(1988) 03 CAL CK 0031

In the Calcutta High Court

Case No : Appeal from Original Order Tender No. 563 of 1987

Dena Bank APPELLANT

Vs

Amiya Kumar Dey RESPONDENT

Date of Decision : 25-03-1988

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1988) 2 CALLT 95 : 92 CWN 1100

Hon'ble Judges : K.M. Yusuf, J;G.N. Ray, J

Bench : Division Bench

Advocate : P.P. Ginwalla, D.N. Mitra and I.P. Sinha Roy, for the Appellant;Anindya Kumar Mitra and Debabrata Mukherjee, for the Respondent

Final Decision : Dismissed

Judgement

G.N. Ray, J.—This appeal is directed against the judgment dated 15th January, 1987 passed by the learned Trial Judge in Civil Order No. 15936 (W) of 1986. The aforesaid Civil Order No. 15936 (W) of 1986 arose out of an application made under Article 226 of the Constitution of India by the writ-petitioner, Sri Amiya Kumar Dey. It appears that Sri Dey was an employee of Dena Bank and in the year 1974, he was holding the post of Branch Manager, Brabourne Road Branch of the said Bank. Sri Dey was placed under suspension on 23rd October, 1974 and a charge-sheet was also issued by the said Bank to Sri Dey. In reply to the said charge-sheet, Sri Dey submitted his written explanation on 28th November, 1974. Sri Dey also requested the administration of the Dena Bank for early disposal of the enquiry by an imperial body. The Dena Bank Administration, however, informed Sri Dey on 17th January, 1975 that his explanation to the charge-sheet was not satisfactory and a departmental enquiry would be held against him shortly. After waiting for sometime, on 3rd March, 1976, Sri Dey, through his lawyer requested the Bank to start the enquiry proceedings. Sometime in July 1976, the Bank informed Sri Dey that in view of the investigation being made by the Central Bureau of Investigation, the enquiry proceedings had been kept in abeyance. It appears that on 20th April, 1977 the C.B.I. filed its report of the investigation in Special Court Case No. 6 of 1977 (before the Third Additional Special Judge, Calcutta) and the learned Judge took cognizance of the investigation report of the C.B.I, and the case before the Special Judge was started and the said case is still pending. It may be noted that the Dena Bank filed a suit being Suit No. 366 of 1974 in the Ordinary Original Civil Jurisdiction of this Court against M/s. Tea Agents, inter alia, praying that a money decree and also a decree for sale of all the charged assets be passed against the said defendant. It may also be mentioned in this connection that Sri K. K. Chirimar of M/s. Tea Agents is also a co-accused with Sri Dey in the said criminal case pending before the Special Judge and an affidavit in reply to the affidavit-in-opposition filed by the said Sri Chirimar in the said Suit No. 366 of 1974 was affirmed by the writ petitioner Sri Dey on behalf of the Bank. As the writ petitioner was scheduled to retire on attaining the age of superannuation by the end of February 1987, Sri Dey moved a writ petition before this Court on 1st October, 1986 with a prayer for a direction on the Bank Administration to conclude the departmental proceeding without any further delay. A copy of such application was served on the Bank Administration and the Court directed the said writ petition to come up for final disposal as a contested application upon notice to the respondents. On 6th October, 1986, the Bank administration received the copy of the writ petition and Sri Dey affirmed an affidavit of service on 7-10-1986 to that effect. This Court closed for the long Puja Vacation and on reopening of this Court on 7th November, 1986, the writ petition moved by Sri Dey was listed in the Daily List as a contested application. It is the case of the petitioner that the business of the court did not permit the writ petition to be disposed of earlier although on two occasions the matter was mentioned before the learned Trial Judge. On the reopening of this Court, after the Christmas Vacation, the matter was again mentioned on behalf of Sri Dey for early disposal of the writ petition, and the matter was thereafter specially fixed on 13th January, 1987 and intimation of such fixation was served by the petitioner on the Bank and the Bank received such notice on 8th January, 1987 and affidavit of service to that effect was also affirmed by the petitioner on 12th January, 1987. The said writ petition was thereafter taken up for hearing on 15th January, 1987 and the same was disposed of by the learned Trial Judge, inter alia, directing the .Bank to complete the enquiry proceedings within 3 weeks from the date that is 15th January, 1987 and it was further directed that in default of completing of the enquiry proceeding within the stipulated time the order of suspension and the charge-sheet would stand set aside and quashed. The writ petitioner Sri Amiya Kumar Dey was directed by the court to intimate the purport of the order passed on 15th January, 1987 upon the Bank by the 17th January, 1987. The text of the order, dated 15th January, 1987 was also communicated by the learned counsel for the writ petitioner Sri Amiya Kumar Dey to the Bank and the Bank received the communication on the 17th January, 1987.

