
(1980) 01 MAD CK 0054
In the Madras High Court
Case No : S.A. No. 1964 of 1976

Canara Bank

APPELLANT

Vs

M. Thiyagarajan

RESPONDENT

Date of Decision : 04-01-1980

Acts Referred:

Constitution of India, 1950 — Article 322

Citation : (1980) 2 LLJ 37 : (1980) 93 LW 54

Hon'ble Judges : G. Ramanujam, J

Bench : Single Bench

Judgement

G. Ramanujam, J.—This second appeal has been filed by the second defendant in O.S. No. 93 of 1966 on the file of the sub-Court,

Tuticorin. The said suit was filed by the respondent herein (1) for declaration that his discharge from the service of the appellant-bank is illegal and

void (2) for a direction to reinstate him in service; and (3) for an injunction directing the defendant to allow him to work in his post in the bank or in

the alternative for recovery of a sum of Rs. 10,000, as damages for breach of contract of service. The circumstances under which the said suit

came to be filed may briefly be stated as follows :

2. The plaintiff was a permanent employee of the defendant-Bank. He was the Manager in the appellant's branch at Sankarankoil when certain

charges were framed against him. In relation to the said charges, an enquiry was conducted by the appellant-Bank and as a result of the said

enquiry the plaintiff was discharged from his service. Aggrieved against the order of discharge, the plaintiff filed this suit seeking a declaration that

his discharge was illegal and void and for reinstatement to his office or in the alternative damages for a sum of Rs. 10,000 for breach of contract of

service.

3. The defence put forward by the appellant-bank in the said suit was as follows :

The plaintiff was appointed as an officer in Grade IV and was placed in charge of the Sankarankoil branch subject to the regulations in the

appellant-Bank's Service Code, Exhibit B3. During the period when the plaintiff was in charge of the Sankarankoil branch, he committed various

irregularities and misconduct which were not only detrimental to the interests of the bank but were also subversive of discipline. For the said

irregularities and misconduct committed by the plaintiff, the appellant-bank, without dismissing the plaintiff from service, discharged him from

service as per the provisions in the Service Code, Ext. B3. The said discharge of the plaintiff from his service cannot be questioned in a civil Court

and in any event, the plaintiff cannot claim damages in a sum of Rs. 10,000 which is excessive. According to the appellant-bank the plaintiff was

given full and effective opportunity to defend himself during the enquiry on the charges levelled against him, and there had been no violation of any

of the principles of natural justice, and, therefore, no interference is, called for by the Court even if it has jurisdiction to entertain the suit to interfere

with the order of discharge.

4. The trial Court, on a consideration of the evidence adduced by the parties, held that the order of discharge of the plaintiff was not legal and valid

and awarded the alternative relief of damages, to the plaintiff without costs. According to the trial Court, the enquiry conducted by the appellant-

bank in relation to the charges levelled against the plaintiff, was not fair and proper and the plaintiff did not have an effective opportunity to defend

himself. Aggrieved again the decision of the trial Court, the appellant-bank went in appeal to the lower appellate Court. The plaintiff filed a cross

objection praying that he should be ordered to be reinstated instead of the grant of monetary relief by way of damages. The lower appellate Court

held that the enquiry by the Deputy General Manager of the appellant-bank was not fair and proper, that the same was vitiated of the principles of

natural justice, but that the plaintiff cannot seek reinstatement in the suit and that he will be entitled to claim only damages, for wrongful discharge

from service. The lower appellate Court, then proceeded to grant a decree for the sum of Rs. 10,000, the actual amount claimed by the plaintiff as

damages for breach of contract of service. On the question as to whether a civil Court has jurisdiction to entertain a suit of this nature, the lower

appellate Court held that it has jurisdiction to entertain the suit. In this view, the lower appellate Court dismissed the appeal filed by the appellant-

bank and allowed the cross-objection filed by the plaintiff in so far as it related to costs in the trial Court. Aggrieved against the view taken by the

lower appellate Court, the Bank has come to this Court by way of this second appeal.

