(1986) 03 BOM CK 0073

In the Bombay High Court

Case No : Writ Petition No. 1223 of 1985

M. Sundareswaram	APPELLANT
Vs	
Oriental Bank of Commerce	RESPONDENT

Date of Decision : 04-03-1986

Acts Referred:
Constitution of India, 1950 — Article 14, 16, 226

Citation : (1986) 52 FLR 464 : (1986) 2 LLJ 417

Hon'ble Judges : M.L. Pendse, J

Bench : Single Bench

Judgement

Pendse, J.—The petitioner was appointed as an Officer (Manager) by the respondent Bank by an order dated 27th February, 1980 in the pay scale of Rs. 660-1800. By an order dated 7th December, 1984 the petitioner was suspended in accordance with Regulation 12(1) of the Oriental Bank of Commerce Officers Employees (Discipline and Appeal) Regulations, 1982. The order of suspension was passed on the ground that while working as Manager at Branch Office Dadar, Bombay, the petitioner had committed serious irregularities. After the order of suspension, the Bank did not frame any charge-sheet against the petitioner, but by the letter dated 28th February, 1985 the petitioner was informed that the order of suspension stands revoked and the petitioner would be entitled to the salary and allowance for the period of suspension. On the same day, the petitioner was served with another order informing that his services stand terminated in accordance with Regulation 20 with effect from 4th March, 1985. The action of the respondent Bank is under challenge in this petition filed under Art. 226 of the Constitution of India on 30th April, 1985.

2. Shri. Singhvi, learned Counsel appearing on behalf of the petitioner, complains that Regulation 20(1) of the said Regulations is arbitrary and suffers from vice of discrimination. It was urged that the Regulation confers upon the Bank a blanket power to dismiss an employee without holding an enquiry and without assigning any reasons and as such the power is violative of the protection granted under

Arts. 14 and 16 of the Constitution. The learned Counsel further urged that the order of termination was passed in colourable exercise of the powers. Shri Damania, learned Counsel appearing on behalf of the respondent Bank, on the other hand urged that it is necessary and desirable that the power set out in Regulation 20(1) should be available to the nationalised bank. It was contended that there are certain grey areas where it would be in-appropriate for the Bank to hold an inquiry in regard to the misconduct of the officers and in such cases where the Bank has lost the confidence in the employee, the power to remove is necessary and should not be considered as violative of the fundamental rights.

3. Regulation 20 deals with the subject of termination of service and Regulation 20(1) reads as under :

"20(1) : Subject to Sub-regulation (3) of Regulation 16 the Bank may terminate the services of any officer by giving him three months notice in writing or by paying him three months emoluments in lieu thereof."

Sub-regulation (3) of Regulation 16 deals with non-confirmation of an officer on probation. The power under Regulation 20 confers an absolute power on the Bank to remove any officer by giving three months notice and the complaint of Shri Singhvi that such arbitrary and unfettered power is violative of Arts. 14 and 16 of the Constitution deserves acceptance. An identical rule came up for consideration before the learned Single Judge of this Court and was struck down. The appeal preferred by the employer was allowed by the Division Bench of this Court and the rule was upheld. The Supreme Court had an occasion to consider the identical rule in the case reported in West Bengal State Electricity Board and Others Vs. Desh Bandhu Ghosh and Others, The Supreme Court referred to the decision of this Court and upheld the conclusion of the learned Single Judge with the following observations : at para 5 on page 376.

"The learned Counsel for the appellant relied upon 2, Manohar P. Kharkhar and another Vs. Raghuraj and another, to contend that Regulation 48 of the Air India Employees Services Regulations was valid. It is difficult to agree with the reasoning of the Delhi High Court that because of the complexities of modern administration and the unpredictable exigencies arising in the course of such administration it is necessary for an employer to be vested with such powers as those under Regulation 48. We prefer the reasoning of Sawant, J, of the Bombay High Court and that of the Calcutta High Court in the judgment under appeal to the reasoning of the Delhi High Court. In the result the appeal is dismissed with costs."

In view of the dictum laid down by the Supreme Court, it is obvious that Regulation 20(1) cannot be sustained.

The Division Bench of this Court in Appeal No. 20 of 1980 in Miscellaneous Petition No. 874 of 1975 decided on 18th April, 1985 held that the regulation of such nature is violative of Arts. 14 and 16 of the Constitution. In my judgment, in view of these two decisions, it is necessary to strike down Regulation 20(1) in question in this petition.

4. Shri Singhvi is also right in his submission that the facts set out hereinabove clearly indicate that the claim of the Bank that the removal of the petitioner from service was removal simplicitor is not correct. The Bank had suspended the petitioner from service on the ground of certain misconduct and that order of suspension was revoked and in the same breath an order of removal from service was passed. In the return filed on behalf of the respondent Bank it is claimed in paragraph 4(f) that notwithstanding revocation of power to grant clean overdrafts and notwithstanding restrictions even otherwise imposed for exercise of discretionary powers, the petitioner exceeded his power and co-accepted two bills of exchange of Rs. 20,00,000/-, Rs. 20,87,500/- in favour of two parties and thereby put the Bank to loss. If this was the specific misconduct alleged against the petitioner, then nothing prevented the Bank from holding inquiry against the petitioner as contemplated by the Regulations and the action of the summary removal without holding the inquiry cannot be claimed to be the bonafide exercise of powers.

5. Shri Damania faintly urged that even assuming that the Regulation is invalid and the action of the Bank cannot be sustained, still this Court should not direct reinstatement of the petitioner but should merely provide for payment of compensation in view of the fact that the Bank has lost confidence in the petitioner. It is impossible to accede to this submission. In the first instance the Regulation, under which the Bank has terminated the service of the petitioner is invalid and any action taken in pursuance thereof cannot be sustained, and should be considered as null and void. Secondly, the action of the Bank in not holding the enquiry on the facts and circumstances of the case was clearly mala fide and when such action is struck down there is no reason why the petitioner should be deprived of the right of reinstatement. Thirdly, merely because the Bank makes allegation against the petitioner in the return, it cannot be concluded that the allegations are correct without giving an opportunity to the petitioner to show cause. In my judgment, the claim made on behalf of the Bank that the petitioner should be deprived of the right of reinstatement is wholly misconceived and deserves to be repelled.

6. Accordingly, petition succeeds and the rule is made absolute in terms of prayers (a), (b) and (c). In the circumstances of the case, there will be no order as to costs.

7. Rule made absolute.