
(2015) 06 KAR CK 0301

In the Karnataka High Court

Case No : Writ Petition No. 9648 of 2007 (L-TER)

Jayanth G. Joshi

APPELLANT

Vs

The Management of Syndicate Bank

RESPONDENT

Date of Decision : 18-06-2015

Acts Referred:

Citation : (2015) 147 FLR 467 : (2015) 4 KarLJ 600

Hon'ble Judges : Ravi V. Malimath, J

Bench : Single Bench

Advocate : Ravi Hegde, for the Appellant; M.G. Malawade, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Ravi V. Malimath, J—The case of the petitioner is that he was appointed as a clerk in the respondent-Bank on 10-4-1968. In the year 1975, he was promoted as Specialist Assistant. He was transferred to various branches of the respondent-Bank. He was transferred to Chikodi Branch by the letter dated 21-1-1997. He remained absent from duties at Akol Branch on 29-1-1997. On 15-2-1997, he was relieved in absentia from Akol Branch but he did not report to duty at Chikodi Branch. He was unauthorisedly absent from 29-1-1997 to 31-8-1997. An explanation was called for. Not being satisfied with the same, a charge-sheet was issued on two counts: (1) not reporting to duty at Chikodi Branch; and (2) for unauthorised absent from 29-1-1997 to 31-8-1997. An inquiry was held. He was dismissed from service. He filed an appeal which was also rejected. Thereafter, he filed Writ Petition No. 24994 of 2001 wherein by order dated 20-7-2001, the petition was disposed off directing him to raise a dispute before the Industrial Tribunal under the Industrial Disputes Act, 1947. By the impugned order, the Industrial Tribunal-cum-Labour Court set aside the order of dismissal and modified it to an order of termination. Aggrieved by the same, the employee has filed the present petition. Sri Ravi Hegde, learned Counsel for the petitioner contends that the impugned order is bad in law and liable to be set aside. That

there is no material in order to establish the charges levelled against the petitioner. That the respondent-Bank have failed to establish the charges against him. That even otherwise, so far as Charge No. 1 is concerned, he having reported to duty at Chikodi Branch, the said charge would not survive for consideration. So far as second charge is concerned, even if it is to be held to be proved against him, the punishment imposed is disproportionate to the charges levelled against him. He further submits That the Inquiring Officer committed an error in accepting the plea of the management while holding that the charges have been proved. It is further contended that the Labour Court too has erred in accepting the finding of the Inquiring Officer. That the order of the Labour Court as well as the inquiry report requires to be set aside and appropriate relief be granted to him since he is retired from service.

2. On the other hand, Sri M.G. Malawade, learned Counsel for the respondent-Bank defends the impugned orders. He contends that adequate opportunity has been granted to the petitioner to make out his case. Both charges have been held to be proved by valid and cogent evidence. Notwithstanding the charged being proved, the order of dismissal has been modified to an order of termination so that the future prospects of the petitioner would not be hampered. Hence, it is submitted that no interference is called for.

3. Heard learned Counsels.

4. The two charges levelled against the petitioner are:

1. In the matter of not reporting to duty at Chikodi Branch after relieving from Akol Branch.

2. Unauthorised absence from 29-1-1997 to 31-8-1997.

5. The Bank examined M.W. 1 and marked 16 documents in support of its case. There was no document and no witness on behalf of the workman. The Inquiring Officer on considering the evidence was of the view that the charges levelled against the petitioner have been proved. M.W. 1 has deposed that when the petitioner was working at Akol Branch, he was transferred to Chikodi Branch vide transfer order dated 21-1-1997. He was accordingly relieved on 15-2-1997 in absentia from Akol Branch. That the relieving order was sent to his residential address through registered post acknowledgement due and the same was returned for the reason that he was not found and also that he has not claimed it. He was also informed about non-joining to duties at Chikodi Branch on transfer and advised him to report for duty at Chikodi Branch immediately submitting his explanation for not reporting to duties and remaining absent from 29-1-1997. M.W. 1 has deposed that MEX-6 also shows that a telegram was sent to the petitioner advising him to report to duty at Chikodi Branch. MEX-7 shows his request to transfer to Nippani Branch was not considered. In spite of all these instructions, he has deliberately declined to join the duties.

6. However, it is contended by the petitioner that he joined the duties at Chikodi

Branch on 22-10-1998 i.e., after one year nine months since the order of transfer. He, therefore, contends that since he has reported for duty, the said charge does not arise for consideration.

7. I am unable to accept such a contention. The charge is that he has not reported to duty inspite of issuing order of transfer issued on 22-1-1997. Substantial evidence and material has been let in to show that the petitioner was transferred and that such orders are communicated to him and he was even advised to join duties to Chikodi Branch. He ultimately joined on 22-10-1998. Therefore, the management has proved Charge 1 levelled against the petitioner.

8. So far as unauthorised absence is concerned, the same was also proved based on the evidence lead by M.W. 1 on various documentation. He has admittedly remained unauthorisedly absent between the aforesaid dates. Therefore, even that charge is held to be proved. Under these circumstances, the Inquiring Officer concluded that both charges have been proved. The Labour Court having considered and re-examined the evidence and materials on record, firstly held that the domestic inquiry is fair and proper. Thereafter, by the impugned order, the Labour Court came to the conclusion that the petitioner had failed to assail the correctness of the findings recorded by the Inquiring Officer. Therefore, the findings recorded were accepted by the Labour Court.

9. What is sought to be further contended by the petitioner is based on the evidence of M.W. 1, who is a retired Chief Manager of the Bank. He places reliance on the cross-examination of M.W. 1 which in part reads as follows:

"It is true that list of witnesses and list of documents were supplied on the first day of enquiry and not along with the charge-sheet (witness says that he doesn't know if they are not sent along with the charge-sheet)".

10. Therefore, he contends that the list of documents and witness were not supplied along with the charge-sheet but only supplied on the first date of inquiry. Therefore, the same would vitiate the inquiry. In support of his case, the Counsel specifically relies on para 5 of the judgment in the case of Union of India and Others v. S.K. Kapoor (2011) 4 SCC 889 : (2011) 1 SCC (L and S) 725 : 2011-II-LLJ-627 (SC), wherein the Hon'ble Supreme Court has held that if any material is to be relied upon in departmental proceedings, a copy of the same must be supplied in advance to the charge-sheeted employee so that he may have a chance to rebut the same.

11. I have considered the said evidence. The evidence of M.W. 1 at the first instance would narrate that the documents were supplied on the first date of inquiry and not along with the charge-sheet, but further clarifies his evidence by stating that he does not know if they are not sent along with the charge-sheet. It is the contention of the petitioner that he having admitted for not having sent it along with the charge-sheet, the same vitiates the inquiry. That cannot be the reading of the cross-examination. The witness clearly clarifies his earlier statement wherein he says that he does not know, if, they are not sent along

with the charge-sheet. Therefore, the earlier submission made by him having been clarified, it cannot be said that this portion of the cross-examination would lead to the only conclusion that the documents were not supplied along with the charge-sheet. Therefore, the said contention cannot be accepted and consequently, the judgment relied upon would not have any bearing on his case. Under these circumstances, I am of the view that the Inquiring Officer having considered the evidence and material in-depth, has rightly come to the conclusion that the charges have been proved. The Labour Court has affirmed the said finding.

On going through the well-considered reasons, I do not find any good ground to interfere with the impugned order. Consequently, the petition being devoid of merit is dismissed.

Rule discharged.