

(2024) 02 CHH CK 0061

In the Chhattisgarh High Court

Case No : Writ Petition (S) No. 7043 Of 2010

Deoprasad Singh (Died And Deleted)

APPELLANT

Vs

Chairman Cum Appellate Authority

RESPONDENT

Date of Decision : 27-02-2024

Acts Referred:

Sarguja Kshetriya Gamin Bank (officers & servants) Rules, 2000 — Rule 22

Citation : (2024) 02 CHH CK 0061

Hon'ble Judges : Rajani Dubey, J

Bench : Single Bench

Advocate : A. N. Bhakta, Vivek Bhakta, N. Naha Roy

Final Decision : Dismissed

Judgement

1. The petitioners have preferred the present writ petition praying for the following reliefs:-

"A. Writ setting aside the judgment and order passed by the Respondent no1 on dated 12.10. 20110 by which an appeal filed by the petitioner has been dismissed summarily without applying judicial mind by upholding the order passed by the respondent no 2 the Disciplinary Authority of the Sarguja Kshetriya Gramin Bank head office Ambikapur.

B. A writ setting aside order dated 30.06.2010 passed by the respondent no 2 General Manager cum Disciplinary Authority of Sarguja Kshetriya Gramin Bank head office at Ambikapur by which he has punished the petitioner with major penalty by dismissing him from service where as the petitioner was forced to remain absent from his duty under unavoidable and uncontrollable circumstances as being a T.B.patient and he was under medical treatment.

C. Another writ may kindly be issued directing the respondents no 1 and 2 to treat the period of the absence from duty of the petitioner from 26.06.2006 to 03.02.07 as leaves without pay under legal proviso of rule 22 of Sarguja Kshetriya Gamin Bank (officers & servants) Rule 2000 and allow the petitioner to

join his duty as before with full benefit of his remuneration for the period of his dismissal from service.

D. Any other relief which is deemed fit by this honourable Court.

E. Cost of the petition"

2. Brief facts of the case are that the petitioner was an employee of Sarguja Kshetriya Gramin Bank as a clerk cum cashier and he was posted at Podi Bachara Branch of Sarguja Kshetriya Gramin Bank on transfer. During his service he was infected with the tuberculosis and he was a T.B. patient. Being a patient of contagious disease like tuberculosis, the petitioner was not allowed to remain present on duty by the respondent no.3 Branch Manager of Sarguja Kshetriya Gramin Bank Podi Bachra for fear of getting infected by him and other employees of the Bank. The petitioner was warned by the respondent no.3 to get first treatment and then join the duty. The petitioner was living a secluded life and getting treatment and thus the petitioner was found absent on duty. The management ie Sarguja Kshetriya Gramin Bank initiated a departmental enquiry on the allegation that he remained absent from duty and the head quarter without leave and informing the competent authority. The enquiry officer submitted his report to the respondent No.2 finding the petitioner guilty of misconduct by remaining absent from duty without getting leave, who accepted the report and passed a final order punishing him with major punishment of dismissal from service. The petitioner thereafter filed an appeal before the respondent no.1 but the same has been dismissed vide order dated 12.10.2010. Hence this petition has been filed by the petitioner.

3. Learned counsel for the petitioners submits that the impugned order is bad, illegal, perverse and contrary to law. The respondent authorities have failed to consider the unavoidable circumstances under which the petitioner was living a secluded life as a hermitage avoiding social contact with his near dear and other employees of the bank. The appellate Authority has also failed to see that leave applications are not regularly maintained by the office of respondent No.3. Since leave register was not maintained by the respondent no.3 the contention of the petitioner that he has left the application for leave at the resident of the respondent no 3 and he had sent an application for medical leave by post under postal certificate was genuine and probable which was worth consideration. The petitioner also appeared before the respondent no.3 on 10.08.2006 in the bank along with the medical certificate but the manager of Podi Bachara branch of the bank did not allow the petitioner to take over the charge for fear of getting infected, due to this reason petitioner remained absent on his duty. These explanations of the petitioner were most reasonable but the respondent no.1 did not consider the plea of the petitioner. The final order passed by the disciplinary authority, the respondent no 2 after accepting the report of the of the enquiring officer and punishing the petitioner by major punishment by dismissing him from service is injudicious harsh and bad in the eye of the law. The petitioner was denied to have an opportunity of hearing before passing the final order. The

