
(2014) 03 DEL CK 0034

In the Delhi High Court

Case No : LPA 47 of 2007

Inder Raj Malhotra

APPELLANT

Vs

Canara Bank and Another

RESPONDENT

Date of Decision : 25-03-2014

Acts Referred:

Citation : (2014) 4 AD 702

Hon'ble Judges : Sanjiv Khanna, J;G.P. Mittal, J

Bench : Division Bench

Advocate : Rajiv Garg and Mr. K.K. Aggarwal, for the Appellant;

Final Decision : Dismissed

Judgement

Sanjiv Khanna, J.

R.P. 146/2014 in LPA 47/2007

1. This is an application for review of the decision dated 01.02.2007 by which the LPA. No. 47/2007 was dismissed. The applicant had preferred a SLP against the said decision, which was disposed of vide order dated 17.01.2014 by the Supreme Court recording as under:

Learned counsel for the petitioner seeks leave to withdraw the SLP with liberty to approach the High Court by filing a review petition.

The SLP is accordingly dismissed as withdrawn with the aforesaid liberty. We express no opinion on the merit of the case.

Learned counsel for the applicant has submitted that while dismissing the LPA, the Hon'ble Division Bench did not consider the operative portion, i.e., the last paragraph of the judgment dated 18.09.1987 passed by the Supreme Court in Writ Petition filed by K.I. Shephard and Ors. vs. Union of India and Ors. Our attention is drawn to the decision of the Madhya Pradesh High Court in Sudershan Kumar Dhall vs. Canara Bank, which was subject matter of challenge

before the Supreme Court in Civil Appeal No. 4885/92, disposed of vide order dated 29.03.1995. In addition, learned counsel for the applicant has drawn our attention to order dated 04.02.2000 in Writ Petition No. 2634/1989 titled Jagdish Mittal Maini vs. Canara Bank & Another passed by a Single Bench of this Court.

2. The applicant was an employee of erstwhile Lakshmi Commercial Bank Ltd. and was placed under suspension on 30.11.1984. By a Notification issued by the Government of India dated 23.08.1985, Lakshmi Commercial Bank Ltd. was merged with Canara Bank and as per Clause 10 of the Notification employees of the transferor bank, other than those specified in the schedule, were to continue in service and deemed to have been appointed by the transferee bank on the same remuneration and terms and conditions of service as was applicable to the employees of the transferee bank before closure of business of the transferor bank on 27.04.1985.

3. The Petitioner who was under suspension was one of the employees mentioned in the schedule and, therefore, was not to continue and deemed to be appointed by the transferee bank under Clause 10. Similarly, situated employees who were not taken in service, had filed writ petition before the Supreme Court titled K.I. Shephard and Ors. vs. Union of India and Ors. The writ petition was allowed by judgment dated 18.09.1987 reported in K.I. Shephard and Others Vs. Union of India (UOI) and Others, The operative portion of the said judgment reads:-

The writ petitions and the appeals must succeed. We set aside the impugned judgments of the Single Judge and Division Bench of the Kerala High Court and direct that each of the three transferee banks should take over the excluded employees on the same terms and conditions of employment under the respective banking companies prior to amalgamation. The employees would be entitled to the benefit of continuity of service for all purposes including salary and perks throughout the period. We leave it open to the transferee bank to take such action as they consider proper against these employees in accordance with law. Some of the excluded employees have not come to Court. There is no justification to penalise them for not having litigated. They too shall be entitled to the same benefits as the petitioners. Ordinarily the successful parties should have been entitled to costs but in view of the fact that they are going back to employment, we do not propose to make orders of costs against their employers. We hope and trust that the transferee banks would look at the matter with an open mind and would keep themselves alive to the human problem involved in it.

4. Noticing the aforesaid judgment in decision dated 01.02.2007 in LPA No. 47/2007, the Division Bench examined the effect of the said judgment and whether by applying doctrine of merger, the suspension order earlier passed was set aside and had ceased to exist. The Division Bench after considering the effect of the decision in case K.I. Shephard and Ors. (supra) and the purport and import of the said decision, came to the conclusion that the suspension order was not set aside by the judgment in K.I. Shephard and Ors. (supra) and

doctrine of merger had no application. The suspension order even on the applicant becoming an employee of the transferee bank continued to operate and was effective. This is clear from paragraphs 8 to 13 of the decision dated 01.02.2007, which, for the sake of convenience, are reproduced below:

8. In terms of the aforesaid judgment, the transferee bank had to take over the excluded employees on the same terms and conditions of employment and granted them benefit of continuity of service for all purposes but liberty was also granted to the Canara Bank to proceed against those employees according to law. In terms thereof, services of the appellant were also taken over by the Canara Bank on the same terms and conditions of employment. He also became entitled to the benefit of continuity of service for all purposes including salary and perks throughout the period but liberty to the bank to proceed and continue departmental proceedings against the appellant in accordance with law.

9. It is the contention on behalf of the appellant that although a disciplinary proceeding can be continued against the appellant, but his continued suspension is illegal, particularly in view of the judgment of the Madhya Pradesh High Court in M.P. No. 132/89 entitled as Sudarshan Kumar Dhall Vs. Canara Bank, which was decided on 25.7.1991. We have perused the said judgment. It was held by a Division Bench of Madhya Pradesh High Court that the order of suspension got merged with the order of termination and once the order of termination was set aside, the order of suspension could not be revived.

