
(2016) 05 DEL CK 0049
In the Delhi High Court
Case No : W.P.(C) No. 3149 of 2002.

Dashrath Singh

APPELLANT

Vs

Andhra Bank and Others

RESPONDENT

Date of Decision : 10-05-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 2 CLR 401 : (2016) 150 FLR 540 : (2016) LabLR 687 : (2016) 3 LLJ 624

Hon'ble Judges : Ved Prakash Vaish, J.

Bench : Single Bench

Advocate : Harish Sharma, Advocate, for the Appellant; S.L. Gupta and Tarunika Sharma, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Ved Prakash Vaish, J. - By way of the present petition the petitioner seeks direction to the respondents to reinstate the petitioner with continuity of service and consequential benefits and for quashing the order dated 20th July, 2001 passed by respondent No.1 whereby punishment of dismissal was imposed on the petitioner.

2. Briefly stated the facts leading to filing of the present petition are that the petitioner was working as peon with the respondent Andhra Bank. While working at Vishwash Nagar, Branch, Shahdara, Delhi of the respondent Bank, the petitioner hurt his superior officer Shri Narinder Pal. FIR No.116/92 under Section 325 of Indian Penal Code (hereinafter referred to as "IPC") was registered at Vivek Vihar Police Station against the petitioner.

3. The respondent Bank also issued a charge sheet dated 23rd October, 1992 against the petitioner for holding disciplinary proceedings. The petitioner replied to the charge sheet and denied the charges. He further pleaded that the incident occurred as Mr. Narender Pal used to harras him and on the said date provoked

him.

4. The disciplinary authority upon proving of charge, vide order dated 27th September, 1994 ordered stoppage of four annual increments of the petitioner in time scale with cumulative effect.

5. Pursuant to the aforesaid FIR No.116/92, criminal prosecution was instituted against the petitioner by the learned Metropolitan Magistrate and vide order dated 27th October, 1998 held the petitioner guilty under Section 325 IPC and sentenced him to undergo simple imprisonment of eight months.

6. The petitioner preferred an appeal against the order of the learned Metropolitan Magistrate dated 27th October, 1998 before the learned Additional Sessions Judge, Shahdara, Delhi. The appeal of the petitioner was also rejected by the learned ASJ vide order dated 27th June, 1999.

7. The petitioner thereafter preferred revision petition bearing Criminal Revision No.238/1999 against the order of the learned ASJ before this Court. The said petition was disposed of vide order dated 27th September, 2001 and the order of conviction was confirmed and the order on sentence was reduced to that already undergone.

8. Thereafter, the petitioner was issued a show cause notice dated 16th September, 2000 calling upon him as to why he should not be dismissed for having punished by the Court under Section 325 IPC. The petitioner submitted his reply dated 12th October, 2000 to the show cause notice.

9. It is stated that consequent to the stay of the order of the trial court in the revision petition, the respondent Bank allowed the petitioner to join duties. He remained on duty till 20th July, 2001 till the order of dismissal from service was conveyed to him vide respondent Bank's letter dated 20th July, 2001.

10. Being aggrieved by the order of dismissal, the petitioner preferred the present writ petition by contending that the respondent Bank did not follow the rules and the petitioner could not have been punished twice for the same misconduct.

11. Learned counsel for the petitioner by relying upon the judgments of "Mangali v. Chhakki Lal and Others., AIR 1963 Allahabad 527; "Jaysing Raugarao Raut v. Maharashtra State Electricity Board and Another., (I) L.L.J. Bombay 117; "State Bank of India and another v. Mohammed Abdul Rahim., (2013) 11 Supreme Court Cases 67, argued that the respondent Bank has misconstrued the term "moral turpitude" for dismissing the petitioner. It is also contended by learned counsel for the petitioner that the petitioner was sentenced to undergo simple imprisonment only and such sentence does not involve the offence of moral turpitude.

