(2021) 04 GAU CK 0020

In the Gauhati High Court

Case No : Writ Petition (C) No. 1736 Of 2012

Jamini Talukdar APPELLANT

Vs

State Bank Of India And Ors RESPONDENT

Date of Decision : 20-04-2021

Acts Referred:
Indian Penal Code, 1860 — Section 408, 468, 471

Citation : (2021) 04 GAU CK 0020

Hon'ble Judges : Michael Zothankhuma, J

Bench : Single Bench

Advocate : P.K. Roy, G. Choudhury, S.K. Chakraborty, S.S. Sharma, H. Buragohain

Final Decision : Dismissed

Judgement

1. Heard Mr. P.K. Roy, learned counsel for the petitioner. Also heard Mr. S.S. Sharma, learned Senior Counsel for the respondents assisted by Mr. H. Buragohain, Advocate.

2. The petitioner is aggrieved by the impugned order dated 17.04.2010, by which he has been dismissed from service by the State Bank of India (for short SBI). The petitioner's case in brief is that the petitioner was appointed as a Computer Operator with the SBI which was re-designated as Senior Assistant. He thereafter availed a loan amount of Rs.1,50,000/- for the purpose of constructing a house. Thereafter an additional loan amount of Rs.1,50,000/-was taken by the petitioner. The petitioner however did not construct the house and due to the same, a departmental proceeding was initiated against the petitioner.

3. When the respondents came to learn that the petitioner had not utilized the loan amount for which it had been sanctioned, an FIR dated 01.09.2008 was submitted to the Senior Superintendent of Police, Panbazar stating that the petitioner had submitted fake receipts showing purchase of raw materials and other expenditures as proof of construction, though no construction had been

carried out by the petitioner. As such, the petitioner was cheating the respondent bank. In pursuant to the FIR, Panbazar P.S. Case No.355/2008 dated 18.09.2008 was registered.

4. Subsequent to the above, the respondent bank issued a show-cause notice dated 06.10.2009 to the petitioner, asking him to submit his written explanation to the four allegations (charges) that had been set out in the show-cause notice, as his act of omission and commission fell within the ambit of "gross misconduct", as defined in paragraph 5(d), 5(j) and 5(m) of the Memorandum of Settlement of the Disciplinary Action and Procedures for Workmen dated 10.04.2002. The four allegations are extracted hereinbelow :

"Allegation -I:

You were sanctioned a housing loan of Rs.1,50,000/- by the Bank on 25.07.1994 for construction of a house at village Bamunichuburi (Mazgaon), Mouza Bahairabpad, Tezpur. Our Tezpur Branch disbursed the loan amounts in phased manner as follows :

i) Rs.35,000/- vide your request letter dated 24/11/1994

ii) Rs.40,000/- vide your request letter dated 27/03/1995

iii) Rs.40,000/- vide your request letter dated 03/04/1997

iv) Rs.35,000/- vide your request letter dated 14/07/1997

It is observed that you did not construct the house and misutilized the entire loan amount.

Allegation -II:

To obtain the release of the loan installments as per allegation-I, you had submitted fake receipts showing purchase of raw materials, other expenditures as proof of construction.

Allegation -III:

An additional housing loan of Rs.1,50,000/- was also sanctioned to you on 31.10.1997 at your request to meet shortfall for completing the house. The amount of loan was disbursed by our Tezpur Branch in phased manner as follows :

i) Rs.50,000/- vide your request letter dated 16.01.1998

ii) Rs.50,000/- vide your request letter dated 27.02.1998

iii) Rs.50,000/- vide your request letter dated 03.10.1998

Here also it is observed that you did not utilize the amount in constructing your house and misutilized the entire loan amount.

Allegation -IV:

To obtain the release of the loan installments as per allegation-III, you had submitted fake receipts showing purchase of raw materials, other expenditures as proof of construction."

5. The petitioner thereafter submitted his reply dated 14.10.2009 to the show-cause notice dated 06.10.2009 admitting that he knew that he was not going to construct a house at that time he asked for the loan. He also submitted that he was ready to settle all his liabilities in an amicable way. However, after purchasing land, the left over loan amount was used by the petitioner to build a small room in the house of his mother.

6. In the departmental proceeding/Enquiry initiated against the petitioner, the Inquiry Officer in his enquiry report held that all the charges leveled against the petitioner had been proved, as the petitioner had admitted to all allegations leveled against him. Subsequent to the above, the petitioner was "dismissed without notice" as per the provision of Clause 6(a) of the Memorandum of Settlement of the Disciplinary Action and Procedures for Workmen dated 10.04.2002 vide Memorandum dated 20.02.2010 issued by the Disciplinary Authority and Assistant General Manager (Admn.). The petitioner filed an Appeal on 16.06.2010 against the penalty order and the same was rejected by the Appellate Authority vide Memorandum dated 28.08.2010.

