(2005) 08 CHH CK 0004

In the Chhattisgarh High Court

Case No : Writ Petition No. 2021 of 1999

Chhedi Lal Gupta APPELLANT

Vs

Branch Manager, SBI and Others RESPONDENT

Date of Decision : 16-08-2005

Acts Referred:

Banking Regulation Act, 1949 — Section 10, 10(1)(b)(i)
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 — Section 3(1), 3(1)(2), 3(1)(5)

Citation : (2006) 1 CGLJ 187

Hon'ble Judges : Sunil Kumar Sinha, J

Bench : Division Bench

Advocate : Sanjay K. Agrawal and Pratibha Verma, for the Appellant; P. Diwakar and Kasif Shakeel, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Kumar Sinha, J.—This writ petition has been filed for quashing of the order of dismissal (Annexure P-7) passed on 18-2-1999 by the disciplinary authority, Respondent No. 2.

2. The facts of the case are that the Petitioner was working as Deputy Head Cashier in the State Bank of India. He was tried for a Criminal Case under Sections 3(1)(ii) and 3(1)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 (hereinafter referred to as "the Act") vide Special Case No. 71/1996. The special Court convicted the Petitioner u/s 3(1)(ii) of the Aforesaid Act on 14-10-1998. However he was acquitted of the charges framed u/s 3(1)(v). The Petitioner was sentenced to undergo Rigorous Imprisonment for two years and to pay a fine of Rs. 1000/-, in default of payment of fine, to further undergo R.I. for 3 months. This judgment of conviction and sentence awarded to the Petitioner was challenged before the High Court in Criminal Appeal No. 2449/1998 in which the sentence awarded to the Petitioner was suspended vide order dated 30-10-1998. The appeal is still

pending for its disposal. In the meanwhile, the Bank issued a memo to the Petitioner calling explanation regarding the aforesaid conviction. The Petitioner submitted his reply on 21-1-1999 to the aforesaid memo issued to him. Thereafter the disciplinary authority without conducting any enquiry and without recording any finding regarding the nature and character of involvement passed the impugned order dated 18-2-1999 dismissing the Petitioner from service. It is against this order, the Petitioner has filed this writ petition.

3. Learned Counsel for the Petitioner submits that the impugned order has been shown to have been passed in terms of Section 10(1)(b)(i) of the Banking Regulation Act 1949 (For short ''Act of 1949) read with para 521 (2)(b) of Shastri Award read with Desai Award with effect from 14-10-1998 i.e., the date of conviction, but none of these provisions give an authority to Respondent No. 2 to pass such an order of dismissal on the basis of the conviction without recording a finding about the conviction of the Petitioner for an offence involving moral turpitude. He further submits that what is meant by an offence involving moral turpitude, referred to in both of these provisions mentioned in the impugned order, was required to be taken note of by the disciplinary authority. There is no finding that the Petitioner was guilty of an offence involving moral turpitude. In fact the offence u/s 3(1)(ii) of the Act may not be covered under an offence involving moral turpitude, therefore, this order of punishment is bad in law.

4. On the other hand learned Counsel for the Respondents submits that after the conviction of the Petitioner, he was served with a notice and after considering the reply, the Petitioner has rightly been dismissed from service as such the act of the Petitioner falls within the ambit of an offence involving moral turpitude.

5. I have heard learned Counsel for the parties at length and have also perused the records of the writ petition.

6. First of all, I quote the impugned order passed by the disciplinary authority:

Shri Chedilal Gupta, S/o Shri Raghunandan Pd. Gupta, Dy. Head Cashier, State Bank of India, Railway Colony Branch, Bilaspur(M.R)

Regional office Bilaspur

BRO/AGM/STAFF/321 Date: 18-2-1999

CONVICTION BY SPECIAL COURT (ATROCITIES) BILASPUR (M.P.)

