(2013) 01 DEL CK 0086

In the Delhi High Court

Case No : LPA No. 771 of 2010

General Manager, Canara Bank and Others — APPELLANT

Vs

Kuldeep Raj Sharma — RESPONDENT

Date of Decision : 07-01-2013

Acts Referred:

Citation : (2013) 2 AD 1 : (2013) 197 DLT 673 : (2013) 134 DRJ 43 : (2013) 3 ILR Delhi 2085 : (2013) LabIC 3816

Hon'ble Judges : V.K. Jain, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Naveen R. Nath, for the Appellant; Sumedha Sharma, for the Respondent

Final Decision : Allowed

Judgement

Badar Durrez Ahmed, J.—This Letters Patent Appeal is directed against the judgment dated 09.02.2010 passed by a learned single Judge of this court in WP (C) 7383/2009 as also against the order dated 20.09.2010 passed by the said learned single Judge in the review petition No. 243/2010. By virtue of the judgment dated 09.02.2010, the respondent''s writ petition was allowed and by virtue of the order dated 20.09.2010, the appellant''s review petition was dismissed. The issue sought to be raised in the present appeal pertains to the manner in which the period for which the respondent Kuldeep Raj Sharma was under suspension, that is, from 05.08.2000 to 20.07.2002, is to be dealt with. The respondent''s claim for difference in salary as well as of treating the said period of suspension as having been "spent on duty" was allowed by the learned single Judge by virtue of the impugned judgment/order. It is the case of the appellant that the said decision runs contrary to the regulations and also to the Supreme Court decision which had been relied upon by the learned single Judge in the case of General Manager, UCO Bank and Another Vs. M. Venuranganath, .

2. Before we examinee rival contentions of the parties, it would be relevant to notice some facts. The respondent Kuldeep Raj Sharma was working with the

appellant. The respondent had two sons Pradeep Sharma and Manish Sharma. The younger son (Manish Sharma) married one Anita Sharma sometime in the year 2000. Unfortunately, Anita Sharma died an unnatural death on 01.08.2000. A criminal case came to be registered under FIR No. 1643/2000 at police station Sahibabad under Sections 498A/ 304B/ 302/ 34 IPC and under Sections 3/ 4 of the Dowry Prohibition Act, 1961. The respondent was arrested in connection with that criminal case and by virtue of an office order bearing No. DC/DAC/700/2000 dated 05.08.2000, the respondent was placed under suspension. Subsequently, the respondent and his wife were granted bail by the Sessions Court, Ghaziabad (U.P.) on 30.09.2000. By an order dated 20.07.2002 issued by the Deputy General Manager of the appellant, the suspension order was revoked. The revocation of suspension order clearly indicated that the question of suspension of the respondent was reviewed and it had been decided to revoke the same. The suspension was revoked from the date of reporting for duty by the said respondent at the appellants Ballimaran, Chandni Chowk Branch, Delhi. The order dated 20.07.2002 also indicated that upon revocation of suspension, the respondent would be paid salary and allowances which he was drawing prior to the date of suspension. Furthermore, the said order dated 20.07.2002 stipulated that the period spent under suspension by the respondent shall not be treated as having been "spent on duty" and the same shall not be reckoned for any purpose whatsoever.

3. The respondent superannuated on 31.12.2002. He was acquitted of all the criminal charges by the Sessions Court at Ghaziabad on 19.01.2004.

4. We may point out that on 03.10.2000, the respondent had made a representation to the General Manager, Canara Bank requesting for revocation of the suspension and release of the differential salary. We have already mentioned above that the suspension order was subsequently revoked by virtue of an order dated 20.07.2002. However, his request for differential salary was not acceded to. A further representation was made by the respondent on 23.08.2004, whereby he requested for counting the period of suspension as having been "spent on duty". By a communication dated 28.10.2004 from the appellant to the respondent, the respondent was informed that at the time of revocation of suspension, the competent authority had ordered to treat the period of suspension as one "not spent on duty. As such, the request for treating the period of suspension as "spent on duty" could not be acceded to.

5. These are the facts leading upto the filing of the writ petition. The learned single Judge by virtue of the impugned judgment dated 09.02.2010, after considering the Canara Bank Officer Employees'' (Conduct) Regulations, 1976 (hereinafter referred to as ''the said Regulations''), came to the conclusion that in the order dated 28.10.2004, no reasons had been given as to why the request of the respondent for treating the period of suspension as the period "spent on duty", had not been acceded to. Consequently, the learned single Judge held that the said order ''smacked'' of arbitrariness, having been passed without

application of mind. The learned single Judge also sought to place reliance on the decision of the Supreme Court in the case of General Manager, UCO Bank (supra) and directed that the respondent was entitled to the difference of salary for the period 05.08.2000 to 20.07.2002 and that the said period should be treated as "spent on duty" by the respondent for all intents and purposes.

6. As mentioned above, the appellant had filed a review petition being review petition No. 243/2010, wherein, inter alia, the plea was taken that the decision of the Supreme Court in the case of General Manager, UCO Bank (supra) does not support the case of the respondent at all. But, on the contrary, supports the case of the appellant. However, the learned single Judge repelled this contention after setting out Regulation 15 of the said Regulations and para 10 of the said Supreme Court decision. We may point out that the learned single Judge also referred to clause 22(8) of the Manual on Disciplinary Action and Related Matters of UCO Bank and came to the conclusion that the review petition had no merit and affirmed his decision as per the impugned judgment dated 09.02.2010.

