
(1979) 07 GUJ CK 0004
In the Gujarat High Court

Harishchandra Hotchand Saijani

APPELLANT

Vs

Syndicate Bank and Others

RESPONDENT

Date of Decision : 18-07-1979

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 380

Citation : (1980) 21 GLR 657

Hon'ble Judges : M.P. Thakkar, J

Bench : Single Bench

Judgement

M.P. Thakkar, J.—A loss of even a petty article may understandably cause concern to a Nationalized Bank, true, but should the management feel out-raged and lose sense of proportion when an article of private property of a trifling value (a pant piece) belonging to one of its Assistant Managers is found missing from his residence? Is it such a momentous matter that a Nationalized Bank should expend (waste?) its public time and public funds for setting the machinery of its Law department in motion? And to go to the length of persecuting an employee (a Clerk) suspected of a petty theft notwithstanding an order of acquittal rendered by a competent Court? And must it waste thousands in litigation for this trifling matter of no consequence to the mighty Bank? These reflections are ignited by the present petition under Article 226 of the Constitution instituted by a Clerk in a Nationalized Bank in order to challenge the legality and validity of disciplinary proceedings initiated against him way back in 1976 on the ground that the proceedings are without jurisdiction. The proceedings stemmed from an accusation levelled against the petitioner that he had committed the theft of a pant piece from the residence of the Assistant Manager. The petitioner was prosecuted in regard to this accusation and was tried by the learned Chief Judicial Magistrate of Jamnagar at Jamnagar in Criminal Case No. 11102 of 1976. The learned Magistrate after recording evidence and hearing the parties came to the conclusion that the prosecution had failed to establish its case. In this view of the matter the petitioner was acquitted of the offence u/s 380 of the Indian Penal

Code in connection with the aforesaid accusation by the judgment and order dated December 31, 1977 as per Annexure "K". Even so the respondent Bank insists on continuing the disciplinary proceedings initiated on February 5, 1976 as per the charge-sheet at Annexure "A". Thereupon the petitioner has approached this Court by way of the present petition.

2. The legality and validity of the proceedings commenced by Annexure "A" dated February 5, 1976 have been challenged on the following grounds:

(1) That the proceedings relate to a criminal offence for which he was prosecuted and that according to the relevant rules no disciplinary proceeding could be initiated before the termination of the criminal case. The impugned proceedings were initiated before the criminal case was decided and were, therefore, altogether without jurisdiction.

(2) The disciplinary proceedings were without jurisdiction in view of the fact that the accusation levelled against the petitioner taken at its face value did not constitute gross misconduct within the meaning of Clause 19.5 of the bipartite settlement, that being the basis of the disciplinary proceedings.

(3) The petitioner having been acquitted by a Court of law it was not open to the management to initiate proceedings for the alleged misconduct on the same facts.

3. The facts are not in dispute. The alleged theft took place on 15th December 1975. The theft related to an article belonging to an officer of the Bank and not to any article belonging to the Bank itself. It was an accusation of theft levelled by one citizen against another and not by the Bank itself against one of its employees. In regard to the accusation stemming from the alleged incident of theft the petitioner was suspended on January 13, 1976. Some three weeks thereafter disciplinary proceedings were initiated against him on February 5, 1976. And much later (about five months thereafter), prosecution was instituted against him on July 10, 1976. Thus, it is an admitted position that the disciplinary proceedings were initiated long before the prosecution was instituted against the petitioner. And this prosecution resulted in the acquittal of the petitioner by a judgment and order of the competent Court rendered on 31st December 1977 as per Annexure "K". It is not in dispute that the order of acquittal has not been challenged by way of an appeal or revision and that it has become final. And yet the Management wants to proceed with the disciplinary proceedings. The questions indicated hereinabove have been raised in the context of these undisputed facts.

