
(1980) 02 GUJ CK 0021
In the Gujarat High Court

Central Bank of India

APPELLANT

Vs

Ghanshyamlal Mohanlal Jani

RESPONDENT

Date of Decision : 06-02-1980

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Constitution of India, 1950 — Article 14, 16

Citation : (1981) 22 GLR 145

Hon'ble Judges : M.P. Thakkar, J;D.C. Gheewola, J

Bench : Division Bench

Judgement

M.P. Thakkar, J.—The only question which arises in this appeal by the Central Bank of India which has been directed by the learned Civil Judge (S.D.) Surendranagar, in Special Civil Suit No. 47 of 1973, to pay to its ex-employee, respondent-plaintiff G.M. Jani, a sum of Rs. 8,800/~ in connection with his Provident Fund dues, and Rs. 14,000/- in connection with his claim for gratuity, is as to whether the learned trial Judge was in error in negating the plea of the appellant Bank that it was entitled to withhold the aforesaid amounts. The suit giving rise to the appeal was instituted by the plaintiff, an ex-officer of the Bank, seeking a declaration that an order of dismissal from service passed by the Bank on Sept. 13, 1969 was illegal and ultra vires. The plaintiff also prayed for consequential reliefs. The plaintiff also claimed that he was entitled to be paid a sum of Rs. 8,800/- which was at his credit in his Provident Fund Account and a sum of Rs. 14,000/- in connection with gratuity. The defendant-Bank in its written statement, contended the plaintiff was not entitled to the payment of the Provident Fund amount and the gratuity amount without disclosing the legal basis for withholding the said amount. The trial Court on an appreciation of evidence came to the conclusion that the plaintiff had failed to establish his case in so far as the impugned order of dismissal dated September 13, 1969 was concerned. The suit of the plaintiff in so far as the relief for declaration in this behalf was concerned was dismissed. The trial Court, however, came to the conclusion that the defendant Bank was not justified in withholding the amount

of Provident Fund and gratuity in view of the fact that the Bank had failed to make out the case that it was entitled to withhold these amounts as per the relevant rules. Thereupon the unsuccessful Bank has approached this Court by way of the present appeal and has contended that the trial Court ought to have upheld the plea that the Bank was entitled to withhold these amounts. In so far as the plaintiff has failed in his challenge to the impugned order of dismissal dated September 13, 1969, it has been accepted by the plaintiff in the sense that it has not been questioned by way of a cross appeal or cross objections. We are, therefore, not concerned with that part of the case and need not invest public time in adverting to the facts and circumstances pertaining to the order of dismissal or the grounds on which it was challenged.

2. As mentioned earlier, the defendant Bank did not make explicit its stand in regard to the alleged right to withhold payment of Provident Fund and gratuity as claimed by the plaintiff in the written statement. All the same it appears that when the matter came up for arguments, reliance was placed on Rules 17 and 18 of the Provident Fund Rules of the Bank, and on a Circular being Circular No. 6 of 1968 regarding payment of gratuity to office staff. The Bank did not place on record the full text of the rules or the Circular. The Bank placed on record at Ex. 73 an extract from the Rules which was certified to be a true copy by an officer of the Bank. So also the Bank also placed on record an extract of the official Circular No. 6/68 at Ex. 74. These extracts typed on the letter-head of the defendant Bank have been received in evidence and marked Exs. 73 and 74 by consent. An argument to the following effect was advanced on the basis of Exs. 73 and 74 before the trial Court. The Bank was entitled to withhold from the Provident Fund Account of the plaintiff amount equivalent to the contributions made by the Bank to the said Account in view of Rules 17 and 18 contained in Ex. 73. It was also argued that the Bank was entitled to withhold the payment of gratuity in view of Ex. 74. In order to understand the argument these extracts require to be reproduced:

Extract From Provident Fund Rules Of The Bank Under Which A Member who Is Dismissed For misconduct is Not Entitled To Claim The Bank's Contribution To His Provident Fund.

x x x x x x x x Rule No. 17. "Any contributor who is dismissed for insubordination, misconduct, fraud or any other cause of a like nature or retires from the Bank in consequence thereof shall only be entitled to repayment of the amount of his own contributions with the interest accrued thereon at the rate and in manner aforesaid. The Trustees shall be sole judges of the sufficiency of the cause of the dismissal or retirement of any contributor in any of the foregoing cases.