7. Regulation 15 of the said Regulations reads as under:-

15. Pay, allowances and treatment of service on termination of suspension:

(1) Where the competent authority holds that the officer employee has been fully exonerated or that the suspension was unjustifiable, the officer employee concerned shall be granted the full pay to which he would have been entitled, had he not been suspended, together with any allowance of which he was in receipt immediately prior to his suspension, or may have been sanctioned subsequently and made applicable to ail officer employees.

(2) In all cases other than those referred to in sub-regulation (1), the officer employee shall be granted such proportion of pay and allowances as the Competent Authority may direct:

Provided that the payment of allowances under this sub-regulations hall be subject to all other conditions to which such allowances are admissible:

Provided further that the pay and allowances granted under this sub-regulation shall not be less than the subsistence and other allowances admissible under regulation 14.

(3) (a) In a case falling under sub-regulation (1), the period of absence from duty shall, for all purpose, be treated as a period spent on duty;

(b) In a case falling under sub-regulation (2), the period of absence from duty shall not be treated as a period spent on duty unless the Competent Authority specifically directs, for reasons to be recorded in writing, that it shall be so treated for any specific purpose.

8. A plain reading of the said Regulations makes it clear that Regulation 15(1) deals with departmental proceedings inasmuch as the expression used is where the "employee has been fully exonerated". Regulation 15(1) does not apply to

acquittals in criminal cases. This has been so held by the Supreme Court in General Manager, UCO Bank (supra). In the said decision, it has also been held that Regulation 15(2) applies to all other cases which include criminal cases. Therefore, reading Regulation 15 by itself, it is abundantly clear that the respondent cannot get the benefit under Regulation 15(1) as his case is not of a departmental proceeding, but of a criminal case. The respondent''s case falls under Regulation 15(2) and, if that be so, the respondent is only entitled to be granted such proportion of pay and allowances as the competent authority may direct. The respondent is not entitled to the grant of full pay to which he would have been entitled had he not been suspended. That is only possible under Regulation 15(1) which does not apply to the respondent''s case. We may also point out that Regulation 15(3) deals with two situations; one, where the case falls under sub-Regulation (1) and; two, where the case falls under sub-Regulation (2). Since the respondent''s case falls under Regulation 15(2), it would be Regulation 15(3)(b) which would apply. According to that sub-Regulation, the period of absence from duty shall not be treated as a period "spent on duty" unless the competent authority specifically directs, for reasons to be recorded in writing, that it shall be so treated for any specific purpose. In other words, normally, the period of absence from duty in such cases is not to be treated as a period "spent on duty". It is only in cases where the competent authority specifically directs that such period of suspension should be treated as having been " spent on duty" that the competent authority is required to give reasons in writing. No reasons are necessary when the period of suspension in cases falling under sub-Regulation 15(2) is treated as "not spent on duty".

9. The reliance by the learned single Judge on the Supreme Court decision in General Manager, UCO Bank (supra) is also misplaced. The Supreme Court in the said decision had ultimately held in favour of the respondent therein because of clause 22(8) of the said UCO Bank Manual. The Supreme Court observed as under:-

14. Clause 22(8) obviously is relatable to Clause 15(2), meaning that it provides guidelines for operating Sub-regulation (2) of Regulation 15. The High Court was, therefore, justified in holding that because of Clause 22(8), the respondent was entitled to all benefits to which he would have been normally entitled, had he been on duty. Therefore, no interference is called for.

10. Unfortunately, for the respondent, there is no provision analogous to the said clause 22.8 of the UCO Bank Manual insofar as Canara Bank is concerned. The learned counsel for the appellant had also drawn our attention to the Supreme Court decision in the case of Union of India Vs. K.V. Jankiraman, etc. etc., , wherein the Supreme Court observed as under:-

25. We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the

employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases.

26. We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated in disciplinary/criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardise public interests. We are, therefore, unable to agree with the Tribunal that to deny the salary to an employee would in all circumstances be illegal. While, therefore, we do not approve of the said last sentence in the first sub-paragraph after Clause (iii) of paragraph 3 of the said Memorandum, viz., '""but no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion", we direct that in place of the said sentence following sentence be read in the Memorandum:

However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/ criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so.

11. On going through the above extract from the Supreme Court decision in K.V. Jankiraman (supra), it is clear that the concerned authorities are to be vested with the power to decide whether an employee at all deserves any salary for the intervening period and if he does, the extent to which he is entitled. This is specifically provided in Regulation 15(2) of the said Regulations. Therefore, the observations of the Supreme Court in K.V. Jankiraman (supra) tend to support the case of the appellant. The Supreme Court also observed that it would not be possible to lay down an inflexible rule that in every case when an employee is

exonerated in disciplinary/criminal proceedings, he should be entitled to all salary for the intervening period and to lay down such an inflexible rule would be to undermine the discipline in the administration and jeopardize public interest. Therefore, there was nothing wrong with the appellant deciding not to grant salary to the respondent during the period of suspension because this was in exercise of the discretion under Regulation 15(2) of the said Regulations. For these reasons, the impugned judgment and order cannot be sustained and the same are set aside. The appeal is allowed. There shall be no order as to costs.

