
(1985) 09 MP CK 0038

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 301 of 1981

Guna Central Co-Operative Bank Ltd.

APPELLANT

Vs

Somprakash Mahendra and others

RESPONDENT

Date of Decision : 19-09-1985

Acts Referred:

Madhya Pradesh Co-operative Central Bank Employees Services (Terms of Employment and Working Conditions) Rules, 1965 — Rule 43(2)

Citation : (1987) MPLJ 414

Hon'ble Judges : T.N. Singh, J

Bench : Single Bench

Advocate : N.P. Mittal, for the Appellant; H.N. Upadhyaya, for the Respondent

Final Decision : Allowed

Judgement

Dr. T.N. Singh, J.

A Co-operative Bank under which the non-Petitioner No. 1 was serving as a Supervisor, has come to this Court, assailing an order passed in second appeal by the Board of Revenue, Madhya Pradesh, on 20-8-1981.

The order is challenged on two counts and indeed very forcefully by Shri N.P. Mittal, but after hearing counsel for both sides, I have taken the view that there is no reasonable ground for interference by this Court with one part of the order. I am not at all impressed by the argument advanced by Shri Mittal that the Board exceeded its jurisdiction in awarding a minor penalty to the petitioner who was dismissed from service by the Bank.

When the petitioner raised "dispute" about his dismissal before the Deputy Registrar of Co-operative Societies in accordance with the provisions of the M. P. Cooperative Societies Act, he succeeded and the order passed by the Bank was set aside. However, the Bank was not satisfied with the decision rendered and appealed to the Joint Registrar and succeeded in having its own order restored. Now it was the turn of the employee to move the Board, wherein, he succeeded

albeit partially. The Board, while setting aside the order passed in appeal by the Joint Registrar, did not restore the order passed by the Deputy Registrar in toto. The Board, accepting Bank's case that the employee, while showing cause in the disciplinary proceedings, admitted the crucial fact, for which he could not be totally exonerated of the misconduct attributed to him. The Board held that the employee was guilty of a minor misconduct and the punishment commensurate therewith could be stoppage of two increments and not dismissal from service. Accordingly, the Board, without remanding the case to the authorities below, substituted the punishment as aforesaid. Shri Mittal strenuously argued that this course could not be adopted by the Board. But, I am unable to accept his submission in view of the decision in *Purna and Another Vs. State of Uttar Pradesh*, . That such a course can be adopted and was rightly adopted in the facts and circumstances of the case appears clear from the decision in *Bhagtram* (supra).

However, Shri Mittal further submitted that a finding had to be recorded nevertheless by the Board in terms of sub-rule (2) of Rule 43 of the relevant rules (Madhya Pradesh Co-operative Central Bank Employees, Terms of Employment and Working Conditions Rules) that the petitioner was guilty of "Minor misconduct". For this submission, Shri Mittal drew my attention to clauses (b) and (c) of sub-rule (1) of Rule 43 to submit that the admitted facts could bring the "acts and omissions" attributed to the petitioner within the mischief of the expression "gross misconduct" and, therefore, proper punishment was imposed by the Bank, which was rightly upheld by the first appellate authority. He has also drawn my attention to certain annexures and made a serious attempt to revet my attention on Annexure P/2, wherein the so-called admission, as alluded, finds place. However, on a perusal of the show-cause notice (Annexure P/1) as well as Annexure P/2, I entertain no doubt at all that the offensive

"acts and omissions", attributed to the employee, lastly partook the character of a dishonest act in that it was not such an act which could be said to have been done deliberately with the intention of involving the Bank in loss. I have no doubt that to find an employee guilty of "gross misconduct", his intention in doing, or omitting to do, any act, must receive paramount consideration. This appears clear from clause (e) which speaks of "wilful" and also from clause (d), of sub-rule (1) of Rule 43, which speaks of "offence involving moral turpitude". Clause (b) of the sub-rule must be read ejusdem generis and the expressions "involving or likely to involve the Bank in loss" have to be construed as resulting from deliberate act of a wrong doer, done with a dishonest intention. The use of the word "gross" qualifying the term "negligence" is also indicative of the same purport. Indeed, the two words must be read in its context and setting, partaking the colour and character of the expressions used in the same clause as also in the other clauses.

From the "admission", sifted from Annexure P/2, the reasonable conclusion that

can be reached by any Tribunal must be based on the finding of "minor misconduct" only in the facts and circumstances of the case. I say so because of what is found in clause (c) of sub-rule (2) of Rule 43. There is an admission in Annexure P/2 of "neglect of work" and that is what is embraced by clause (c). There is a clear assertion by the employer in Annexure P/2 about his clean intentions based on the fact that due to inadvertence, the employee failed to discharge his duty of checking and verifying the statements diligently and carefully. It is true that there is also a prayer by the employee that he be excused for the lapse, but it is founded on admission merely of negligence of performance of duty. Although Shri Mittal is right in assailing the Board's order on the sense that a clear finding of "minor misconduct" is lacking therein, I have no doubt that the material preponderate in the instant case and those were available to the Tribunal to reach the conclusion. It is, therefore, difficult to hold that the Board exceeded its jurisdiction in ordering to reinstate non-petitioner No. 1 in service on withholding of two increments. The Board did apply its mind to Rule 43 of the Rules to which explicit reference is to be found in the impugned order. It cannot be also said that the impugned order suffers from any error of law, apparent on the face of the record.

However, there is sufficient force in the contention of Shri Mittal that the Board, while passing the order, not of reinstatement simpliciter, but with full backwage, acted illegally and without jurisdiction. It was necessary for the Board to record a clear and definite finding that the delinquent employee was not gainfully employed after termination of his service, so that he could be, and had to be, compensated for the loss suffered. I have taken this view consistently in a large number of cases coming before this Court, relying on Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee, . Shri Upadhyaya had, therefore, tough time to convince me that this was not the view to be taken in this case. However, he drew my attention to the statements made in sub-para (f) of para 7 of his return, which are very revealing statements. Non-petitioner No. 1, who was serving as a Supervisor in the Bank and drawing respectable time-scaled salary was appointed on daily wages of Rs. 7/ per day by the Bank after his services were dispensed. This fact is not admitted by Shri Mittal. But, the matter requires consideration and adjudication. It cannot be said, in view of this statement, that non-petitioner No. 1 was "gainfully" employed in such manner that he had totally lost his right to be adequately compensated for the loss suffered by him during the period he was out of "regular" employment. His "regular" employment being illegally terminated by the Bank he would be entitled to be compensated adequately for the loss suffered.

Accordingly, while setting aside the order for backwages, passed by the Board,

I direct that Deputy Registrar of Co-operative Societies, Guna, or any other appropriate authority, authorised for the time being, having competence to decide the "dispute", shall reconsider the matter of backwages afresh. It shall be

open to parties on either side to adduce evidence before him on the question of backwages and a reasoned decision, after hearing parties and recording evidence (if adduced) shall be rendered by the concerned authority within a period of three months.

In the result, this petition succeeds partially and is allowed in part. The order of the Board, in so far reinstatement of the petitioner is concerned, saddled with the minor penalty, stands confirmed. The other part of the order, in so far as backwages are concerned, is set aside and the matter is remitted to be dealt within the manner herein indicated. No costs. The outstanding amount of security be refunded to the petitioner.