Rule No. 18. If a contributor is dismissed for fraud or misconduct the Bank shall be entitled to recover from the contributions made by the Bank to the individual account of the contributor and the interest (simple and compound) credited in respect of such contributions, any loss or damage resulting to the Bank from the

cause which entailed such dismissal. The Board shall be entitled to declare the amount of loss or damage so resulting and their declaration in that behalf shall be final and conclusive and the amount so declared be paid to the Bank.

Extract From Head Office Circular No. 6 of 1968 Regarding Gratuity To Officer-Staff:

x x x x x x x x x Notwithstanding anything contained in these rules, no gratuity will be payable to an officer who, in the opinion of the Board of Directors, which shall be final and conclusive, is guilty of misconduct or negligence, whether or not such misconduct or negligence involves financial loss to the Bank.

It will be seen that Rule 18 authorises the Bank to withhold contribution made by the Bank to the individual account of the contributor in a case of dismissal for fraud or misconduct provided and only provided the Board, which means Board of Directors, has made a declaration in that behalf. Admittedly no such declaration had been made by the Board of Directors at the point of time when the suit came up for hearing before the trial Court. This factual position was not disputed. Under the circumstances, the learned trial Judge rightly came to the conclusion that the condition precedent for the exercise of the power to withhold the contribution made by the Bank in the individual account of the plaintiff was not satisfied and that the Bank was not entitled to withhold such sum from the Provident Fund Account. A similar view was taken on the same line of reasoning in the context of Ex. 74 in regard to the claim for the gratuity amount. Ex. 74 in terms inter alia provides that the gratuity amount will not be paid to an officer who, in the opinion of the "Board of Directors", is guilty of misconduct or negligence. The opinion has, therefore, to be formed by the "Board of Directors,". It was not in dispute that the Board of Directors had never considered the question at its meeting or formed any such opinion and that there was no such resolution in existence. Under the circumstances, the trial Court came to the conclusion, which was the only possible conclusion, that the condition precedent for withholding the amount of gratuity as per Ex. 74 was also not satisfied. The learned trial Judge accordingly decreed the suit of the plaintiff.

3. Learned Counsel for the appellant Bank was not in a position to dispute that the "Board of Directors" had not taken any such decision or passed any resolutions in that behalf in the context of Exs. 73 and 74 till the decree was passed. Nor was he able to contend that in the absence of such a resolution the impugned decision for withholding gratuity and pension could be legally taken. He however, contended that subsequently, after a lapse of several years, during the pendency of this appeal, the Board of Directors had passed an appropriate resolution in this behalf at its meeting dated July 11, 1979. It may be stated that the suit was instituted on September 11, 1973 and was decreed by the trial Court on January 31, 1979. The present appeal was instituted by petitioner on June 18, 1979. Thus, the aforesaid resolution dated July 11, 1979 was passed virtually giving post facto sanction with retroactive effect some six years after the impugned decision was taken and the suit giving rise to this appeal was

instituted, and some seven months after the decision of the trial Court. And that resolution passed after this appeal was admitted is sought to be produced by way of Civil Application No. 288 of 1980 which was instituted four days back on February 2, 1980. We do not propose to examine whether or not these documents should be permitted to be received in evidence by way of additional evidence during the pendency of the appeal under Order 41 Rule 27 of the Code of Civil Procedure. Having regard to the time-cost which has been already incurred (more than 7 years) we have granted the request made by the learned Counsel for the appellant Bank to take these documents on record subject to and without prejudice to the rights and contentions of the other side. We shall presently point out that even if these resolutions are taken into consideration, the appellant cannot succeed. But before we do so, we must reproduce the resolution said to have been passed at the meeting of the Board of Directors on July 11, 1979 which has been produced before the Court in the aforesaid circumstances:

