
(2002) 10 RAJ CK 0008
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4330 of 1999

Krishna Kant

APPELLANT

Vs

Udaipur Zila Sahkari Bhumi Vikas Bank Ltd.

RESPONDENT

Date of Decision : 23-10-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 407, 409, 471

Citation : (2003) 3 WLC 97 : (2003) 2 WLN 483

Hon'ble Judges : Prakash Tatia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prakash Tatia, J.—Heard learned Counsel for the parties.

2. Facts of the case are that the petitioner (now deceased) submitted in the writ petition that he was appointed as Lower Division Clerk in the year 1965 on a fixed pay basis of Rs. 90/- per month. Thereafter, he was given regular appointed in the pay scale of Rs 90-220 along with dearness allowance and other allowances vide order dated 19.6.1996 copy of which is placed on record as Annex. 1.

3. The petitioner was promoted to the post of Assistant Accountant vide order dated 21.6.1968 (Annex. 2). The petitioner was suspended on 26.11.1968 and a memo was issued to the petitioner on 3.6.1969 alleging certain embezzlement of Rs. 4,784.75. The petitioner submitted reply to the memo on 4.1.1969. Thereafter, no enquiry was held in this matter but an FIR was lodged against the petitioner at Police Station Suraj Pole, Udaipur on 5.3.1970 under Sections 409, 407 & 471 of the IPC. The petitioner alleged that he kept on going to the bank but he was asked to go away and he was threatened with dire consequences in case he reports on duty. The petitioner ultimately acquitted by the criminal court by order dated 28.11.1992. It is submitted by learned Counsel for the petitioner that leave to appeal against the above acquittal order was dismissed on

1.11.1999 (S.B. Criminal Misc. Special Leave to Appeal No. 264/1993). Thereafter, the petitioner again submitted joining letter to respondent No. 2 to permit him to join the duties and also submitted a certified copy of the judgment delivered by the Trial Court in criminal case, but petitioner was not permitted to join the duty.

4. It is stated that though petitioner was suspended but no departmental enquiry was conducted against the petitioner. Neither he was punished nor his services were terminated nor he was dismissed from service at any time by the respondent- Bank. Since, after acquittal the petitioner was not taken back in service and the petitioner was not paid the suspension allowances, therefore, petitioner served a notice for demand of justice through his counsel on 15.3.1993 (Annex. 5). Even after notice, the petitioner was not reinstated nor he was paid suspension allowances. The petitioner preferred a revision petition u/s 128 of the Act of 1965 before the Additional Registrar (Appeals), Cooperative Societies, Jodhpur against the action of the respondent for not permitting him to join the duties with a relief for revoke the suspension and grant of arrears of salary including the subsistence allowance and other consequential benefits. The revision petition was registered as No. 7/1994 and finally the revision petition was dismissed by order dated 17.3.1999. It is stated that the revision petition was dismissed on the ground that the petitioner has not submitted his joining after his suspension on 26.3.1968. According to the petitioner, the action of the respondent is absolutely illegal and high handed and the order passed in the revision petition is absolutely illegal. learned Counsel for the petitioner relied upon various judgments of the Hon"ble Apex Court out of which relevant and which covers the matters, are the judgment delivered in the cases of Anwarun Nisha Khatoon Vs. State of Bihar and Others, and Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another,

5. learned Counsel for the respondent Shri C.S. Kotwani & Shri M.C. Purohit vehemently submitted that the petitioner, from the date when he was suspended, voluntarily left the service and did not turn up on duties or marked the attendance as suspended employee. Therefore, it is not a case of termination of the service of the petitioner or removal of the petitioner from service, but it is a case of abandonment of the service by the petitioner himself. It is also submitted that the petitioner was accused for embezzlement of the amount and, therefore, a chargesheet was served upon the petitioner and the petitioner himself admitted that he submitted reply to the chargesheet. Therefore, in view of the fact that for long period the petitioner did not claim suspension allowance or for reinstatement and for revocation of the suspension order, which proves that the petitioner abandoned the services. Hence, the petitioner is not entitled for the suspension allowance or the reinstatement. learned Counsel Mr. M.C. Purohit for the respondent submits that another employee has been engaged in place of the petitioner by the respondent Bank.

6. It is relevant to mention here that during the pendency of the writ petition,

the original petitioner-employee Kishna Kant expired and his legal representatives were taken on record. A bare perusal of the order dated 17.3.1999 (Annex. 8) passed by the Additional Registrar (Appeals), Cooperative Societies, Jodhpur shows that, as per rules, after suspension, the bank could have proceeded with the departmental enquiry but the bank has not proceeded to hold enquiry against the petitioner. It was also observed in the order dated 17.3.1999 that bank could not place on record any order of termination of the service of the petitioner despite this, the revision petition of the petitioner was rejected only on the ground that after passing of the suspension order against the petitioner, the petitioner did not attend the office of the bank to mark his attendance.