2. It appears that the Dena Bank thereafter moved an application for vacating

the said judgment and order, dated the 15th January, 1987, but such application was dismissed by the learned trial Judge after a contested hearing. As the departmental, proceeding had not been concluded within the period specified in the aforesaid order passed in the writ proceeding, Sri Dey requested the Bank to allow him to join his duties and on 10th February, 1987 such letter/request was made by the writ petitioner. But Sri Dey was not allowed to join his duties and he was informed by the Bank that the Bank had preferred an appeal and as such Sri Dey would not be allowed to join. It may be noted in this connection that initially the Bank preferred an appeal against the order rejecting the application for recalling the judgment, dated January 15, 1987 but later on the Bank filed an appeal against the judgment and order, dated 15th January, 1987 and such appeal was numbered as F.M.A.T. No. 563 of 1987, which is being considered in this judgment.

3. The learned trial Judge in the impugned judgment, dated 15th January, 1987 has held that it was a matter of great regret that from 1974 till 1987, the nationalised Bank thought it fit not to conclude the disciplinary proceeding even though the writ petitioner was kept under suspension. The learned trial Judge has noted in his judgment that suspension was permissible under the law in contemplation of disciplinary proceeding, but the suspension ought not be treated as a strong weapon to harass an employee. The learned trial Judge was of the view that reasonableness and fairness must be the attitude of a public authority and the law courts should take appropriate action if it is found that such public authorities have not reacted fairly and reasonably. It was held by the learned trial Judge that it could not be held to be a fair and reasonable action on the part of the respondents Bank to keep the disciplinary proceeding pending for long 12 years although the poor employee of the Bank was suspended all the time. The learned trial Judge also noted that the Bank informed Sri Dey that the departmental enquiry would not be taken up until the end of the C.B.I, enquiry, but it was reasonably expected that both the. C.B.I, and the Bank administration should try to expedite the matter so that it would not hang on for an indefinite period. The learned trial Judge has also noted in his judgment that the writ petition was moved on 1st October, 1986, but no interim order was made but it was directed by the "court that the writ petition would come up for hearing one week after the Long Vacation and direction was given to the writ petitioner to serve the copy of the petition within 10 days and to file affidavit of service. We have already indicated that the writ petition had in fact been served without any delay and affidavit of service had been filed. The learned trial Judge has further noted that inspite of reasonable opportunities being given to the Bank administration, the Bank did not think it fit and proper to appear before the learned trial Judge and the learned Judge has further noted that he had no other alternative but to pass appropriate order considering the urgency of the matter.

4. Mr. Ginwalla, the learned counsel appearing for the Dena Bank, in support of the appeal has contended that the writ petition should have been dismissed by the learned trial Judge in limine for inordinate delay on the part of the writ

petitioner to move this court. It was contended by Mr. Ginwalla that he was placed under suspension in 1976 and the writ petition was moved only on 1st October, 1986. Hence, the Court should not have entertained the writ petition and should have dismissed the same. Mr. Ginwalla has also contended that as the C.B.I, had been making preliminary enquiry into the allegations contained in the chargesheet, the Bank administration did not intend to proceed further with the said departmental proceeding and kept the same in abeyance and also informed the writ petitioner that such proceeding should be kept in abeyance until the enquiry by the C.B.I, was finalised. In this connection, Mr. Ginwalla, has cited two decisions of the Supreme Court made in the case of The Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan, and in the case of Tata Oil Mills Co. Ltd. Vs. Its Workmen, . It was held by the Supreme Court in the said two decisions that the refusal of an employer not to stay a disciplinary proceeding even when on the self-same charges criminal trial was pending, cannot be held to be in violation of natural justice. But the Supreme Court has further observed that if the allegations are of grave and serious nature, it is only reasonable to await the decision of the criminal court. Mr. Ginwalla has, therefore, submitted that in the facts of the case, the Bank administration was quite justified in not concluding the departmental proceeding and the writ petition moved for a direction on the Bank to complete the disciplinary proceeding immediately and without further delay was, therefore, liable to be dismissed.

5. We fail to appreciate the second contention of Mr. Ginwalla and it appears to us that the second contention that the Bank was justified in not completing the departmental proceeding but keeping the same pending until the finalisation of the criminal case pending before the Special Judge, runs counter to his first contention that the writ petition Should have been dismissed in limine because the same was moved at a belated stage. If the Bank administration was justified in keeping the said departmental proceeding in abeyance, it cannot be reasonably contended that the writ petitioner should have come before this court on earlier occasion for a direction upon the Bank to complete the disciplinary proceeding. Such contention, in our view, militates against the first contention of Mr. Ginwalla, counsel for the appellant Bank that the writ petition should have been dismissed in limine on the score of inordinate delay.

