-paragraphs 9 an 10 infra relating to discharge, and the provisions set out-above as to pay allowances and the period of suspension will apply, the period up-to-date for which full pay and allowances have not been drawn being treated as one of suspension. In the event of the management deciding after enquiry not to continue him in service, the employee not to continue him in termination with three months'' pay and allowances in lieu of notice, as directed above.

(3) If after steps have been to prosecute an employee, or to get him prosecuted for an offence, he is not put on trial within a year of commission of the offence, the management may then deal with him as if he had committed an act of "gross misconduct" or of "minor misconduct" as defined below; provided that if the authority which was to start prosecution proceedings refuses to do so or comes

to the conclusion that there is no case for prosecution it shall be open to the management to proceed against the employee under the provisions set out below in sub paragraphs 9 and 10 infra relating to discharge, but he shall be deemed to have been on duty during the period of suspension, if any, and shall be entitled to the full wages and allowances and to all other privilege for such period. In the event of the management deciding, after enquiry, not to continue him in service, he shall be liable only for termination with three months'' pay and allowances in lieu of notice as directed in sub paragraph (2) supra. If within the pendency of the proceedings thus instituted he is put on trial, such proceedings shall be stayed pending the completion of the trial, after which the provisions mentioned in sub paragraph (2) above shall apply.

(4) By the expression "gross misconduct" shall be meant any of the following acts and omissions on the part of an employee :

(a) engaging in any trade or business outside the scope of his duties except with the permission of the bank;

(b) unauthorised disclosure of information regarding the affairs of the bank or any of its customers or any other person connected with the business of the bank which is confidential or the disclosure of which is likely to be prejudicial to the interests of the bank;

(c) drunkenness or riotous or disorderly or indecent behavior on the premises of the bank;

(d) willful damage or attempt to cause damage to the property of the bank or any of its customer;

(e) willful insubordination or disobedience of any lawful and reasonable order of the management or of a superior;

(f) habitual doing of any act which amounts to "minor misconduct" as defined below, "habitual" meaning a course of a action taken or persisted in notwithstanding that at least on three previous occasions censure or warnings have been administered or an adverse remark has been entered against him;

(g) willful slowing down in performance of work;

(h) gambling or betting on the premises of the bank;

(i) speculation in stocks, shares, securities or any commodity whether on his account or that of any other persons;

(j) doing any act prejudicial to the interests of the bank or gross negligence or negligence involving or likely to involve the bank in serious loss;

(k) giving or taking a bribe or illegal gratification from a customer or an employee of the bank;

(1) abatement or instigation of any of the acts or omissions above mentioned.

(5) An employee found guilty of gross misconduct may :

(a) be dismissed without notice, or

(b) be warned or censured, or have an adverse remark entered against him or

(c) be fined, or

(d) have his increment stopped, or

(e) have his misconduct condoned and be merely discharge.

(6) By the expression "minor misconduct" shall be meant any of the following acts and omissions on the part of the employee :

(a) absence without leave or overstaying sanctioned leave without sufficient grounds;

(b) unpunctual or irregular attendance;

(c) neglect of work, negligence in performing duties ;

(d) breach of any rule of business of the bank or instruction for the running of any department;

(e) committing nuisance on the premises of the bank;

(f) entering or leaving the premises of the bank except by an entrance provided for the purpose;

(g) attempt to collect or collecting monies within the premises of the bank without he previous permission of the management or except as allowed by any rule or law for the time being in force;

(h) holding or attempting to hold or attending any meeting on the premises of the bank without the previous permission of the management or except in accordance with the provisions of any rule or law for the time being in force;

(i) canvassing for union membership or collection of union dues or subscriptions within the premises of the bank without the previous permission of the management or except in accordance with the provisions of any rule or law for the time being in force;

(j) failing to show proper consideration, courtesy or attention towards officers, customers or other employees of the bank; unseemly or unsatisfactory behavior while on duty;

(k) marked disregard of ordinary requirements of decency and cleanliness in person or dress

(l) incurring debts to an extent considered by the management as excessive.

(7) An employee found guilty of minor misconduct may -

(a) be warned or censured; or

(b) have an adverse remark entered against him, or

(c) have his increment stopped for a period not longer than six months.

(8) In all cases in which action under paragraphs (3), (5) and (7) may be taken, the proceedings held shall be entered in a book kept specially for the purpose, in which the date on which the proceedings are held, the name of the employee proceeded against, the charge or charges, the evidence on which they are based, the Explanation and the evidence, if any, tendered by the said employee, the finding or findings with the grounds on which they are based and the order passed shall be recorded with sufficient fullness, as clearly as possible and such record of the proceedings shall be signed by the officer who holds them.

(9) When it is decided to take any disciplinary action against an employee, such decision shall be communicated to him within three days thereof.