Item 1720

The Board considered the Management's Note on forfeiture of terminal benefits of Shri J.M. Jani, Sub-Accountant/Office-in-Charge of the Bank's Joravarnagar (Gujarat) branch, on his dismissal from service in March 1959. The Board noted that in a civil suit filed by Shri Jani while the Management's action of dismissal was upheld, the court had directed the Bank to pay the sum of Rs. 22,800 to Shri Jani towards his Provident Fund and Gratuity dues, on the ground that the competent authority empowered to forfeit a member's Provident Fund and/or Gratuity dues, namely : the Board of Directors, had not passed the requisite Resolution for forfeiture of terminal benefits of Shri Jani. The Board was informed that this was only a technical lacuna and the Management had appealed against the court's order. Having regard to all aspects of the matter, the Board felt that this was a fit case for forfeiture of terminal benefits and while concurring with the Management's decision to appeal against the Court's order advised the Management to obtain a stay of the order for payment until the Bank's Appeal was heard.

RESOLVED THAT, having regard to the gravity of the misconduct of Shri G.M. Jani, erstwhile Officer-in-Charge (Sub-Accountant) of the Bank's Joravarnagar (Gujarat) branch, which had caused a financial loss to the Bank, the Board do consider this as a fit case for forfeiture, of the Bank's contribution to the Provident Fund and the Gratuity payable to Shri G.M. Jani, to the extent of the financial loss occasioned to the Bank, and the Board do hereby accordingly recommend to the Trustees of the Central Bank of India Employees' Provident Fund and the Trustees of Central Bank of India Employees Gratuity Fund.

FURTHER RESOLVED that the Bank Management be and is hereby advised to convey the foregoing decision of the Board to the Trustees of the Central Bank of India Employees' Provident Fund/Gratuity Fund, subject to the decision of the Court in the Appeal filed by the Management against the lower Court's Order for

payment of terminal benefits to Shri G. M. Jani passed in civil application filed by the latter.

4. Now the following features pertaining to the aforesaid resolution require to be kept in focus and highlighted:

(i) The resolution in terms places on record that the Board of Directors had not passed the necessary resolutions for withholding the Provident Fund and Gratuity amounts till July 11, 1979.

(ii) The Board of Directors has not made any declaration in the aforesaid resolution to the effect that any loss or damage had resulted to the Bank in connection with the alleged fraud or misconduct of the employee concerned.

(iii) The Board of Directors has not specified the amount of the alleged loss or damage resulting to the Bank in the aforesaid resolution, and no declaration in that behalf is contained therein.

(iv) In order to succeed, the appellant Bank will have to show that is justified under Rules 17 and 18 in making the deduction from the contribution made by the Bank to the individual account of the contributor and that the conditions prescribed by Rules 17 and 18 have been satisfied.

5. On an analysis of Rules 18 it is abundantly clear that a recovery can be made by the Bank from the contribution made by the Bank to the individual account of the employee concerned provided and only provided the Board of Directors makes two declarations viz. (i) that loss or damage has in fact been occasioned to the Bank on account of the alleged fraud or misconduct which formed the basis of the order of dismissal, and (2) that the amount of loss or damage so sustained was to the tune of the specified amount as declared in the resolution. These declarations have to be made by the Bank as per Rule 18. The said rule has been reproduced at an earlier stage. It will, therefore, be sufficient to quote the relevant part of Rule 18 which adverts to the declaration on the aforesaid two points:

The Board shall be entitled to declare the amount of loss or damage so resulting and their declaration in that behalf shall be final and conclusive and the amount so declared be paid to the Bank.

