(2007) 03 CAL CK 0062

In the Calcutta High Court

Case No : F.M.A. No. 88 of 2005 and W.P. No. 15155 (W) of 2004

Krishnanagar City Co-Operative Bank Ltd. and Others APPELLANT

Vs

Siddheshar Ghosh and Others RESPONDENT

Date of Decision : 30-03-2007

Acts Referred:

Citation : 111 CWN 534

Hon'ble Judges : Tapan Mukherjee, J;Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : Kashi Kanta Moitra, Alok Kumar Ghosh and Kanta Moitra, for the Appellant;Debabrata Saha Roy and Indranath Mitra, for the Respondent

Final Decision : Dismissed

Judgement

Ashim Kumar Banerjee, J.—Respondent No. 1 was working as a staff of Krishnagar City Co-operative Bank, the appellant abovenamed. His father was a founder member of the said Bank. His brother was also working therein. His initial appointment was as a sub-staff in the year 1977. He was ultimately promoted to the post of clerk-cum-cashier with effect from May 2, 1984. In 2004 his father became seriously ill and it was detected that he was suffering from cancer. The respondent No. 1 took leave for treatment of his ailing father. His father subsequently died. He originally took seven days leave and came to Calcutta for his fathers treatment, however, overstayed due to his father''s treatment. When he went back to join Bank in the last week of April, 2004 he was not allowed to join and ultimately on May 7, 2004 he was issued an order of suspension. It further transpired that the Bank earlier issued a show cause notice dated April 6, 2004 which was received by his sister-in-law (brother''s wife) while he was away from Krishnanagar for his fathers treatment at Calcutta. It further transpired that Board of Directors in 615 their meeting held on April 2S, 2004 decided to put him under suspension. He was served with the show cause notice on the allegation that he obtained loan by pledging bronze ornaments by misdeclaring them as gold. Earlier, preliminary enquiry committee was appointed which investigated upon such charges. Such preliminary enquiry committee gave their report holding the petitioner guilty of charge and recommending punishment of removal from service. On the basis of such recommendation of the enquiry committee the petitioner was issued charge sheet and ultimately dismissed from service. Being aggrieved by and dissatisfied with the order of termination of service with effect from August 26, 2004 the respondent No. 1 filed the instant writ petition. The Bank filed affidavit-in-opposition wherein they reiterated their stand as contended in the show cause notice and the order of termination. They disclosed the copy of the preliminary report of investigation conducted by the enquiry committee appearing at page 70-75 of the Paper Book.

2. The learned Single Judge allowed the writ petition by quashing the order of termination by judgment and order dated September 28, 2004. The relevant observations of His Lordship are quoted below:

"The show cause notice dated 6th April, 2004 was served upon one Smt. Sampa Ghosh, a family member of the writ petitioner at a time when the writ petitioner''s father was lying in hospital. The writ petitioner could not give reply to that letter. Even if I assume that the writ petitioner did not deliberately give reply to the show cause notice that would not authorize the Bank to hold that all the charges have been proved and to pass an order of termination on that basis. This is precisely what has been done in this case. After issuance of the show cause notice dated 6th April, 2004 no enquiry was held. Straightway the letter of termination was handed down to the petitioner. This is the height of high-handed behaviour to say the least.

Whether the bank has suffered a loss or not is a fact which the bank has to prove. The bank has not obviously come up with the proof to show that the bank has suffered any loss. The bank could not do so because the bank has not as yet assessed the worth of the gold pledged by the petitioner. Until that is done and compared with the liability of the petitioner where is the basis to make any such aspersion.

I am also surprised that the bank in its letter of termination has referred to an alleged fraudulent activity of 1999 which has not even been charged against him. This only shows the mental make up of those who were at the helm of affairs who took the decision to terminate the petitioner''s service. The alleged fraudulent activity of 1999 may also be reasonably deemed to have been condoned when no step on that basis was taken for such a long time. The way the bank has conducted itself is reprehensible to say the least."

3. His Lordship directed unauthorized leave to be regularised by granting leave without pay.

4. Being aggrieved by and dissatisfied with the judgment and order of the learned Single Judge the appellant preferred the instant appeal and obtained an order of stay.

5. Mr. Kashi Kama Moitra, learned senior counsel appearing for the appellant contended as follows:

(i) The charge brought against tile respondent No. 1 was so grave in nature that deserved order of termination.

(ii) A criminal case was also initiated against the respondent No. 1 which is pending. The Bank, however, proceeded against him departmentally after affording him adequate opportunity to defend himself in the said proceeding, and as such the learned Single Judge should not have interfered with the order of termination.

(iii) Bank might not have strictly followed the normal procedure in the disciplinary proceeding. However, the sum total of the events that came out in the enquiry would justify the order of termination.

