
(2014) 03 AHC CK 0109
In the Allahabad High Court
Case No : Civil Misc. Writ Petition No. 54 of 2014

Bechu Prasad

APPELLANT

Vs

District Cooperative Bank Ltd. and Others

RESPONDENT

Date of Decision : 25-03-2014

Acts Referred:

Constitution of India, 1950 — Article 311, 311(2)
Forest Act, 1927 — Section 26
Penal Code, 1860 (IPC) — Section 294, 379, 411

Citation : (2014) 4 ADJ 271

Hon'ble Judges : Manoj Misra, J

Bench : Single Bench

Advocate : Vineet Kumar Singh, Advocate for the Appellant; K.N. Mishra and S.C, Advocate for the Respondent

Final Decision : Allowed

Judgement

Manoj Kumar Gupta, J.—The moot question for consideration in the present writ petition is regarding the scope and meaning of the phrase "moral turpitude", used in Regulation 83 of The U.P. Co-operative Societies Employees' Service Regulations, 1975 (hereinafter, referred to as "the Regulations") which is to the following effect inter alia:

83. (i)....

(ii) An employee who is convicted of a criminal charge involving moral turpitude by a Criminal Court shall be liable to dismissal.

Explanation.--"Conviction" means sentence of punishment, fine or both.

Before dealing with the question posed before the Court, it would be appropriate to refer to the facts in brief. The petitioner was holding a class IV post in District Cooperative Bank Ltd., Gorakhpur branch Paniyara, District Maharajganj. A First Information Report being case crime No. 2 of 2002 under Sections 379/411 I.P.C. read with Section 26 of the Indian Forest Act was lodged against the petitioner

and two others, namely, Chhote and Jhinak on 1.1.2002 at police station Paniyara, District Maharajganj in connection with the incident which had taken place on 1.1.2002. It is alleged that the petitioner and two others were illegally involved in cutting of sakhu wood and carrying the same on tractor-trolley No. UP56-3061. It was intercepted by the first informant H.C.P. Mohd. Aslam Khan and he lodged a First Information Report, in pursuance whereof, the petitioner was arrested and was placed under suspension on 14.3.2002. Subsequently, he was enlarged on bail and where after, suspension was revoked as an ad interim measure. After investigation, the police submitted a charge-sheet against the petitioner and two other co-accused, under rule 3/28 of The Uttar Pradesh Transit of Timber and other Forest Produce Rules, 1978 (wrongly mentioned as Section 3/28 of the U.P. Transit Act), for transporting forest produce without a transit pass. However, charges under Sections 379/411 I.P.C. and Section 26 of the Indian forest Act were dropped as the sakhu wood under transit belonged to the co-accused Chhote, which he had purchased from one Chanda Ram for Rs. 8500/-. The petitioner and two other co-accused were subjected to criminal prosecution in criminal case No. 3037 of 2008. The petitioner, in order to save himself from long drawn criminal proceedings, preferred to admit his offence and whereupon, he was sentenced to imprisonment of one month and one day which he had already undergone before being granted bail and a fine of Rs. 1000/-, failing which he had to undergo simple imprisonment of additional 15 days, by judgment dated 14.9.2010 passed by Additional Chief Judicial Magistrate, Maharajganj. The petitioner himself apprised the bank of the aforesaid judgment whereupon, the Committee of Management in its meeting dated 14.9.2013, resolved to dispense with the services of the petitioner. Respondent No. 3 passed consequential order dated 30.9.2013 for removal of the petitioner from service of the bank in purported exercise of power under Regulation 83(ii). Aggrieved thereby, the petitioner had filed the instant writ petition.

2. In the aforesaid background, the question formulated above requires consideration. I have heard counsel for the parties and perused the record.

3. Under Regulation 83(ii), every conviction on a criminal charge does not entail dismissal from service. It is only in cases involving moral turpitude. Thus, the core question is whether the present offence on which petitioner has been convicted, is one which involves moral turpitude.

