
(1995) 11 DEL CK 0001

In the Delhi High Court

Case No : Letters Patent Appeal No. 33 of 1992

B.L. Kapur

APPELLANT

Vs

Allahabad Bank and Others

RESPONDENT

Date of Decision : 09-11-1995

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : (1996) 61 DLT 55 : (1996) 2 LLJ 863

Hon'ble Judges : M. Jagannadha Rao, C.J;A.D. Singh, J

Bench : Division Bench

Advocate : V.K. Sharma, Urmil Khanna and S.K. Mehta, for the Appellant;

Judgement

M. Jagannadha Rao, C.J.

(1) This Lpa has been filed by the appellant-employee for setting aside the orders/judgment dated 21.2.92 of the learned Single Judge in Cwp 2513/84 in which, after holding that principles of natural justice were violated, the learned Single Judge did not set aside the order of dismissal dated 11.6.84 passed by the respondent. The learned Single Judge did not also awarded direct reinstatement of the appellant in the service of respondents with full back wages and consequential relief. He merely directed a fresh inquiry retaining the dismissal order as a provisional order. This according to the employee is illegal. A contention is also raised in regard to the further enquiry to be conducted by the respondent and it is that if dismissal order is not set aside, no further inquiry can have been ordered as there is no relationship of master and servant, if the dismissal order is to continue.

(2) The facts of the case are as under: The appellant joined service in the respondent No. 1 s bank as a Clerk-cum-typist on 12.12.86. He was finally appointed as Officer Middle Management Grade Scale-11 and posted at the Link Road, Ludhiana Branch. In between he had various promotions before promotion to the post of Officer Middle Management Grade Scale-11. The petitioner/

appellant was charged with defalcation of two sums, one was Rs. 31,905.00 and other was Rs. 40,544.10. Having come to know about the said allegations, the appellant himself wrote two letters to the bank dated 5.1.84 and 30.3.84. In these letters he stated that pending full enquiry in the whole matter, he is surrounding the amount by means of a demand draft for adjusting the entries. But in case of his exoneration, the amount may be made good to him and agreed for full cooperation during the process of enquiry. After that, the appellant was issued a charge-sheet/show-cause notice to show cause why he should not be dismissed from service. The appellant replied to show cause notice on 17th May, 1984. No inquiry was conducted but thereafter the impugned order of dismissal was passed on 1st June, 1984 dismissing the appellant from service. During the course of the said dismissal order, the said authority observed that Explanation of the appellant was found to be totally unsatisfactory and only after the investigation the charges were leveled against the appellant and served on him. These charges were substantiated to the satisfaction of the Disciplinary Authority. The contention of the appellant that he made good the loss and submitted Rs. 72,449.10 on being threatened by the bank compelling him to accept the guilt was not accepted. Therefore, the appellant was dismissed from service without any inquiry on the ground that his continuance in service would be prejudicial to the interests of the bank. The appellant preferred an appeal against the said order to the General Manager. The Appellate Authority also dismissed the appeal on 11.9.1984.

(3) Before the learned Single Judge the contention of the appellant/petitioner was that no opportunity was given to the appellant and no inquiry was made in accordance with the Allahabad Bank Employees (Discipline and Appeal) Regulations, 1985. The appellant was not supplied with relevant copies and he was not given opportunity to represent his case. The learned Single Judge found that no record was supplied to him and the Counsel for the bank had relied upon the provision which permits punishment to be imposed in case of confession of guilt. Learned Counsel for the bank Therefore submitted before the learned Judge that the bank had proceeded under the proviso to the Regulations which permitted major penalty without inquiry. The Articles of charges were, according to the bank, admitted by the officer. The learned Judge rejected this contention and pointed out that the Explanation furnished by the appellant was that it was a case where the appellant wrote two letters, - while depositing the money, - stating that he was doing so as he wanted an inquiry to be conducted and would be exonerated. He also claimed that this money should be repaid to him after inquiry. There was thus, according to the learned Judge, no admission by the appellant about his guilt. Having come to the above conclusions the learned Single Judge observed that it would be in the interests of justice if disciplinary proceedings are held in accordance with the regulations of the Bank and the appellant is provided full opportunity to participate in those proceedings.

(4) But the learned Single Judge did not deem fit to set aside the orders of dismissal passed by the Disciplinary Authority or the appellate order passed by

the Appellant Authority itself. The dismissal order was to continue provisionally but the petitioner was to be given an opportunity by the respondents' bank to make his representation against the charges and demand documents in accordance with law so as to enable him to effectively participate in the proceedings. The petitioner was to be given liberty to peruse the relevant records and to participate in the proceedings. His reply was to be considered afresh and the respondent-bank was to pass an order affirming, modifying or cancelling the order of dismissal. The petitioner was to be given liberty to raise any objection, as he may deem fit in accordance with law during the course of the inquiry. The respondent was Therefore, directed to conduct the inquiry in accordance with the rules and regulations of the Allahabad Bank Employees (Discipline and Appeal) Regulations and complete the same in 6 months. The petition was disposed of in the above terms.