It has been brought to our notice that you have been convicted by the Court of Shri B.P. Mishra, Special Judge (Atrocities) Bilaspur on 14-10-1998 u/s 3(1)(2) and 3(1)(5) of Prevention of Atrocities against S.C.S.T. Act 1989, in Criminal Case No. 71196 for 2 years rigorous imprisonment with a fine of Rs. 1000.00

2. I, as a disciplinary Authority, have therefore decided to dismiss you from Bank''s service in terms of Section 10(1)(b)(i) of Banking Regulation Act 1949 read with para 521(2)(b) of Sastri Award read with Desai Award with effect from 14-10-1998 i.e., the date of conviction order passed by the Court.

Sd/- Asst. General Manager (Disciplinary Authority)

7. It appears from para 2 of the order that since the Petitioner has been convicted by the Special Court u/s 3(1)(ii) of the Special Act he has been dismissed from Bank''s service u/s 10(1)(b)(i) of the Act of 1949 and para 521(2)(b) of the Sastri Award. Section 10(1)(b)(i) of the Banking Regulation Act, 1949 provides as under:

10. Prohibition of employment of Managing Agents and restrictions on certain forms of employment.- (1) No banking company, -

(a) Shall employ or be managed by a Managing Agent; or

(b) shall employ or continue the employment of any person.-

(i) who is, or at any time has been, adjudicated insolvent, or has suspended payment or has compounded with his creditors, or who is, or has been, convicted by a criminal Court of an offence involving moral turpitude; or

(only the Relevant portion quoted)

Para 520 and 521 of Sastri Award is also quoted as under:

Section III-Procedure for taking disciplinary action.

520. Under the subject of disciplinary action we deal with dismissal, suspension, warning or censure, fine, the making of adverse remarks and the stoppage of an increment.

521. A person against whom disciplinary action is proposed or likely to be taken should in the first instance, be informed of the particulars of the charge against him; he should have a proper opportunity to give his explanation as to such particulars. Final orders should be passed after due consideration of all the relevant facts and circumstances. With this object in view we give the following directions:

(1) By the expression "offence" shall be meant any offence involving moral turpitude for which an employee is liable to conviction and sentence under any provision of law.

(2)(a) When in the opinion of the management an employee has committed an offence, unless he be otherwise prosecuted, the bank may take steps to prosecute him or. get him prosecuted; and in such a case he may also be suspended.

(b) If he be convicted he may be dismissed with effect from the date of his conviction or be given any lesser form of punishment as mentioned in sub-paragraph of (5) below.

(only the Relevant portion quoted)

8. After bare perusal of the provisions of Banking regulation Act, 1949 it would

appear that the disciplinary authority can remove a person from his service on the basis of his conviction by a criminal Court only when the person is convicted for an offence involving moral turpitude. The relevant provisions of Sastry Award vide sub-para 1 of para 521 also provides that the expression "offence" used in this paragraph shall be meant any offence involving moral turpitude for which an employee is liable for conviction and sentence under any provision of law. Both these provisions go to show that there cannot be dismissal of an employee unless he has been convicted for an offence involving moral turpitude. After conviction of a person, if the offence convicted for has not been held to be an offence involving moral turpitude then the person cannot be dismissed from service under the aforesaid provisions. What is a moral turpitude is a matter of discussion and determination by the concerned authority at the appropriate stage.

9. The Apex Court in the matter of Pawan Kumar Vs. State of Haryana and another, held that the "moral turpitude" is an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity. While considering the matter the Apex Court has also referred about the policy decision of Government of Haryana modifying the earlier decision by streamlining determination of moral turpitude which is as follows:

... The following terms should ordinarily be applied in judging whether a certain offence involves moral turpitude or not;

1. whether the act leading to a conviction was such as could shock the moral conscience of society in general.

2. Whether the motive which led to the act was a base one.

3. Whether on account of the act having been committed the perpetrator could be considered to be of a depraved character or a person who was to be looked down upon by the society.

