

(2015) 09 KAR CK 0261

In the Karnataka High Court

Case No : Writ Petition No. 18853 of 2006 (S-DIS)

Basavaraj P. Patagundi

APPELLANT

Vs

Malaprabha Grameena Bank

RESPONDENT

Date of Decision : 11-09-2015

Acts Referred:

Citation : (2015) 09 KAR CK 0261

Hon'ble Judges : Anand Byrareddy, J.

Bench : Single Bench

Advocate : S.R. Hegde, Advocate, for the Appellant; S.S. Yadrami, Advocate, for the Respondent

Judgement

Anand Byrareddy, J.—Heard the learned counsel for the petitioner and the learned Counsel for the respondent.

2. The background to the present case is that one Basavaraj P. Patagundi was appointed as a Field Officer in the erstwhile Malaprabha Grameena Bank during the year 1983. He was posted as the Manager of the Arabhavi branch of the respondent during the year 1985. While he was working at the said branch, he was placed under suspension pending inquiry in respect of serious misconduct alleged to have been committed by him by an order dated 17.9.1987. A charge sheet dated 20.2.1988 was issued to him and an inquiry was initiated to inquire into the matter wherein all the charges, except one charge, were held as proved. Based on the finding of the inquiry officer, the petitioner was removed from service by an order dated 30.6.1989.

Aggrieved by the said order, an appeal was preferred before the appellate authority and the appellate authority had rejected the appeal by its order dated 19.12.1989, against which, the petitioner had approached this court by way of a writ petition in WP 8232/1990, which was partly allowed, by an order dated 13.9.1996 and the order of the appellate authority was quashed on the ground that, while considering the appeal, the chairman, who was the disciplinary

authority, had passed an order of removal of the petitioner from service and had remanded back to the Board of Directors, which was the appellate authority to reconsider the appeal after giving opportunity of hearing to the petitioner. Pursuant to which, the petitioner was heard by the appellate authority and the appeal was again rejected. Aggrieved by which, the petitioner had approached this court by way of yet another writ petition in WP 23419/1998. This court had allowed the writ petition and quashed the order passed by the disciplinary authority and the appellate authority and directed the bank to reinstate the appellant within four months and also to pay back wages.

Against this order of the learned Single Judge of this court, the bank had preferred an appeal to the division bench in WA 1998/2002. The division bench, by its judgment dated 20.1.2005, set aside the order of the learned single judge and remitted the matter to the single judge for fresh consideration. In accordance with the said direction, the Single Judge had heard the matter afresh and by order dated 9.11.2005, allowed the writ petition in part and set aside the order dated 17.12.1996 and remitted the matter to the appellate authority with a direction to consider the appeal on merits and pass a considered order. The bank was mulcted with costs of Rs. 10,000/-. The appellate authority, on further consideration, has rejected the appeal of the petitioner. Against this order, the petitioner had filed the third writ petition in WP 18853/2006. The said writ petition was dismissed on merits by order dated 28.5.2007. Against which, an appeal was preferred in WA 5124/2008 before a Division Bench. The Division Bench, after quashing the order of the learned Single Judge, has remanded the matter for a fresh consideration with a request to consider the grounds urged by the petitioner in the writ petition. Therefore the present writ petition.

It is noticed that insofar as the earlier order passed by the learned Single Judge of this court in WP 18853/2006 dated 28.5.2007 is concerned, the learned Single Judge has in his own way dealt with the petition on merits and has recorded that he has perused the inquiry report and relevant material available on file and has also addressed the findings of fact and thereafter has opined that there is no merit in the case and has dismissed the writ petition. The same having been questioned before a Division Bench, the Division Bench has expressed thus:

"7. On perusal of the order of the learned single Judge, we are of the opinion that the learned single Judge has concurred views of the Disciplinary Authority and the Appellate Authority. But, by oversight the learned single Judge has not disclosed the facts and evidence and has not assigned proper reasons to concur with the order of dismissal, considering the nature of allegations or charges levelled against the appellant. Therefore, we are of the view that it was for the learned single Judge to narrate the facts and grounds urged by the learned counsel for the appellant in the writ petition. The Court is required to consider the grounds urged by the parties. Since such a procedure is not followed, we are of the view that the matter requires to be reconsidered by the learned single Judge, in accordance with law. "

The question that arises for consideration is whether the Division Bench could have remanded the matter to this bench in the light of a full bench judgment in *Town House Building Co-operative Society Ltd. Vs. Special Deputy Commissioner*, .

The honourable Chief Justice, who was a member of the full bench has opined thus:--

"14. xxx xxxx As a result of the aforesaid discussion the answers to the questions referred to us may be stated as follows:

(i) That there is an inherent power in the Division Bench hearing writ appeal against an order of a learned single Judge, to remand the case to be decided afresh by a learned single Judge;

(ii) That a remand order may be passed in cases where a Writ Petition has been dismissed for non-prosecution or in limine or on the ground of delay or maintainability or on some question of law without going into merits, etc.

However, it is best in these matters to be neither dogmatic nor exhaustive, yet the aforesaid categories are the ones in which the Appellate Bench may exercise its power of remand and

(iii) That where a Writ Petition has been disposed of on merits by an order made by a learned single Judge, a Division Bench on Appeal would have no jurisdiction to remand such a case to a learned single Judge for fresh decision on merits and the appeal has to be disposed of on merits by the Division Bench itself. "

Another Judge expressing a separate opinion has also concurred with the view expressed by the honourable Chief Justice and has expressed as follows:--

"27. On reconsideration of the matter in the light of the judgment of the Supreme Court in *Umaji Keshao Meshram and Others Vs. Radhikabai and Another*, , I am of the view that if a Writ Petition has been dismissed for non-prosecution or in limine on grounds such as delay, maintainability etc., and not on merits by a learned single Judge and such an order is taken in appeal and the Division Bench sets aside such an order, the Writ Petition gets restored. As a consequence, in view of Sec. 9 of the Act and the Rules, the Writ Petition has to be posted for preliminary hearing or final hearing, as the case may be, before a learned single Judge. It is in this manner and to this extent, it appears to me it can be said that the Division Bench has the inherent or incidental power to bring about a remand of the Writ Petition by a learned single Judge."

The third Judge while concurring with the reasoning and conclusion arrived at by the learned Chief Justice has also expressed the following opinion:

"32. An appellate power necessarily includes a power to remand the cause to be decided by the original authority or Court. Such a power is inherent in the appellate power. Since the appellate power is conferred on a Bench of the same High Court here, while exercising the said appellate power necessarily the

appellate Bench will have to be guided by principles of propriety while remitting a cause to the original side Bench. It is in this background I consider that the power to remit a cause to the original Bench by the Division Bench will have to be sparingly used when the situation absolutely warrants such a remand, as opined by my Lord the Chief Justice."

In the above view of the matter, the Division Bench could not have remanded the matter after the learned Single Judge had decided the case on merits in his own style. The dissatisfaction expressed by the Division Bench as to the manner in which the petition was disposed of is immaterial. It was for the Division Bench to deal with the appeal in the manner that it considered best. Since the Division Bench does not have any superior jurisdiction and was only taking a relook at the matter, it could have decided the appeal in the fashion that it thought best and therefore, the order remanding the matter was not in accordance with the opinion expressed by the Full Bench of this court. Consequently, the registry is directed to post the matter before a division bench for a fresh consideration.