6. Apart from that, we are also not inclined to accept the contention of Mr. Ginwalla, that the writ petition is liable to be dismissed because the same was moved only on the 1st October, 1986. In our view, it was the duty of the Bank to complete the disciplinary proceeding before Sri Dey would retire on attaining the age of superannuation. In our view it was the duty of the Bank to complete the departmental proceeding before Sri Dey''s retirement in any event but the Bank failed and neglected to do the same and despite the requests of Sri Dey on a number of occasions to complete such departmental proceeding the same was not completed. The C.B.I, enquiry was finalised and the report was placed before the learned Special Judge in April, 1977. It, therefore, appears to us that after April, 1977 there was no difficulty on the part of the Bank administration to

complete the departmental proceeding initiated against Sri Dey for which he was placed under suspension sometime in October 1976. It may be noted in this connection that the learned counsel appearing for both the parties have submitted before us that there is no rule which authorises the Bank to continue the disciplinary proceeding after the superannuation of the concerned employee. It is, therefore, quite evident that the disciplinary proceeding should automatically come to an end with the superannuation of the concerned employee and the Bank administration, with eyes open to such fact, chose not to complete the disciplinary proceeding. We may refer to the decisions of the Supreme Court cited by Mr. Ginwalla in this connection. It has been specifically laid down by the Hon''ble Supreme Court that even when on the self-same allegations, the criminal trial has been initiated, there is no bar for completing the disciplinary proceeding. There may be some justification on the part of the Bank administration to wait for the finalisation of the criminal trial, but when such criminal trial was not completed by more than 10 years from the date of submission of the report by the C.B.I. and when Sri Dey was scheduled to retire by the end of February, 1987 it was the paramount duty of the Bank to complete the. disciplinary proceeding before Sri Dey would retire; from service -of the Bank on attaining the age of superannuation. The writ petitioner Sri Dey came before this court on 1st October, 1986 with a modest prayer for a direction upon the Bank administration to complete the disciplinary proceeding at an early date. Such application was admittedly served on the .Bank sometime in the first week of October, 1986. In our view, the Bank administration after service of the writ petition should have appreciated the fact that Sri Dey was going to retire within 5 months and in proper haste should have completed the disciplinary proceeding. We may note in this connection that Mr. Ginwalla, has submitted before us that the learned trial Judge should not have directed the Bank administration to complete the disciplinary proceedings within three weeks but should have allowed at least three months time. If the Bank was really serious to complete the said departmental proceeding it could do so even after the service of the writ petition sometime in the first week of October, 1986 because there was still about 5 months'' time to complete the disciplinary proceeding before the writ petitioner would retire on attaining the age of superannuation. On retirement of the writ petitioner, the relationship of master and servant has come to an end and there is no statutory provisions under which the departmental proceeding initiated against a retired employee can be continued. The proceeding, therefore, must come to an end as a matter of course. The inevitable result is that there is no further scope in the departmental proceeding to make any finding against the delinquent officer inspite of levelling charges against him in the departmental proceeding. We may also note that the Bank administration has also not filed any civil suit against the writ petitioner for recovery of any amount on account of alleged loss incurred by the Bank because of the lapses on the part of the writ petitioner. The Bank administration on the contrary has chosen to file a suit only against M/s. Tea Agents and the service of the writ petitioner was utilised by the Bank even during the period of suspension in getting an affidavit-in-reply affirmed by him on behalf of the Bank to be filed in the suit instituted against M/s. Tea Agents. In our view, the learned trial Judge had ample justification to comment that despite all reasonable chances given to the Bank administration to appear, the Bank Administration failed and neglected to appear before this court. We may also add that in the facts and circumstances of the case, the Administration of the Bank miserably failed to conclude the disciplinary proceeding although it had ample opportunity to complete the same even when the attention of the Bank was pointedly drawn to complete the departmental proceeding after service of the writ petition in the first week of October, 1986.

7. In the aforesaid facts and circumstances, we do not find any reason to interfere with the judgment passed by the learned trial Judge and the appeal is, therefore, dismissed with costs assessed at fifty G.Ms.

8. The prayer for stay of operation of this judgment has been made by the learned counsel for the appellant Bank after the judgment has been delivered in court. In the facts and circumstances of the case, we do not think that such prayer should be allowed and the prayer for stay is, therefore, rejected.

K.M. Yusuf, J.

9. I agree.