4. On behalf of the respondent Bank an affidavit - in-reply sworn by one of its officers, Shri K. Gopalkrishna Kamath, on July 10, 1978 has been placed on record. The stand taken by the respondent is reflected in paragraph 11 of the affidavit-in-reply. Reliance has been placed on Clause 19. 3(c) of the bipartite agreement as is evident from the following passage extracted therefrom:

I further say that under the Bipartite settlement between the Indian Banks Association and the All India Bank Employees Association, hereafter referred to as "the bipartite agreement," which is still binding on the parties in the present case and at no time the petitioner has not disputed its application to the parties, under para 19(3)(c) even if the petitioner is acquitted, it shall be open to the management to proceed against him under the provisions set out below in Clauses 19.11 and 19.12 infra relating to the discharges. However, in the event of the management deciding after inquiry not to continue him in service, he shall be liable only for termination of service with three month's pay and allowances in lieu of notice." In order to understand the aforesaid contention the provisions contained in Chapter XIX of the bipartite agreement, which admittedly govern the relations between the parties in regard to disciplinary action, in so far as material, require to be quoted:

Chapter XIX

Disciplinary Action and Procedure Therefore "19.1.

XX XX XX XX XX 19.2. By the expression "offence" shall be meant any offence involving moral turpitude for which an employee is liable to conviction and sentence under any provision of Law.

19.3. (a) When in the opinion of the management an employee has committed an offence, unless he be otherwise prosecuted, the bank may take step to prosecute him or get him prosecuted and in such a case he may also be suspended.

(b) If he be convicted, he may be dismissed with effect from the date of his conviction or be given any lesser form of punishment as-mentioned in Clause 19.6 below.

(c) If he be acquitted, it shall be open to the management to proceed against him under the provisions set out below in Clauses 19.11 and 19.12 infra relating to discharges. However, in the event of the management deciding after enquiry not to continue him in service, he shall be liable only for termination of service with three months' pay and allowances in lieu of notice. And he shall be deemed to have been on duty during the period of suspension, if any, and shall be entitled to the full pay and allowances minus such subsistence allowance as he has drawn and to all other privileges for the period of suspension provided that if he be acquitted by being given the benefit of doubt he may be paid such portion of such pay and allowances as the management may deem proper, and the period of his absence shall not be treated as a period spent on duty unless the management so direct.

(d) xx xx xx xx xx 19.4 If after steps have been taken to prosecute an employee or to get him prosecuted, for an offence, he is not put on trial within a year of the commission of the offence, the management may then deal with him as if he had committed an act of "gross misconduct" or of "minor misconduct," as defined

below; provided that if the authority which was to start prosecuting proceedings refuses to do so or come to the conclusion that there is no case for prosecution it shall be open to the management to proceed against the employee under the provisions set out below in Clauses 19.11 and 19.12 infra relating to discharge, but he shall be deemed to have been on duty during the period of suspension, if any, and shall be entitled to the full wages and allowances and to all other privileges for such period. In the event of the management deciding, after enquiry, not to continue him in service, he shall be liable only for termination with three months' pay and allowances in lieu of notice as provided in Clause 19.3 supra. If within the tendency of the proceedings thus instituted he is put on trial such proceedings shall be stayed pending the completion of the trial, after which the provisions mentioned in Clause 19.3 above shall apply.

19.5. By the expression "gross misconduct" shall be meant any of the following acts and omissions on the part of an employee:

xx xx xx xx xx (j) doing any act prejudicial to the interest of the bank or gross negligence or negligence involving or likely to involve the bank in serious loss;

xx xx xx xx xx 19.6. An employee found guilty of gross misconduct may: (a) be dismissed without notice; or (d) be warned or censured, or have an adverse remark entered against him; or

(c) be fined; or

(d) have his increment stopped; or

(e) have his misconduct condoned and be merely discharged.

19. 11 When it is decided to take any disciplinary action against an employee such decision shall be communicated to him within three days thereof.

