(2005) 03 MAD CK 0138

In the Madras High Court

Case No : W.A. No. 3696 of 2002 and W.A.M.P. No''s. 549 of 2004 and 6180 of 2002

Indian Bank APPELLANT

Vs

S. Madhavan RESPONDENT

Date of Decision : 24-03-2005

Acts Referred:

Citation : (2005) 5 CTC 245

Hon'ble Judges : Markandey Katju, C.J;D. Murugesan, J

Bench : Division Bench

Advocate : G. Venkataraman, for Aiyar and Dolia, for the Appellant; V. Prakash, for K. Ramkumar, for the Respondent

Final Decision : Allowed

Judgement

Markandey Katju, C.J.—This writ appeal has been filed against the order of the learned single Judge dated 12.03.2002.

2. We have heard learned counsel for the parties and perused the record.

3. The respondent was a clerk in the service of the appellant/bank, and he was also the Vice President of the Indian Bank Employees'' Union (IBEU) which had a Current Account in the same bank. The respondent was given charge sheet dated 08.03.1997 alleging that on 18.01.1996 he had opened a Savings Bank Account in the name and style of S. Madhavan, Organiser, Indian Bank Employees'' Union (M.L.)/S.B.A/c.No.16270 at the Tiruppur Branch of the bank. It was further alleged that he had collected and retained 11 cheques in his capacity as Vice President of the Indian Bank Employees'' Union. He was Vice President of I.B.E.U only till 18.12.1995 when he lost the election. Hence, he should have returned the cheques to I.B.E.U., but instead a new S.B. Account No.16270 was opened by him on 18.01.1996 in the name of ''S. Madhavan, Organiser, I.B.E.U.(M.L.)''. It was further alleged that he had managed to get collected the proceeds of the above said 11 cheques which were really payable to Indian Bank Employees''

Union by depositing the cheques in the aforesaid S.B.A/c.No.16270 with Tiruppur Branch of the Bank with the ulterior motive of wrongfully enjoying the proceeds of the 11 cheques. It was alleged that he enjoyed the proceeds of the 11 cheques which were not due to the so called Indian Bank Employees'' Union (M.L.) but were due to the I.B.E.U. Consequently, in April 1997 a departmental enquiry was held on these charges in which the respondent was given a hearing, and on 21.06.1997 the Enquiry Officer submitted his Report holding that the 1st charge was not proved and all the other charges in the charge sheet were proved. The Disciplinary Authority concurred with the findings of the Enquiry Officer as regards charges 2,3,4, and 5 are concerned, but disagreed with his findings on the 1st charge and held that the 1st charge was also proved. However, it is alleged that he did not issue any show cause notice to the respondent in this connection. The Disciplinary Authority thereupon imposed punishment on 28.06.1997 by which the employee was reduced to two stages in his pay scale. The respondent-employee filed an appeal before the Appellate Authority which was rejected by the order dated 22.1 0.1997. Thereafter, he filed the writ petition in which the impugned order was passed.

4. The allegation against the respondent-writ petitioner was that he was the Vice President of the Indian Bank Employees'' Union till 18.0 1.1995, but lost in the subsequent election. While he was the Vice President of the said union he had collected certain amounts in cheques from various customers of the bank as tariff for the Souvenir to be released at the time of 34th Conference of the Indian Bank Employees'' Union held on 17th and 18th of December, 1995. When he was defeated in the subsequent election, he started a nother so-called union in the name and style of "Indian Bank Employees'' Union (M.L.)". Thereafter, a complaint was lodged by one E. Arunachalam, General Secretary of the Indian Bank Employees'' Union, Madras alleging that the respondentwrit petitioner collected some tariff under the pretext of bringing out a Souvenir to commemorate the occasion of 34th Conference of the Indian Bank Employees'' Union, but since he did not get elected, he decided to misappropriate the said collections. For that purpose he opened a Savings Bank Account in S.B.A/ c.No.16270 on 18.01.1996 at Tiruppur in the name and style of "S. Madhavan, Organiser, Indian Bank Employees'' Union (M.L.)" by remitting Rs.100/- in cash. Earlier, while he had been the Vice President of the Indian Bank Employees'' Union he had collected and retained 11 cheques on various dates as given below:-

Sl. Cheque No. Date Amount Drawn on No. in Rs. 1. 907494 21.10.1995 2000 Indian Bank, Tiruppur 2. 408797 20.11.1995 1000 Indian Bank, Tiruppur 3. 324006 02.11.1995 1000 Indian Bank, Tiruppur 4. 315709 31.10.1995 1000 Indian Bank, Tiruppur 5. 313342 09.11.1995 1000 Indian Bank, Tiruppur 6. 317277 04.12.1995 1000 Indian Bank, Tiruppur 7. 843477 15.12.1995 500 Indian Bank, Karamadai 8. 1641491 15.12.1995 1000 Indian Bank, Karamadai 9. 457019 --- 500 Canara Bank, Coimbatore 10. --- --- 5000 CUB Ltd., Salem 11. --- --- 500 Indian Bank, Naal Road

