

(1996) 01 SC CK 0236
In the Supreme Court Of India
Case No : SLP (C) No. 4395Of 1995

Chairman and Managing Director, Andhra Bank and Others	APPELLANT
Vs	
Ramoo Ramesh and Another	RESPONDENT

Date of Decision : 08-01-1996

Acts Referred:

Citation : (1997) 11 SCC 597 : (1998) SCC(L&S) 250

Hon'ble Judges : S. C. Agrawal, J;G. T. Nanavati, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.C. Agrawal and; G.T. Nanavati, JJ.-We have heard the learned Additional Solicitor General in support of the application for restoration. Subject to the payment of Rs 500 which amount has already been deposited by the petitioners and has been withdrawn by Respondent 1, the said application is allowed and the special leave petition is restored to its original position.

2. Taken on board.

3. Leave granted.

4. This appeal is directed against the judgment of the Kerala High Court dated 28-10-1994 dismissing the appeal filed by the appellants against the judgment of the learned Single Judge in writ petition [OP No. 10338 of 1989 (E)] filed by the respondent. The facts briefly stated are as follows:

The respondent is employed with the Andhra Bank (hereinafter referred to as "the Bank") and, at the relevant time, he was posted as the Manager of Ernakulam Branch of the Bank. Certain irregularities were found in the conduct of accounts of certain parties in that branch and by order dated 29-8-1984, passed by the Assistant General Manager of the Bank, the respondent was placed under suspension. Thereafter, a charge-sheet dated 7-5-1985, containing 17 charges, was served on the respondent and disciplinary proceedings were initiated on the

basis of the said charge-sheet. But, in the meanwhile, the matter was taken up for investigation by the Central Bureau of Investigation and the respondent was prosecuted before a criminal court. The respondent was, however, acquitted in the said case. The respondent, however, continued to remain under suspension since 29-8-1994. On 7-12-1989, he filed the writ petition giving rise to this appeal challenging the order of suspension. It was submitted that the said order has not been passed by the authority competent to place the respondent under suspension under Regulation 12 of the Andhra Bank Officers, Employees (Discipline & Appeal) Regulations, 1981 (hereinafter referred to as "the Regulations"). In the said writ petition the learned Single Judge passed an interim order dated 12-12-1990, directing that full salary be paid to the respondent from 1-12-1990 till the enquiry was completed. In accordance with the said direction, the respondent has been paid full salary with effect from 1-12-1990. By judgment dated 25-3-1992, the writ petition filed by the respondent was allowed by the learned Single Judge. It was held that the Assistant General Manager who had passed the order of suspension was not competent to pass the said order and the order of suspension was quashed. The Division Bench, in appeal, has affirmed the said judgment of the learned Single Judge.

5. It appears that in the disciplinary proceedings Charges 1 and 5 have been found to be established against the respondent and the disciplinary authority, namely, the Assistant General Manager, has passed an order dated 4-12-1992, imposing the punishment of reduction of pay up to two stages in the time scale. As regards the payment of back wages for the period of suspension, the said order states that the Bank would be guided by the orders of the High Court.

6. The learned Additional Solicitor General, appearing for the appellants, has submitted that although no person had been nominated as the competent authority who could pass the order of suspension under Regulation 12 of the Regulations but having regard to the nature of the power to suspend an employee during the pendency of disciplinary proceedings against him it is implicit that the said power of suspension can be exercised by the disciplinary authority who is competent to impose the penalty of removal and dismissal on the employee and, therefore, the order of suspension dated 29-8-1984, passed by the disciplinary authority, viz., Assistant General Manager, was an order passed by the authority competent to suspend the respondent.

7. We find it difficult to accept this contention. A perusal of the Regulations shows that a distinction has been made between the disciplinary authority who can impose a punishment on the delinquent officer and the competent authority under Regulation 12 who can place him under suspension. It is no doubt true that the Assistant General Manager was the disciplinary authority who could impose the penalty of removal or dismissal on the respondent. But that does not mean that he was also the competent authority for the purpose of Regulation 12 of the Regulations. It is not disputed that no authority had been nominated as

the competent authority under Regulation 12 till 16-5-1991, when the Assistant General Manager has been nominated as the competent authority for the purpose of passing the order of suspension, in respect of officers in MMGS III. The said nomination is of no avail to the appellants in the present case because the order of suspension was passed much earlier on 29-8-1984. In our opinion, therefore, the High Court has rightly held that the Assistant General Manager, though the disciplinary authority in respect of the respondent, could not be regarded as the competent authority who could pass the order of suspension under Regulation 12. The direction given by the High Court quashing the order of suspension dated 29-8-1984 must, therefore, be upheld.

8. During the period of suspension the respondent was paid subsistence allowance, which was less than his salary, from 29-8-1984 to 30-11-1990 and was paid the full emoluments from 1-12-1990. Since the respondent did not challenge the order of suspension during the period from 29-8-1984 till 7-12-1989 and he filed the writ petition in the High Court challenging the order of suspension only on 7-12-1989, we are of the view that the benefit of the quashing of the order of suspension as regards payment of arrears on account of difference between the subsistence allowance paid to him and the salary and allowances that were payable to him should be confined to the period subsequent to his filing the writ petition in the High Court, i.e., from 7-12-1989 and he would not be entitled to payment of any arrears on account of quashing of the order of suspension in respect of the period from 29-8-1984 to 7-12-1989. The entire period of suspension will, however, be counted as period of service of the respondent for all other purposes. The appeal is allowed accordingly. No order as to costs.