(2000) 02 DEL CK 0037

In the Delhi High Court

Case No : C.W. No. 2634/89

Jagdish Mitter Maini APPELLANT

Vs

Canara Bank and Another RESPONDENT

Date of Decision : 04-02-2000

Acts Referred:

Citation : (2000) 3 AD 137 : (2001) 2 LLJ 394 : (2000) 3 SLJ 216

Hon'ble Judges : Cyriac Joseph, J

Bench : Single Bench

Advocate : Mr. M.C. Dhingra, for the Appellant; Mr. S.N. Bhat, Senior Advocate, Mr. S.R. Bhat and Ms. Kiran Jethanand, for the Respondent

Judgement

Cyriac Joseph, J.—This case is listed for rehearing. Learned counsel for the parties submit that they have no further submissions to make and hence the case may be disposed of in view of the submissions already made. Accordingly the petition is being disposed of.

2. The petitioner was an employee of the Lakshmi Commercial Bank Limited (L.C.B. Ltd.) which was amalgated with the Canara Bank in 1985. The respondent is the Canara Bank. While the petitioner was working as manager of the Lakshmi Commercial Bank, Chandni Chowk Branch, Delhi, he was placed under suspension vide Lakshmi Commercial Bank Head Office Letter No. Estt./ PLC/84 dated 27-2-1984. Subsequently a memorandum of charge sheet dated 26.3.1984 was served on the petitioner. The petitioner submitted his reply dated 25.4.1984 denying all the allegations against him. Before taking further action against the petitioner pursuant to the said chargesheet, the Reserve Bank of India in exercise of the powers conferred by Sub-section 4 of Section 45 of the Banking Regulation Act, 1949 prepared a Scheme for amalgamation of the Lakshmi Commercial Bank Limited, with the Canara Bank. By a notification F.No. 17/12/85-B.O.III (ii) dated 23-8-1985 the Government of India sanctioned the said Scheme on and subject to the terms and conditions mentioned in the said notification. As per the said notification, the Lakshmi Commercial Bank Limited

was the transferor bank and the Canara Bank was the transferee bank and all rights, powers, claims, demands, interests, authorities, privileges, benefits, assets and properties of the transferor bank, subject to the other provisions of the Scheme, stood transferred to and became the properties and assets of the transferee bank from the date which the Central Government would specify for the said purpose under Sub-section 7 of Section 45 of the Banking Regulations Act, 1949. From the prescribed date all the liabilities, duties and obligations of the transferor bank shall be and shall become the liabilities, duties and obligations of the transferee bank to the extent and in the manner provided in the notification. All the employees of the transferor bank other than those specified in the schedule annexed to the scheme shall continue in service and be deemed to have been appointed by the transferee bank at the same remuneration and on the same terms and conditions of service as were applicable to such employees immediately before the close of business on 27-4-1985. It was further stated in the notification that the persons specified in the schedule annexed to the scheme shall on the prescribed date cease to be the employees of the transferor bank. In pursuance of sub-section 5 of Section 45 of the Banking Regulations Act, 1949 the Central Government issued a notification No. F. 17/12/85-B.O. III (i) dated 23-8-1985 specifying 24-8-1985 as the prescribed date in relation to the Scheme for the amalgamation of the Lakshmi Commercial Bank Limited with the Canara Bank.

3. The respondent (Canara Bank) through a communication dated 24-8-1985 informed the petitioner that in terms of the above mentioned Scheme he ceased to be an employee of the Lakshmi Commercial Bank Limited with effect from the commencement of business on 24-8-1985 and consequently he was not an employee of the Canara Bank. Challenging the said communication the petitioner filed Writ Petition No. 477/87 in the Supreme Court under Article 32 of the Constitution of India. The said writ petition, along with other similar petitions, was disposed of by the Supreme Court on 18-9-1987. The judgment in the said cases was K.I. Shephard and Others Vs. Union of India (UOI) and Others, In the said judgment the Supreme Court held that the transferee banks should take over the excluded employees on the same terms and conditions of employment under the respective banking companies prior to the moratorium and that the employees would be entitled to the benefit of continuity of service for all purposes including salary and perks throughout the period. However, the court left it open to the transferee banks to take such action as they considered proper against such employees in accordance with law.