(10) The procedure in such cases shall be as follows :

(a) An employee against whom disciplinary action is proposed or is likely to be taken shall be given a charge-sheet clearly setting forth the circumstances appearing against him and a date shall be fixed for enquiry, sufficient time being given to him to enable him to prepare and give his Explanation as also to produce any evidence that he may wish to tender in his defense. He shall be permitted to appear before the officer conducting the enquiry, to cross-examine any witness on whose evidence the charge rests and to examine witnesses and produce other evidence in his defense. He shall be permitted to be defended by a representative of a registered union of bank employees or with the bank''s permission, by a lawyer. He shall also be given a hearing as regards the nature of the proposed punishment in case any charge is established against him.

(b) Pending such inquiry, he may be suspended, but if on the conclusion of the enquiry it is decided to take no action against him, he shall be deemed to have been on duty allowances and to all other privileges for the period of suspension, and if some punishment other than dismissal is inflicted, the whole or a part of the period of suspension may, at the discretion of the management, be treated as on duty with the right to a corresponding portion of the wages, allowances, etc.

(c) In awarding punishment by way of disciplinary action the authority concerned shall take into account the gravity of the misconduct, the previous record, if any, of the employee and any other aggravating or extenuating circumstances that may exist. Where sufficiently extenuating circumstances exist, the misconduct may be condoned and in case such misconduct is of the "gross" type, he may be merely discharged, with or without notice or on payment of a month''s pay and allowances, in lieu of notice. Such discharge may also be given where the evidence is found to be insufficient to sustain the charge and where the bank does not, for some reason or other, think it expedient to retain the employee in question any longer in service. Discharge in such cases shall not be deemed to amount to disciplinary action.

(11) Where the directions given above conflict with the procedure or rules in force in any bank regarding disciplinary action they shall prevail over the latter. There may, in such procedure or rules, exist certain provisions outside the scope of the directions given by us above, enabling the bank to dismiss, warn, censure, fine an employee or have his increment stopped or have an adverse remark entered against him. In all such cases also we think that the provisions set out in clauses (8) and (9) should apply, and we direct accordingly.

(12) It also seems to us necessary that a bank should decide which officer shall be empowered to take disciplinary action, in the case of each office or establishment and that it should also make provision for appeals against orders passed in disciplinary matters to an officer or a body not lower in status than the manager, who shall if the employee concerned so desires in a case of dismissal hear him or his representative before disposing of the appeal. We direct accordingly and further direct that the names of the officers or the body who are empowered to pass the original orders or hear the appeal shall from time to time be published on the bank''s notice boards, that an appeal shall be disposed of as early as possible, and that the period within which an appeal can be preferred shall be forty-five days from the date on which the original order has been communicated in writing to the employee concerned".

Para. 522 of the said award provides for discharge simplicities and lays down as under :

"522. We now proceed to the subject of termination of employment. We give the following directions :

(l) In cases not involving disciplinary action for misconduct and subject to clause (6) below, the employment of a permanent employee may be terminated by three months'' notice or on payment of three months'' pay and allowance in lieu of notice. The services of a probationer may be terminated by one month''s notice or on payment of a month''s pay and allowance in lieu of notice.

(2) A permanent employee desirous of leaving the service of the bank shall give one month''s notice in writing to the manager. A probationer desirous of leaving service shall giver 14 days'' notice in writing to the manager. A permanent employee or a probationer shall, when he leaves service, be given an order of relief signed by the manager.

(3) If any permanent employee leaves the service of the bank without giving notice, he shall be liable to pay the bank one month''s pay and allowances. A probationer, if he leaves service without giving notice, shall be liable for 14 days'' pay and allowances.

(4) The services of any employee other than a permanent employee or probationer may be terminated, and he may leave service, after 14 day''s notice.

If such an employee leaves service without giving such notice he shall be liable for week''s pay (including all allowances).

(5) An order relating to discharge or termination of service shall be in writing and shall be signed by the manger. A copy of such order shall be supplied to the employee concerned.

(6) In cases of contemplated closing down or of retrenchment of more than five employees, the following procedure shall be observed :

(a) two month''s notice of such proposed action shall be given individually to all the employees concerned, with a statement of the reasons for such proposed action;

(b) the manager or an officer empowered in this behalf shall within the period of such notice hear any representation from the employees concerned or any registered union of bank employees;

(c) after the hearing of such representation and the receipt of the report in the matter, if necessary, by the management, if it decides to give effect to the contemplated closing down or retrenchment in the original or an amended form, the service, of the employees may be terminated by giving notice or payment in lieu thereof for the periods prescribed above".

8. From the perusal of para. 521 of the said award it would be found that the loss of confidence has not been mentioned as misconduct on the basis whereof enquiry has to be held under para. 521 of the Sastry Award and as such it would follow that it is open to the bank management to effect discharge simplicities under pare. 522(1) of Sastry Award in the case of a workman in whom the bank has lost confidence. This may not mean that the bank cannot hold enquiry under para. 521(1) of the said award in case of loss of confidence and that is what is alleged to have been done in the instant case. Mere non-mention of reason of loss of confidence in the order of termination does not change this position. In view of these facts, the conclusion is irresistible that the services of the workman were terminated by the bank for loss of confidence under para. 522(1) of the Sastry Award.