7. The Panbazar P.S. Case No.355/2008 under Section 408/468/471 of IPC was transferred to Tezpur P.S. vide order dated 10.11.2008. On receipt of the same it was re-registered as Tezpur P.S. Case No.962/2008. The petitioner was acquitted by the Court of Judicial Magistrate 1st Class, Tezpur vide order dated 15.06.2016 passed in G.R. Case No.1972/2008.

8. As the petitioner was not repaying the loan amount to the respondent bank, the respondent bank filed Title Suit i.e. T.S. 3/2011 in the Court of the Civil Judge, Tezpur for recovery of the loan amount. Suffice to say that in terms of a Compromise Settlement dated 30.03.2016, the parties came to a settlement, whereby the petitioner would pay to the respondent bank Rs.2,28,514/-, as re-payment of the loan amount.

9. The petitioner being aggrieved by his dismissal from service has made a challenge to the impugned Memorandum dated 17.04.2010 and Memorandum dated 28.08.2010 on the ground that the charges framed against the petitioner do not come within the scope/provisions of gross mis-conduct as defined in paragraph 5(d), 5(j) and 5(m) of the Memorandum of Settlement of the Disciplinary Action and Procedures for Workmen dated 10.04.2002, hereinafter referred to as the "Memorandum of Settlement".

10. Mr. P.K. Roy, learned counsel for the petitioner submits that the petitioner did not utilize the loan amount for the purpose for which it had been granted and instead used the loan amount for buying land and used the left over amount for constructing a room for his mother, in the house of his mother. He submits that though the petitioner was an employee of the bank, an agreement had been

made between the petitioner and the bank at the time of availing of the loan. The use of the loan amount for another purpose, which was not the reason for grant of the loan, could not be said to be a misconduct, as there was an agreement made between the parties in respect of the loan amount. Accordingly the grant, use and repayment of the loan being a contract between the parties, the violation of the contract could not be said to be gross misconduct. He submits that at best, it may come within the provisions of minor misconduct as defined in Clause 7(d) of the Memorandum of Settlement and accordingly the petitioner could have been given the penalty as provided in Clause 8. In support of his submission that the charges leveled against the petitioner did not amount to misconduct, he has relied upon the judgment of the Apex Court in Rasiklal Vaghajibhai Patel vs. Ahmedabad Municipal Corporation and Others, reported in (1985) 2 SCC 35 and in the case of Union of India and Others vs. J. Ahmed, reported in (1979) 2 SCC 286. The petitioner's counsel also submits that the penalty imposed upon the petitioner is not proportionate to the offence and in this regard he has relied upon the judgment of the Apex Court in the case of Deputy Commissioner, KVS and Others vs. J. Hussain, reported in (2013) 10 SCC 106.

11. Mr. S.S. Sharma, learned senior counsel for the respondent bank submits that the mis-utilization of the loan amount by the petitioner, who is an employee of the bank clearly shows the mis-conduct on the part of the petitioner. He submits that the conduct of a bank employee has to be above board and he is required to be honest and trustworthy. He also submits that the utilization of fake receipts/bills, besides diverting the loan amount for a different purpose clearly shows that the petitioner did not maintain absolute integrity, which was required of a bank employee. In this regard he has relied upon the Division Bench judgment of this Court in the case of Bijoy Rajkhowa vs. State Bank of India and Others, reported in 2013 2 GLR 6 and also the judgment of the Apex Court in the case of Union Bank of India vs. Vishwa Mohan, reported in (1998) 4 SCC 310. Mr. S.S. Sharma also submits that the petitioner being a bank employee, he was to repay the loan amount at a lesser rate of interest than what is normally given to other loanees.

12. Mr. S.S. Sharma, learned senior counsel for the respondent bank also submits that just because the petitioner has been acquitted in a criminal case does not mean that he cannot be found guilty in a departmental proceeding, inasmuch as, the standard of proof required in a criminal proceeding and in a department proceeding is different. He submits that the petitioner has not bought any land as alleged by the petitioner, inasmuch as, no land documents have been submitted by the petitioner to the respondent bank or even to this Court till date. He also submits that as the petitioner had admitted to all the allegations made against him in the show-cause notice, including submission of fake receipts and bill, the charge of gross misconduct stood proved against the petitioner. He thus submits that the present writ petition should be dismissed.

13. I have heard the counsels for the parties.

14. As can be seen from the records and the submissions made by the counsels for the parties, the petitioner, who was an employee of the Bank, took a loan of Rs.1,50,000/- on different dates for construction of a house in the year 1994. Thereafter on the pretext of completing the house which purportedly required more money, the petitioner took an additional loan amount of Rs.1,50,000/- by submitting false receipts and false bills. The loan amount was taken between 1994 - 1998. The petitioner has also admitted to all the four allegations made in the show-cause notice dated 06.10.2009 wherein it had been stated that he had mis-utilized the entire loan amount and for release of loan installments, he had submitted fake receipts showing purchase of raw materials and other expenditure as proof of construction.

