

(1991) 03 DEL CK 0011

In the Delhi High Court

Case No : Civil Writ Appeal No's. 571 and 935 of 1985

H.B. Prabhu

APPELLANT

Vs

Oriental Bank of Commerce and Others

RESPONDENT

Date of Decision : 06-03-1991

Acts Referred:

Citation : (1991) LabIC 1954 : (1992) 2 LLJ 568

Hon'ble Judges : Leila Seth, J;A.D. Singh, J

Bench : Division Bench

Advocate : J.L. Bhanot, Anand Prakash and Jagat Arora, for the Appellant;

Judgement

Leila Seth, J.

(1) These two writ petitions have been filed by Mr. H. B. Prabhu and Mr. Vasant Ayyar, challenging the order dated 7th November, 1984, terminating their services. The said orders have been passed by the Chairman and Managing Director of the Oriental Bank of Commerce under Regulation 20 of the Oriental Bank of Commerce (Officer's) Regulations, 1982.

(2) The facts briefly stated are that the Oriental Bank of Commerce started an international banking division after obtaining permission in 1978 from the Reserve Bank of India, to deal in foreign exchange. Mr. Prabhu, who had earlier been working since 1961 in the Canara Bank mainly in "the foreign department" joined the Oriental Bank of Commerce in early 1979 to work in the international banking division as the Chief Officer. The said division was under the overall charge of Mr. S. C. Singhal, Deputy General Manager. Mr. Vasant Ayyar, who was already working in the Oriental Bank of Commerce was inducted into the international banking division as Deputy Chief Officer. One Mr. Rakesh Saxena, who was earlier working with an exchange brokers firm, joined the Bank in December 1978 and was also posted in the international banking division as an officer and functioned as a trader. Since the Reserve Bank of India had allowed free trading in permitted currency. Mr. Rakesh Saxena was assigned and

authorized to carry on the work of inter-bank transactions, namely the sale and purchase of foreign exchange.

(3) Mr. S. C. Singhal, as already noticed, was the Deputy General Manager, and overall in charge of the international banking division. He had experience and expertise in foreign exchange operations and was at the time exercising the powers of General Manager.

(4) It appears that large scale inter-bank trading operations were carried on much beyond the customer base, as a result of which, the outstanding forward contracts (both purchase and sale) in foreign currencies amounted to Rs. 454.00 crores as on 31st December, 1979, whereas the bank's foreign exchange merchant turn-over was around Rs. 10 crores. Mr. Singhal was asked to submit a report regarding the working and streamlining of the international banking division. He submitted the report on 8th March, 1980. He recommended continuing the trading operations and not only praised Mr. Saxena, the trader, but also depicted a rosy picture of profitability from the said division, which later on proved to be contrary to results.

(5) The Bank was nationalized on 15th April, 1980. It appears that Mr. Saxena was involved in some fraudulent transactions resulting in a loss of Rs. 3.98 crores. It also appears that the matter was referred to the Central Bureau of Investigation and all the above mentioned four persons were suspended on 19th July, 1980. The Central Bureau of Investigation concluded its enquiry in October, 1982 and found nothing incriminatory against Mr. Singhal, Mr. Prabhu and Mr. Ayyar. On 7th November, 1984, the orders of suspension of the abovementioned three persons were revoked and their services were terminated as above noticed, under Regulation 20

(6) Mr. Singhal then filed a writ petition, being C.W, 2740184. The said writ petition was allowed by this Court on 25th August, 1986 and Mr. Singhal was reinstated in service with full back wages and all other consequential benefits. He was also granted costs of Rs. 3,0001-. The judgment is reported S.C. Singhal Vs. Union of India and others,

(7) Mr. Prabhu and Mr. Ayyar filed their respective writ petitions sometime in March and April, 1985.

(8) It is admitted that Regulation 20 of the Oriental Bank of Commerce and Regulation 20 of the United Bank of India is the same. The Supreme Court by its decision in United Bank of India Officers Association v. United Bank of India 1987 (1) Lj 104, (1) on 1st August, 1986, struck down Regulation 20. Consequently, it is apparent that the orders under which the services of Mr. Prabhu and Mr. Ayyar were terminated were null and void.

(9) As such, the only submission made by Dr. Anand Prakash, learned counsel for the respondents, is that the petitioners should be given some amount as compensation but not be reinstated as the Bank has lost confidence in them.

