

(2009) 01 MAD CK 0072

In the Madras High Court

Case No : Writ Petition No. 12056 of 1999

Mohammed Abdur Raheem @ Ramuvel

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 19-01-2009

Acts Referred:

Banking Regulation Act, 1949 — Section 10(1)
Constitution of India, 1950 — Article 311(2)
Dowry Prohibition Act, 1961 — Section 4
Penal Code, 1860 (IPC) — Section 498A
Probation of Offenders Act, 1958 — Section 4

Citation : (2009) 2 MLJ 589

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : G. Venkatraman, for Aiyar and Dolia, for the Appellant; U. Karunakaran, for G.M. Mani Associates, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The petitioner's services were dispensed with by the order of the second respondent dated 07.6.1999 by exercising the

power u/s 10(1)(b)(i) of the Banking Regulation Act, 1949 read with Paragraph 521 (2)(b) of the Shastri Award. It was stated in the order that

the petitioner was convicted for an offence u/s 498A, IPC and imposed with a penalty of six months imprisonment and also convicted for an

offence u/s 4 of the Dowry Prohibition Act and imposed with a punishment of imprisonment for a period of six months together with a fine of Rs.

500/- by the Chief Judicial Magistrate, Ramanathapuram. This was on account of the complaint given by petitioner's wife Mrs. Rajeswari before

the All Women Police Station at Ramanathapuram and the same was registered in Crime No. 12 of 1999. Subsequently, the case was tried as

C.C. No. 4 of 1996 by the Chief Judicial Magistrate, Ramanathapuram. After the trial, the petitioner was found guilty and was imposed with the punishment of conviction on both counts as stated earlier.

2. The petitioner had preferred Crl.A. No. 930 of 1997 before this Court. This Court had suspended the sentence. It is significant to note that the petitioner's original name in the bank records as well as in the Criminal Court is Ramuvel and subsequently he has assumed the name of Mohammed Abdul Rahim.

3. The petitioner after getting his sentence suspended by this Court on 03.11.1997, wrote a letter to the respondent bank stating that since the sentence has been suspended, there was no question of any discharge from service and therefore, he must be restored to duty. As he did not get any reply, he filed the present writ petition before this Court and the same was admitted on 15.7.1999.

4. The petitioner in this writ petition has raised the following contentions:

a) Para 521(2)(b) of the Shastri Award cannot be applied to his case as he is a permanent employee and such a discharge order cannot be passed

without disciplinary action.

b) Section 10(1)(b)(i) of the Banking Regulation Act, 1949 cannot be invoked in a case where there is a private dispute between an husband and

his wife and his conviction cannot amount to a moral turpitude.

c) Since the petitioner's conviction has been suspended and it is pending in appeal, the conviction had not reached its finality and, therefore, the

power of discharge cannot be invoked by the respondents.

5. The learned Counsel for the petitioner placed reliance upon the judgment of the Supreme Court in State bank of India Vs. The Workmen of

State Bank of India and another, for the purpose of showing that an order under para 521 cannot be a discharge simpliciter if it is imposed as a

punishment. Therefore, in the present case, when the petitioner had been discharged for a punishment, the said provision cannot be invoked.

6. He also placed reliance upon the decision of this Court in Management of Tractors & Farms Equipment Limited and First Additional Labour

Court, Madras and Anr. reported in 1982 II LLJ 403 for the purpose of showing that a conviction under the Prohibition Act was held to be not

amounting to moral turpitude.

7. Taking the second argument, it is necessary to refer to the provision of law in this regard. Section 10(1)(b)(i) of the Banking Regulation Act,

1949 reads as follows:

10. Prohibition of employment of Managing Agents and restrictions on certain forms of employment-

(1) No banking company-

(a) (omitted)

(b) Shall employ or continue the employment of any person.

(i) Who is, or at any time has been, adjudicated insolvent, or has suspended payment or has compounded with his creditors, or who, is or has

been, convicted by a criminal court of an offence involving moral turpitude;

8. The term "'moral turpitude'" came to be considered by the Supreme Court in Pawan Kumar Vs. State of Haryana and another, it is stated as

follows:

12. "'Moral turpitude'" is an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile, depraved

or having any connection showing depravity.

