(2014) 01 MP CK 0027

In the Madhya Pradesh High Court

Case No : W.A. No. 51/2010

Devendra Kumar Join (died) through L.R. Smt. Rajkumari Ajmera — APPELLANT

Vs

United Commercial Bank and Others — RESPONDENT

Date of Decision : 31-01-2014

Acts Referred:

Citation : (2014) 141 FLR 1071 : (2014) LLR 528

Hon'ble Judges : S.K. Gangele, J;K.K. Lahoti, J

Bench : Division Bench

Advocate : N.S. Kirar, Advocate for the Appellant; Rohit Mishra, Advocate for (Bank), Advocate for the Respondent

Judgement

S.K. Gangele, J.—This Writ Appeal has been filed by the appellant against the order dated 08-12-2009 passed in Writ Petition No. 2150/2004. During pendency of appeal, the employee Mr. Devendra Kumar Jain died and his Legal Representative wife has been brought on record. The appellant (deceased) employee was appointed as Assistant Cashier-cum-Godown Keeper in June, 1967. He was promoted to the post of Head Cashier in June, 1974. He was further promoted to the ''post of Chief Cashier of Officer Grade on 10.1.1976. He was given benefit of scale promotion of Chief Cashier of Officer Grade-E. In the year 1982, he was also again accorded benefit of scale promotion of Chief Cashier of Officer Grade D.

2. When the deceased employee was posted United Commercial Bank, Branch at High Court Road, Gwalior as Chief Cashier, on 5.3.2008 during the course of process of cash remittance, a shortage of cash of Rs. 1.00 lac was detected in the currency chest, which was confirmed on 8th March, 1983. The deceased employee informed the same to the higher officers. It was found that the balance in the currency chest must be Rs. 2,26,37,000, however, it was Rs. 2,25,37,000. The deceased-employee Mr. Jain was holding the charge of currency chest as first custodian and the Manager of the Bank was holding the charge of second

custodian. The deceased employee was suspended and charge-sheeted. A criminal case was also registered against him and the Manager. The Manager and Mr. Jain were acquitted in the criminal case. Following three charges were levelled against the deceased employee Mr. Jain.

1. He failed to maintain absolute integrity and devotion to duty while functioning as the first custodian of the currency chest at the Bank''s branch at High Court Road, Gwalior.

2. He was grossly negligent and careless in discharge of his duties.

3. Because of his carelessness and dereliction of duties, Shri Jain has caused financial loss to the Bank.

3. The enquiry officer had found charge No. 1 not proved and charges Nos. 2 and 3 partially proved in the enquiry. The following findings were recorded by the enquiry officer in the enquiry report:

As such concluding my all observations I am of the opinion that CSO alone cannot be held accountable as the currency chest maintenance was always a joint affairs by both custodians i.e. Chief Cashier and Manager. He has also not been negligent i.e. has not committed any act to take away the money as he was the first person to point it out/detect/notice the shortage on 5.3.83. Had he been little more careful while tallying the physical balances either daily or alternate day or some other interval, the tracing of shortage could have been little early. The CSO had been careless in either way i.e. either in remitting out cash or receiving deposits in chest but over all the CASH shortage had occurred under his joint charge alongwith the manager that day it was noticed. The custodian on that day are responsible and thereby to meet this shortage good, the Bank has suffered loss Rs. 1.00 Lac by paying to RBI in currency chest from its own fund. As such my findings on the articles of charges as referred in the charge-sheet ME1 and its corrigendum are as under:

1. He failed to maintain absolute integrity and devotion to duty while functioning as the first custodian of the currency chest NOT PROVED.

2. He was grossly negligent and careless in discharge of his duties. PARTIALLY PROVED.

3. Because of his carelessness and dereliction of duties, Shri Jain has caused financial loss to the Bank PARTIALLY PROVED.

4. During enquiry, the Management had produced two witnesses and filed 11 documents. The deceased employee produced 15 documents but had not examined any witness in support of his case.

5. A show cause notice was issued to the deceased employee. He had submitted his reply Annexure P22 and denied the allegations. He further submitted that near about 19 years had been taken by the authorities to complete enquiry and there was no charge to prove the fact that he had misappropriated the amount.

He further submitted that Manager Shri R.S. Khard who was joint custodian of chest was exonerated from the charges. The chest was verified by Mr. M.L. Jain on 26.2.1983 and there was no deficiency found in the currency chest on that date.

6. The disciplinary authority had awarded a punishment of reduction in the basic pay by one stage in the time scale of pay without affecting the pension and gratuity benefits. Against the aforesaid order, the, deceased employee filed an appeal, that was also dismissed.

7. Learned counsel appearing on behalf of the appellant has submitted that the findings recorded by the enquiry officer are based on surmises and conjectures. There is no finding that the deceased-employee was negligent in any manner. He further submitted that the other co-employee who was posted along with the deceased employee for the same charges, was exonerated in the departmental enquiry. Hence, the punishment awarded by the authority against the deceased employee is illegal.

