

(1975) 10 AP CK 0005
In the Andhra Pradesh High Court

K. Satyanarayana Murthy

APPELLANT

Vs

Syndicate Bank and Another

RESPONDENT

Date of Decision : 10-10-1975

Acts Referred:

Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 — Section 12
Constitution of India, 1950 — Article 12, 14, 311

Citation : (1976) 2 LLJ 222

Hon'ble Judges : A.V. Krishna Rao, J

Bench : Single Bench

Judgement

A.V. Krishna Rao, J.—The petitioner herein seeks a writ of certiorari quashing the proceedings, dated 16-3-1973 of the 1st respondent-Syndicate Bank with its Head Office at Manipal terminating the services of the petitioner. The petitioner also seeks consequential directions of reinstating the petitioner with all his emoluments and incremental benefits.

2. The petitioner is a M.Sc. 1st Class of the Andhra University. He applied for a junior officer's post in response to an advertisement in the Syndicate Bank. He was selected and on 7-12-1971 he was given an order appointing him as an officer-trainee, He had accepted the appointment by letter dated 14-12-1971. Under the letter of appointment, he was to undergo six months' training as an officer-trainee. He underwent the prescribed course of training. After completion of the training course, he was appointed as a probationary junior officer in the Bank by order dated 4-9-1972. He joined service on 14-9-1972. He was posted at Vijayawada at the Branch Office of the Bank and was working there. He received an order of termination dated 16-3-1973 invoking Rule 36 of the Syndicate Bank Officers' (Conditions of Service) Rules, 1966. The petitioner had raised the main following grounds in the writ petition:

(1) The petitioner being in the service of the Syndicate Bank which is a nationalised Bank and which is vested in the Central Government, he is entitled to the protection of Article 311 of Constitution.

(2) The petitioner's service is governed by statutory rules u/s 24(1) of the Act and the impugned order is in reality and purpose amounts to a dismissal of the petitioner. Even otherwise the termination of the services of the petitioner is in the nature of punishment imposed on him. The termination of the service under Rule 36 of the Rules is bad. The Bank should have had recourse to Rule 35 alone which applies to the case and the procedure prescribed by Rule 35 should have been followed. The action of the Bank in terminating the Services violates the principles of natural justice.

(3) The Bank had acted arbitrarily and in a capricious manner acting solely on the basis of certain allegations made behind the back of the petitioner without giving him an opportunity to defend himself.

(4) The action of the Bank is vitiated by mala fides.

(5) Rule 36 under which the petitioner's service is terminated is not valid after the nationalisation of the Bank and in view of Section 24(1) of the Banking Companies (Acquisition and Transfer of Undertakings) Act of 1970. The said rule confers an arbitrary and unbridled discretion on the part of the management. The said rule does not provide for any objective satisfaction on the part of the management. The rule is hit by Article 14 of the Constitution.

3. The main averments in the counter-affidavit filed on behalf of the respondent are:

(1) that the writ petition does not lie against the 1st respondent-Bank as it is functioning under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 with perpetual succession and a common seal.

(2) Article 311 of the Constitution is not attracted as the petitioner is not in civil service either under the Centre or under the State.

(3) The petitioner's service is governed by the service rules of the Bank and those rules constitute a contract of service between the parties.

(4) The rules are not statutory rules, having regard to the provisions of Section 12(2) of the Act.

(5) The allegation of mala fides is not true. Rule 35 does not apply, as the termination was a discharge simpliciter in pursuance of Rule 36.

(6) Since the termination is in pursuance of the contract of service, there is no question of invoking principles of natural justice.

(7) The termination order cannot be challenged on the ground that it is arbitrary or capricious.

(8) Rule 36 does not violate Article 14 of the Constitution.

4. Certain facts are alleged in the writ petition and they are denied in the counter-affidavit filed by the respondents. Certain other facts mentioned in the counter-

affidavit were sought to be met by the petitioner by filing a reply affidavit. The main contention of the petitioner during the arguments was about the order of termination, which the counsel contended, is in the nature of dismissal by way of punishment.

5. The order of termination dated 16-3-1973 which was received by the petitioner on 23-3-1973 and addressed to him (petitioner) states:

SYNDICATE BANK STAFF DEPT.

A. 3970/1/TRN

Post Box No. 1, Manipal, Mysore State, March 16, 1973, Phalguna 25, 1894.

Sri K. Satyanarayana Murthy, Officer, Camp: Manipal.