respondent no.2 has not applied his judicial mind and has failed to see that any minor punishment would have met the end of the justice. The petitioner was a T.B. patient and he was under treatment and he was admitted in the hospital so many times as such he remained absent under unavoidable circumstances which were not in his control. The respondent no.2 has failed to exercise his judicial discretion under the legal proviso of Rule 22 of Sarguja Keshtriya Gramin Bank (Officer & servants) Rule 2000 that the period of the absence of the petitioner from duty may be treated as leave without pay. The respondents have erred by punishing the petitioner by removing him from service that completely being unmindful, as the petitioner remained absent from duty and his head quarter under unavoidable circumstances. Reliance has been placed on the judgment rendered by the Hon'ble Supreme Court in the matter of Rajinder Kumar vs State of Haryana and another, reported in (2016) 15 SCC 693.

4. Learned counsel for the respondents opposes the submission made by the petitioner's counsel and submits that the petitioner was habitual of unauthorised absence from the duty without any leave application or intimation. He remained absent with the keys of the safe from duty as well as Head Quarters without intimation since 24.02.1997 to 26.02.1997. For these lapses his services were suspended on 01.03.1997 and a charge-sheet was issued to him on 19.04.1997. After the departmental enquiry, punishment of withholding of one increment for one year was imposed against the petitioner. The unauthorised absence of the petitioner didn't come to an end. He remained absent in verbatim from the duty as per his choice. By the end of 1999, the total leave without pay on account of absence accumulated upto 240 days. After the year 2000, the situation even deteriorated. In the year 2000, he remained unauthorised absent for 14 days, in the year 2002 for 95 days, in 2003 - 191 days, in 2004, 87 days, 2005-143 days, 2006-13 days and in 2007, 95 days. At the end of year 2007, the total unauthorised absence went up to 1184 days. Similarly, in the year 2008, 2009 and 2010 the petitioner remained absent for 100, 69 and 35 days, respectively. The petitioner remained absent from the duty from 12.07.2004 to 11.10.2004 with the keys of the safe. A show-cause-notice in this regard was issued to him on 27.06.2005. The petitioner remained absent from office from 03.03.2008 to 03.04.2008 without prior permission, without intimation. He further submits that remaining absent from the duty without intimation/application/prior permission from the Competent Authority is an offence under Section 22 of Service Regulation and remaining absent from the Head Quarter without intimation/application/prior permission from the Competent Authority is an offence under Section 23 of Service Regulation. The petitioner was subjected to an enquiry in accordance with the applicable regulation and was called for explaining his defence during the course of Enquiry. He was also provided with defence representative namely Mr. Ravindra Kumar Sinha who was General Secretary of the Employee's Union. After conducting the enquiry in accordance with the procedure settled for the same, the charges were proved by the Enquiry officer, as such he was dismissed from service by the respondent Department. Thus, the

writ petition has no substance and it deserves to be dismissed. Reliance has been placed on the judgments rendered by the Hon'ble Supreme Court in the matters of General Manager, Appellate Authority, Bank of India and another vs Mohd. Nizamuddin, reported in (2006) 7 SCC 410 and L & T Komatsu Ltd. vs N. Udaya Kumar, reported in (2008) 1 SCC 224.

5. In reply to the return filed by the respondents, the petitioner filed rejoinder and denied the allegations made by the respondent authorities and has submitted that the petitioner was suffering from TB and he even submitted the medical document before the respondent authorities, but the same was not considered. He further submitted that the penalty imposed by the respondent authorities is too harsh debarring him from future employment and instead minor penalty should have been imposed against the petitioner, as is available under Regulation 38.

6. During pendency of this writ petition, the petitioner has died and his LRs have been brought on record.

7. Heard learned counsel for the parties and perused the material available on record.

8. It is not disputed in this case that the petitioner was appointed in respondent bank on the post of clerk-cum-cashier on 01.10.1985. On being absent from duty regularly, a charge sheet was issued to him after conducting departmental enquiry, vide impugned order dated 30.06.2010 (Annexure-P/2), he was removed from service, against which the petitioner filed appeal before the learned Appellate Authority/respondent No.1, but the same has also been dismissed vide impugned order dated 12/14.10.2010 (Annexure-P/1).