(5) The Allahabad Bank has not preferred any appeal. This appeal has been preferred by the writ petitioner contending that as the learned Single Judge has come to the conclusion that there is no admission of the charges and an inquiry shall be made in respect of the charges, he should have set aside the order of dismissal passed by the authorities against the appellant and directed reinstatement and back wages. Learned Counsel for the appellant contends that it is not permissible under law to keep the order of dismissal in tact on a provisional basis pending the inquiry. Since the order of dismissal is not set aside, fresh inquiry cannot be made as relationship of master and servant does not exist between the parties.

(6) Learned Counsel for the respondent on the other hand contends that there is nothing wrong in treating the dismissal order as a provisional order and that Therefore there is no need to set aside the order of dismissal against the appellant or reinstate him and and there was no need to pay back wages. It is also contended for the respondents that fresh inquiry can be held against the appellant, while retaining the dismissal order on a provisional basis in view of recent decisions of the Supreme Court in the case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., and in D. Subba Rao Vs. The State of Andhra Pradesh, . Learned Counsel also submits that in the case of Krishan Lal Vs. State of Jammu & Kashmir, , the Ecil decision was followed. Reference is also made to Union of India and others Vs. Mohd. Ramzan Khan, . It is contended that in view of the aforesaid cases decided by the Supreme Court, the dismissal order can be retained on a provisional basis. That was the procedure followed in those cases.

(7) The point of consideration is whether having come to the conclusion that there was no admission of guilt by the appellant and a fresh inquiry had to be conducted, it was open to the learned Single Judge not to order reinstatement and back wages and whether it was further open to the learned Judge to treat the dismissal order as a provisional order?

(8) Learned Counsel for the respondent has also placed before us the decision of

Disciplinary Authority on the further inquiry that was conducted subsequently. The order is dated 1.5.93 and by that order the Disciplinary Authority has confirmed the earlier order dated 1.6.1984 of dismissal. But the question before us is whether the procedure adopted by the learned Single Judge while directing fresh inquiry was consistent with law and could be brought within the principles laid down and the principles adopted by the Supreme Court in *Managing Director, CIL*(supra) and in *Krishan Lal's* (supra) case?

(9) In our opinion, the learned Single Judge ought to have set aside the dismissal order dated 1.6.84 as well as the Appellate Order dated 11.9.84 and only then he could have directed a fresh inquiry. The learned Single Judge ought to have directed reinstatement. If he was in doubt as to back wages, he could have directed an inquiry as to whether the appellant was in gainful employment during the intervening period. The dismissal, if there was no admission of guilt, was clearly violative of principles of natural justice. There was no admission of guilt as the employee deposited the money and asked simultaneously for an inquiry. He also stated that in case he was held not guilty, he should get back the money deposited. The learned Single Judge came to the clear conclusion that principles of natural justice had been violated. In the normal course the learned Judge should have set aside the dismissal order leaving it open to the employer to consider whether the officer should be kept under suspension till the further inquiry. So far as the back wages are concerned, the normal procedure is to grant back wages but if any doubt was there, an inquiry into whether back wages were payable and whether the employee was gainfully employed, could have been ordered.

(10) Again if it is the contention of the bank that dismissal order is still in force, then the other difficulty will be that the Court cannot direct further inquiry if the employee, because of the dismissal order continuing, must be treated as a person, out of service. Therefore it becomes necessary to set aside the dismissal order and then reinstate him and direct fresh inquiry. Of course, now that a fresh inquiry has been held during the pendency of this appeal, we have to mould the relief taking into account subsequent events.

(11) It is true that in *Ramzan Khan's* (supra) case and in the case of *Managing Director, Ecil*, the dismissal order was provisionally retained. But those cases were cases where there was initially a disciplinary inquiry but the report of the Inquiry Officer was not furnished to the delinquent employee. Such a situation arose because of the amendment to Article 311(2) of the Constitution of India and in the wake of similar amendments brought about in the rules/regulations applicable to Banks and various public sector undertakings. The Supreme Court laid down that, even after the constitutional amendment, principles of natural justice required that the report of Inquiry Officer be furnished to the delinquent employee so that he can make the representation. The Supreme Court found that in a large number of cases the Governments and several other public sector undertakings had applied the constitutional amendment or other amendments

rigidly and had passed orders without giving the employee a copy of the report. The Supreme Court, Therefore, felt that the inquiry report must be given to the employee, but that a special procedure which they elaborated, can be followed in all such cases where the Inquiry Officer's report was not furnished. The special procedure was that the dismissal orders are to operate provisionally, copy of the report is to be given to the employee, and on his further reply, orders are to be passed either confirming or modifying or setting aside the provisional orders as to punishment. But the question where such a special procedure is applicable even to cases where no enquiry at all was conducted ?