12. Learned counsel for the petitioner further argued that the petitioner was forced to face the trial in the FIR and also the disciplinary proceedings which is in

clear violation of the provisions of para 19.3 and 19.4 of the Bipartite Settlement which govern the service conditions of bank employees in workmen cadre and which prohibits simultaneously two trials one in the court and other by virtue of disciplinary proceedings.

13. It is further contended by learned counsel for the petitioner that the petitioner had already been punished by a major penalty of stoppage of four annual increments with cumulative effect which fact was ignored by the respondent Bank and show cause notice was issued followed by the dismissal order dated 20th July, 2001. It is thus argued by learned counsel for the petitioner that the action of the respondent is unconstitutional as being barred by the legal maxim of 'double jeopardy'.

14. Per contra, learned counsel for the respondents opposed the petition and contended that it is not a case of double jeopardy and therefore, the punishment of dismissal based on the conviction is fully justified and there is no need to interfere with the punishment. It is also submitted that there is no violation of the principles of natural justice and the petitioner was issued with show cause notice and he also gave explanation and as there was no further proof required, as the conviction of the petitioner was admittedly upheld for the offence under Section 325 IPC, it amounts to moral turpitude.

15. Learned counsel for the respondent further contended that the petitioner was convicted for the offence under Section 325 IPC and was sentenced to undergo imprisonment for a period of eight months. The petitioner could not continue with the respondent bank as per the provisions of Section 10(1)(b)(i) of the Banking Regulations Act, 1949 as he had been convicted with an offence involving moral turpitude.

16. I have given my thoughtful consideration to the submissions advanced by learned Counsel for the parties. I have also perused the material on record.

17. The petitioner was issued a charge sheet on 23rd October, 1992 by the respondent and disciplinary proceedings were held against him. It is relevant to refer to the charges framed against the petitioner, which are reproduced as under:-

"1. It is reported that on 23.01.1992 a current account holder M/s. J.K. Enterprises contacted Ms. Indu Sharma, Officer for getting the cheque book and when she was explaining the customer about the issuance of cheque book, all of sudden you started talking loudly in indecent manner demanding for the cheque book disregarding the minimum decent and decorum of the bank. Further on the same day, when an account holder named Sri Banwari asked for new cheque book, the concerned officer had advised the customer to close the account, since he was already lost two cheque books, which may expose the bank in financial risk. At that point you once again started talking in riots manner and banged the manager's table demanding that above account holder should be provided with a cheque book immediately and started threatening and telling atmosphere was

disturbed due to your unwarranted indecent behaviour and the customer service was effected which is prejudicial to the interest of the bank.

The branch vide letter 628/3/430 dated 23.1.91 has called for explanation for you for the above incident for which till date you have not submitted your explanation which shows your insubordination towards lawful order of your superiors.

Your above act amounts to misconduct as per clause 19.5(c) and 19.5G) of Bipartite Settlement and attracts stringent punishment.

2. Further it is reported that on 25.4.92, when you were asked to carry out the allotted work, you have misbehaved with the sub-manager Mr. N.P.Gaur and physically assaulted the officer resulting in an injury to sub-manager's hand which is prejudicial to the interest of the bank and amounts to misconduct as per clause 19.5 G) of Bipartite Settlement and attracts appropriate action.

3. It is reported that on 9.6.1992 you went to service centre, New Delhi and tampered the Service Centre records and created nuisance using unparliamentary language and threatened the Service Centre Officials. Thus you have wilfully damaged the bank's records and behaved indecently which amounts to misconduct as per clause 19.5(d) and 19.5(c) of Bipartite Settlement and attracts appropriate action.

4. Further on 11.8.1992 when Manager of the Branch asked Mr. Alok Sharma, D.P. Bhatt and Sukhpal Singh to bring cash from Connaught Circus, all of sudden you objected the Daftary Mr. D.P. Bhatt and physically pulled the cash box from him using abusive language. Thus you have forcibly snatched cash trunks from a colleague the contrary to the lawful order of your superiors and challenged the authority of Manager before the staff and customers, which is prejudicial to the interest of the bank.