Dear Sir,

Your services are terminated with immediate effect in terms of Rule 36 of Syndicate Bank Officers" (Conditions of Service) Rules, 1966. A demand draft for Rs. 2,242.50 drawn in your favour being salary for 3 months is enclosed herewith.

Yours faithfully, Sd. xx General manager.

The contention of the petitioner is that the termination of services under Rule 36 is due to the fact that in the opinion of the management, the continuation in service of the petitioner was not desirable in interest of the Syndicate.

6. Rule 36 may now be read. It states:

The management may terminate the services of any officer by giving him three months" notice in writing or 3 months" salary in lieu of such notice if in the opinion of the management, continuation in service of such officer is not desirable in the interest of the Syndicate.

7. I am not able to understand why the management had recourse to Rule 36. The appointment order issued on 4-9-72 states that the period of the petitioner's probation would be in the first instance for one year with liberty to the Bank to extend the period of probation by a further period of six months or more at its absolute discretion and further defer confirmation. It is, therefore, clear that on the date when the petitioner was served with a notice of termination of service, he was still an officer on probation. Rule 5 under Chapter I of the Syndicate Bank Officer (Conditions of Service) Rules, 1966 provides for probation. The said rule may be quoted:

5. Probation: (a) Every officer appointed shall be (initially on probation for a period of one year of such extended or reduced period at the discretion of the management.

(b) Every Officer on successful completion of the probationary period shall be confirmed in the cadre of officers applicable to him but the management at its

sole discretion may, (i) in the case of a direct recruit terminate the services of the probationer without assigning any reason whatsoever at any time during the probationary period paying a month's salary:

Recourse was not had by the Bank to Rule 5. The Bank could have terminated the services of the petitioner without assigning any reason whatsoever during the probationary period by paying only a month's salary. However, the Bank chose to invoke Rule 36, which it appears to me to be only applicable to full-fledged officers of the Bank and not to officers on probation. Be that as it may, the question for consideration by me is whether the order of termination which is issued under Rule 36 casts any stigma on the conduct and character of the petitioner. By the mention of Rule 36 in the impugned order, it is clear that the management has terminated the services by giving the officer three months' salary in lieu of the notice because it has come to the opinion that the continuation of such officer is not desirable in the interest of the Syndicate. It is explicit, therefore, that the management considered that it was not desirable to continue the officer in service and that such continuance would not be in the interest of the Bank. Whatever may be the position, if the Bank had recourse to Rule 5 providing for termination of services of an officer on probation, the termination under Rule 36, I have no doubt casts a stigma on the conduct and character of the petitioner. Wherever he goes seeking employment, he would be faced with the situation that the Bank terminated his services on the ground that he was not a desirable person to be in service and that the Bank felt that the interests of the Bank would suffer if he was to be continued as an officer of the Bank

8. Sri A.L. Narayana referred me to Rule 35(a) of the Rules. He stated that under Rule 35 every officer found guilty of any misconduct may be punished by awarding any of the four punishments: (1) Dismissal from Service without notice; (2) Discharge from service without notice; (3) Stoppage of one or more increments; and (4) Warning or censure or entering an adverse remark in his record. Rule 35(b) provides that for the purpose of that rule as to what acts may be construed as acts of misconduct. There is a list of fourteen such acts item No. (6) of the list is "acting" prejudicially to the interest of Syndicate. Clauses (c) to (1) of Rule 35 provide for an elaborate procedure of inquiry where there is an allegation of misconduct on the part of an officer. The learned Counsel contends that since the termination was under Rule 36, the management had considered that keeping him in service was not desirable in the interest of the Syndicate Bank, it implies that the petitioner had conducted himself prejudicially to the interest of the Syndicate and, therefore, was not an officer whose continuance is desirable. The ground specifically falls under Rule 35(b)(6) and the removal is due to his misconduct. I find considerable force in the argument of the counsel, I am disposed to give credence to it. I am of the view that Rule 36 is adopted in this case as a mere cloak for dismissing the petitioner for misconduct. A discharge for misconduct certainly requires the procedure under Rule 35(c) to (1) to be followed.