(12) We are of the view that the above procedure laid down by the Supreme Court in General Manager, ECIL's case and other cases has adopted to cover a specific situation arising out of the rigid implementation of the constitutional amendment and because there were large number of cases like that. That was a special procedure, as indicated by the Supreme Court is to be followed and cannot be applied here.

(13) In the present case before us, it is not as if there was a regular inquiry and it is not as if the only flaw was that the appellant was not furnished with the report of the Inquiry Officer. The case before us is admittedly one where no inquiry at all was conducted. The employees' Explanation to the charge sheet was received and straightaway dismissed thinking that it was a case of admission of guilt. In the two letters which the appellant had written earlier, the appellant had merely stated that he deposited but he asked for an inquiry. If the result of the inquiry was to go in his favor, the amount deposited by him should be returned back. The learned Single Judge came to the clear conclusion that there was no inquiry at all and an inquiry should now be conducted. It is, Therefore, not a case where the only irregularity was of non-furnishing of the report as in the Ecil case decided by the Supreme Court. Hence the special procedure adopted in Ecil case is not attracted.

(14) The decision in Subba Rao's case was based on concession of Counsel and is again not applicable.

(15) Learned Counsel for the respondent has contended that in Krishan Lal's case the Supreme Court applied the special procedure even in a case where there was some inquiry. In our view, factually, this submission is not correct. There also, there was an inquiry but inquiry report was not furnished. The case was similar to Ecil case. The Anti-Corruption Commission by its order dated 14.3.74 recommended dismissal of the official from service. After receipt of the recommendation, a show cause notice dated 4.7.74 asking the officer to show cause why he should not be dismissed from service was issued. The officer replied vide letters dated 13.8.74 and 4.1.76 for supplying the proceedings of the inquiry including the report of the Commission and this having not done, filed a writ petition seeking the issuance of the proceedings of inquiry and before any order could be passed thereof he was dismissed from service on 31.1.78. The appellant preferred the appeal after dismissal. Ultimately the appeal was also

dismissed. Then a suit was filed. It came up in Second Appeal to the High Court. The High Court allowed the second appeal and dismissed the suit holding that inquiry report need not have been supplied. The facts mentioned above which we have gathered from para 5 of the judgment of the Supreme Court show that it was a case where an inquiry by the Anti-Corruption department was conducted but copies of the inquiry and report were not supplied. That judgment of the Supreme Court followed Ramzan Khan's case and also the judgment in the Managing Director, ECIL's case. Therefore the special procedure laid down in such type of cases was clearly applicable. The decision in Krishan Lal's case is clearly distinguishable. We are, Therefore, of the view that the dismissal order in the present case cannot be retained on a provisional basis.

(16) We accordingly set aside the dismissal order. That would result in reinstatement of the petitioner subject to of course to the result It of the fresh inquiry. We have stated that after the judgment of the learned Single Judge, a fresh order has been passed by the Disciplinary Authority on 10.5.93 confirming the earlier order of dismissal dated 7.4.84. Therefore, without prejudice to the rights of the petitioner to question the second order dated 10.5.93, we direct that the petitioner be declared as a person who has been nationally taken back in service with effect from the earlier order of dismissal dated 1.6.84 up to 10.5.93, when the fresh order of dismissal was passed. This is subject of course to the appellant's right to challenge the subsequent order dated 10.5.93 in accordance with law. There is thus no need to direct reinstatement now but appellant is to be deemed reinstated during 1.6.84 to 10.5.93, subject to his right to challenge the fresh order dated 10.5.93.

(17) Then the next question is whether the appellant is entitled to back wages for the period from 1.6.84 to 10.5.93. So far as right to recover back wages beyond 10.5.93 is concerned, the same is dependent upon whether he will succeed in having the fresh order dated 10.5.93 set aside. But so far as the period from 1.6.84 to 10.5.93 is concerned, we declare that the appellant is entitled to back wages unless of course he was otherwise gainfully employed. Parties have not addressed themselves to this question. We Therefore direct an inquiry into the question of back wages for the said period i.e. as to whether the appellant was gainfully employed during the period 1.6.84 to 10.5.93. This inquiry will be conducted by the Disciplinary Authority. It shall give a show cause notice to the petitioner in this behalf within six weeks from today giving four weeks time to the petitioner to submit his Explanation. On the basis of the said Explanation and after conducting an inquiry in which the appellant will be given an opportunity of hearing, the Disciplinary Authority will decide whether any amount is due to the appellant towards back wages for the said period and if so, what amount. The said decision will be given in a period of three months from the date of submission of the Explanation by the appellant. If any amount is found to be due to the appellant towards back wages as aforesaid, the same will be paid to the appellant within one month of the date of the decision. The appeal is allowed to the extent stated above.