Your above act amounts to misconduct as per clause 19.5 (c) and (j) of Bipartite Settlement and attracts appropriate action.

5. Further on 16.9.92 when the Manager advised you not to go to the clearing duty as you are always coming late to the office, and not returning from clearing house/service centre, you deliberately uttered the following words during business hours.

"Tum Mujko Kyo nahi clearing bejthe-Iac Baahar aayo Tum ko dektum aur Jaan Laycum".

Thus you have deliberately disregarded the minimum decency and decorum of the branch and behaved disorderly and indecently which amounts to gross misconduct as per clause 19.5 (c) and (j) of Bipartite Settlement and attracts disciplinary action."

A perusal of the above charge sheet clearly reveals that in addition to the charge for which an FIR was registered against the petitioner under Section 325 IPC, the

petitioner was also charged with insubordination, indecent behaviour and damaging the official records apart from disobeying the orders of the superiors.

18. The petitioner faced trial in the FIR under Section 325 IPC and was found guilty. The learned trial Court while convicting the petitioner and sentencing him to undergo imprisonment for a period of eight months, held as under:-

"I am not inclined to take a lenient view against the convict as he has caused grievous injuries on the senior official while working in his office. In case the convict is not given any substantive punishment it may encourage him to report such an offence in future. Otherwise also it is necessary that due regard and respect should be given to senior official by his junior official so that proper decorum of the office is maintained. Further in the present case the accused has shown complete disregard and disrespect to all senior official by causing grievous injuries to him."

19. The petitioner was punished in the earlier disciplinary proceedings by imposition of stoppage of four annual increments with cumulative effect, and the punishment was *inter alia* on the ground of disobeying the orders of the superiors and hurting his superior, but the present misconduct is on the basis of conviction by the criminal court and therefore, both cannot be said to be on the same grounds.

20. The concept of double jeopardy, to some extent, is allergic to service law. The Supreme Court has made it clear in as many cases as one can think of (a) that imposition of a punishment and the denial of promotion did not amount to double jeopardy and (b) that the conviction by a criminal Court and the disciplinary proceedings initiated either on the basis of conduct which led to the conviction or on pure questions of misconduct, did not amount to double jeopardy. Reference in this regard may be had to a Full Bench judgment of the Madras High Court reported in the case of "Manikandan and others v. Chairman, Tamil Nadu Uniformed Services, Recruitment Board, Chennai and Others", (2008) 2 MLJ 1203.

21. Further in the case of "Union of India v. P.D. Yadav", (2002) 1 SCC 405, it has been explained as follows:-

"This principle is embodied in the well-known maxim *nemo debet bis vexari*, (*si constat curiae quod sit*) *pro una et eadem causa* meaning no one ought to be vexed twice if it appears to the court that it is for one and the same cause. Doctrine of double jeopardy is a protection against prosecution twice for the same offence. Under Articles 20-22 of the Indian Constitution, provisions are made relating to personal liberty of citizens and others. Article 20(2) expressly provides that: "No one shall be prosecuted and punished for the same offence more than once. Offences such as criminal breach of trust, misappropriation, cheating, defamation etc., may give rise to prosecution on criminal side and also for action in civil court/other forum for recovery of money by way of damages etc., unless there is a bar created by law."

22. In the case of "R. Viswan v. Union of India", AIR (1983) 3 SCC 401, the issue of double jeopardy was discussed and, in that case, Government servant was punished for the same misconduct both under the Army Act as well as under Central Government Rules, and it was held that, two proceedings under the Army Act and the Central Government Rules operate in two different fields though the crime or the misconduct might arise out of one and the same Act. The Martial Court proceedings deals with the penal aspect of misconduct while proceedings under the Central Government Rules deals with disciplinary proceedings in respect of the misconduct. Therefore, it was held that it does not amount to double jeopardy.