5. It is alleged that the respondent made material alteration by addition/insertion of the word (M.L.) with the name of the real Union (IBEU) and fraudulently encashed 11 cheques drawn in favour of the Indian Bank Employees'' Union available with him totaling a sum of Rs.14,50 0/- and closed the Savings Bank Account on 09.01.1996. The Assistant General Manager of the Zonal Inspectorate, Bangalore by his order dated 01.03.1996 had directed one K.S. Gnanasekar, Inspector, Zonal Inspectorate, Bangalore to investigate the above complaint. The said Inspector after completing the inspection submitted a report dated 15.04.1 996 holding that the respondent-writ petitioner had deliberately with the intent to deceive/defraud the true owner of the cheques encashed the cheques worth Rs.14,500/- pertaining to the Indian Bank Employees'' Union with the help of officials of Tiruppur Branch of the Indian Bank by adding "(M.L.)" to the payees original name "Indian Bank Employees'' Union".

6. From the facts of the case it is evident that the respondentwrit petitioner was the Vice President up to 18.12.1995 of the parent union i.e., Indian Bank Employees'' Union. He lost in the subsequent election held in December 1995. However, before that in his capacity as Vice President of I.B.E.U. he had collected 11 cheques totalling Rs.14 ,500/-. It seems that after his defeat in the election he formed a separate union by the name "Indian Bank Employees'' Union (M.L.)" (whose very existence has been denied by the bank) and in the capacity as Organiser of the new union he started dealing with the cheques payable to I.B.E.U which he had collected when he was the Vice President of the I.B.E.U. In the enquiry the writ petitioner was found guilty of fraud and misappropriation. In our opinion, since these findings were findings of fact, it was not open to the learned single Judge to interfere with them in writ jurisdiction. The Enquiry Officer had found that the writ petitioner had committed fraud and mis-appropriation and had retained the 11 cheques which he had collected as Vice President of the I.B.E.U. He inserted the letter (M.L.) without getting any authentication from the drawers of the cheques or any endorsement in that regard.

7. Since 11 cheques were issued for the benefit of the I.B.E.U., in our opinion, the I.B.E.U. was rightly aggrieved that the respondentwrit petitioner, who was the Vice President of the I.B.E.U. until his defeat in the election, wrongly misappropriated the amounts in the cheques belonging to the I.B.E.U. In fact, the respondent-writ petitioner should have returned those cheques to the I.B.E.U., but he wrongfully did not do so. The amount was taken away by the respondent-writ petitioner by self drawn cheques and on the reverse of the cheques he signed as "S.Madhavan" in his individual capacity. In our opinion, the respondent-writ petitioner mis-used his position as clerk in the bank and committed a serious mis-conduct.

8. A bank is an institution where the highest standards of integrity and discipline have to be maintained as has been repeatedly held by the Supreme Court in various decisions.

9. In Sudhir Singh v. District Co-operative Bank Ltd., Muzaffar Nagar, 2003 All L.J. 1213 a Division Bench of the Allahabad High Court held that an employee of a bank has to maintain the highest degree of discipline and integrity in order that the public may maintain confidence in the bank. The Division Bench relied on the earlier decisions of the Allahabad High Court in Ram Pratap Sankar v. Allahabad Bank, 2000 All L.J. 2510 and K.K. Singh v. Gomti Gramin Bank, 2002 All L.J. 480. We agree with the view taken by the Allahabad High Court. A bank runs on public confidence, and if the highest standards of integrity are not maintained therein there can be a run on the bank and it may collapse.

10. In State Bank of India and others Vs. T.J. Paul, the Supreme Court held that the proof of actual loss to the bank was not necessary for holding that the employee has acted in a manner prejudicial to the interest of the bank.

11. In Tara Chand Vyas Vs. Chairman and Disciplinary Authority and Others, the Supreme Court observed that strong disciplinary action should be taken against bank employees who derelicted in the performance of their duties.

12. In Disciplinary Authority-cum-Regional Manager and Others Vs. Nikunja Bihari Patnaik, the respondent allowed overdrafts or passed cheques involving substantial amounts beyond his authority. Even though such acts did not result in loss to the bank, and in some cases even yielded some profits to the bank, it was held by the Supreme Court that as they were done be yond the authority of the employee it was an act in breach of discipline, and hence he was liable to be punished.

13. In Ganesh Santa Ram Sirur Vs. State Bank of India and Another, the Supreme Court followed its own earlier decisions in Regional Manager, U.P.S.R.T.C., Etawah and Others Vs. Hoti Lal and Another, wherein it was observed:- "If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable".

14. In our opinion, the learned single Judge was not justified in interfering with the order of punishment. He should have realised that he was not sitting as a court of first appeal, but was sitting in writ jurisdiction, in which findings of fact cannot ordinarily be interfered with unless they are based on no evidence. 15. Before parting with this case we would like to add that the respondent has been treated over-leniently. It has been repeatedly held by the Supreme Court that in cases of misappropriation, whether of a small or large amount, there is no scope for showing any uncalled for sympathy, and the only punishment in such cases where the charge is proved should be dismissal, vide Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores Limited) Etc. Vs. The Secretary, Sahakari Noukarara Sangha Etc., .

16. In result, the writ appeal is allowed. The impugned order of the learned single Judge is set aside. Consequently, connected miscellaneous petitions are closed. No costs.