(2004) 03 KAR CK 0056

In the Karnataka High Court

Case No : Writ Petition No. 52840 of 2003

K. Varadaraja Pai APPELLANT

Vs

Corporation Bank and Another RESPONDENT

Date of Decision : 29-03-2004

Acts Referred:

Citation : (2004) 102 FLR 834 : (2004) ILR (Kar) 2580 : (2004) 5 KarLJ 279 : (2004) 3 KCCR 1850 : (2004) 3 LLJ 726

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : A.V. Srinivas, for the Appellant; P.D. Vishwanath, for the Respondent

Final Decision : Allowed

Judgement

Gururajan, J.—Petitioner is seeking for a direction to the respondents to pay subsistence allowance without deductions from 7-10-2000 from the date on which he was kept under suspension.

2. Petitioner joined the services of the bank as a clerk in the year 1971. He was promoted from time to time. While he was working as senior manager officiating as chief manager at Vasco-Goa Branch of the first respondent, he was kept under suspension on 7-10-2000 pending enquiry, by the first respondent, based on a complaint. The order of suspension was seized by the CBI, while investigating the complaint lodged by the bank. After issuing the suspension order, the respondents did not take any action. On 9-9-2002, a charge sheet was issued by the second respondent. CBI started investigating and filed a charge sheet against the GPA holders and the petitioner before the special Court for CBI cases in Bangalore. Petitioner was paid subsistence allowance but it was less than what is contemplated under the law and also the corporation Bank Officers employees (Discipline and Appeal) Regulation. Respondents while paying subsistence allowance started deduction of the loan amount given to the petitioner. On coming to know of the deduction, petitioner approached the respondents in terms of a letter dated 30-5-2002. Respondents rejected the petitioner''s request

in terms of Annexure-E. Petitioner says that the petitioner is suffering from diabetes for the past three years on account of want of funds he is put to lot of difficulties and hardship. According to petitioner the deduction is unsustainable in law. In these circumstances, petitioner filed a Writ Petition in WP No. 49304/ 2003 and this Court disposed of the petition on the ground that Writ Petition is premature. This Court opined that the petitioner shall wait till the disposal of his representation. After disposal of the Writ Petition respondents have issued Annexure-J dated 1-12-2003. Petitioner with these facts is before me.

3. Notice was issued and respondents have entered appearance. They have filed a very detailed statement of objection opposing the prayers. They say that the petitioner got himself enrolled as an advocate on 8-8-2003 and he has not approached this Court with clean hands. He is involved in various fraudulent transactions in the matter. They justify their action.

4. Heard the learned Counsel for the parties.

5. Learned Counsel for the petitioner invites my attention to the material facts to contend that in terms of the law governing subsistence allowance deduction is impermissible in law. Per contra, learned Counsel for the respondent apart from contesting the matter on merits states that the judgment of this Court in WP .No. 34958/1995 is reversed by the Division Bench in WA No. 3684/2000. Learned Counsel for the respondent says that deductions are permissible.

6. After hearing the learned Counsel, I have carefully perused the material on record.

7. Admitted facts would reveal of suspension of the petitioner by the respondents. Admitted facts would also reveal that the bank has deducted from the subsistence allowance payable to the petitioner towards loan transaction. Let me see as to whether law permits such deduction in the given circumstances .

8. The Supreme Court in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, , has considered non-payment of subsistence Allowance, In the said case, The Supreme Court in para 28 has ruled as under;

" Exercise of right to suspend an employee may be justified on facts of a particular case. Instances, however, are not rare where officers have been found to be afflicted by ''suspension syndrome'' and the employees have been found to be placed under suspension just for nothing. It is their irritability rather than the employee''s trivial lapse which has often resulted in suspension. Suspension notwithstanding, non-payment of subsistence allowance is an inhuman act which has unpropitious effect on the life of an employee. When the employee is placed under suspension, he is demobilised and the salary is also paid to him at a reduced rate under the nick name of ''subsistence allowance'' so that the employee may sustain himself

9. A Single Judge of this Court in WP.No. 34958/1995 has chosen to hold in para 14 that the deduction from subsistence allowance would be a denial of

reasonable opportunity of defending himself. The Court ruled that the bank did not comply with regulation 14 of the (C & D) Regulation of the Bank. The said matter was taken in appeal. The division Bench ruled that the issue with regard to non-observance of natural justice in conducting a departmental proceedings is independent of the issue regarding less payment of subsistence allowance. The Court further ruled that there was no violation of principles of natural justice since the respondent had the fullest opportunity of defending himself in accordance with law.

10. Learned Counsel for the respondent also relies on the judgment of the Division Bench referred to above to contend that deduction from the subsistence allowance is permissible in terms of the law governing subsistence allowance. I am unable to agree with this contention. The Division Bench has nowhere considered with regard to legality of deduction towards loan amount from subsistence allowance. The Court has only considered with regard to rules of natural justice. In the case on hand, petitioner is not complaining of violation of principles of natural justice in conducting the enquiry. Therefore this judgment may not be of much assistance to the petitioner.

11. It is also to be noticed at this stage that the respondent themselves probably after realising have chosen to order no deduction from December, 2003. In the given circumstances and on the facts of this case and in the absence of any permissible deduction in terms of any legal provisions, respondents could not have deducted towards the loan amount from the subsistence allowance payable to the petitioner. They are directed to make over the difference of payment to the petitioner within eight weeks from the date of receipt of a copy of this order. The said payment is without interest. However, I deem it proper to reserve liberty to the respondent to recover the loan amount in a manner known to law and in accordance with law.

12. Petition is allowed with directions. Parties are to bear their respective costs.