23. Further, Hon^{ble} Supreme Court in case "Sangeetaben Mahendrabhai Patel v. State of Gujarat", (2012) 7 SCC 621, discussed this principle and same runs as follows:-

"if an issue of a fact is decided in favour of an accused, it would not bar trial or conviction of the accused for a different and distinguished offence but it precludes acceptance of evidence to disturb the said finding of the fact. Thus, the principle of estoppel and res judicata are applicable only to admissibility of evidence in subsequent trial and not to the trial itself for distinct and different offence."

24. In the case in hand, by order dated 27th September, 1994, the petitioner was imposed with penalty of stoppage of four annual increments with cumulative effect. The second order terminating his services was passed on 20th July, 2001 keeping in view Section 10(1)(b) (i) of Banking Regulation Act, 1949. When a major penalty is proposed to be imposed upon a person on the ground of conduct which led to his conviction on a criminal charge, to my mind, there was no question of the petitioner suffering a double jeopardy. Reliance may be placed to the judgment in the case of "State of Haryana v. Balwant Singh", (2003) 3 SCC 362, wherein Hon^{ble} Supreme Court observed as under:-

"The respondent was a bus-driver under Haryana Roadways. In an accident caused by his rash and negligent driving, one person died and another was injured. An award passed by the Motor Accidents Claims Tribunal in that matter resulted in the loss of a huge sum to the State. Consequently, a departmental enquiry under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 (for short "the Rules") was initiated against him and ultimately by an order dated 12-3-1990 punishment of reduction of pay to the minimum of the pay scale was imposed on him. On account of causing the same accident, he was convicted by a court under Section 340-A IPC. Based on that conviction, the Department by an order dated 17-9-1992 terminated his services. His suit challenging the termination order, though initially unsuccessful, was in second appeal decreed by the High Court only on the ground that an employee could not be punished twice for the same offence in view of Article 20(2)."

Allowing the States appeal, the Supreme Court Held:

"The High Court was not right in equating the departmental enquiries held on different grounds to prosecution in a criminal case. The High Court also has failed to see that the two orders passed against the respondent were on different grounds and were on different cause of actions."

25. The cause of action for both the proceedings are different. Therefore, having regard to the judgments referred to above, it cannot be stated that the subsequent order of dismissal amounts to double jeopardy.

26. In the case of "Pawan Kumar v. State of Haryana and Anr.", 1996 SCC (4) 17, the services of an adhoc appointee were terminated on the ground that he had been convicted for an offence under Section 294 IPC and that therefore, his character and antecedents did not befit his regularisation in service. His challenge to the order of termination was rejected by the trial Court, 1st appellate Court and the High Court. But the decision of the courts below was reversed by the Supreme Court and granted him relief on the ground that his conviction for an offence under Section 294 IPC, on its own, did not involve moral turpitude depriving him of the opportunity to serve the State unless the facts and circumstances which led to the conviction, met the requirements of the policy decision of the State. The Apex Court also made certain observations in paragraph 14 of the judgment, which are as follows:

"14. Before concluding this judgment we hereby draw the attention of Parliament to step in and perceive the large many cases which as per law and public policy are tried summarily, involving thousands and thousands of people throughout the country appearing before summary courts and paying small amounts of fine, more often than not, as a measure of plea-bargaining. Foremost among them being traffic, municipal and other petty offences under the Indian Penal Code, mostly committed by the young and/or the inexperienced. The cruel result of a conviction of that kind and a fine of payment of a paltry sum on plea-bargaining is the end of the career, future or present, as the case may be, of that young and/or inexperienced person, putting a blast to his life and his dreams. Life is too precious to be staked over a petty incident like this. Immediate remedial measures are therefore necessary in raising the toleration limits with regard to petty offences especially when tried summarily. Provision need be made that punishment of fine up to a certain limit, say up to Rs.2000 or so, on a summary/ordinary conviction shall not be treated as conviction at all for any purpose and all the more for entry into and retention in Government service. This can brook no delay, whatsoever."