4. After the pronouncement of the above mentioned judgment by the Supreme Court the petitioner, through his representation dated 24-9-1987 addressed to the respondent reported for duty and the receipt of it was acknowledge by the respondent through the reply dated 24-9-1987. In the reply dated 24-9-1987 the Divisional Manager of the Canara Bank informed the petitioner that the bank was not in receipt of the certified copies of the orders of the Supreme Court and that the matter required to be referred to the appropriate authorities and as such the

bank required sometime. The petitioner was also asked to await further communication. Thereafter the respondent bank through a communication dated 16-10-1987 forwarded to the petitioner the proceedings dated 15-10-1987 of the General Manager of the respondent bank. In the said proceedings it was ordered that the petitioner would continue to be under suspension in contemplation of disciplinary proceedings/criminal proceedings with effect from 24-8-1985 and that he was deemed to be under suspension pending departmental inquiry/ initiation of criminal proceedings and that he would be entitled to the subsistence allowance at the rates which were applicable to him as on the date of suspension. There-upon the petitioner submitted a representation dated 19-11-1987 to the Chairman of the respondent bank pointing out that though the petitioner was placed under suspension with effect from 27-2-1984 and through the charge sheet was issued on 26-3-1984 no enquiry was held. It was also pointed out that in view of the agreement between the management of the Lakshmi Commercial Bank Limited and the Officers Union, if the enquiry officer did not conclude the enquiry within nine months the petitioner should be to resumed to have been exonerated from the charges and that keeping the petitioner under suspension for years together without holding any enquiry was vocative of his fundamental rights under Articles 14,16 and 19 of the Constitution of India. The petitioner also requested the respondent bank to immediately revoke the order of suspension dated 15-10-1987 and to reinstate him in service with full back wages. However through a communication dated 6-1-1988 the respondent bank informed the petitioner that the respondent''s decision dated 15-10-1987 was correct and that the disciplinary proceedings against him would be expedited. It was also informed that during the period of suspension he would be paid subsistence allowance in accordance with the rules. Thereafter by another communication dated 10-8-1989 the respondent bank informed the petitioner that the respondent would be proceeding further in respect of the nine accounts mentioned in the charge sheet dated 26-3-1984 issued to the petitioner by the Lakshmi Commercial Bank Limited. It was also informed that enquiry in respect of the other accounts referred to in the charge sheet were kept in abeyance for the time being reserving the bank''s right to proceed against the petitioner in respect of those charges in future. Along with a further communication dated 4-9-1989 the respondent forwarded to the petitioner the copies of two proceedings dated 26-8-1989 issued by the respondent. As per the first proceedings Shri J.S. Kalyanpur, Senior Manager was appointed as the enquiry authority in the departmental proceedings initiated against the petitioner. As per the second proceedings Shri M.G. Ramana, Manager was appointed as the Presenting Officer. On receipt of the above mentioned proceedings dated 26-8-1989 the petitioner filed the present writ petition praying for quashing the order of suspension dated 27-2-1984, the charge sheet dated 26-3-1984 and the communication dated 10-8-1989 of the respondent. The petitioner has also prayed for a direction to reinstate him in service with all consequential benefits. It is further prayed that the respondents should be restrained from proceeding with the holding departmental enquiry against the petitioner pursuant to the order dated 10-8-1989 of the respondent and the charge sheet dated 26-8-1984.

5. On 19-7-1990 the writ petition was admitted by this Court and as per order passed in C.M. No. 4020/89 the prayer for staying the enquiry proceedings was rejected. However it was directed that if an order of dismissal was passed the same should not be given effect to the without permission of this Court. During the pendency of the writ petition the enquiry proceedings against the petitioner continued and the respondent bank passed an order dated 27-7-1993 dismissing the petitioner from service. The respondent filed CM 8733/93 praying for permission to give effect to the said order dated 27-7-1993. After hearing the learned counsel for the parties this Court passed the following orders on 30-1-1995:-

"(i) The order dated 19-7-1990 in CM 4020/89 is modified and the respondents are given permission to give effect to the final order passed by the disciplinary authority against the petitioner.

(ii) However all action taken in the disciplinary proceedings against the petitioner will be subject to the final decision in this writ petition."