19.12. The procedure in such cases shall be as follows:

XX XX XX XX XX

A close scrutiny of the aforesaid provision reveals that when an employee is suspected of having committed a criminal offence which would render him liable to conviction and sentence under Criminal Law, the Management cannot initiate departmental or disciplinary proceedings straightaway. The Bank management has to take steps to itself prosecute him or get him prosecuted. Having done so the Criminal Law must be allowed to take its own course and the management must stay its hands till the final outcome of the criminal case. If the prosecution results in a conviction, recourse is to be made to Sub-clause (b). If it results in acquittal, recourse is to be made to Sub-clause (c) of Clause 19. 3. Until the Criminal Court records a finding of guilt or otherwise nothing can be done under Clause 19. No steps can be initiated till the completion of the criminal case which may result either in a conviction or in an acquittal having regard to the scheme of Clause 19. And yet admittedly disciplinary proceedings giving rise to the present petition have been initiated even before the launching of the prosecution.

It is, therefore, clear that the proceedings are altogether without jurisdiction in the sense that they are not warranted by the provisions contained in Chapter XIX which governs the question of disciplinary proceedings. On this ground alone the petitioner is entitled to succeed.

5. The petitioner is also entitled to succeed on the second ground viz. that it is not gross misconduct as defined in Clause 19. 5(j). It maybe mentioned at this juncture that the impugned proceedings have been initiated by a charge-sheet as per Annexure "A", which in terms makes a reference to this provision as its source of authority, as is evident from the following extract:

Since there is a prima facie case against you we charge you with the gross misconduct of "doing act prejudicial to the interest of the Bank" vide Clause 19.5(j) of the Bipartite Settlement.

A reference to Clause 19. 5(j) (quoted earlier) shows that proceedings may be undertaken provided the same pertain to any act prejudicial to the interest of the Bank involving or likely to involve the Bank in serious loss or pertaining to gross negligence or negligence involving or likely to involve the Bank in serious loss. In the present case there is no question of any loss, much less serious loss, to the Bank. The accusation was that the petitioner had committed a theft from the house of the Assistant Manager. Admittedly the theft was of the private property of the Assistant Manager and not of the property of the Bank at all. Taken at its face value the accusation will not attract Clause 19. 5(j) and it will not constitute misconduct at all. The proceedings initiated by Annexure "A" are, therefore, clearly without jurisdiction.

6. In the view that I am taking it is not necessary to consider the submission urged by the petitioner's counsel that even if Clause 19. 3(c) is attached, no proceedings can be initiated in the wake of an order of acquittal having regard to the principle laid down in *Abdul Hakim Ahmad v. Dist. Supdt of Police and Ors.* 19 G.L.R. 210.

7. Counsel for the respondents submits that relief should be denied to the petitioner for two reasons viz.:

(1) An alternative remedy under the Industrial Disputes Act, 1947 exists and

(2) Petitioner has already submitted to the jurisdiction of the disciplinary authority.

There is no substance in any of these pleas. Counsel is unable to show how the petitioner can invoke the machinery of the Industrial Disputes Act at this juncture after the disciplinary proceedings are initiated but before the same are completed. Powers to quash proceedings lacking in jurisdiction akin to powers under Article 226 cannot be exercised by the competent authority under the Industrial Disputes Act. It is, therefore, futile to contend that an alternative remedy is available to the petitioner. So also it is equally futile to argue that the petitioner has submitted to the jurisdiction of the disciplinary authority and has

thereby disabled himself from invoking the jurisdiction of the Court under Article 226 of the Constitution. The record clearly shows that the petitioner has consistently protested against the continuation of these proceedings. Besides, a citizen's right to invoke the jurisdiction of the Court does not depend on whether or not he was fully awake and aware or conscious of his legal rights earlier.

No other point is urged.

8. In the result, the petition succeeds. The disciplinary proceedings Initiated against the petitioner as per Annexure "A" dated February 5, 1976 are quashed and set aside. The respondent Bank is restrained from taking any action against the petitioner in the context of Annexure "A". Since the petitioner is under suspension and is being paid only half the salary, the respondent Bank shall pay to him the remaining salary as soon as practicable and in any case before the expiry of three months from to-day. Rule is made absolute. There will be no order regarding costs.