6. Mr. Debabrata Sana Roy, learned counsel appearing for the respondent No. 1 contended as follows :

(i) The respondent No. 1 was implicated in the case along with one Abani Prasad Bhattacharjee who was, however, not proceeded with. From the charges so brought against the respondent No. 1 and the facts that came out in evidence would show that other employees of the Bank were also involved in the incident. They were, however, not proceeded with. The appellant Bank, however, very recently lodged a FIR dated June 12, 2006 relating to the said incident as against 21 persons including the mother of the respondent No. 1 They were arrested and suffered at least seven days imprisonment.

(ii) The founder member of the Bank Late Balai Chandra Ghosh, the father of the respondent No. 1 was suffering from cancer. When he became seriously ill and the respondent No. 1 was away from Krishnanagar for his treatment at Calcutta, the Bank authorities knowing fully well proceeded against him in his absence by serving a chargesheet upon his brother''s wife.

(iii) The charges, even if it was proved, would not amount to any misconduct committed by the respondent No. 1.

(iv) The proceeding was nothing but a result of animosity against the family members of Late Balai Chandra Ghosh.

The Parties cited the following decisions :

(i) All India Reporter, 1958, Supreme Court, Page 148 (Indu Bhusan Chatterjee vs. State of West Bengal).

(ii) All India Reporter, 1999, Supreme Court, Page 3219 (D.R.A.M. Educational Institution vs. Educational Appellate Tribunal & Anr.)

(iii) 2003, Volume X, Supreme Court Cases, Page 733 (Federal Bank Ltd. vs. Sagar Thomas &, Ors.)

(iv) Judgment Today, 2004 Volume-I. Supreme Court, Page 38 (Union of India & Anr. vs. S. B. Vohra & Ors.)

7. On perusal of the chargesheet as well as enquiry report and the evidence it would appear that the respondent No. 1 allegedly obtained loan in the name of various employees of the Bank as well as his family members by pledging ornaments declaring them as gold whereas some of those ornaments turned out to be bronze ornaments having insignificant quantity of gold. It was not the case of the Bank that the respondent No. 1 forged the signature of the employees in whose names the loans were obtained by him. Hence, we are unable to understand as to how the respondent No. 1 could be blamed for the loan obtained by the staff of the Bank other than the respondent No. 1. It further came out in evidence that the respondent No. 1 helped those employees by pledging his own ornaments.

If that be the situation then those staff should have been held responsible for obtaining loan without pledging any gold ornament. Even if we accept that some of those ornaments were not made of gold, for that the respondent No. 1 could not be held responsible unless it was shown that he obtained the said loan in benami of any other persons by forging their respective signatures. In this regard from the belated complaint of the Bank lodged with the police station on June 12. 2006 it appears that Shri Abani Prasad Bhattacharjee acted as appraiser on behalf of the Bank while granting loan to various persons. The said Abani Prasad Bhattacharjee was not proceeded with on the plea that he repaid a sum of Rs. 6.00 lacs to the Bank. According to the Bank, the persons named in the said complaint deliberately cheated the Bank by various fraudulent means. Significantly enough those persons were never proceeded with. On a query made by this court we came to know that some of them are still serving the Bank without facing any disciplinary proceeding although they suffered seven days imprisonment in a criminal case initiated by the police on the basis of such complaint dated June 12, 2000.

8. It was sought to be contended before us that since Abani or others were not proceeded with that could not absolve the responsibility of Siddheswar. Per se such submission sounds good logic. However, the way the case was proceeded with we have every doubt whether the Bank had a sincere intention to proceed as against Siddheswar by giving him appropriate opportunity to defend himself in the said proceeding. The chargesheet was issued on April 6, 2004 when the Bank knew that he was away from Krishnanagar after obtaining leave. Krishnanagar is a small town and his father''s ailment and hospitalization must be within the knowledge of the Bank management more so, because of the reason that he was a founder member of the Bank. Even if we take into account that the Bank served a notice to his sister-in-law, the Bank should have appointed an enquiry officer and thereafter proceeded against him departmentally following the regular procedure required for a disciplinary proceeding.

9. Earlier, he appeared before the enquiry committee. Before the enquiry

committee the staff named in the complaint dated June 12, 2006 were all examined. They admitted having taken loan. They, however, said that the ornaments so pledged by them belonged to Siddheshwar. Even if we take into account that those loans were availed of by Siddheshwar for all practical purposes, involvement of those staff could not be avoided.