7. It is relevant to mention here that in reply to the writ petition, in para 8 it is admitted by the respondents No. 1 and 2 that respondents have not proceeded with the enquiry though by saying that since petitioner left the Bank's service, therefore, there was no question of proceeding with enquiry. Hon'ble Apex Court held that suspension allowance cannot be denied because employee during period of suspension has not marked his attendance. The Hon'ble Apex Court in the case of Anwarun Nisha Khatoon v. State of Bihar and Ors., observes as under:

There is no rule which requires a suspended employee to mark attendance. The respondents can at the most ask for a certificate that the appellant's husband was not engaged in any other employment, business, profession or vocation. The appellant's husband having died, he could not have furnished such a certificate. At no stage have the respondents asked the appellant to give such a certificate. Thus, the grant of subsistence allowance cannot be denied on the ground that such a certificate was not given.

It is, therefore, clear from the facts of the case that the order passed by the Registrar (Appeals), Cooperative Societies, Jodhpur is just contrary to the law laid down by the Hon'ble Apex Court and the same deserves to be set aside only on this ground.

8. So far as the contention of the learned Counsel for the respondent that the petitioner himself abandoned the service is concerned, it is an admitted case of even the respondent that the petitioner was suspended on 26.11.1968 and it is also admitted case that criminal case was pending against the petitioner till 28.11.1992 when the petitioner was acquitted by the Court of Chief Judicial Magistrate, Udaipur. It is not in dispute that the employee could have been suspended because of pendency of the criminal case and it was not obligatory on the employer to revoke the suspension order during the pendency of the criminal case. During this period of trial of the criminal case, if petitioner remained suspended and for which the respondents themselves have passed the order of suspension, which admittedly has not been revoked, then during this period, in the facts and circumstances of this case, it cannot be said that the petitioner abandoned his services. The position would have been different, if there was no order of suspension and petitioner was required to attend regular duties and the

petitioner voluntarily did not attend the duties for such a long period. It is clear that the employee under suspension is not required to mark attendance unless there is a rule to this effect. It may also be observed that relationship of employee and employer does exist during the suspension period as held by the Hon"ble Apex Court in the case of Capt. M. Paulanthony v. Bharat Gold Mines Ltd. and Anr., (cited supra). It is relevant to mention again here that the Bank itself has initiated the departmental enquiry proceedings against the petitioner, but admittedly no order has been passed in that proceedings against the petitioner, which could have been passed by the respondent. The respondent Bank could have initiated any other proceedings against the petitioner, if in opinion of the respondent Bank, the petitioner was required to mark his attendance during currency of the suspension order, but it appears that no action has been taken by the respondent Bank in which the petitioner could have explained his position. Therefore, in the instant case, it cannot be assumed that the petitioner himself abandoned the services.

9. It is clear from the above facts that denial of the suspension allowance during the period of suspension is illegal and the order passed by the Additional Registrar (Appeal), Cooperative Societies, Jodhpur (Anenx. 8) dated 17.3.1999 deserves to be set aside.

10. learned Counsel for the respondents submits that the legal representatives of the deceased petitioner Krishna Kant may be directed to furnish an affidavit that deceased employee was not employed during the suspension period for which learned Counsel for the respondent relied upon the same judgment delivered in the case of Anwarun Nisha Khatoon v. State of Bihar and Ors., (cited supra). It is clear from the above judgment itself that there was specific Rule 96(2) governing the matter of suspension claimed by the petitioner in the above-mentioned case, which clearly provides that no payment under Sub-Rule (1) shall be paid unless the government servant furnishes a certificate that he is not engaged in any other employment, business, profession or vacation. learned Counsel for the respondent could not point out any such rule, which requires certificate of the employee, therefore, this plea of learned Counsel for the respondent does not apply to the fact of this case. At the cost of repetition, it is relevant to mention here that during the pendency of the criminal case, the petitioner remained suspended and, immediately after acquittal, he gave his joining report and also served a notice through his counsel on 15.3.1993 upon the respondent, therefore, it cannot be said that the petitioner was not interest to remain in service and abandoned the services voluntarily.

11. In view of the facts of this case, the writ petition of the petitioner is allowed and the petitioner is held to be entitled for suspension allowance as per rules from the date when the petitioner was suspended till the date of attaining of age of superannuation. The petitioner's legal representatives shall not be entitled for any salary which the original petitioner has claimed in the writ petition because of the fact that no order of reinstatement was ever passed by the respondents

themselves or by any Court nor petitioner worked for this period. The petitioner shall also be entitled for all consequential reliefs and costs.