5. The main contention advanced by the appellant-bank in this Second Appeal is that the plaintiff having been discharged from service in pursuance

of a specific power reserved by it under the Service Code, the validity of such a discharge cannot be questioned in a civil Court, that the civil Court

has no jurisdiction to entertain a suit for wrongful discharge in the face of the service code and that no relief could be granted to the plaintiff based

on such a discharge. The appellant-bank has also challenged the decisions of both the Courts below on the issue as to whether the domestic

enquiry conducted by the appellant-bank was fair and proper. According to the bank, the rules of natural justice had been strictly followed and the

plaintiff did not urge at the time of the enquiry that he was not given sufficient time for making his representations or filing his objections to the

show-cause notice and it is only after the order of discharge had been passed he has chosen to allege that a reasonable opportunity was not given

to him to defend himself. It does not appear to be necessary to go into all the other pleas raised by the appellant, as it is entitled to succeed on the

substantial question referred to above, that is, as to whether the civil Court has jurisdiction to declare the order of discharge passed by the

appellant-bank as invalid for violations of the principles of natural justice when the said order has been passed in pursuance of a power reserved

by the management in the Service Code.

6. It is not in dispute that on a routine inspection made by D.W. 2, the District Supervisor, in 1964, of the Sankarankoil branch which was in the

charge of the plaintiff, certain defects have been set out in the Inspection Questionnaire, Exhibit B4. In his reply to the said questionnaire, Exhibit

B-4, the plaintiff had stated that the mistakes referred to therein had been duly rectified. The Sankarankoil branch was again inspected by D.W. 2,

in the year 1965 and he sent his report, Exhibit B-31, to the head office stating that five of the defects pointed out in the earlier questionnaire

attached to the previous inspection report, had not been rectified though the plaintiff had stated that they had been duly rectified, in his reply. The

Deputy General Manager of the bank, on the basis of Ext. B31, the second inspection report of D.W. 2, called upon the plaintiff, under Exhibit A-

3, to show cause why a serious view should not be taken of his conduct in stating that the mistakes referred to in Exhibit B4, have been rectified

while, in fact, they have not been so rectified. The plaintiff sent a reply in Ext. B5 stating that he thought he could rectify the defects pointed out in

due course, but he could not rectify the same as he had been deputed to Bangalore to attend the staff training course and that later he completely

forgot about the defects. As regards the conduct of the plaintiff in stating that the defects have been rectified while in fact, they have not been

rectified, a charge-sheet, Ext. B6, was issued to him on 8th October, 1965 and the said charge-sheet contained five charges relating to the five

defects pointed out in Exhibit B4, which, according to the bank, had not been rectified at all. According to the bank, the plaintiff had made a false

statement that the defects mentioned in Exhibit B6 had been rectified while actually they had not been rectified by him. To the said charge-sheet

Exhibit B6, dated 8th October, 1965, the plaintiff sent a reply Ext. B7, wherein he has stated that he did not make a false statement knowingly,

that he was in bona fide belief that the defects could be rectified by him before the next inspection and that, therefore, charges framed against him

should be dropped. But, the Deputy General Manager of the bank initiated enquiry on the said five charges and after giving him an opportunity to

defend himself with reference to the said charges, came to the conclusion that the plaintiff was guilty of misconduct and that the proper punishment

for such misconduct, was one of dismissal from service. Thereafter, the plaintiff was given a show cause notice proposing the punishment of

dismissal and calling upon him to show cause why the said punishment should not be imposed, on the charges which had been held proved. The

plaintiff sent a reply and after consideration, of the reply, the Deputy General Manager felt that though the plaintiff was liable to be dismissed, it is

enough if he is discharged from service as per cl., (11) of Chapter XI of the Service Code of the bank. The said clause reads as follows :

In awarding punishment under this Chapter, there shall be taken into account the gravity of the misconduct, the previous record, if any, of the employee and any other aggravating or extenuating circumstances which 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 salary and emoluments in lieu of notice. Such discharge may also be given where the evidence is insufficient to sustain the charge but where on grounds of expediency or other grounds it is deemed undesirable to retain the employee in question any longer in the service of the Bank; the discharge in such a case shall not be deemed to amount to disciplinary action. The said clause proceeds on the basis that even in a case where an employee of the bank has committed a misconduct, if there are sufficient extenuating circumstances, the misconduct may be condoned or if the misconduct is of a gross type, he may be merely discharged with or without notice or on payment of a month's salary and emoluments in lieu of notice and in such a case, the discharge shall not be deemed to amount to a disciplinary action. It is not in dispute that though originally the bank intended to impose the punishment of dismissal on the plaintiff and issued a show-cause notice to that effect, it ultimately passed an order of discharge under the said clause of the Service Code. The ultimate order of discharge passed by the bank discharging the plaintiff from service cannot be treated as a penalty imposed in pursuance of a disciplinary action, in view of the specific language contained in clause (11).