Decision in each case will however depend on the circumstances of the case and the competent authority has to exercise its discretion while taking a decision in accordance with the above mentioned principles. A list of offences which involve moral turpitude is enclosed for your information and guidance. This list, however, cannot be said to be exhaustive and there might be offences which are not included in it but which in certain situations and circumstances may involve moral turpitude.

10. The "moral turpitude" is a conduct that is contrary to justice, honesty or morality. In the area of legal ethics, offences involving moral turpitude are such as fraud or breach of trust. "Moral turpitude means, in general, shameful wickedness - so extreme a departure from ordinary standards of honest, good morals, justice, or ethics as to be shocking to the moral sense of the community. It has also been defined as an act of baseness, vileness, or depravity in the

private and social duties which one person owes to another, or to society in general, contrary to the accepted and customary rule of right and duty between people." (Please see Black''s Law Dictionary, 7th Edition, page 1026).

11. In common parlance ''moral turpitude'' means baseness of character. Concise Oxford Dictionary defines ''moral'' as concerned with goodness or badness of character or disposition or with distinction between right and wrong... virtuous in general conduct...'' The word "turpitude" means "baseness, depravity, wickedness". Thus any act which is contrary to good morals from society''s point of view will come within the ambit of ''moral turpitude.''

12. In the light of above references, if we conclude the matter, it would appear that whether an offence involves moral delinquency is a question of fact depending on the public morals of the time, common sense of community and context and purpose of which the character of offence is to be determined. Any act resulting into conviction cannot be held to be per se involving an offence of moral turpitude. Therefore, on the basis of facts and circumstances of each case a decision will have to be taken and the competent authority has to exercise its discretion while taking a decision in accordance with the broad principles, referred to above. If we analyze this case, on the principles, referred to above, and we examine the correctness of the order, it would appear that the disciplinary authority has not recorded any finding as to whether the offence for which the Petitioner has been convicted shall involve moral turpitude or not. It has even not been said in the impugned order that the dismissal is being effected due to involvement of the Petitioner in an offence involving moral turpitude. It has only been said in the order that since the Petitioner has been convicted for a particular offence, therefore, under the provisions referred to in the order, which I have already referred to above, his services are dismissed. This kind of an approach goes to show that the order has been passed without application of mind and the Petitioner has been dismissed without looking into the gravity of the offence and without determining as to whether the act committed by the Petitioner involves moral turpitude or not.

13. If we examine this case from another angle it would appear that in fact a civil suit was pending between the Petitioner and the complainant which was dismissed and the first appeal is pending between them in the High Court bearing F.A. No. 109/95. It appears from the contents of the memo of appeal filed before this Court, that there was some agreement to sell between the Petitioner/Plaintiff and Defendant No. 1 and a suit for specific performance was filed. The suit was dismissed, therefore, the Petitioner/Plaintiff has filed the first appeal. The complainant of the criminal case is Defendant No. 2 (Respondent No. 2 in the High Court) and she was also contesting the suit. It has also come in para 8 of the judgment of conviction dated 14-10-1988 (Annexure P-2) that there is one hand-pump on the spot and the dirty/used water of the hand pump goes towards the house of the complainant and in fact, the Petitioner has diverted the drainage (Nali) carrying waste water towards the Court-yard of the

complainant in which the dirty water and excretory waste etc., are also flown. Further it has come in paras 10 and 11 that in fact, both the parties i.e., the complainant and accused, were using this Nali and there is dispute about this Nali between them. It is in this back ground the conviction and sentence has been awarded against the Petitioner.

14. In the facts and circumstances of the case, particularly in this back ground of finding of the criminal Court, when the disciplinary authority has not recorded the finding about the involvement of the Petitioner in commission of an offence involving moral turpitude, the impugned order passed by the disciplinary authority cannot be sustained as the same is against the provisions of Section 10 of the Banking Regulation Act as also para 521 of the Shastri Award. The Petitioner has been dismissed contrary to law. The impugned order Annexure P-7 is quashed. The Petitioner is entitled to be reinstated alongwith all service benefits in accordance with law.