9. Learned counsel for the petitioner has contended that the petitioner was absent from service due to his illness, as he was suffering from tuberculosis, which is a contagious disease and the bank officer did not allow him to join his duty, but this fact was not considered by the Disciplinary Authority as well as the Appellate Authority and the impugned harsh punishment was passed against the petitioner. Learned counsel for the petitioner has placed reliance on the judgment rendered by the Hon'ble Supreme Court in the matter of Rajinder Kumar (supra), in which the Hon'ble Supreme Court set aside the order of removal and converted it into compulsory retirement from service, as such the petitioner's punishment be also converted into the compulsory retirement from service, as during pendency of this writ petition, the late petitioner has died and his LRs specially wife of late petitioner has no source of earning,

10. Learned counsel for the respondents strongly opposed the prayer of the petitioner on this ground that during departmental enquiry, the petitioner did not file any medical certificate and he has filed certificate of doctor of the date which is not related to the absence period of the petitioner.

11. The respondents have filed explanation of the petitioner (Annexure-R/8), in

which the petitioner stated that he remained absent from duty, as he was suffering from TB and during his absence from duty, he was not having any charge of the bank and further explained that since he was not having sufficient leave in his account, as such he did not submit the leave application.

12. The respondents have also filed enquiry report (Annexure-R/10), which makes it clear that the delinquent employee did not file any document in his defence and the Enquiry Officer after appreciating the oral and documentary evidence of the Department and the delinquent employee found both the charges proved against the petitioner, as the delinquent/petitioner did not file any document or certificate regarding his illness of tuberculosis. Thereafter, a show cause notice was issued to the petitioner with enquiry report. The petitioner filed Annexure-R/12 with this reply/explanation, but he did not file any medical certificate. The Disciplinary Authority again issued the proposed punishment (Annexure-R/13) but the petitioner did not file any reply to this letter and ultimately the Disciplinary Authority passed the impugned order removing him from service.

13. The Hon'ble Apex Court in the matter of Mohd. Nizamuddin (supra) held in para 9 as under:-

"9. It is now well settled principle of law that the gravity of misconduct must necessarily be measured in terms of the nature of the misconduct. A bank officer holding the post of Middle Management Officer- Grade II which is a responsible post absented himself unauthorisedly for about three years which is undoubtedly detrimental to the public interest cannot be said to be not grave misconduct which would warrant dismissal from service. The High Court's view that the punishment of dismissal from service on the proved misconduct is disproportionate to the gravity of the misconduct, in our view, is fallacious. There can never be a more grave misconduct than a bank officer holding a responsible post absenting himself unauthorisedly for a period of three years detrimental to the public interest. That apart, despite the receipt of several notices issued to him he remained adamant and shy away from participating in the inquiry proceedings. This conduct is also unbecoming or a responsible officer holding the position as Middle Management Officer-Grade II."

14. Again the Hon'ble Apex Court in the matter of L&T Komatsu Ltd. (supra) held in para 8 as under:-

"8. So far as the question whether habitual absentism means the gross violation of discipline, it is relevant to take note of what was stated by this Court in M/s. Burn & Co. Ltd. v. Their Workmen and Ors. [AIR 1959 SC 529] "There should have been an application for leave but Roy thought that he could claim as a matter of right leave of absence though that might be without permission and though there might not be any application for the same. This was gross violation of discipline. Accordingly, if the company had placed him under suspension that was in order. On these findings, it seems to us that the Tribunal erred in holding

that it could not endorse the Company's decision to dispense with the services altogether. In our opinion, when the Tribunal upheld the order of suspension it erred in directing that Roy must be taken back in his previous post of employment on the pay last drawn by him before the order of suspension."

15. In light of the above judgments, it is clear that in this case also, the petitioner was habitual absentee and it is also clear from all documents that he even did not file leave application. The respondent authorities issued several notices to the petitioner and after that the disciplinary enquiry was initiated against him, in which ample opportunity was given to the petitioner, but he did not file his medical certificate and before passing major penalty, again notice was issued to the petitioner for proposed punishment but the petitioner did not file his reply. It is clear that the petitioner violated Rule 22 of the Sarguja Keshtriya Gramin Bank (Officer & servants) Rules, 2000, which strictly provides that no officer or employee shall be absent from duty without permission/intimation.

16. Thus, considering the facts and circumstances of the case and the guidelines of the Hon'ble Supreme Court, the writ petition is without any merit. It deserves to be and is hereby dismissed accordingly.