10. The question that falls for our consideration is whether on the merger of the Lakshmi Commercial Bank with the Canara Bank and with the services of appellant having been taken over by the Canara Bank under scheme as modified by the Supreme Court, would the order of suspension automatically get revoked or would it continue to be in operation. No direction or order was passed by the Supreme Court for terminating suspension order. The Supreme Court on the other hand had clearly stated that all actions taken against the concerned person would continue. Order of suspension was not set aside and de novo proceedings were never directed. Departmental proceedings were to continue from the same stage. The order of suspension which was passed would also continue to operate and it cannot be said that it has lapsed because services of the appellant were taken over by the Canara Bank.

11. Supreme Court in the case of K.I. Shepherd was not considering and examining the question whether Order of suspension passed against an employee of the Transferor Bank shall cease to operate as a result of the Scheme of Merger. Further the Scheme by itself did not postulate termination of services of an employee under suspension as a result of departmental proceedings. The Scheme provided that upon merger of the Transferor Bank with the Canara Bank services of some employees including the appellant herein will not be absorbed.

12. We may also notice here that in Civil Appeal NO. 4885/1982 titled Canara Bank, Indore versus Sudershan Kumar Dhall, the Supreme Court noticed the

contention of Canara Bank that doctrine of merger is not attracted in the present case as suspension order never got merged into an order of termination. Thereafter, it was observed that:

there may be some plausibility in the argument of the learned counsel, but it is not necessary for us to go into that question. We are of the view that by setting aside the order of suspension, the High Court has done substantial justice and we are not inclined to interfere with the same.

Thus, the decisions of the Supreme Court in the case of K.I. Shepherd and Sudershan Kumar Dhall (supra) do not support the contention of the appellant that suspension order was set aside by the decision in K.I. Shepherd's case and the view that suspension order merged and exhausted itself has been approved in Sudershan Kumar Dhall's case.

13. The appellant herein continued to be in service of the respondent. As a result of the judgment of the Supreme Court he was granted continuity in service without break. It cannot be said that services of the appellant were terminated. The effect of the judgment of the Supreme Court was that services of the appellant were also taken over by Canara Bank on merger. It did not affect and/or obliterate the suspension order. It cannot be said that the order of suspension was set aside with the scheme of merger. It cannot also be said that the departmental proceedings were set aside. As per the original scheme a suspended employee or an employee against whom the departmental proceedings were pending were not to be absorbed by Canara Bank. This was set at naught by the Supreme Court by directing that the employees against whom the departmental proceedings were pending and also in those cases where order of suspension was made would be absorbed in the service of Canara Bank and would continue to get the same scale and salary with continuity of service.

5. The decision in the case of Sudershan Kumar Dhall (supra) of the Supreme Court was duly noticed by the Division Bench and it was observed that the Supreme Court had not pronounced or given any opinion or finding whether the suspension order merged into the order of termination. The Division Bench quoted the relevant portion of the order passed by the Supreme Court dated 29.03.1995 in Civil Appeal No. 4885/1992 (wrongly mentioned in paragraph 12 as 4885/1982), which reads:-

there may be some plausibility in the argument of the learned counsel, but it is not necessary for us to go into that question. We are of the view that by setting aside the order of suspension, the High Court has done substantial justice and we are not inclined to interfere with the same.

6. In view of the aforesaid discussion, it is clear that the Division Bench after considering the judgment of the Supreme Court dated 29.03.1995, gave and recorded their findings on merits. The prayer made in the review application is beyond the scope of Order 47 of the Code of Civil Procedure, 1988 and this Court in a review petition cannot re-examine merits of the said findings.

7. As far as judgment of the Single Judge in Jagdish Mittal Maini's case (supra) is concerned, no doubt the Hon"ble Judge has followed the decision of the Madhya Pradesh High Court in Sudershan Kumar Dhall, but in another portion of the same decision it has been recorded as under:

...According to the respondent, after the amalgamation of the Lakshmi Commercial Bank Limited with the Canara Bank the petitioner was not taken back in service of the respondent bank and it was pursuant to the above mentioned decision by the Supreme Court that the petitioner was placed in the same position in which he was in the Lakshmi Commercial Bank Limited before the amalgamation. It cannot vitiate the validity of the suspension. There is also no merit in the contention of the petitioner that the petitioner was placed under suspension by the Lakshmi Commercial Bank Limited without sufficient and valid reasons. Considering the reasons stated in the resolution No. 13 dated 25-2-1984 of the Board of Directors it cannot be said that the suspension was not for valid and sufficient reasons. Moreover, though the petitioner was placed under suspension in February 1984, the said suspension was challenged by the petitioner through the present writ petition only in 1989. Hence the challenge against the suspension of the petitioner by the Lakshmi Commercial Bank Limited is highly belated and cannot be entertained. In these circumstances the petitioner's challenge against the order of suspension passed by the Lakshmi Commercial Bank Limited should fail.

8. It is apparent that the decision in LPA No. 47/2007 vide order dated 01.02.2007 has taken a different view and has not accepted the contention that the suspension order merged and therefore the applicant was entitled to full back wages.

9. At this stage, learned counsel for the applicant submits that there is another error in the order dated 01.02.2007 inasmuch as in paragraph 5 it is recorded that the order of suspension was revoked by the Chairman of Lakshmi Commercial Bank Ltd. on 20.04.1985, but the same was not approved by the Board of Directors who had passed the resolution/order dated 01.05.1985 disapproving the order of revoking the suspension. It is stated that the resolution/order passed by the Board of Directors on 01.05.1985 was/is not on record. Learned counsel for the applicant was asked to point out whether any such plea or ground has been taken in the application for review. He frankly admitted that no such plea/ground has been raised. In view of this, we are not inclined to entertain the review application and review the decision dated 01.02.2007. The review application is accordingly dismissed.