8. We have examined the findings of the enquiry officer above in the order on which the enquiry officer had been found the deceased employee guilty. It has clearly been observed by the enquiry officer that the deceased employee could not be held accountable alone because management of currency chest was a joint affairs by both custodians i.e., Chief Cashier and Manager, The deceased employee had not taken away the money and he was the first person to point out, the shortage. The enquiry officer had observed that the deceased employee was careful while tallying the physical balances either daily or alternate day or some other interval and so, the shortage could have been detected earlier and on that part, the deceased employee was careless. Same charges were levelled against another employee, the Manager, who was acquitted from the charges. No rule has been produced by the respondents Bank to the effect that it was compulsory for both the persons to check the cash of currency chest every day. It is also a fact that huge amount of cash of Rs. 2,26,37,000 was in the chest. Physically, it was not possible to check the'' amount and count the same on day-to-day basis. Earlier, the chest was verified on 26.2.1983 and thereafter on 5.3.1983 the deceased employee noticed the deficiency and immediately pointed out the same. In such circumstances, in our opinion, it could not be said that the deceased employee was negligent because there was no rule in the Bank that the cash kept in the chest, has to be checked on day-to-day basis.

9. Hon''ble the Supreme Court in the case of M.V. Bijlani Vs. Union of India (UOI) and Others, has held as under in regard to jurisdiction of the court in judicial review of disciplinary proceedings:

25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi -criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all

reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion, that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse, to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not be charged with.

26. The report of the enquiry officer suffers from the aforementioned vices. The orders of the disciplinary authority as also the Appellate Authority which are based on the said enquiry report, thus, cannot be sustained. We have also noticed the way in which the Tribunal has dealt with the matter. Upon its findings, the High Court also commented that it had not delved deep into the contentions raised by the appellant. The Tribunal also, thus, failed to discharge its functions properly.

Hon''ble the Supreme Court further in the case of Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others, has held as under:

37. It is thus well-settled law that strict rules of the Evidence Act, and the standard of proof envisaged therein do not apply to departmental proceedings or domestic tribunal. It is open to the authorities to receive and place on record all the necessary, relevant, cogent and acceptable material facts though not proved strictly in conformity with the Evidence Act. The material must be germane and relevant to the facts in issue. In grave cases like forgery, fraud, conspiracy, misappropriation, etc. seldom direct evidence would be available. Only the circumstantial evidence would furnish the proof. In our considered view inference from the evidence and circumstances must be carefully distinguished from conjectures or speculation. The mind is prone to take pleasure to adapt circumstances to one another and even in straining them a little to force them to form parts of one connected whole. There must be evidence direct or circumstantial to deduce necessary inferences in proof of the facts in issue. There can be no inferences unless there are objective facts, direct or circumstantial from which to infer the other fact which it is sought to establish. In some cases the other facts can be inferred, as much as is practical, as if-they had been actually observed. In other cases the inferences do not go beyond reasonable probability. If there are no positive proved fact, oral, documentary or circumstantial from which the inferences can be made the method of inference fails and what is left is mere speculation or conjecture. Therefore, when an inference of proof that a fact in dispute has been held established there must be some material" facts or circumstances on record from which such an inference could be drawn. The standard of proof is not proof beyond reasonable doubt "but" the preponderance of probabilities (ending to draw an inference that the

fact must be more probable. Standard of proof cannot put in a straight-jacket formula. No mathematical formula could be laid on degree of proof. The probative value could be gauged from facts and circumstances in a given case. The standard of proof is the same both in civil cases and domestic enquires.

10. From the aforesaid judgments of Hon''ble the Supreme Court, it is clear that the power of the Court to interfere in the findings recorded by the enquiry officer is limited. However, the Court can Interfere if the findings are perverse or no prudent and reasonable person can come to the conclusion on which the enquiry officer recorded his findings. The principle of law in regard to proof in departmental enquiry is that on the basis of probabilities the enquiry officer could not reach on a conclusion, there must be some evidence to support the conclusion.

11. In the present case, the enquiry officer has recorded a finding that the delinquent employee could be vigilant and he was careless. However, there is no evidence to support that delinquent employee was careless. Two persons were authorized to operate the chest. Delinquent employee himself reported about the deficiency of rupees one lac amount which was kept in the chest, it was a huge amount. It was not possible to check the currency chest on day-to-day basis and when the General Manager, who was joint custodian of the chest, had been acquitted in the departmental enquiry, the delinquent employee was entitled the same benefit. In such circumstances, in our opinion/the findings recorded against the deceased employee and holding the charge Nos. 2 and 3 partially proved, are arbitrary. Apart from this, the departmental enquiry continued for a long period of 19 years. The deceased employee had suffered a lot during pendency of enquiry. He was not promoted at all.

12. Learned Single Judge has not considered the aforesaid aspect. Learned Single Judge has clearly observed that the findings recorded by the enquiry officer are based on evidence. The writ Court has not considered the fact that on the same set of evidence, another co-employee, the Manager has been exonerated from the charges. Apart from this, there was no rule placed by the Bank on record to the effect that it was mandatory to check balance in the chest by both joint custodians. Looking to the huge amount which was kept in The chest and the fact that the deceased employee himself reported the deficiency. In our opinion, the findings recorded by the writ Court are not in accordance with law. Consequently, the writ appeal is allowed. The Impugned order dated 8.12.2009 passed by writ Court, is hereby quashed. The order dated 22.7.2003 (Annexure P1) in regard to imposition of punishment and the order dated 8.12.2003 (Annexure P2) passed by Appellate Authority are hereby quashed. The writ petition filed by deceased employee is allowed. In consequence thereof, Smt. Rajkumari Ajmera, wife of deceased employee, shall be entitled to get benefit of salary and, other post retiral benefits of deceased employee. The order be complied with within a period of three months from the date of receipt of certified copy of this judgment. No order as to costs.