6. In the counter affidavit filed on behalf of the respondent bank the respondent seeks to justify the action taken against the petitioner and the orders passed by the respondent bank. According to the respondent in accordance with the Scheme of Amalgamation of the Lakshmi Commercial Bank Limited with the respondent bank the petitioner''s name was included in the list of employees whose services were not to be continued under the respondent bank. In the judgment in K.I. Shepherd and others Vs. Union of India and others, the Supreme Court held that discontinuing the services of employees without a hearing was void. However the Supreme Court left it open to the transferee bank i.e. Canara Bank to take such action as they considered proper against such employees in accordance with law. The petitioner was already under suspension and the respondent bank decided to continue the suspension and the disciplinary action. The alleged failure attributed to the Lakshmi Commercial Bank Limited to take final decision after initiating action against the petitioner does not stop the management of the respondent bank from proceeding against him. It is further stated in the counter affidavit that the decision to treat the petitioner as being under suspension and to continue the disciplinary proceedings against him is legal and proper. 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 of 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 is also contended that the petitioner has approached this Court without exhausting the remedy of defending himself in the enquiry proceedings and hence the writ petition is not maintainable. It is further contended that the merits of the charge against the petitioner should not be

considered by this Court at this stage and that it should be left to be considered by the enquiry authority of the disciplinary authority.

7. The first question arising in this case is whether the suspension of the petitioner by the Lakshmi Commercial Bank Limited was valid or not. There is no merit in the contention of the petitioner that the order of suspension was not passed by the competent authority. From the materials placed on record it is seen that by a resolution No.13 dated 25-2-1984 the Board of Directors of the Lakshmi Commercial Bank Limited decided to place the petitioner under suspension in view of the various acts of omissions and commissions and the serious irregularities committed by him. By the same resolution dated 25-2-1984 the Board of Directors decided to issue charge sheet to the petitioner. The power or competence of the Board of Directors to place the petitioner under suspension is not disputed. When the decision to place the petitioner under suspension was validity taken by the Board of Directors of the Lakshmi Commercial Bank Limited, the rank or status of the officer who communicated the decision to the petitioner 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 or suspension passed by the Lakshmi Commercial Bank Limited should fail.

8. The next question raised by the petitioner is whether the suspension of the petitioner by the Lakshmi Commercial Bank Limited ceased to operate on expiry of the period of nine months from the commencement of the enquiry proceedings. According to the petitioner, in view of paragraph 1(b) of the decisions taken by the representatives of the Management of the Lakshmi Commercial Bank Limited and the Officers Union in the meeting held on 28-7-1983 [Annexure ''D'' to the writ petition], when an officer is placed under suspension pending disciplinary action against him the enquiry proceedings shall be completed within a maximum period of six months and if the enquiry proceedings have not been commenced or completed within the period of nine months the officer is entitled to be reinstated in service. It is contended that since the enquiry proceedings were not even started within nine months in the case of the petitioner the order of his suspension ceased to operate on the expiry of the period of nine months and the suspension should be deemed to have been revoked. There is no merit in the above ontention of the petitioner. First of all, there is no material to show that the decisions contained in Annexure ''D'' are enforceable in a Court of law. Secondly, paragraph 1(b) of the above mentioned

decisions reflects only the decision to expedite the enquiry proceedings. It does not provide for revocation of suspension and reinstatement of the suspended officer on the ground that the enquiry proceedings have not been completed within a period of nine months. No such consequences contemplated by the said clause. Hence in the absence of a specific provision or agreement for revocation of suspension on expiry of the period of nine months from the commencement of the enquiry proceedings, revocation of suspension can not be enforced through a writ petition filed under Article 226 of the Constitution of India.

9. Another contention of the petitioner is that the charge sheet dated 26-3-1984 was not issued by the competent authority and hence the said charge sheet and the proceedings pursuant to the said charge sheet should be quashed. There is no merit in this contention also. As already mentioned the decision to issue charge sheet to the petitioner was taken by the Board of Directors of the Lakshmi Commercial Bank Limited as per their resolution No.13 dated 25-2-1984. Even otherwise the contention has lost its relevance and significance in view of the decision of the respondent bank to adopt the charge sheet dated 26-3-1984 and to proceed against the petitioner. The said decision was conveyed to the petitioner through letter No.IRS-DP-DC-CHF-1607-PVS dated 10-8-1989 of the General Manager of the respondent bank [Annexure ''U'' to the petition]. In other words, the disciplinary proceedings against the petitioner should be deemed to have been taken by the respondent bank. Even if there has been any procedural irregularity in the disciplinary proceedings taken against the petitioner it can be raised only while challenging the final order passed in such disciplinary proceedings. It cannot be considered in these proceedings.