9. The question that now arises is as to whether in case of discharge simplicities for loss of confidence, the bank was entitled to lead evidence before the Tribunal to prove its case. In this behalf learned counsel for the bank has urged that termination of service on the ground of loss of confidence has been held by the Supreme Court to involve a stigma and consequently the termination would be deemed to be by way of punishment and, as such, the bank was entitled to lead evidence before the Tribunal. He has drawn my attention to Chandu Lal Vs. Management of Pan American World Airways Inc., , which was followed in Kamal Kishore Lakshman Vs. Management of Pan American World Airways Inc. and Others, . In Chandu Lal Vs. Management of Pan American World Airways Inc., :

"Where the services of a workman were terminated on grounds that the workman was being involved in an act of smuggling, on basis of loss of confidence, without holding any domestic enquiry, the order of termination was vitiated as it did amount to one with stigma and warranted a proceeding contemplated by law preceding termination. Want of confidence in an employee does point out to an adverse facet in his character as the true meaning of the allegation is that the employee has failed to behave up to the expected standard of conduct which has given rise to a situation involving loss of confidence. In such circumstances termination would not amount to retrenchment and disciplinary proceedings were necessary as condition precedent to infliction of termination as measure of punishment".

In Kamal Kishore Lakshman Vs. Management of Pan American World Airways Inc. and Others, :

"Loss of confidence by the employer in the employee is a feature which certainly affects the character or reputation of the employee and, Therefore, this court correctly held in Chandu Lal Vs. Management of Pan American World Airways Inc., , that allegation of loss of confidence amounted to a stigma".

10. Once it is accepted that the termination for loss of confidence involves an element of stigma, it would follow that such a case would be considered like the case of termination for misconduct. It would, consequently, at worst, partake of a case of termination for misconduct without holding an enquiry and, consequently, the bank would be entitled to lead evidence before the Industrial Tribunal to prove the circumstances leading to the loss of confidence. It is not disputed by learned counsel for the workman that where the services of a workman are terminated for loss of confidence without holding any enquiry, the bank would have a right to lead evidence before the Tribunal in as much as such termination involves an element of stigma. Even otherwise, this aspect has been considered in Kamal Kishore Lakshman''s case, (supra), itself. In para. 11 thereof, it has been observed as under (at p.110) :

"... Whether termination is grounded upon stigma would not vary from case to case depending upon whether it involves a Government servant or a workman. But the procedural safeguards appear to be different when termination is sought to be founded upon stigma. If disciplinary inquiry has not preceded the prejudicial order in the case of a Government servant the action would be bad while in the case of workman the order could be justified even in the course of adjudication before the appropriate Tribunal under the Industrial Disputes Act even though no inquiry had been undertaken earlier".

11. Thus, where the services of a bank employee are terminated under para. 522(1) of the Sastry Award for loss of confidence, it would be open to the bank to lead evidence before the Tribunal to prove the facts leading to the termination as it is, no doubt, a mixed question of law and fact, if the employee was guilty of conduct which could result in loss of confidence in him. Termination for loss of confidence may not be a specific misconduct but since stigma is attached to such

termination, right of the management to justify it before the Tribunal must be conceded.

12. It would be appropriate at this stage to revert to the award. Perusal of para 13 thereof would show that the Tribunal has observed therein that expert''s reports already filed is on record and may be used by the management to urge that it was a case of loss of confidence and yet the request of the bank was not granted. Furthermore, the Tribunal has given a finding in para 16 that "in this particular case the ground of loss of confidence in Krishna Kanhaiya a daftly, fails to inspire any confidence ...." and at another place it has been observed in para 17 that "I am clearly of the opinion that the management action of termination of service of Shri Krishna Kanhaiya on account of loss of confidence does not inspire confidence" and, finally, it is observed in para 17 that "the termination of service by the management on the alleged ground of loss of confidence with effect from 14th August, 1981, is held to be unjustified". It is difficult to understand how and on what basis could the Tribunal give this finding on the existence of loss of confidence when it had refused to grant permission to the bank to lead evidence on that aspect of the matter. Where the Tribunal holds that ground of loss of confidence fails to inspire confidence and consequently holds the termination unjustified, it would be incumbent upon the Tribunal to allow the bank to lead evidence to justify the termination. The refusal to permit the bank to lead evidence on this aspect has resulted in failure of justice and such an award would be liable to be quashed.

13. From my discussion and findings above, I have come to conclusion that the award in the instant case is liable to be quashed.

14. No other point has been urged Consequently, the writ petition is allowed and the impugned award is quashed and set aside. The matter is remanded to the Tribunal to be proceeded with in accordance with the above observations after giving opportunity to the bank to lead evidence. The Tribunal would expedite the disposal of this case. No order as to costs.