4. A slightly different phraseology is employed in Article 311 of the Constitution which contemplates action against an employee on the ground of conduct which has led to his conviction on a criminal charge. While interpreting the said provision, a constitution Bench of the Apex Court in the case of Union of India and Another Vs. Tulsiram Patel and Others, , held that conviction on criminal charge does not automatically entails dismissal from service. The disciplinary authority should bear in mind the conduct which has led to his conviction and should impose penalty which is warranted by the facts and circumstances of the case. It was held as under:

127. Not much remains to be said about clause (a) of the second proviso to Article 311(2). To recapitulate briefly, where a disciplinary authority comes to know that a Government servant has been convicted on a criminal charge, it must consider whether his conduct which has led to his conviction was such as warrants the imposition of a penalty and, if so, what that penalty should be. For that purpose it will have to peruse the judgment of the criminal Court and consider all the facts and circumstances of the case and the various factors set out in *The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others*, . This, however, has to be done by it ex parte and by itself. Once the disciplinary authority reaches the conclusion that the Government servant's conduct was such as to require his dismissal or removal from service or reduction in rank he must decide which of these three penalties should be imposed on him. This too it has to do by itself and without hearing the concerned Government servant by reason of the exclusionary effect of the second proviso. The disciplinary authority must, however, bear in mind that a conviction on a criminal charge does not automatically entail dismissal, removal or reduction in rank of the concerned Government servant. Having decided which of these three penalties is required to be imposed, he has to pass the requisite order. A Government servant who is aggrieved by the penalty imposed can agitate in appeal, revision or review, as the case may be, that the penalty was too severe or excessive and not warranted by the facts and circumstances of the case. If it is his case that he is not the Government servant who has been in fact convicted, he can also agitate this question in appeal, revision or review. If he fails in all the departmental remedies and still wants to pursue the matter, he can invoke the Court's power of judicial review subject to the Court permitting it. If the Court finds that he was not in fact the person convicted, it will strike down the impugned order and order him to be reinstated in service. Where the Court finds that the penalty imposed by the impugned order is arbitrary or grossly excessive or out of all proportion to the offence committed or not warranted by the facts and circumstances of the case or the requirements of that particular Government service the Court will also strike down the impugned order. Thus, in *Shankar Dass Vs. Union of India (UOI) and Another*, this Court set aside the impugned order of penalty on the ground that the penalty of dismissal from service imposed upon the appellant was whimsical and ordered his reinstatement in service with full back wages. It is, however, not necessary that the Court should always order reinstatement. The Court can instead substitute a penalty which in its opinion would be just and proper in the circumstances of the case.

Regulation 83 is thus a species of constitutional provision contained in Article 311. It envisages dismissal of an employee only if the conduct is such as would involve moral turpitude. Every misdemeanor or infraction of law embracing criminality does not result in dismissal from service.

5. In *Pawan Kumar Vs. State of Haryana and another*, , the Apex Court had the occasion to consider the meaning of the words "moral turpitude" and it was held that such expression is used in legal as also societal parlance to describe conduct

which is inherently base, vile, depraved or having any connection showing depravity. It was held that conviction u/s 294 I.P.C. for causing nuisance to others by indulging in obscene act in public with fine of Rs. 20/- is not such an offence which may involve moral turpitude.

6. In a later judgment in the case of Allahabad Bank and Another Vs. Deepak Kumar Bhola, , the Apex Court cited with approval the decision of this Court in Baleshwar Singh Vs. District Magistrate and Collector, Banaras and Others, , wherein, it is observed as under:

The expression "moral turpitude" is not defined anywhere. But it means anything done contrary to justice, honesty, modesty or good morals. It implies depravity and wickedness of character or disposition of a person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but it would be so if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellow men or to the society in general. If therefore the individual charged with a certain conduct owes a duty, either to another individual or to the society in general, to act in a specific manner or not to so act and he still acts contrary to it and does so knowingly, his conduct must be held to be due to vileness and depravity. It will be contrary to accepted customary rule and duty between man and man.