(10) In this connection, it is pertinent to see the stand of the Bank in the case of Mr. S. C. Singhal. As noticed from the judgment of Ms. Justice Sunanda Bhandare, in that case also, the Bank had contended that Mr. Singhal should not be reinstated as the management had lost confidence in him. The learned Single Judge repelled this contention and observed) that as held in Chandulal v. The Management of M/s. Pan American world airways 1985 (2) LLJ184, (2) the expression "loss of confidence attracts a stigma and when order of termination is grounded upon conduct attaching stigma, disciplinary proceedings are necessary as a condition precedent to infection of termination ss a measure of punishment". It was also observed therein that in Amarjit Singh v." Punjab National Bank and others 1986 (1) Slr 121, (3} it has been held that "when an order of termination has its genesis in the loss of confidence, it of necessity, carries a stigma". The learned Judge held that the impugned order dated 7th November,1984 read along with the note of the Chairman]Managing Director of the Bank. dated 6th November, 1984, could hardly leave any doubt that the order was condemnatory of Mr. Singhal. In fact, it is the respondents case that the loss of confidence was due to the irregularities and ineffective control exercised by Mr. Singhal and others that culminated in providing 3. fertile ground and climate for fraud to be perpetrated, which resulted in a huge loss of Rs. 3.98 crores to the Bank

(11) Since admittedly, no enquiry had been held and no Explanation called for from Mr. Singhal, nor any depart mental proceedings initiated, the learned Judge opined that this was clearly against the rules of natural justice.

(12) On the question of relief, she held that ones an order of termination 1s set aside, a declaration has to follow that the person continues to be in the employment and. Therefore, is entitled to be reinstated in service with full back wages. She distinguished the cases of Amarjit Singh (supra) and Chandulal (supra), where compensation had been granted in lieu of reinstatement while moulding the relief. Since, she was a member of the Bench that decided Amarjit Singh's case, she observed, that what weighed with the Court was the fact that he was being tried in a criminal court on grave allegations of conspiracy and fraud in relation to the conduct of the business of the Bank, and consequently his reinstatement might have been an embarrassment to the Bank. In Chandulal's case compensation was ordered on its peculiar facts. But, in the case of Mr. Singhal, who had ben exonerated by the Central Bureau of Investigation and against whom no criminal charge had been framed, nor a reference made by the Bank to the Central Vigilance Commission regarding institution of any depart mental proceedings, the ordinary rule of reinstatement had to be applied.

(13) Dr. Anand Prakash admits that the Bank has not appealed against the said judgment and order passed in Mr. Singhal's case. However, he contends that the entire picture regarding reinstatement and compensation has been altered in view of the decision of the Supreme Court dated 26th September, 1986 in O. P. Bhandari v. Indian Tourism Development Corporation Ltd. and Ors 1986 (2) Lj

509. (4) His submission is that this judgment was not available to the Bank at the time when the judgment of the learned Single Judge was passed in Mr. Singhal's case and, consequently, no appeal was filed. He further contends that in view of this judgment the gold collar employees in whom the management has lost confidence should not be reinstated and should be given compensation only.

(14) In O. P. Bhandari's case (supra) the Supreme Court was dealing with the case of a person, who was the Manager of Hotel Ranjeet, New Delhi. The Court while discussing the difference between private sector and public sector, observed that in private sector the dead wood could be cut and a managerial cadre employee be got rid of if he was wanting in performance or integrity; whereas "public sector undertakings may under the circumstances be exposed to irreversible damage at the hands of a "gold collar" employee, (belonging to a high managerial cadre), on account of the faulty policy decisions or on account of lack of efficiency or probity of such an employee. The very existence of the undertaking may be endangered beyond recall" On facts, the Court found that the relations between the parties were strained beyond the point of no return and the trade union of the employees had lodged a strong protest and even held of a threat of strike, in the context of some acts of Mr. Bhandari. They felt that such unrest among the workmen was likely to have a prejudicial effect on the working to the undertaking and would prima facie be detrimental to the larger national interest, not to speak of the detriment to the interest of the concerned undertaking. They further observed that reinstatement is not even in the interest of Mr. Bhandari as he cannot give his best in the less than cordial atmosphere and there would be misery on both sides. Neither the undertaking nor Mr. Bhandari could improve their "image or performance, or achieve success and both would be unhappy The Court was of the view that it is not obligatory to direct reinstatement in all cases of high managerial cadre but was dependent on the facts and circumstances and this was a fit case for sculpturing the relief and permitting compensation to be paid in lieu of reinstatement, as an option to the employer.

(15) Dr. Anand Prakash also refers to the decision of this Court in S. Amarjit Singh (supra) and contends that despite the fact the order was stigmatic, the Bench gave the employer an option to compensate rather than reinstate the petitioner in whom it had lost confidence. As already noticed, what had weighed with the Bench in Amarjit Singh's case (supra) was the fact that he was being tried on grave allegations of conspiracy and fraud in relation to the conduct of the business of the Bank consequently, directing his reinstatement might have caused embarrassment to the Bank; further, Amarjit Singh himself was also perhaps not too keen to go back into the institution, which, according to him, had treated him so shabbily in spite of what he claimed to be a meritorious record of service.

(16) Recently, we had occasion to deal with a similar matter in Vishwanath v. Delhi Transport Corporation and others. Lpa No. 26 of 1978 (5) and by a

judgment given on 13th December, 1990, we had directed reinstatement rather than compensation. In *Kamal Kishore Lakshman Vs. Management of Pan American World Airways Inc. and Others*, where the workman was involved in the act of smuggling, the Supreme Court relying on *Chandu Lal's* case (*supra*) clearly opined that an assertion that the management has lost confidence, amounts to a stigma. It was observed that such an order of termination was vitiated without following all the procedural safeguards contemplated by law.

