

(2002) 09 KAR CK 0047
In the Karnataka High Court
Case No : Writ Appeal No. 5500 of 1997

Mahabal S. Amin

APPELLANT

Vs

Vijaya Bank

RESPONDENT

Date of Decision : 11-09-2002

Acts Referred:

Vijaya Bank Officer Employees (Discipline and Appeal) Regulations, 1981 — Regulation 4, 7 (3)

Citation : (2002) ILR (Kar) 4903 : (2002) 6 KarLJ 267 : (2002) 4 KCCR 386
SN : (2003) 1 LLJ 394

Hon'ble Judges : K. Sreedhar Rao, J;G.C. Bharuka, J

Bench : Division Bench

Advocate : P.S. Rajagopal, for the Appellant; Pradeep S. Shankar, for Sundaraswamy Ramdas and Anand, for the Respondent

Final Decision : Dismissed

Judgement

1. This appellant is an employee of respondent-Vijaya Bank. During 27-2-1986 to 13-5-1987, he was working as Branch Manager at Jorhat Branch of the Bank. In a disciplinary proceedings initiated against him, he has been found guilty of misconducts committed by him during the said period. It is a matter of record that because of his negligence and breach of administrative orders, rules and regulations framed for giving overdraft facilities and loans, the respondent-Bank had to suffer substantial pecuniary loss.

2. For the above reasons, apart from subjecting the appellant to a penalty of reducing the basic pay to a lower stage in the timescale by four stages, the disciplinary authority also held that the appellant is liable to make good the financial loss caused to the Bank as a result of the irregularities committed by him during his tenure as Branch Manager at Jorhat Branch.

3. The only question which has been raised by the appellant for our consideration is as to whether in view of Regulation 4 read with Regulation 7(3) of the Vijaya Bank Officer Employees' (Discipline and Appeal) Regulations, 1981 (in short the

"Regulations"), a delinquent even in a case of proved misconduct resulting in pecuniary loss to the Bank, cannot be subjected to a major penalty as also can be held liable to make good the pecuniary loss caused to the Bank.

4. Regulation 4 of the Regulations provides for nature of penalties to be imposed. It, to the extent those are relevant for the present purpose, reads as under.--

"4. Penalties.--The following are the penalties which may be imposed on an officer/employee, for acts of misconduct or for any other good and sufficient reasons:

Minor Penalties:

- (a) Censure;
- (b) Withholding of increments of pay with or without cumulative effect;
- (c) Withholding of promotion;
- (d) Recovery from pay or such other amount as may be due to him of the whole or part of any pecuniary loss caused to the Bank by negligence or breach of orders.

Major Penalties:

- (e) Reduction to a lower grade or post, or to a lower stage in a timescale;
- (f) Compulsory retirement;
- (g) Removal from service which shall not be a disqualification for future employment;
- (h) Dismissal which shall ordinarily be a disqualification for future employment.

Explanation: xxx xxx xxx".

4-A. Clause (3) of Regulation 7 of the Regulations empowers the disciplinary authority to take action on the inquiry report. It reads as under.--

"7. Action on the Inquiry Report:

- (1) xxx xxx xxx
- (2) xxx xxx xxx
- (3) If the Disciplinary Authority, having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in Regulation 4 should be imposed on the officer employee it shall, notwithstanding anything contained in Regulation 8, make an order imposing such penalty".

5. Sri P.S. Rajagopal, learned Counsel for the appellant, has submitted that though Regulation 4 of the Regulations envisages eight types of penalties, but Regulation 7(3) authorises the Disciplinary Authority to impose only any of the penalties so specified. According to him, the word "any" used in Clause (3) of

Regulation 7 could mean only one and therefore the direction of the Disciplinary Authority to recover the pecuniary loss caused to the Bank from the delinquent even though arising out of his proved misconduct is impermissible.