Thus, the Supreme Court just indicated its mind and ultimately left it to the wisdom of the Government to frame appropriate rules or regulations.

27. In the case of "Delhi Administration v. Sushil Kumar", 1996 (11) SCC 605, the provisional selection of a person for appointment as a Constable in the Delhi Police Services, was cancelled after it was found at the time of verification of his character and antecedents that he was involved in a criminal case. But the

Central Administrative Tribunal directed his appointment on the ground that he was subsequently discharged and/or acquitted of the offence and hence, he could not be denied the right of appointment. However, the Supreme Court reversed the decision of the Tribunal and held as follows:

"It is seen that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State. Though he was found physically fit, passed the written test and interview and was provisionally selected, on account of his antecedent record, the appointing authority found it not desirable to appoint a person of such record as a Constable to the disciplined force. The view taken by the appointing authority in the background of the case cannot be said to be unwarranted. The Tribunal, therefore, was wholly unjustified in giving the direction for reconsideration of his case. Though he was discharged or acquitted of the criminal offences, the same has nothing to do with the question. What would be relevant is the conduct or character of the candidate to be appointed to a service and not the actual result thereof. If the actual result happened to be in a particular way, the law will take care of the consequences. The consideration relevant to the case is of the antecedents of the candidate. Appointing authority, therefore, has rightly focused this aspect and found it not desirable to appoint him to the service."

The law so laid down by the Supreme Court in this case, still holds the field. As seen from the passage extracted above, the emphasis in such cases, is not so much on the ultimate outcome of the criminal case, as it is on the conduct of a person which led to his involvement or implication in the criminal case.

28. It is relevant in this context to refer to Section 10 (b) (i) of The Banking Regulation Act, 1949 which provides prohibition of employment of managing agents and restriction on certain forms of employment. The said Rule reads as follows:

"10. Prohibition of employment of managing agents and restrictions on certain forms of employment.- (1) No banking company-

(a) ???.

(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 ????"

The requirement of the aforesaid sub-rule (b) (i) is that no banking company shall employ any person who has been convicted by a criminal court for an offence involving moral turpitude.

29. The Supreme Court in the case of "Sushil Kumar Singhal v. Regional Manager, Punjab National Bank", (2010) 8 Supreme Court Cases 573, while

defining "moral turpitude" held that in case of an employee who stands convicted for an offence involving moral turpitude, it is his misconduct that leads to his dismissal. Relevant paragraphs of the said judgments are reproduced as under:-

"23. "Moral turpitude" mean per Black's Law Dictionary (8th Edn., 2004):

"Conduct that is contrary to justice, honesty, or morality. In the area of legal ethics, offences involving moral turpitude-such as fraud or breach of trust.....Also termed moral depravity....

"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 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.."

(emphasis in original)

24. In Pawan Kumar v. State of Haryana this Court has observed as under: (SCC p. 21, para 12)

"12. "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."

The aforesaid judgment in Pawan Kumar has been considered by this Court again in Allahabad Bank v. Deepak Kumar Bhola and placed reliance on Baleshwar Singh v. District Magistrate and Collector wherein it has been held as under:-

"The expression "moral turpitude" is not defined anywhere. But it means anything done contrary to justice, honesty, modesty or good morals. It implies depravity and wickedness of character or disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but it would be so if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellow men or to the society in general. If therefore the individual charged with a certain conduct owes a duty, either to another individual or to the society in general, to act in a specific manner or not to so act and he still acts contrary to it and does so knowingly, his conduct must be held to be due to vileness and depravity. It will be contrary to accepted customary rule and duty between man and man."

25. In view of the above, it is evident that moral turpitude means anything contrary to honest, modesty or good morals. It means vileness and depravity. In fact, the conviction of a person in a crime involving moral turpitude impeaches his credibility as he has been found to have indulged in shameful, wicked and base activities.