7. Counsel for the petitioner has placed reliance on another judgment of this Court reported in Mangali Vs. Chhakki Lal and Others, , holding that:

It is not every punishable act that can be considered to be an offence involving moral turpitude. Had that been so, the qualification "involving moral turpitude" would not have been used by the Legislature and it would have disqualified every person who had been convicted of any offence, the tests which should ordinarily be applied for judging whether a certain offence does or does not involve moral turpitude appear to be : (1) whether the act leading to a conviction was such as could shock the moral conscience or 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.

Further reliance has been placed on a Division Bench judgment of this Court in case of Ran Vijay Chandra Vs. State of U.P. and Others, , wherein, an employee who had committed murder, was not found to be guilty of offence involving moral turpitude as it was an outcome of sudden and grave provocation and was not a result of any premeditated design. It was observed as under:

22. In the present case, there is nothing to show that the offence was committed by the petitioner on provocation by the deceased or any of his family member. The motive assigned to the prosecution was that there was a dispute in relation to contract and the murder was committed in that respect. The Sessions Judge found that even if that part be ignored, admittedly there was a rivalry between two families and bad blood. The murder cannot be said to be in a grave

provocation. On the facts and circumstances of the present case, the offence committed by the petitioner involves moral turpitude.

Applying the aforesaid principles to the facts of the present case, it is seen that though the First Information Report was lodged levelling allegation of theft of forest produce under Sections 379/411 I.P.C. read with Section 26 of the Indian Forest Act but after investigation charges under these sections were dropped apparently for the reason that the wood belonged to the co-accused Chhote. The charge-sheet was submitted only for transport of forest produce without a valid transit pass under Rule 3 which is punishable under rule 28 with imprisonment up to one year or with fine which may extend to Rs. 1000/- or both.

8. The petitioner, admitted to his guilt and was sentenced to one month one day of imprisonment which he had already undergone and with fine of Rs. 1000/-.

9. Admittedly, the goods were not stolen property but belonged to the co-accused Chhote. Thus, the conviction of the petitioner is only for commission of technical offence of transporting the forest produce without a valid pass. The petitioner has admitted his guilt. It was not a case where there was any mens-rea or deliberate effort to evade any provision of law. No act of wickedness or vileness is attributable to the petitioner. The conduct of the petitioner is not such that it may shock the moral conscience of the society. It was mere act of omission in exercise of due diligence to obtain necessary permission, possibly for ignorance of the said provision. Law cannot be interpreted to operate so harshly as to deprive a person of his source of livelihood entailing dismissal/removal from service for such conduct.

10. I am of the considered opinion that the conviction of the petitioner for charges in question is not one which involves moral turpitude, as to justify the impugned order of dismissal from service. The respondents did not apply their mind to the nature of charges on which the petitioner was convicted and proceeded on a wrong notion of law that every conviction results in dismissal/removal from service. Such an order cannot be sustained.

11. The other submission made by learned counsel for the petitioner is that the impugned order of removal has been passed without obtaining prior concurrence of the Board under Regulation 87 and therefore, even otherwise, it is without the authority of law. On the other hand counsel for the respondent submitted that in cases covered by Regulation 87(ii) prior concurrence from the Board is not required. However, since I have already held that the offence in question does not involve moral turpitude and the petitioner could not have been removed from service on such ground even if there was prior concurrence of the Board, therefore, it is not necessary for the Court to go into the other submission made by learned counsel for the petitioner. As a result of the above discussion, the writ petition succeeds and is allowed. The impugned resolution of committee of management dated 14.9.2013 and the consequential order passed by the Secretary/Chief Executive Officer, District Cooperative Bank Limited, Gorakhpur

dated 30.9.2013 are quashed. Respondents are directed to reinstate the petitioner with full back wages. No order as to costs.