Thus, it is clear that the condition precedent has not been satisfied inasmuch as there is no declaration on the aforesaid aspects in the resolution passed by the Board of Directors. As we have pointed out earlier, no such declaration has been embodied in resolution dated July 11, 1979 which has been placed on record by way of additional evidence in the circumstances narrated earlier. Learned Counsel for the appellant Bank is not able to point out any portion of the said resolution which contains any such declaration. Under the circumstances, even if we take into account the additional evidence produced by the appellant Bank, matters will not be improved from the point of view of the appellant. Having regard to the fact that the condition precedent is not satisfied it is clear that the appellant

Bank is not entitled in law to withhold the amount under Rule 18. Learned Counsel, however, contended that Rule 17 did not entitle the employee to claim repayment of the sum standing at his Provident Fund Account. Now, Rules 17 and 18 form an integral part of the scheme pertaining to the Provident Fund Account of an employee which relates to payment of the amount standing in the Provident Fund account to the employee in case of his dismissal for misconduct, fraud etc. All that Rule 17 provides in essence is that even in case of a dismissal for misconduct, fraud etc. the employee concerned will be entitled to repayment of the amount of his own contributions with interest accrued thereon. It is Rule 18 which is the specific rule pertaining to the power of the Bank to make deduction or recovery from the contributions made by the Bank to the individual account of the employee concerned. Rule 18 is the only rule which authorises the Bank to make deduction by way of recovery from the contributions made by the Bank to the individual account provided the Board of Directors has made the two requisite declarations referred to earlier. There is, therefore, nothing in Rule 17 which authorised the Bank to withhold the sum of Rs. 8800/- by the plaintiff. We are, therefore, unable to accede to this submission urged by the learned Counsel for the appellant Bank.

6. It may also be stated that there is another good reason for negating (the contention of the appellant Bank advanced on the basis of the resolution dated July 1), 1979 passed by the Board of Directors which has been placed on record by way of additional evidence. Before passing this resolution the Board of Directors has not heard the plaintiff-employee. It is a resolution passed by the Board behind the back of the plaintiff. To say that the Bank has the power to withhold the amount as per the resolution containing the requisite declarations is one thing. To say that such a resolution can be validly passed without hearing the employee concerned is another. The Central Bank of India, it is not in dispute, is a Nationalised Bank owned by Union of India. It is a "State" for the purposes of Articles 12 and 14 of the Constitution of India see *Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, . In Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, , the principle has not only been affirmed but the principle has been extended to cover autonomous Corporations. The appellant Bank being "State" within the meaning of Articles 12 and 14 cannot act in an arbitrary manner in violation of principles of natural justice in the matter of a decision to withhold the amount at the credit of the plaintiff in his Provident Fund account. This is another reason why the appellant must fail.*

7. The same reasoning will apply in regard to the claim for gratuity. It may be stated that Ex.74 is an extract from Head Office Circular No. 6 of 1968. The Circular in its entirety has not been produced. Whatever departmental instructions might have been issued by the Circular, the same cannot affect the right of the plaintiff. The right of the plaintiff to claim gratuity cannot be taken

away by an inter-departmental circular. We do not know what is the authority of the Circular and what is its legal authority. If the appellant Bank wants to withhold the payment of the gratuity amount, the burden is on the Bank to establish that it has a right to withhold it. This burden has not been discharged. Assuming that Circular Ex. 74 confers uncontrolled powers to withhold the amount of gratuity, the instructions contained in its inter-departmental Circular can have no legal impact on the rights of the plaintiff employee. Besides, the Bank cannot take a decision to refuse the claim for gratuity amount in an arbitrary manner without violating Articles 14 & 16 of the Constitution. Thirdly the decision has been taken without affording an opportunity to the plaintiff to show cause why the amount of gratuity should not be forfeited under Circular Ex. 74. These three reasons individually and cumulatively are sufficient to negative the contention of appellant Bank.

8. In the result, the decree passed by the trial Court must be confirmed. The appeal fails and is dismissed with costs. The interim orders will stand vacated forthwith.