(2009) 03 AHC CK 0202

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 44707 of 1993

Dinesh Kumar Sharma APPELLANT

Vs

Chairman, Vidur Gramin Bank, Bijnore and others RESPONDENT

Date of Decision : 02-03-2009

Acts Referred:

Citation : (2009) 121 FLR 643

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Advocate : S.K. Varma and Siddhartha Varma, for the Appellant; K.L. Grover, for the Respondent

Final Decision : Dismissed

Judgement

S.U. Khan, J.—Heard learned Counsel for the parties.

This writ petition is directed against dismissal order dated 28.5.1988 contained in Annexure-7 to the writ petition and appellate order dated 21.9.1993 Annexure-9 to the writ petition.

2. Petitioner was appointed as Probationary officer in Vidur Gramin Bank, Bijnore in 1984 and became Manager on 4.12.1987. Thereafter, he was transferred to the Head Office of the Bank in Bijnore as Probationary officer. Thereafter, disciplinary proceedings were initiated against the Petitioner regarding allegations of misconduct and one Kuldeep Gupta was appointed as Inquiry Officer.

3. Case of the Petitioner is that Kuldeep Gupta is junior to him. In this regard reliance has been placed upon seniority list dated 10.3.1988. Thereafter on 21.4.1988 the said list was re-arranged and Petitioner was shown junior to Kuldeep Gupta on the ground that he (Petitioner) was on leave for seven days. Petitioner made representation against that and seniority list was again corrected on 5.11.1988 with effect from 10.3.1988. Said corrected list is Annexure-4 to the writ petition.

The further case of the Petitioner is that in view of Rule 30(3) of Vidur Gramin Bank (Staff) Service Regulation, 1983 junior officer could not be appointed as Inquiry Officer.

4. Shri Kuldeep Gupta Inquiry Officer served charge-sheet upon the Petitioner on 30.1.1988. First Information Report was also lodged with regard to the same allegations copy of which is Annexure-5 to the writ petition. In the F.I.R. charges of embezzlement to the extent of Rs. 1.7 lacs were levelled against the Petitioner. Petitioner was arrested and released on bail on 6.5.1988.

In para-14 of the writ petition it is stated that due to pendency of criminal proceedings Petitioner did not think it proper to declare his defence during the departmental proceedings and sought repeated adjournments.

5. After conclusion of inquiry proceedings, show cause notice was issued to the Petitioner on 21.5.1988, copy of which is Annexures-6 and 6-A to the writ petition. Petitioner gave reply to the said show cause notice. Thereafter punishment order contained in Annexure-7 to the writ petition was passed on 28.5.1988. In the punishment order it is mentioned that Petitioner did not give any reply to the show cause notice. Accordingly the bald allegation made in para-18 of the writ petition that Petitioner replied the show cause notice is not correct. Neither the date of the reply has been mentioned nor copy of the alleged reply has been annexed.

6. Initially appeal of the Petitioner filed against the dismissal order was dismissed without speaking order hence Petitioner filed writ petition No. 12538 of 1991 which was disposed of on 7.4.1993 directing the appellate Court to decide the appeal giving reasons. Thereafter appeal was decided on 21.9.1983 which order has also been challenged.

7. In the appellate order it is mentioned that prior to joining the Bank in question Petitioner was Manager in Prathma Bank where he was found involved in embezzlement on two occasions and on both the occasions disciplinary proceedings were initiated against him and he admitted his guilt and was punished on both the occasions. Before the appellate authority Petitioner admitted that in the Prathma Bank he was punished for embezzlement.

8. The Inquiry Officer found that Petitioner alongwith other employees of the Bank embezzled an amount of Rs. 7.11 lacs and all other employees found involved in the fraud i.e. Vinod Kumar - Regional Supervisor, Janam Singh-Clerk/ Cashier and Bhoodev Singh, Messenger were removed from service. That Petitioner did not appear before Inquiry Officer inspite of repeated opportunities.

9. Appellate authority has given very detailed reasons for rejecting the appeal. Board of Directors decided the appeal.

10. In the entire writ petition it has not been denied that Petitioner was involved in embezzlement. Only two points have been taken. Firstly Inquiry Officer was junior to the Petitioner and secondly opportunity of hearing was not provided to

the Petitioner. As far as second point is concerned it is not tenable at all as according to para-14 of the writ petition Petitioner deliberately did not participate in the proceedings.

Supreme Court in Ashok Kumar Sonkar Vs. Union of India (UOI) and Others, has held that order of dismissal or removal from service cannot be quashed merely on the ground that opportunity of hearing was not provided unless Petitioner brings on record in the writ petition or the proceedings which he takes against the dismissal order that in case opportunity had been provided what plausible cause he would have shown.

11. As far as the argument that Inquiry Officer was junior to the Petitioner is concerned, it is not tenable. What is guaranteed is that dismissal order shall not be passed by authority inferior to the appointing authority. In the instant case punishment order was passed by the appointing authority. Supreme Court in Maharashtra State Mining Corporation Vs. Sunil Pathak, " has held that even if dismissal order is passed by an authority which is not competent to pass it still such an invalid order/action can subsequently be rectified and ratified by competent authority having power to pass order of dismissal.

12. Accordingly, writ petition cannot be allowed and dismissal order cannot be set aside on the ultra technical ground that Inquiry Officer was junior to the Petitioner.

13. Petitioner was involved in embezzlement prior to his appointment in the Bank in question also. In case he had disclosed this fact he would not have been given appointment in the bank in question. Petitioner embezzled the amount of account holders who were poor persons. He did not put any defence before the Inquiry Officer.

Accordingly, there is absolutely no reason to set aside the dismissal order. Writ petition is devoid of merit hence dismissed.