7. According to the learned counsel for the appellant, where the power of discharge contained in clause (11) of Chapter XI has been exercised by the bank, the said order cannot be considered as an order of punishment imposed in the course of a disciplinary proceeding and therefore, the Courts below are in error in going into the question as to whether the order is vitiated by violation of the principles of natural justice or whether it violated Art. 311 of the Constitution. In this case, both the Courts below have not dealt with the significance of the said clause (11). They have merely proceeded on the basis that the order of discharge is a punishment meted out to the plaintiff as a result of the disciplinary proceeding and; therefore, it should satisfy the requirements of Art. 311 of the Constitution and

as the plaintiff had no reasonable opportunity to defend himself, the order of discharge should be taken to be vitiated, for violation of the principles of natural justice. According to the Courts below, the violation of the principles of natural justice consists of two circumstances; one is that the plaintiff was not given sufficient time to file his explanation to the charges and the other is that he was not given sufficient time to file his explanation to the show-cause notice proposing the punishment. The time given to the plaintiff by the bank for submitting his explanation to the charge memo is a period of three days and within the period of three days, the plaintiff had, in fact, filed his explanation. He never complained that the period of three days given to him for filing the explanation was not sufficient. He never represented that he had to go from Bangalore to Sankarankoil to collect materials for submitting his explanation and, therefore, the time for submission of the explanation should be extended. When there is no request for extension of time or complaint that the time granted was not sufficient then and there the Courts below are not justified in stating that the time granted for submission of the explanation is inadequate. As regards the show cause notice proposing punishment, it is true that the plaintiff was asked to give his objections to the show-cause notice within 3 p.m. on the same day as the day of service of the show-cause notice. But, the plaintiff gave his objections on the same day and he never complained that he was not in a position to file his objections within 3 p.m. as stated in the show-cause notice and he also did not ask for any extension of time for filing his objections to the show-cause notice as called upon on the same day, he cannot now turn round and say that he was prejudiced in not giving larger period of time for filing his objection. The plaintiff has not anywhere stated as to how he was prejudiced in filing his explanation within three days to the charge memo, and his objections to the show-cause notice within a day. The Courts below also did not find as to how the plaintiff was prejudiced in filing his explanation to the charge memo, and the objections to the show-cause notice within the time specified therein. Except saying that the time granted by the bank for submitting an explanation, to the charge memo, and also objections to the show-cause notice proposing punishment, is too short, no material has been referred to by the Courts below in support of their conclusion that the

principles of natural justice have been violated and considerable prejudice has been caused by such violation to the plaintiff. I am, therefore, of the

view that the Courts below were not right in holding that the principles of natural justice have been violated in the conduct of the enquiry by the

bank. "Even assuming that the enquiry is defective as has been found by the Courts below, still that will not invalidate the order of discharge passed

in this case as it is one passed not as a punishment but as a termination of service contemplated by clause (11) of Chapter XI of the Service Code

extracted above. As per the said clause. even if the Charges are not proved and the evidence is insufficient to sustain the charges, the services of

the employee can be discharged under that clause with or without notice or on payment of a month's salary and emoluments in lieu of notice.

When the service regulations specifically say that an order of discharge passed under clause (11) is not an order of punishment arising out of

disciplinary action, the Courts below Were not right in treating the order of discharge as one by way of punishment imposed in the course of the

disciplinary action. Once the order of discharge passed by the bank is not treated as punishment in the course of disciplinary action, then the

question as to whether the principles of natural justice had been violated at any stage of the disciplinary proceeding will not arise. As already

stated, this aspect of the matter has not been considered by both the Courts below, even though the bank has come forward with the specific case

that the order of discharge had been passed under clause (11) of Chapter XI of the Service Code. In my view, therefore, even assuming that there

has been violation of the principles of natural justice as alleged by the plaintiff, the order of discharge passed in this case cannot be set aside as

being void or illegal. Hence there is no question of any breach of contract of service and no liability to pay damages for breach of contract arises.

The decisions of the Courts below holding that the bank is liable to pay damages for breach of contract of service cannot, therefore be sustained.

However, having regard to the special circumstances of this case, this Court suggested that a sum of Rs. 2,000 may be paid by the bank to the

plaintiff as an ex gratia payment and the bank out of deference to the suggestion by the Court, paid the said amount to the plaintiff. by way of a Pay

Order and the said Pay Order has been received by the learned counsel for the plaintiff.

8. In the circumstances, therefore, the second appeal is allowed and the judgment of the Courts below are set aside and the suit will stand dismissed. There will, however, be an order as to costs throughout.