
(2009) 09 RAJ CK 0055
In the Rajasthan High Court

Inder Singh Chauhan

APPELLANT

Vs

U.Co. Bank and Others

RESPONDENT

Date of Decision : 03-09-2009

Acts Referred:

Banking Regulation Act, 1949 — Section 10
Constitution of India, 1950 — Article 14, 21
Penal Code, 1860 (IPC) — Section 201, 420, 465, 471
Probation of Offenders Act, 1958 — Section 12, 3, 4, 5

Citation : (2009) 09 RAJ CK 0055

Hon'ble Judges : Ajay Rastogi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajay Rastogi, J.—Instant petition is directed against order dt.20/08/92 (Ann.5) whereby disciplinary authority has discharged the petitioner from service, which was affirmed by appellate authority vide order dt.10/01/94 (Ann.7) rejecting his appeal.

2. Petitioner was appointed as Armed Guard in Class IV cadre and confirmed. In year 1989, he was promoted as LDC. Complaint was lodged against him that his matriculation certificate, on the basis whereof, he was promoted on the post of LDC, was forged, and consequently, FIR-RC-32/(5)(9) was registered in Office of Superintendent of Police (CBI), Jaipur and after investigation, challan was filed against him for offences punishable Under Sections 420, 465, 471 & 201, IPC and at the same time, was placed under suspension vide order dt. 05/01/91 (Ann.1). During trial, petitioner pleaded guilty before trial Court and accordingly, was convicted u/s 420, 465, 471 & 201, IPC by learned Judicial Magistrate (CBI), Jaipur; and after taking note of his past conduct, vide judgment dt.20/02/92 (Ann.2) instead of sentencing him, was released on probation u/s 4 & 5 of Probation of Offenders Act, 1958 (Act, 1958) provided (1) he deposits a sum of Rs. 5,000/- towards expenses incurred for prosecution and (2) he furnishes a personal bond to the satisfaction of trial Court that he would maintain piece and

be of good behaviour & conduct for a period of three years.

3. On account of his conviction vide judgment (Ann.2), petitioner was served with notice dt.24/03/92 (Ann.3) in terms of Clause19.3 (b) of 1st Bipartite Settlement dt.19/10/1966 (bipartite settlement) as to why he should not be dismissed from service; and taking note of his reply, the respondent-authority vide order dt.20/08/92 (Ann.5) discharged the petitioner from service against which he preferred appeal (Ann.6), which too was rejected by appellate authority vide order dt.10/01/94 (Ann.7).

4. Counsel for petitioner submits that in view of petitioner being released on probation under the Act, 1958 for alleged conviction, of which he would not suffer disqualification attached thereto in terms of Section 12 of the Act, 1958; in such circumstances, respondents were not justified in discharging him from service without holding disciplinary proceedings as provided under bipartite settlement in absence whereof, very action of respondents impugned herein is in violation of rules provided under bipartite settlement and so also in violation of Article 14 & 21 of the Constitution.

5. In the reply, respondents Bank justified their action impugned herein inter-alia averring that after petitioner was convicted by competent court of jurisdiction vide judgment dt.20/02/92, a show cause noticed was served upon him Under Clause 19.3(b) of bipartite settlement and after taking note of his reply to the notice, he was discharged from service vide order (Ann.5) and their action is in consonance with bipartite settlement. It has also been averred that as per Section 10(1)(b) of Banking Regulation Act, if an employee of Bank is convicted of criminal offence involving moral turpitude, he can not be retained in services of the Bank; and in instant case, petitioner having been convicted of offences punishable Under Sections 420, 465, 471 & 201, IPC, which involve moral turpitude, therefore, he has rightly been discharged from service.

6. I have considered rival contentions of Counsel for the parties and with their assistance, examined material on record. Indisputably, petitioner was promoted as LDC on the basis of his matriculation certificate, which was forged as alleged in complaint, on which first information report was registered wherein after due investigation challan was filed for criminal offences. During trial, he pleaded guilt and was accordingly vide judgment dt.20/02.92 (Ann.2) convicted for criminal offences punishable Under Sections 420, 465, 471 & 201, IPC, which involve moral turpitude; and instead of sentencing him, the trial Judge ordered to release him on probation Under Sections 4 & 5 of the Act, 1958 on certain conditions referred to above.

7. It is not in dispute that disciplinary action and procedure therefore are provided under Chapter XIX of bipartite settlement, which is applicable in case of petitioner. Clause19.3(b) whereof clearly envisages that if one is convicted, the authority may take decision to dismiss him with effect from the date of his conviction or be given any lesser punishment as mentioned in Clo.19.6. Cls.19.2,

19.3(b) & 19.6 of bipartite settlement being relevant are reproduced ad infra:

19.2 By the expression offences 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 (b) if he be convicted, he may be dismissed with from the date of his conviction or be given any lesser form of punishment as mentioned in Clause 19.6 below.