(17) In the present case, the loss of confidence is based on the material contained in the Chairman's report dated 6th November, 1984 and the suspension order dated 19th July, 1980 the relevant portion of which is in the following term:

"BECAUSE of serious lapses and various acts of omission and commission on your part, the Bank has been put to heavy losses."

(18) Admittedly, the order passed under Regulation 20 was passed without any enquiry and it is now being suggested that it was based on loss of confidence by the Management. Loss of confidence by an employer in the employee is a feature which affects the reputation of the latter and casts a stigma on him. If he is not given an opportunity to explain matters before termination, the order is certainly vitiated and reinstatement must follow as a matter of course. But should the relief be moderated to give the employer an option of paying compensation in lieu of reinstatement in the facts of this case?

(19) No doubt, the petitioners are officers of managerial cadre. But they are not at the top of the hierarchy. We are informed that the Bank is headed by the Chairman/Managing Director and below him in descending order is the Director, the General Manager, the Deputy General Manager, the Assistant General Manager, the Chief Officer and the Deputy Chief Officer. The petitioners are the Chief Officer and the Deputy Chief Officer respectively. Mr. Singhal, who was the third person, apart from Mr. Rakesh Saxena, in the international banking division who was suspended and then terminated by similar orders was the Deputy General Manager and acting as the General Manager at the time. As above noticed, he was reinstated by an order of his Court dated 25th August, 1986 and no appeal has been filed against the said order. The fact that O. P. Bhandari's case was decided on 26th September, 1986, is not so relevant, for had the Bank wanted to appeal against the judgment of the learned Single Judge instances of granting compensation in lieu of reinstatement such as in *Amarjit Singh* and *Chandulal's* case. In any case, an application for condensation of delay in filing the appeal could have been moved. Apart from this, it would appear to us that the petitioners herein are persons of middle management and are not that highly placed officers as Mr. Singhal. Mr. O. P. Bhandari, as above noticed, was high managerial cadre and there were other factors, that is the likelihood of a strike etc. if he was reinstated turn giving him compensation instead.

(20) R. Anand Prakash next urged that the petitioners should not be reinstated

as there was a higher degree of responsibility on their then that of Mr. Singhal. The Chairman in his report dated 6th November, 1984 after considering the case of Mr. Singhal, Mr. Prabhu and Mr. Ayyar separately treated them in the same manner and recommended termination of their services under Regulation 20. He also stated therein that it is "revealed from the facts" that these officers "individually collectively did not exercise effective control over the affairs and performance of the and they did not observe or ensure observance of procedure and systems and this culminated in providing a fertile ground and climate for fraud to be perpetrated resulting in a huge loss of Rs. 3.98 crores" It was further observed that the above officers acted "in a rash and utterly inefficient manner and did not safeguard the interest of the bank".

(21) Counsel for the petitioners urged that Mr. Rakesh Saxena was the villain of the piece and that they did not act in a rash and indifferent manner, nor were they responsible for the fraud of the huge losses suffered and could have explained the whole matter regarding forward transactions, had they been given an opportunity to meet the allegations.

(22) In *Raghunandan Prasad v. The Institute for the Physically Handicapped and others* 1984 11 Llt 339, (7) this Court noted that public employment has become for all purposes of subject of Administrative Law. The public element ^ so mixed that it ceases to be a contractual appointment. The cardinal development "in this branch of law is that in public employment the employer is required to observe the principles of natural justice. The State must be Fair, just and reasonable, because in fact the State is the employer. Fairness demands that the employee must be heard. The Court upheld the contention of the petitioner in that case that fairness demanded that the Director should have been heard and given an opportunity to show that he was equal to the task assigned to him and the complaints were unfounded.

(23) For the reasons outlined above, the order of termination is quashed. In the facts and circumstances of the case, as indicated, we are of the view that the normal rule of reinstatement should follow and this is not a fit case to deviate from the said rule, especially as the higher officer, Mr. Singhal has been reinstated and no appeal filed by the Bank. The petitioners will be deemed to be in the service of the Bank and will be entitled to back wages and all other consequential benefits to which they would have been entitled if their services had not been terminated. We direct the Bank to pay the petitioner back wages and all other consequential benefits within six months from today.

(24) It will be open to the respondents to take such action as is available to them in accordance with law and it will be open to the petitioners to raise such objections as they are entitled to.

(25) Mr. K. T. Anantharaman says that a writ petition No. 961/84 filed by Mr. Vasant Ayyar is pending, challenging the order dated 9th July, 1980, suspending him. Counsel says that though it is correct that the suspension order was

revoked when the petitioner's service was terminated on 7th November, 1984 and he was paid back wages, yet he has not been relieved of all the adverse consequences of the suspension order. Consequently, Mr. Ayyar will agitate that aspect of the matter in the said writ petition and does wish to press it in this writ petition.

(26) The writ petitions are allowed and the rule is made absolute. However we make no order as to costs.