10. There is also no merit in the contention of the petitioner that the respondent bank is not competent to take disciplinary action against the petitioner in respect of the alleged irregularities committed by him while he was an employee of the Lakshmi Commercial Bank Limited. According to the terms and conditions mentioned in the notification F. No. 17/12/85-B.O.III (ii) dated 23-8-1985 [Annexure ''A'' to the petition], consequent on the amalgamation of the Lakshmi Commercial Bank Limited (transferor bank) with the Canara Bank (transferee bank) all the employees of the transferor bank other than those specified in the schedule to the Scheme shall continue in service and shall be deemed to have been appointed by the transferee bank at the same remuneration and on the same terms and conditions of service as were applicable to such employees immediately before the close of business on 27-4-1985. Even though the petitioner''s name was excluded from the list of employees to be continued in service of the transferee bank, the petitioner challenged the said exclusion in the Supreme Court by filing Writ Petition No. 477/87. In the judgment dated 18-9-1987 the Supreme Court directed the transferee bank to take over the excluded employees like the petitioner on the same terms and conditions of employment under the respective Banking Companies prior to the moratorium. It was also directed that the employees would be entitled to the benefit of continuity of service for all purposes including salary and perks throughout the

period. Considering that disciplinary proceedings were pending against some of the excluded employees, the Supreme Court allowed the transferee bank to take such action as they considered proper against such employees in accordance with law. By virtue of Annexure ''A'' notification dated 23-8-1985 and the judgment dated 18-9-1987 of the Supreme Court in Writ Petition No. 477/87 the petitioner is deemed to be an employee of the respondent bank and the respondent bank is competent to take disciplinary action against the petitioner even in respect of the irregularities committed by the petitioner during the period prior to the amalgamation of the Lakshmi Commercial Bank Limited with Canara Bank. In the Judgment dated 28-3-1995 of the Supreme Court in Sudershan Kumar Dhall Vs. Canara Bank, [Civil Appeal No. 48856/92] while considering the cases of persons similarly placed like the petitioner the Supreme Court held that the rules of the Canara Bank as operating at present shall be applicable to the disciplinary proceedings against the erstwhile employees of the Lakshmi Commercial Bank Limited. The Court also permitted the continuance of the disciplinary proceedings which had been started in the year 1984. Hence I do not find any illegality in the action of the respondent bank in taking or continuing the disciplinary proceedings against the petitioner in accordance with the rules of the Canara Bank in respect of the irregularities committed by him prior to the amalgamation of the Lakshmi Commercial Bank Limited and the Canara Bank. It is to be noted that in the absence of any stay of the disciplinary proceedings, the disciplinary proceedings against the petitioner continued and the disciplinary authority passed an order dated 27-7-1993 dismissing the petitioner from service. By order dated 30-1-1995 passed in C.M. No. 4020/89 and C.M. No. 8733/93 this Court granted permission to the respondent bank to give effect to the said order of dismissal. The said order of dismissal is not under challenge in this writ petition. Even though the petitioner has raised contentions relating to the validity of the appointment of the enquiry officer and the validity of the disciplinary proceedings on the ground of the long delay etc., I am not inclined to consider those contentions in this case. Since the final order in the disciplinary proceedings has been passed, the proper course would be to leave the petitioner free to challenge the final order in separate proceedings before the appropriate forum, if he has not already done so. It is made clear that since the delay in the disposal of this case was not due to any fault of the petitioner, the delay if any, in challenging the dismissal should not be held against him. The delay up to this date shall stand condoned.

11. The last question to be considered relates to the validity of the order dated 15-10-1987 [Annexure ''N'' to the petition] of the respondent bank directing that the petitioner shall continue to be under suspension in contemplation of disciplinary proceedings with effect from 24-8-1985 and that he was deemed to be under suspension during the interregnum period. According to the petitioner the order of suspension passed by the Lakshmi Commercial Bank on 27-2-1984 had merged with Annexure ''E'' order dated 24-8-1985 of the respondent and consequently he had ceased to be an employee of the Canara Bank. It is