19.6 An employee found guilty of gross misconduct may:

(a) be dismissed without notice; or

(b) 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.

From afore quoted provisions, it clearly emerges that in reference to offence involving moral turpitude, if an employee is convicted, the authority may either dismiss him from service with effect from the date of his conviction or give him lesser punishment for gross misconduct as provided Under Clause 19.6.

8. In instant case, act of petitioner submitting forged matriculation certificate for seeking promotion from Class IV to the post of LDC was involving moral turpitude, for which he was prosecuted by court of competent jurisdiction and during trial, petitioner pleaded guilty and was accordingly convicted as detailed out above. Taking note of his conviction for offences involving moral turpitude, he was served with notice Under Clause 19.3 (b) and after considering his reply to the notice, he was discharged from service vide order dt.20/08/92 (Ann.5) which was upheld by appellate authority by speaking order dt. 10/01/94 (Ann.7).

9. While invoking Section 3 & 4 of the Act, the Court does not deal with conviction but deals with the sentence of offender to undergo; and after taking note of nature of offence & circumstances on record, instead of sentencing the offender, the Court releases him on probation of good conduct. However, the stigma of conviction is not obliterated and does not preclude an employer to initiate disciplinary proceedings based on conviction for offence recorded against offender.

10. Scope of Section 12 of the Act, 1958 has been considered in Union of India and others Vs. Bakshi Ram, ad infra:

13. Section 12 is thus clear and it only directs that the offender "shall not suffer disqualification, if any, attaching to a conviction of an offence under such law". Such law in the context is other law providing for disqualification on account of conviction. For instance, if a law provides for disqualification of a person for

being appointed in any office or for seeking election to any authority or body in view of his conviction, that disqualification by virtue of Section 12 stands removed. That in effect is the scope and effect of Section 12 of the Act. But that is not the same thing to state that person who has been dismissed from service in view of his conviction is entitled to reinstatement upon getting the benefit of probation of good conduct. Apparently, such a view has no support by the terms of Section 12 and the order of the High Court cannot, therefore, be sustained.

11. In *Additional D.I.G. of Police, Hyderabad v. P.R.K. Mohan*, (1997) 11 SCC 571, scope of Section 12 of the Act, 1958 has further been considered *ad infra*:

4. It is settled law that Section 12 of the Probation of Offenders Act, 1958 does not preclude the department from taking action for misconduct leading to the offence or to his conviction thereon *asper law*. The section was not intended to exonerate a person from departmental punishment. It was clarified; the section only directed that the offender shall not suffer disqualification, if any attaching to a conviction of an offence under such law. Such law in the context is other law providing for disqualification on account of conviction. This Court, therefore, held that merely because a sentence of imprisonment has been substituted by an order passed u/s 12 of the Probation of Offenders Act, 1958, the effect of the conviction is not obliterated altogether and it would be open to the authorities to take departmental proceedings on the basis thereof (see *Union of India and others Vs. Bakshi Ram*). Therefore, the observation of the appellate court on the interpretation of Section 12 is not correct.

12. In view of what has been observed (*supra*), merely because sentence has been substituted while an offender of his conviction recorded, being released on probation of good conduct in exercise of powers by competent court of jurisdiction u/s 3 & 4 while invoking Section 12 of the Act, 1958, it never precludes the employer/department from taking disciplinary action for misconduct committed of criminal charges based on his conviction as per law; inasmuch as it never intends to exonerate delinquent of criminal charge from initiating disciplinary proceedings.

13. In instant case, upon his conviction recorded by competent court of jurisdiction, petitioner was served with notice Under Clause 19.3(b) of bipartite settlement which empowers respondents Bank to initiate action against delinquent if he is convicted, for dismissing him from service with effect from the date of his conviction or for giving him lesser punishment for gross misconduct as provided Under Clause 19.6. Taking note of his reply to the notice, and considering nature of offence for which he was convicted, it was certainly a gross misconduct on his part upon having pleaded and held guilty culminating into conviction Under Sections 420, 465, 471 & 201, IPC and that being so, respondents authority took decision to discharge him from service. The appellate authority after having examined material on record in regard to his conviction upheld punishment order passed by disciplinary authority under challenge in appeal. This Court does not find any error being committed by respondents while

passing orders impugned which may call for interference.

14. Consequently, writ petition fails and is hereby dismissed. No costs.