9. As to how the order of termination is to be construed, there is abundant authority of the highest Court of the land. There is apparently some conflict in the principles laid down by the Supreme Court with regard to this matter. Apparent conflict is with regard to decisions where the order of termination did not ex facie contain anything except the fact of termination or discharge of either a probationer or a temporary employee. I am, however, relieved of the necessity of considering the various decisions for, in the instant case, the impugned order was passed undoubtedly by reason of the alleged misconduct of the petitioner. [The order referring to Rule 36 states that the petitioner's services were terminated only because of undesirability of the petitioner to be continued in service in the interest of the Syndicate Bank, He was not given an opportunity to defend himself against what amounts to an allegation of misconduct and, therefore, apart from the question whether the services of the petitioner are contractual or statutory, principles of natural justice are violated. There can be no doubt that the impugned order has put the petitioner's future in jeopardy in the matter of seeking service elsewhere. This view of mine is sufficient to dispose of the writ petition in favour of the writ petitioner by the issuance of a writ of certiorari quashing the impugned order. The question of granting consequential reliefs of reinstatement, etc., is another matter which I will consider later. I may now usefully refer to a Division Bench decision of this Court in Writ Appeal No. 772 of 1974 and Batch, dated 11-2-1975-- [(reported in 1976 Lab. I.C. 115 . In the course of the judgment delivered by Chinnappa Reddy, J. the learned Judge had referred to some of the Supreme Court decisions now cited before me by the learned Counsel for the petitioner. It would be opposite to reproduce what their Lordships said regarding the observations of Mathew, J. in State of U.P. and Others Vs. Sughar Singh,

Mathew, J. noticed that though the law in the matter had been laid down in large number of decisions of the Supreme Court, considerable difficulty had arisen in applying the various principles enunciated by the decisions to the facts of particular cases and that moulding of the principles to suit the needs of the varying circumstances of different cases had often led to formulation of principles with varying contours which suggested, at least superficially that some of them were anomalous and even contradictory.

In the state of the authorities of the Supreme Court which evoked the above comment of Mathew, J. the learned Judges on a consideration of several decisions of the Supreme Court cited before them, summarised the legal position as follows:

The question whether the order of termination of service is a punishment arises in cases where the employer has the right to terminate the services of an employee by the very terms of employment, contractual or statutory. The question cannot be answered solely with reference to the question whether the order of termination of service is prima facie or presumptive evidence that the order of termination of service is not a punishment. But the form and silence of

the order is not the last word in the matter. In cases where the order is silent about any misconduct or unsatisfactory service, where necessary the Court is entitled to look into the proceeding and attendant circumstances to arrive at a conclusion whether the order is in fact a punishment. This does not mean that the Court will delve deep into Government files to discover whether some misconduct or unsatisfactory service may not have influenced the order of termination of service. The test in such cases is "whether the misconduct is a mere motive or is the very foundation of the order." A more practical test perhaps is whether the order of termination of service is a direct or indirect consequence of the misconduct or unsatisfactory service. Without doubt, it is a difficult task for Courts to decide on which side of the line the facts of a case fall. But that is a task which the Courts have to face. Each case must naturally depend upon its own facts and circumstances, In one case greater weight may be attached to the presumptive evidence afforded by the silence of the order. In another case greater weight may be attached to other circumstances. The weight to be attached to any individual circumstances must depend on the entirety of the circumstances of the case. If on a superficial reading; decided cases do not appear to be unanimous it is because of the weight attached in individual cases to particular circumstances.

I am in full and respectful agreement with the above assessment of the legal position with regard to the several Supreme Court decisions bearing on the subject. Here in the instant case, the order of termination cannot be said to be silent. Ex facie, the order shows that the termination was due to, what earlier I have construed, as amounting to an alleged misconduct on the part of the petitioner and it in substance amounts to a dismissal of the petitioner. I am absolved of the necessity, in the circumstances, to look into the entirety of circumstances proceeding and antecedent to the termination order because the impugned order speaks for itself.

10. The very power possessed by the management under Rule 36 is for reasons which undoubtedly would cast a stigma on the petitioner. The use of the word "termination" is not determinative of the question when the termination is under Rule 36 which enables the management to terminate the services of the petitioner on the ground that his continuance in service is undesirable in the interest of the Bank. It, in effect, amounts to a dismissal and not a discharge simpliciter. It is a dismissal order disguised as an order terminating the services. Whether the impugned order really casts a stigma on the petitioner and also amounts to an order of dismissal of the petitioner may be considered in the light of the observations of the Supreme Court in Jagdish Mitter Vs. The Union of India (UOI), A Constitution Bench of the Supreme Court had "to consider the nature of an order which is in terms similar to the order passed under Rule 36 of the Rules. No doubt the case related to a Government servant. The impugned order in that case was as follows:

Shri Jagdish Mitter, a temporary 2nd divisional clerk of this office having been

found undesirable to be retained in the Government service is hereby served with a month's notice of discharge with effect from November, 1949.

