

(2008) 09 AHC CK 0298

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 50441 of 2008

Daman Singh

APPELLANT

Vs

Secretary/General Manager District Co-operative Bank Ltd.,
Kanpur and Others

RESPONDENT

Date of Decision : 24-09-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 357, 364A, 365

Citation : (2008) 28 CriminalCC 94

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Jai Singh and Mr. S.N. Dubey, for the Appellant; Sujeet Kumar Rai, S.C., for the Respondent

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—Petitioner, Daman Singh aggrieved by the order dated 18.08.2008 whereby he has been dismissed from service pursuant to his conviction by the Court of Vth Additional Sessions Judge, Kanpur in Sessions Trial No. 1331 of 1995, under sections 364A, 365, 357 and 346 IPC, has invoked the jurisdiction of this Court under Article 226 of the Constitution of India by filing the present writ petition. It is the own case of the petitioner that he was initially appointed as Class IV employee in District Co-operative Bank Limited, Kanpur and promoted to the post of Clerk-cum-Cashier on 30.08.1988. He was implicated in a criminal case under sections 363/364/364A/365/342/367/323/504/ 506/387/406/411/358/468/171,120B IPC and 25 Arms Act, 357 and 346 IPC and was tried in Sessions Trial No. 1331 of 1995, in the Court of Vth Additional Sessions Judge, Kanpur Nagar who vide judgment dated 29.06.2002 convicted him and sentenced to Rigorous Imprisonment for life. The petitioner filed Criminal Appeal No.2654 of 2002, wherein this Court while admitting the appeal on 09.07.2002, suspended sentence during the pendency of the appeal and the petitioner was released on bail. Realisation of fine was also stayed. The

petitioner was issued a show-cause notice on account of the aforesaid conviction by the respondent and thereafter the impugned order has been passed.-

2. The sole contention advanced before this Court by the learned Counsel for the petitioner is that once the sentence and fine has been stayed by this Court in appeal filed against the judgment of conviction and sentence, the petitioner cannot be dismissed on account of the aforesaid conviction since the matter is pending before the Appellate Court.

3. However, this Court finds it difficult to subscribe the aforesaid view. Regulation 85 (ii) of U.P.Co-operative Societies Employees Service Regulation, 1995 empowers termination of an employee if he has been convicted for an offence involving moral turpitude and reads as under:-

85. "(ii) (a) Where an employee is dismissed or removed from service on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the employee has absconded and his whereabouts are not known to the society for more than three months, or

(c) where the employee refuses or fails without sufficient cause to appear before the Inquiring Officer when specifically called upon in writing to appear; or

(d) where it is otherwise (for reasons to be recorded) not possible to communicate with him, the competent authority may award appropriate punishment without taking or continuing disciplinary proceedings.

4. The mere fact that sentence pursuant to criminal case or the judgment has been stayed in appeal, in my view would not deprive the competent authority to pass an appropriate order under Regulation 85(ii) inasmuch as the effect of conviction of criminal charge involving moral turpitude is sufficient to empower a disciplinary authority to pass appropriate order under the aforesaid Regulation. Whether the punishment enforced by the Criminal Court is operating or not, is of no relevance for exercise of power under Regulation 85(ii) which is to be examined in respect to conduct led to conviction. In the case in hand, the conviction of the petitioner has not been stayed and it is only the sentence which has been stayed. Jurisdiction of the disciplinary authority to pass appropriate order under Regulation 85(ii) emanates from the fact as to whether the employee has been convicted or not and has nothing to do with the question as to whether he has been sentenced or whether the sentence is executable or stayed.

5. A similar question came up for consideration before the Apex Court in the case of Deputy Director of Collegiate Education (Administration), Madras Vs. S. Nagoor Meera, . The Apex Court Considered the pari materia provision contained in Article 311 (2), second proviso, clause (a) and said that what is relevant for exercise of power thereunder is the conduct, which has led to conviction in criminal charge and not the conviction itself. There is no question of suspending the conduct of an employee when he has been convicted and in an appeal, the

same is stayed. Since the Disciplinary Authority has to exercise power considering the conduct of the employee, which has led to his conviction on a criminal charge and since conduct is not stayed, therefore, even if the conviction has been stayed in appeal, the power can be exercised by the Disciplinary Authority on the basis of the conduct, which has led to conviction on a criminal charge. In that case, the conviction and sentence both were stayed. Even then the Court held that since power can be exercised for the conduct led to conviction and there is no question of stay of conduct of the employee therefore, the Disciplinary Authority can exercise its power under the aforesaid provision. Here also in this case, it is the conduct led to conviction of the employee concerned which gives power to Disciplinary Authority to pass an order of punishment under Regulation 85(h) and it is the admitted case of the petitioner that the conviction has not been stayed and only sentence has been stayed. Therefore, this case is more vulnerable than that which was up for consideration in *S. Nagoor Meera (supra)*. In my view, therefore, the Disciplinary Authority cannot be said to lack jurisdiction to pass the impugned order.

6. It would be useful to mention at this stage that the Apex Court in *S. Nagoor Meera (supra)* also observed that where an employee is convicted on a criminal charge, the appropriate course would be in all such cases to take action and not to wait for the result of appeal or revision, as the case may be. It is always open to the authority to revise its order and reinstate the employee concerned with all benefits if in appeal or other proceeding the accused employee is acquitted. The aforesaid law was followed by a Division Bench of this Court in *Mohan Lal v. State of U.P.*, 1998(78) FLR 987 (All.) and by this Court in Civil Misc. Writ Petition No.22319 of 2005, *Brahma Dev v. Life Insurance Corporation of India and Others*, decided on 28.02.2006. In this view of the matter, I do not find any force in the submission of the learned Counsel for the petitioner that the impugned order is without jurisdiction since the sentence was stayed by this Court in appeal.

7. The writ petition therefore, lacks merit and is accordingly, dismissed.