9. While considering whether a conviction u/s 61 (1)(a) of the Punjab Excise Act can be a disqualification u/s 10(1)(b)(i) of the Banking Regulation

Act, 1949, the Supreme Court in State of M.P. and Others Vs. Nandlal Jaiswal and Others, held that it will not be a disqualification. The following

passage found in para 1 is extracted below:

1. The contention that the petitioner having been released u/s 4 of the Probation of Offenders Act, 1958, the disqualification attaching to his

conviction for having committed an offence punishable u/s 61(1)(a) of the Punjab Excise Act, 1914 stood removed by Section 12 of the Act,

cannot prevail. The matter is concluded by the recent decision of this Court in Shankar Dass v. Union of India. In that case the court has laid down

that conviction on a criminal charge was not a disqualification falling within the purview of Section 12 of the Act. It also referred to clause (a) of the

second proviso to Article 311(2) of the Constitution which confers a power on the government to dismiss a person "'on the ground of conduct

which has led to his conviction on a criminal charge'". It cannot therefore be said

that the State Bank of India could not take recourse to Section

10(1)(b)(i) of the Banking Regulations Act, 1949 in directing the removal from service of the petitioner upon his conviction u/s 61(1)(a) of the Act

as he was guilty of conduct which led to his conviction by the criminal court involving moral turpitude.

10. But by no stretch of imagination, the offence committed by the petitioner can be equated to an offence under the Excise Act. A conviction u/s

498-A of the IPC and Section 4 of the Dowry Prohibition Act is inherently base, vile and shows depraved conduct. Demanding and accepting

dowry is a social evil and it is certainly an offence involving moral turpitude. Therefore, the second contention raised by the petitioner cannot be

accepted by this Court.

11. With reference to the first contention that the petitioner cannot be discharged from service since he had his sentence suspended pending appeal

and that the conviction had not reached finality, it is necessary to refer to the judgment of the Supreme Court in Deputy Director of Collegiate

Education (Administration), Madras Vs. S. Nagoor Meera, . The passages found in paragraphs 8 and 9 can be usefully reproduced below:

Para 8 : We need not, however, concern ourselves any more with the power of the appellate court under the Code of Criminal Procedure for the

reason that what is relevant for clause (a) of the second proviso to Article 311(2) is the ""conduct which has led to his conviction on a criminal

charge"" and there can be no question of suspending the conduct. We are, therefore, of the opinion that taking proceedings for and passing orders

of dismissal, removal or reduction in rank of a government servant who has been convicted by a criminal court is not barred merely because the

sentence or order is suspended by the appellate court or on the ground that the said government servant-accused has been released on bail

pending the appeal.

Para 9 : The Tribunal seems to be of the opinion that until the appeal against the conviction is disposed of, action under clause (a) of the second

proviso to Article 311(2) is not permissible. We see no basis or justification for the said view. The more appropriate course in all such cases is to

take action under clause (a) of the second proviso to Article 311(2) once a government servant is convicted of a criminal charge and not to wait

for the appeal or revision, as the case may be. If, however, the government servant-accused is acquitted on appeal or other proceeding, the order

can always be revised and if the government servant is reinstated, he will be entitled to all the benefits to which he would have been entitled to had

he continued in service. The other course suggested, viz., to wait till the appeal, revision and other remedies are over, would not be advisable since

it would mean continuing in service a person who has been convicted of a serious offence by a criminal court. It should be remembered that the

action under clause (a) of the second proviso to Article 311(2) will be taken only where the conduct which has led to his conviction is such that it

deserves any of the three major punishments mentioned in Article 311(2). As held by this Court in *Shankar Dass v. Union of India*: (SCC p. 362,

para 7)

Clause (a) of the second proviso to Article 311(2) of the Constitution confers on the Government the power to dismiss a person from service "on

the ground of conduct which has led to his conviction on a criminal charge". But that power like every other power has to be exercised fairly, justly

and reasonably. Surely, the Constitution does not contemplate that a government servant who is convicted for parking his scooter in a no-parking

area should be dismissed from service. He may, perhaps, not be entitled to be heard on the question of penalty since clause (a) of the second

proviso to Article 311(2) makes the provisions of that article inapplicable when a penalty is to be imposed on a government servant on the ground

of conduct which has led to his conviction on a criminal charge. But the right to impose a penalty carries with it the duty to act justly.

Hence, the second contention must also necessarily fail. It is for the petitioner to work out his rights depending upon the outcome of the criminal

appeal pending before this Court. The writ petition at this stage is premature.

12. In the light of the above, the writ petition will stand dismissed. However, there will be no order as to costs.