Gagendragadkar, J., on behalf of the Bench stated that when the order refers to the fact that the appellant was found undesirable to be retained in Government service, it expressly casts a stigma on the appellant and in that sense must be held to be an order of dismissal and not a mere order of discharge. Their Lordships pointed out that it is obvious that when the order says that it is undesirable to continue a temporary servant, it is not the same thing as saying that it is unnecessary to continue him, which, of course, does not cast any stigma. The impugned order in that case, it was pointed out by his Lordship, when read by any one in a reasonable way would naturally conclude that the appellant was found to be undesirable and that must necessarily import an element of punishment which is the basis of the order and its integral part. It was then observed:

When an authority wants to terminate the services of a temporary servant, it can pass a simple order of discharge without casting any aspersion against the temporary servant or attaching any stigma to his character." As soon as it is shown that the order purports to cast an aspersion on the temporary servant it would be idle to suggest that the order is a simple order of discharge, fine test in such cases must be does the order cast aspersion or attach stigma to the officer when it purports to discharge him? If the answer to this question is in the affirmative, then notwithstanding the form of the order, the termination of service must be held, in substance, to amount to dismissal. That being so, we are satisfied that the High Court was in error in coming to the conclusion that the appellant had not been dismissed but had been merely discharged.

It was pointed out that the temporary Government servant be entitled to the protection of Article 311(2) of the Constitution.

11. Here in the instant case, Rule 35 of the Rules envisages a procedure which would afford protection to an employee of the Bank analogous to the one under Article 311(2). The petitioner is not a civil servant, but when the rules governing his services provide a full-fledged enquiry for any of the acts under Rule 35(b) which amounts to misconduct he is entitled to the protection afforded by Rule 35(c) to (1).

12. The petitioner's employment is subsequent to the passing of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. I do not think the petitioner's counsel can rely upon Section 12(2) of that Act, for it seems to me to apply only to officers and employees of one of the Scheduled Banks on the date of commencement of the Act. It came into force on 31-3-1970. After the nationalisation of the Banks shown in the Schedule to the Act. the Syndicate Bank being one of them, the petitioner having been selected as an officer of the Bank attains a statutory status. A writ un-questionably lies against the Syndicate Bank which may be said to be a State within the meaning of Article 12 of the

Constitution.

13. The learned Counsel for the petitioner has argued that the action of the management is actuated by mala fides on the part of the management. I do not think it necessary to embark upon an enquiry into the question of mala fides and find upon it, as the petitioner has to succeed for the reasons given above by me.

14. The argument of the learned Counsel for the petitioner that Article 14 of the Constitution is based upon discriminatory nature of Rules 35 and 36 need not also be considered by me. After the proclamation of emergency, no argument based upon Article 14 of the Constitution can be considered by the Court. It was also sought to be argued that de hors any rules where a person holds a status, principles of natural justice make it obligatory that the authorities have to go through a formal enquiry placing reliance upon Sirsi Municipality by its President Sirsi Vs. Cecelia Kom Francis Tellis, and certain other decisions of the Supreme Court. These also need not be considered by me, in view of my discussion regarding the impugned order and its nature having regard to Rule 36.

15. The petitioner filed an application W.P.M.P. No. 4739 of 1975 for amending the prayer in the writ petition by introducing a prayer (b) in paragraph 7, viz., to quash Rule 36 of the Syndicate Bank Officers (conditions of Service) Rules. 1966 as void and unconstitutional. The petition is ordered. It is not necessary for me in this case to hold that Rule 36 is void and unconstitutional.

16. The next point for consideration is, what is the relief to be given to the petitioner? He has prayed in the writ petition for reinstatement and consequential directions. The petitioner is entitled to reinstatement, as his services were not validly terminated. It is as if he has been in service. There will, therefore, be a declaration that he is entitled to the salary and other benefits is and from the date of termination. This shall not, however, preclude the 1st respondent from proceeding in the manner provided under Rule 35 of the Rules.

17. The result is, the impugned order dated 16-3-1973 is quashed with a declaration that the petitioner's services were never validly terminated and that he is entitled to the salary and other benefits as and from the date of termination of his services under the impugned order. The petitioner will be entitled to his costs. Advocate's fee Rs. 100.