6. Sri Pradeep S. Shankar, learned Counsel for the respondent-Bank, has submitted that in a financial or commercial institution, if its employees are found to be guilty of misconduct resulting in pecuniary loss to the institution, then apart from any other penalty imposable, he has necessarily to be held liable to make good the pecuniary loss caused to the Bank on account of negligence or misconduct and the order of recovery of such loss should not be treated as independent penalty. According to him, the order of recovery should be treated as supplemental to any other penalty provided under Regulation 4 of the Regulations. His submission is that any other interpretation given to the regulation would frustrate the very object of penalising the delinquent officer of the Bank found guilty of financial irregularities, because merely by imposing any other penalty, the Bank cannot get reimbursed with the pecuniary losses. On the other hand, only if order of recovery is made, the delinquent officer can conveniently avoid the major penalty of dismissal, removal or reduction in rank, which in fact are meant to be deterrent action for such misconduct.

7. Sri P.S. Rajagopal, learned Counsel for the appellant, in support of his submission has relied on the judgment of the learned Single Judge of this Court in the case of Mallappa Basappa v Controller of Weights and Measures 1983(2) Kar. L.J. 338. On the other hand Sri Pradeep S. Shankar, learned Counsel for the respondent-Bank has placed reliance on two unreported judgments of the Division Bench of this Court and Kerala High Court. These cases are Chairman and Managing Director, Canara Bank v. K.M. Abdul Kareem, W.A. No. 1088 of 1997, DD: 30-7-1999 (Ker.) and Canara Bank v. I.D. Govinda Rao, W.A. No. 1509 of 1996, DD: 2-9-1997 (Kar.). He has also placed reliance on the judgment of the Supreme Court in the case of Depot Manager, Andhra Pradesh State Road Transport Corporation v. N. Ramulu and Anr., (1997) 11 SCC 319

8. In Mallappa Basappa's case, supra, learned Single Judge of this Court was considering the scope of Rules 10-A and 11 of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957. Reading of this judgment shows that the learned Single Judge has nowhere held that if in any statute word "any" used, it must necessarily be read as only one. In paragraph 10 of the order it has been said that:

"That meaning which fits aptly to the scheme of the statutory provision should be given".

9. For taking the above view, this Court had relied on the judgment of the Supreme Court in the case of The Chief Inspector of Mines and Another Vs. Lala Karam Chand Thapar etc., , wherein it has been held that.--

"34. After giving the matter full and anxious consideration, we have come to the conclusion that the words "any one of the directors" is ambiguous; in some

contexts, it means "only one of the directors, does not matter which one", but in other contexts, it is capable of meaning "every one of the directors". Which of these two meanings was intended by the legislature in any particular statutory phrase has to be decided by the Courts on a consideration of the context in which the words appear, and in particular, the scheme and object of the legislation".

10. So far as Bench decision of this Court in I.D. Govinda Rao's case, supra, is concerned, a portion of paragraph 3 of the judgment which has relevance for the present purpose reads as under.--

"In this case we have carefully perused the charge-sheet issued to the respondent. The charge-sheet does not specifically disclose that any pecuniary loss has been caused to the Bank by the respondent. When such charge has not been made against him nor in the course of the proceedings also any intimation had been given to him that such pecuniary loss had been caused by him, he had no opportunity of meeting such a charge".

11. This Court in the above case has not decided the issue at hand. In this case, this Court having found that there being no charge that pecuniary loss has been caused to the Bank by the delinquent there was no occasion for passing an order of recovery as a measure of penalty. This is what this Court has observed in the judgment in the following terms.--

"If the employee concerned did not have an opportunity to meet such a charge to impose a punishment on such basis would not be permissible at all, even if Regulation 7(3) is understood to enable the Bank to impose both a major and a minor penalty in a given case".

