
(1999) 06 AP CK 0019
In the Andhra Pradesh High Court
Case No : W.P.No. 34808 of 1998

G.A. Sarma

APPELLANT

Vs

Syndicate Bank, Manipal and Another

RESPONDENT

Date of Decision : 01-06-1999

Acts Referred:

Citation : (1999) 4 ALD 92

Hon'ble Judges : S.R. Nayak, J

Bench : Single Bench

Advocate : Mr. Nooty Rama Mohana Rao, for the Appellant; Mr. A. Krishnam Raju, SC, for the Respondent

Judgement

1. The petitioner while serving as Branch Manager at Banaganapalli and at Proddatur, a charge memo was issued to him on 21-12-1984 alleging certain misconduct against him under the Bank's Conduct Regulations. The management, after holding departmental enquiry, removed the petitioner from the service as a disciplinary measure with effect from 4-1-1986. Aggrieved by the said disciplinary action, the petitioner filed Writ Petition No. 16692 of 1986 in this Court. The learned single Judge of this Court after appreciation of evidence on record came to the conclusion that the findings recorded by the enquiring authority and accepted by the disciplinary authority are without basis. The learned single Judge also thought that penalty of removal imposed on the petitioner-delinquent was disproportionate to the gravity of mis-conduct alleged to have been committed by the petitioner-delinquent. In that view of the matter, the learned single Judge disposed of the writ petition by his order dated 7-4-1998.

2. The operative portion of the order reads thus:

"For the foregoing reasons, I would allow the writ petition and set aside the Impugned order. The second respondent is directed to consider all the aspects of the matter and impose a reasonable punishment for the irregularities committed

by the petitioner, insofar as releasing of loan in favour of Laxmi Reddy and five others are concerned. The findings of the Enquiry Officer that the petitioner acquired properties benami in the name of his nephew is without evidence and, therefore, it is set aside. Likewise, the finding in respect of charge No.2 also is set aside. The second respondent shall within eight weeks from the date of receipt of this judgment pass orders reinstating the petitioner into service and also imposing upon him a reasonable punishment."

3. The management of the bank being aggrieved by the order of the learned single Judge preferred Writ Appeal No.864 of 1988 in this Court. When the writ appeal was pending, there were certain interim orders. I do not think it necessary to refer to those interim orders in view of the fact that the said writ appeal was dismissed as having become infructuous on 26-3-1997 on the submission made by the learned Standing Counsel for the management.

4. There is no controversy between the parties that after the learned single Judge passed the order on 7-4-1988, the management did not hold any enquiry against the petitioner-delinquent or pass any order imposing appropriate penalty, in the place of penalty of removal earlier imposed. The petitioner retired from service on attaining the age of superannuation on 30-9-1996. The petitioner after dismissal of Writ Appeal No.864 of 1988 on 26-3-1997 submitted a representation dated 10-12-1997 to the Chairman of the Bank requesting the management to pay him the wages for the period between 22-1-1986 and 30-5-1988 with interest at 36% along with other service benefits from 22-1-1986 to 24-11-1990. To this letter, the General Manager of the Bank sent a reply dated 15-12-1997 rejecting the claim of the petitioner.

The letter reads:

"3799/WP-154-0028-LAD Regd. Post Ack. Due

December 15, 1997

Shri.G.A, Sarma, Manager (Retd.), B-15, Syndicate Bank Officers" Quarters, 11 Dover Park, B.C.Road, Calcutta-700019.

Dear Sir,

Sub:--Payment of arrears of salary for the period 22-1-1986 to 30-5-1988.

We have for reference your letter dated 10-12-1997 addressed to our Chairman & Managing Director.

In this connection, we would like to inform you that on an Application filed by you on the Interim Order dated 31-5-1988 of the Hon"ble Division Bench of the Andhra Pradesh High Court, inter alia, seeking for payment of arrears of salary for the period 22-1-1986 to 30-5-1988, the High Court has specifically directed the bank to pay you full salary including all allowances with effect from 31-5-1988.

Therefore, there are no directions of the Court to pay back wages for the aforesaid period.

That part, it is a settled legal position that a dismissed employee when reinstated is not, as a matter of right, entitled for back wages from the date of dismissal to the date of reinstatement.

Under the circumstances, the Bank is unable to accede to the request for payment of back wages.

In spite of this, if you approach a Court of Law and drag the Bank to litigations, you will be doing so at your own risk and will have to pay costs and expenses to be incurred by the Bank in defending such action.

Yours faithfully,

General Manager (P)"

4. The validity of this letter of the General Manager of the Bank dated 15-12-1997 is assailed in this writ petition.

5. A short question that falls for consideration is whether the petitioner is entitled to back wages and other attendant pecuniary benefits and service benefits during the out-of-employment period consequent upon the disciplinary action earlier taken by the bank's management. After hearing the Counsel for the parties, I should state that the petitioner is entitled to the relief. I say this because, by virtue of the order made by M.N.Rao, J in Writ Petition No.16692 of 1986, the petitioner should be deemed to have been in service throughout. Further disciplinary proceedings were not taken against the petitioner though liberty to take such a step was reserved by the learned Judge. The management also did not pass any order imposing appropriate penalty on the petitioner as reserved by the learned Judge. The resultant position is that the earlier order passed by the disciplinary authority dated 4-1-1986 was set at naught by the order of the learned single Judge, and by virtue of the order made by the learned single Judge, the petitioner stood reinstated into service. If that is so, it is well settled that back wages should follow reinstatement. Undoubtedly, the employer or the Court have the power, in appropriate case, to deny the back wages or continuity of service and/or attendant benefits, pecuniary and otherwise. In the case of the petitioner, there was no denial of backwages and any other attendant benefits either by the Court or by the employer. If that is so, it goes without saying that the petitioner is entitled to all the benefits which are otherwise available to him as an Officer of the bank during the out of employment period.

6. In the result, I allow the writ petition and quash the impugned letter issued by the General Manager (P), dated 15-12-1997. A direction shall issue to the respondents to pay the salary and allowances for the period from 22-1-1986 to 30-5-1988 and this payment should be made to the petitioner within a period of two months from the date of receipt of a copy of this order. The parties are directed to bear their own costs in this writ petition.

7. Before parting with this case, I thought it necessary to point out the serious lapse committed by the concerned officers of the bank in not exercising the liberty reserved to the bank's management in the order of the learned single Judge dated 7-4-1998 in Writ Petition No. 16692 of 1986. Although the learned Standing Counsel for the bank would strenuously contend that the petitioner was guilty of the mis-conduct alleged against him, the concerned officers of the bank for the reasons best known to them did not take any further steps after the disposal of the writ petition and on the other hand without application of mind, they submitted before the Division Bench that after retirement of the petitioner on attaining the age of superannuation, the management's writ appeal had become infructuous and thereby got it dismissed as having become infructuous. It is for the Bank's management to find out the lapse committed by the concerned Officers in this regard. The 2nd respondent-General Manager (Personnel) is directed to place a copy of this order before the Board of Directors of the Bank.