
(2002) 05 RAJ CK 0008

In the Rajasthan High Court

Case No : Civil Special Appeal No. 648 of 1998

Bhilwara Ajmer Kshetriya Gramin Bank

APPELLANT

Vs

Madav Gopal Garg

RESPONDENT

Date of Decision : 21-05-2002

Acts Referred:

Citation : (2002) 5 WLN 20

Hon'ble Judges : Rajesh Balia, J;K.K. Acharya, J

Bench : Division Bench

Judgement

Rajesh Balia, J.—Heard learned Counsel for the parties.

2. This appeal is directed against the order dated 15.5.1998 passed by learned Single Judge allowing the writ petition filed by the respondent-petitioner.

3. The facts leading to this appeal are that the respondent- petitioner was appointed as a probationer with the appellant Bank by letter of appointment dated 2.2.1985 and his services were terminated on 14.8.1987 ostensibly by discharge simpliciter vide Annexure 35 dated 14.8.1987 by enclosing three months emoluments in lieu of three months' notice as envisaged under the terms of appointment. Appeal against that order Annexure 35 was also dismissed by the Board of Directors of the Bank vide communication dated 18.3.1988. The other facts which have come on record are that the probation period of the petitioner which was initially for two years and could be extended by one year was extended by six months w.e.f. 11.2.1987. After the extension of period of probation, a chargesheet was served on the petitioner-respondent which was dated 29.4.1987 with the covering letter dated 4.5.1987 and while an enquiry was going on vigorously, the aforesaid termination order was made. No order of dropping the enquiry before termination was made. In other words, as on the date the termination order was passed, which was termination simpliciter, the enquiry against the charges levelled against the petitioner was already pending.

4. The termination order was challenged by way of writ petition No. 4667 of 1989

by the petitioner, inter-alia, on the ground that the termination order was punitive in character and could not have been passed without holding an enquiry and finding him guilty of misconduct for which a chargesheet was already served on him.

5. The learned Single Judge, after considering the entire material on record, was of the opinion that the charges levelled against the petitioner vide the chargesheet dated 29.4.1987 provided the foundation for order of termination Ex. 35 and was not merely a motive for passing that order. As a result of this finding, the termination order as well as the order passed in appeal was quashed and the petitioner was ordered to be reinstated with full back wages as if the impugned orders had never been passed against him. Rs. 50,000 were ordered to be adjusted against backwages as estimated income by deducting estimated Income Tax Liability thereon.

6. It has further transpired that before filing writ petition, and before his appeal was decided, the petitioner had enrolled himself as an Advocate on 19.2.1988 and is practising since then.

7. The appellant-non-petitioner has sought to make out a case that from the initial stage his services were not satisfactory and he was given memos after memos but his work did not improve and therefore it was a case of termination of service simpliciter with the expiry of extended period of probation.

8. However, in the totality of the facts and circumstances, we agree with the findings of the learned Single Judge that the termination was founded on the alleged misconduct for which an enquiry was instituted and not on the basis of general dissatisfaction of the work. Had it been so, probation period of the petitioner-respondent would not have been extended for a further period of six months after having tolerated, his unsatisfactory services of two years. It was not a case in which the appellant has alleged about a deterioration in his functioning or some intermittent dissatisfaction of work. The first memo which appears to have been served on the petitioner soon after his appointment in February 1985 is Ex. R/I dated 26.4.1985. Moreover, the fact that the specific charges have been levelled against him in April, 1987 and were seriously pressed even shortly before passing of subsequent order but without completing the enquiry, the appellant found it easy way to terminate the services after expiry of extended period of probation. The appellant has seized the opportunity and passed an innocuous looking order whereas the real cause appears to be alleged misconduct for which enquiry was instituted.

9. The principle is well settled that where alleged misconduct is a motive simpliciter, the order may be treated as an order of termination simpliciter not amounting to punitive order but where it provides foundation, the passing of order notwithstanding its tenor it is to be treated as punitive order.

10. However, in the facts and circumstances, we are of the opinion that the

reinstatement ought not to have been ordered at this distance of time particularly when admittedly the petitioner had joined the honourable profession even before his appeal was decided vide Annexure 37 which was pending before the Bank to sever his connection with any employment to pursue it independently. It may be noticed that the petitioner has joined profession even before awaiting order on appeal which has been decided expeditiously. The writ petition was filed after about one year of order of appeal was communicated to him. Still the petitioner did not chose to disclose this vital fact in his writ petition. Keeping in view all other circumstances, we are of opinion that petitioner was not entitled to reinstatement thereafter with back wages, the ends of justice would be met by granting adequate compensation in lieu of termination which could not be sustained in law and leave the petitioner to prosecute his independent profession of which he has been a member since February 1988. The termination which was made on 14.8.1987 has kept the petitioner out of employment in fact only for a period of about six months and thereafter he has joined the profession at Beawar. In our opinion, it will be just and appropriate if in lieu of illegal termination a lumpsum compensation of Rs. 1,25,000 is granted to the petitioner-respondent to be paid to him within a period of three months failing which it shall carry interest @12% p.a. with effect from the date the writ petition was filed.

11. The appeal stands partly allowed, as aforesaid.

12. No costs.