10. Let us now examine the gravity of the charge. The loans were obtained by various individuals by pledging ornaments. Those ornaments were declared to be gold. In the enquiry report it was found that some of the ornaments so pledged were made of bronze containing insignificant quantity of gold meaning, thereby the rest of the ornaments were made of gold. To what extent the Bank suffered loss was not investigated upon. Even if we take into account the said report as an enquiry report as contemplated in a disciplinary proceeding it is well settled principle of law that the enquiry officer is not entitled to recommend punishment. In the instant case the enquiry committee suggested remarkable punishment like termination of service which is illegal.

11. Let us now examine the letter of termination. The letter of termination dated June 26, 2004 is appearing at pages 47C-47D of the Paper Book. The brief contents of the letter of termination are as follows :

i) On the basis of the charges the Bank framed an enquiry committee in the meeting of the Board of Directors on March 1, 2004 for the purpose of investigating the charges framed against Siddheshwar.

ii) The enquiry committee issued notice upon him on March 9, 2004. He appeared before the enquiry committee and admitted the charges brought against him by the Bank.

iii) Show cause notice was as served on April 7, 2004 on Smt. Sampa the sister-in-law of Siddheshwar.

iv) He did not reply to the show cause notice. He was put under suspension by the Board of Directors in a meeting held on April 28.. 2004 with effect from May 15, 2004.

v) Second show cause notice was given on July 12. 2004 of which reply was given on July 20. 2004 confronting the charges brought against him.

vi) In the year 1999 there had been financial irregularity for which he suffered punishment of stoppage of increment etc.

vii) He committed offences repeatedly hampering the goodwill of the Bank.

viii) Hence, his service stood terminated with effect from August 26. 2004.

12. From the analysis of the order of the termination it would reveal that the enquiry committee was appointed prior to the issuance of the charge sheet. If we take the report of the enquiry committee as a preliminary investigation report we would find that after issuance of tile charge sheet dated April 6, 2004 no enquiry

was held. He was served with a second show cause notice and ultimately his service stood terminated by the order of termination. The copy of the enquiry report was initially not given to him. It appears from the letter of termination that the disciplinary authority terminated his service on the basis of the enquiry report. Such enquiry report, however, was not forwarded to him along with the charge sheet issued on April 6. 2004. It further appears from the record that after receipt of the order of suspension Siddheshwar wanted to pay of Rs. 4,00,000.00 in repayment of the loan accounts of various persons for whom he was charge sheeted. Pertinent to mention, Abani was not proceeded with upon payment of Rs. 6,00,000.00 Siddheshwar was, however, not given time as prayed for by him in his letter dated June 17, 2004.

13. On a sum total of the situation so discussed above we are of the view that neither there was any appropriate disciplinary proceeding initiated and proceeded with by the Bank as against Siddheshwar nor the proceeding in respect of the charges so framed against Siddheshwar in absence of other persons as discussed above should have been proceeded with.

14. We have carefully perused the investigation report submitted by the enquiry committee. We do not find that the irregularity, if any, was due to Siddheshwar and Siddheshwar alone. It was not his sole responsibility for which he could be implicated. Abani was acting as appraiser. Abani could not avoid his responsibility before giving a clean cheat to the Bank with regard to the quality and quantity of the ornaments pledged with the Bank by the borrower.

15. The learned Judge observed that after issuance of the show cause notice dated April 6, 2004 no enquiry was held and he was dismissed straight away which would amount to high handed behaviour of the management. We are in full agreement with His Lordship on that score.

16. The learned Judge also observed that whether the Bank had suffered loss or not was not proved. The Bank also did not assess the worth of the gold pledged by Siddheshwar. Until those were done and compared with the liability of the petitioner he could not be said to be involved in financial irregularity. We are in full agreement with His Lordship.

17. There was no occasion for bringing 1999 episode in the order of termination. His Lordship observed that such mentioning would show the mental make up of the management. His Lordship also observed, "the way the bank has conducted itself is reprehensible to say the least". "We are in full agreement with His Lordship.

18. The Apex Court decision in the case of D.R.A.R.M. Educational Institution (Supra) observed that giving of opportunity or an enquiry of course is a check and balance concept that no one''s right be taken away without giving him/her opportunity or without enquiry in a given case or where statute requires. But this cannot be in a case where allegations and charges are admitted and no possible defence is placed before the authority concerned. We are unable to appreciate

how this ratio could help us to decide this appeal. The fact so came out in the preliminary investigation has already been discussed by us above. The basic infirmities in the disciplinary proceedings were highlighted by His Lordship in His Lordship''s judgment as discussed by us above. We are at a loss to find as to how the alleged charge even if taken to be an admitted fact could make Siddheshwar solely responsible which would deserve order of termination that too without a regular proceeding being had.

19. The appeal thus fails and is hereby dismissed.

20. There would be no order as to costs. Urgent xerox certified copy will be given to the parties, if applied for.

Tapan Mukherjee, J.

I agree.