26. Undoubtedly, the embezzlement of Rs. 5000 by the appellant, for which he

had been convicted, was an offence involving moral turpitude. The statutory provisions of the 1949 Act, provide that the management shall not permit any person convicted for an offence involving moral turpitude to continue in employment.

27. In *Manish Goel v. Rohini Goel* this Court after placing reliance on large number of its earlier judgments held as under: (SCC p. 399, para 14)

"14 ... no court has competent to issue a direction contrary to law nor the court can direct an authority to act in contravention of the statutory provisions. The courts are meant to enforce the rule of law and not to pass the orders or directions which are contrary to what has been enjoined by law."

Thus, in such a fact situation, it is not permissible for this Court to issue any direction as had been issued in *Shankar Dass*.

28. In view of the above, we reach the conclusion that once a criminal court grants a delinquent employee the benefit of the 1958 Act, its order does not have any bearing so far as the service of such employee is concerned. The word "disqualification" in Section 12 of the 1958 Act provides that such a person shall not stand disqualified for the purpose of other Acts like the Representation of the People Act, 1950, etc. The conviction in a criminal case is one part of the case and release on probation is another. Therefore, grant of benefit of the provisions of the 1958 Act, only enables the delinquent not to undergo the sentence on showing his good conduct during the period of probation. In case, after being released, the delinquent commits another offence, benefit of the 1958 Act gets terminated and the delinquent can be made liable to undergo the sentence. Therefore, in case of an employee who stands convicted for an offence involving moral turpitude, it is his misconduct that leads to his dismissal"

30. In this case also, as stated above, the earlier disciplinary proceedings were initiated, inter alia, on the grounds of insubordination, indecent behaviour and damaging the official records apart from disobeying the orders of the superiors, which were prejudicial to the interest of the bank by getting himself involved in a criminal case for having committed the offence under Section 325 IPC by physically assaulting the senior officer and though evidence was led in to prove the offences, punishment was imposed by stoppage of four annual increments with cumulative effect taking into consideration the misconduct levelled against him. The order of dismissal passed against the petitioner was on the basis of conviction in the criminal case. Though the criminal case is common in both the departmental proceedings, the earlier proceedings were initiated, inter alia, for having involved in a criminal case and the subsequent order of dismissal was passed on the basis of the conviction of the petitioner in the criminal case in view of Section 10(1)(b)(i) of the Banking Regulation Act, 1949 which lays down that no Banking Company shall employ or continue the employment of any person who is or has been convicted by a criminal court of an offence involving moral turpitude.

31. Section 325 of IPC provides punishment for voluntarily causing grievous hurt. The same reads as under: -

"325. Punishment for voluntarily causing grievous hurt.-Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

32. Admittedly, the petitioner was convicted for the offence under Section 325 of IPC and sentenced to undergo imprisonment for eight months. The appeal filed by the petitioner against the said judgment was dismissed by learned Additional Sessions Judge, Delhi vide order dated 27.06.1999. In Criminal Revision against the said order, the conviction was maintained by this Court vide order dated 27.09.2001.

33. The petitioner seriously hurt his superior officer Shri Narinder Pal and that too in the bank premises. Shri Narinder Pal was then rushed to the SDN Hospital. The act of the petitioner is thus contrary to the good morals and shocking to the moral sense of the community. What is an offence involving "moral turpitude" must depend upon the facts of each case. But whatever may be the meaning given to the term "moral turpitude" it appears to me that one of the serious offences involving "moral turpitude" would be where a person employed in a banking company dealing with general public commits physical assault to his superior officer, tampered the service records and used unparliamentary language. Therefore, the respondent is justified in dismissing the petitioner from service after conviction and that order was passed by issuing show cause notice calling for explanation and having regard to the facts of the case, there is no need to conduct enquiry as the factum of conviction is admitted.

34. In light of the aforesaid discussion, I do not find any illegality or infirmity in the impugned order of dismissal. The writ petition is devoid of any merit and the same is hereby dismissed. No costs.