15. Thus, on facts, it is clear that the petitioner did not utilize the loan amount for the purpose it was granted. The question whether the petitioner bought land or whether he had constructed a room for his mother in his mother's house need not be gone into as the same is not relevant. Suffice to say that the petitioner has not utilized the loan amount for the purpose it was sanctioned.

16. The only question that has to be considered with regard to whether the action of the petitioner amounted to a misconduct or not. The very fact that the petitioner had submitted false receipts and false bills showing that he had purchased raw materials, as expenditure for the house he never built, clearly shows the misconduct on the part of the petitioner.

Clause 5(d), 5(j), 5(m) and Clause 7(d) of the Memorandum of Settlement dated 10.04.2002 states as follows :

"5. By the expression "gross misconduct" shall be meant any of the following acts and omissions on the part of an employee:

(d) wilful damage or attempt to cause damage to the property of the bank or any of its customers;

(j) doing any act prejudicial to the interest of the bank or gross negligence or negligence involving or likely to involve the bank in serious loss;

(m) knowingly making a false statement in any document pertaining to or in connection with his employment in the bank."

7. By the expression "minor misconduct" shall be meant any of the following acts and omissions on the part of an employee:

(d) breach of any rule of business of the bank or instruction for the running of any department."

17. In the case of Rasiklal Vaghajibhai Patel (Supra), the Apex Court has held that it is well-settled that unless in the service regulations an act or omission is prescribed as misconduct, it is not open to the employer to fish out some

conduct as misconduct and punish the workman even though the alleged misconduct could not be comprehended in any of the enumerated misconduct.

In the case of Union of India and Others vs. J. Ahmed (Supra), the Apex Court has held that code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that that conduct which is blameworthy for the Government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct.

18. The very fact that the petitioner has taken loan for building a house by submitting a false bills/receipts clearly shows that the act done by the petitioner is prejudicial to the interest of the bank and that he has knowingly made a false statement and documents. Though the misconduct of the petitioner is relatable to the loan taken by the petitioner, the petitioner being a bank employee is still bound by the memorandum of settlement, which requires that he should maintain absolute integrity and honestly in his conduct with the bank. As such, this Court is of the view that there is no infirmity with the decision of the respondents that the petitioner has committed gross misconduct.

19. In the case of Samar Bahadur Singh Vs. State of U.P & Ors, reported in (2011) 9 SCC 94, the Apex Court has held that acquittal in the criminal case shall have no bearing or relevance to the facts of a departmental proceedings, as the standard of proof in both the cases are totally different. While in a criminal case, the prosecution has to prove the case beyond all reasonable doubt, the Department has to prove only preponderance of probability in a departmental proceeding. As such, the acquittal of the petitioner in the criminal case can have no bearing to the outcome that may arise in a departmental proceeding.

20. In the case of Deputy Commissioner, KVS and Others vs. J. Hussain, reported in (2013) 10 SCC 106, the Apex Court has held that a punishment can be interfered with only if it is outrageously disproportionate to the charge and shocks the conscience of the Court. It has held at paragraph No. 7 as follows:-

"7. When the punishment is found to be outrageously disproportionate to the nature of charge, principle of proportionality comes into play. It is, however, to be borne in mind that this principle would be attracted, which is in tune with doctrine of Wednesbury Rule of reasonableness, only when in the facts and circumstances of the case, penalty imposed is so disproportionate to the nature of charge that it shocks the conscience of the Court and the Court is forced to believe that it is totally unreasonable and arbitrary."

21. In the case of Bijoy Rajkhowa vs. State Bank of India and Others (Supra), the Division Bench of this Court has held that the conduct of a bank employee must be above board and that he is required to maintain absolute integrity, which is of paramount consideration. It further held that on his conduct rests the confidence of the customers of the bank. Compromise with doubtful integrity will

not only erode the faith of the people using the bank's facilities but also in the functioning of the bank itself. In such matters, quantum of misappropriation is immaterial, the factum of misappropriation itself would justify the disciplinary action taken. Considering the above, in the present case, I do not find any good and sufficient ground to interfere with punishment imposed.

22. In the case of Union Bank of India vs. Vishwa Mohan (Supra), the Apex Court has held that in the banking business, absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the Bank Officer. The above being said, this Court finds that the act of the petitioner in taking a loan on a false claim, while knowing that he was not going to construct a house of his own from the very beginning, shows that the petitioner has not been honest in his dealings with his employer bank. Further, the petitioner has not shown absolute devotion and integrity to the bank, which in turn would be detrimental to the interest of the bank, as he is untrustworthy and lacks integrity. If the petitioner is untrustworthy and lacks integrity, there is every likelihood that his working in the bank would not be above board, which would in turn affect the confidence of the public and the depositors, who park their hard earned money in banks.

23. In view of the reasons stated above, this Court finds no merit in the writ petition. The writ petition is accordingly dismissed.