12. The Supreme Court in Ramulu's case, supra, had the occasion of considering as to whether a delinquent found to be guilty of charge of causing pecuniary loss to the employer Corporation can be subjected to penalty of removal from service as well as direction for recovery of loss to the Corporation from the pay of the delinquent. This aspect has been dealt with by the Supreme Court in paragraph 3 of the judgment which reads as under.--

"It is true that reimbursement of the loss caused to the appellant, Andhra Pradesh State Road Transport Corporation has been shown to be a penalty under Regulation 8(v) of the Regulations. But the penalty for the act of negligence was removal from service. The explanation to Regulation 8, however, enumerates various penalties which are not to be treated as penalties and one of them is as Clause (5) thereof says: "The penalty of recovery from pay of the whole or part of any pecuniary loss caused to the Corporation by an employee's negligence or breach of orders, may be imposed in addition to any other penalty which may be inflicted in respect of the same act of negligence or breach of orders". This clause clearly says that the penalty of recovering loss caused to the management under Regulation (1)(v) shall not preclude the management from imposing any other penalty. The High Court was, therefore, wrong in thinking that this was a case of

double jeopardy. The order passed by the learned Single Judge was eminently just and fair and the Division Bench of the High Court should not have interfered with that order".

13. The above judgment is not very helpful to the respondent-Bank because in this judgment the Supreme Court has found that the order for recovery of pecuniary loss caused to the Corporation was not to be treated as penalty under explanation to Regulation 8(v). But the learned Counsel for the respondent-Bank could not bring to our notice any such specific provision made in the regulations. The case which has direct bearing on the issue at hand is that of the judgment of the Kerala High Court in Abdul Kareem's case, *supra*. The Bench after referring the judgment of the Supreme Court in the case of Chief Inspector of Mines, *supra*, has taken the view that.--

"According to us, the word "any" in this sub-regulation taking into consideration the context in which it is used and the subject-matter of the Statute would only mean "all" or "every" or "some" and at any rate, not one. We cannot lose sight of the fact that the regulation in question pertains to a banking institution which is custodian of other people's money and when it suffers a pecuniary loss as in the present case because of negligence on the part of the delinquent who is entrusted with the money, Bank cannot just censure its employee without taking measures to recover the same from him either from his pay or from any other amounts due to him because it is accountable to the customers' money. Therefore, invocation of one penalty does not preclude resorting to other penalty. If the contention of the delinquent employee/respondent that the disciplinary authority is competent to impose only one of the penalties specified in the regulation is accepted, it would certainly lead to anomalous consequences disabling the banking institutions from realising the loss suffered by it from the employees. Analysing the regulation in the context in which it occurs, we have no hesitation in accepting the contention of the appellants and holding that the disciplinary authority has every right to impose every one of the penalties mentioned in the regulation".

14. We are in agreement with the view taken by the Kerala High Court to the extent that if an employee is found to be guilty of causing pecuniary loss to the Bank then the disciplinary authority apart from imposing any of the major or minor penalties envisaged under Regulation 4, can also direct for recovery of pecuniary loss caused to the institution from the delinquent. This is so even in common law. It requires no specific provision under the regulations for the purpose. This is more in the nature of civil liability like damages, than a penalty to be based on charge. No doubt, for fastening such liability the employee has to be given a reasonable opportunity of showing that the alleged pecuniary loss to the employer has not occasioned because of any negligence or other misconduct on his part. In our opinion, item (d) under the heading "Minor Penalties" in Regulation 4 providing for recovery of pecuniary loss caused to the Bank has to be construed as a provision supplemental to the other enumerated penalties and

not independent penalty as such. This would mean that if because of some misconduct or dereliction of duty on the part of a delinquent employee, the Bank has suffered any pecuniary loss, then the disciplinary authority, apart from imposing any of the minor or major penalties, can also direct for recovery of amount of pecuniary loss caused to the Bank attributable to the misconduct of the delinquent. Such a construction would be consistent with the object of the regulations and will act as deterrent against the employees who are found to have misconducted themselves in the manner which results in pecuniary loss to the Bank.

15. For the said reasons, we find no occasion to interfere with the order of the learned Single Judge who has held that the respondent's Board of Directors can take appropriate steps for recovery of financial loss caused to the Bank after giving an opportunity of hearing to the appellant to make representations. The appeal is accordingly dismissed.