contended that consequent on the judgment of the Supreme Court in Writ Petition No. 477/87 in which the exclusion of the petitioner from the list of employees to be continued in the service of the respondent bank was declared to be illegal and the respondent bank wad directed to take the petitioner back in service with the benefit of continued service, the order of suspension which had merged with the order dated 24-8-1985 of the respondent bank did not revive. This contention is strongly disputed by the respondent. According to the responding pursuant to the decision of the Supreme Court the petitioner was placed in the same position in which he was in the Lakshmi Commercial Bank before the amalgamation. It is contended that before the amalgamation of the Lakshmi Commercial Bank with the Canara Bank the petitioner was under suspension and, Therefore, while taking over the petitioner in the service of the respondent bank he was liable to be laced in the same position i.e. under suspension. An identical question was considered by a Division Bench of the Madhya Pradesh High Court in Sudershan Kumar Dhall Vs. Canara Bank [M.P. No. 132/89]. The petitioner therein also was an employee of the Lakshmi Commercial Bank who was placed under suspension by an order dated 24-4-1984 of the Lakshmi Commercial Bank. Consequent on the amalgamation of the Lakshmi Commercial Bank with the Canara Bank the said officer was informed by the Canara Bank through a letter dated 24-8-1985 that in terms of the Scheme of Amalgamation he had ceased to be an employee of the Lakshmi Commercial Bank with effect from 24-8-1985 and that consequently he was not an employee of the Canara Bank. The said officer filed a writ petition before the Supreme Court under Article 32 of the Constitution of India and the said petition also was disposed of along with similar petitions as judgment dated 18-9-1987 which was reported as K.I. Shephard and Others Vs. Union of India (UOI) and Others, . The Supreme Court held that the exclusion of the said officer was illegal and unconstitutional and directed the Canara Bank to take over the officer in its service with benefit of continuity of service. After the judgment of the Supreme Court the officer reported for duty but the Canara Bank took the stand that the officer continued to be under suspension till the completion of the enquiry proceedings against him. The officer through a writ petition filed in the Madhya Pradesh High Court challenged the action of the Canara Bank in treating the suspension order as revived and also the continuation of the suspension and the enquiry against him. In the judgment dated 25-7-1991 a Division Bench of the Madhya Pradesh. High Court partly allowed the petition and quashed the proceedings of the General Manager of the Canara Bank communicating the decision to the officer that he shall continue to be under suspension in contemplation of the disciplinary proceedings against him. The Court also held that the officer would be entitled to the benefit of continuity of service for all purposes including salary and perks throughout the period of suspension including the period after the judgment of the Supreme Court. The Canara Bank challenged the said judgment of the Madhya Pradesh High Court before the Supreme Court by filing Civil Appeal No. 4885/92. The said Civil Appeal No. 4885/92 was disposed of by the Supreme Court as per the judgment dated

29-3-1995 holding that by setting aside the order of suspension the High Court had done substantial justice and refusing to interfere with the order of the High Court. In view of the above mentioned judgment of the Madhya Pradesh High Court and the Supreme Court I am inclined to accept the contention of the petitioner with regard to the validity of his suspension during the period from 24-8-1985. Considering the entire facts and circumstances of this case I am of the view that substantial justice can be meted out to the petitioner only by holding that the action of the respondent bank in keeping the petitioner under suspension with effect from 24-8-195 was illegal and by directing that the petitioner shall be deemed to have continued in service during the period from 24-8-1985 till his dismissal from service on conclusion of the disciplinary proceedings against him. In this context it may be mentioned that I have already rejected the petitioner''s challenge against his suspension by the Lakshmi Commercial Bank during the period from 25-2-1984 to 23-8-1985.

12. For the reasons stated above I declare that the action of the respondent bank in treating the petitioner to be under suspension with effect from 24-8-1985 is illegal. I also declare that the petitioner will be deemed to have continued in service of the respondent bank from 24-8-1985 till his dismissal from service. During the said period the petitioner will be entitled to salary and other monetary benefits as if he continued in service. It is made clear that during the period of suspension from 25-2-1984 to 23-8-1985 the petitioner will be entitled only to the subsistence allowance as per the rules of the Lakshmi Commercial Bank. It is also clarified that the respondent bank will be entitled to deduct the amount of subsistence allowance, if any, paid to the petitioner for the period from 24-8-1985 till his dismissal from the service, from the amount due to the petitioner towards salary and other monetary benefits payable to him for the said period as per this judgment.

13. The respondent bank shall calculate the amounts due to the petitioner in terms of this judgment and they shall be paid to him as early as possible and at any rate within a period of three months from today. Any dispute regarding such calculation shall be raised and resolved in separate proceedings before the appropriate forum.

14. The writ petition stands disposed of in the above terms. There will be no order as to costs.

