
(2006) 05 KAR CK 0010
In the Karnataka High Court
Case No : Writ Petition No. 20071 of 2001

M.R. Achar

APPELLANT

Vs

Syndicate Bank

RESPONDENT

Date of Decision : 30-05-2006

Acts Referred:

Constitution of India, 1950 — Article 12, 226
Industrial Disputes Act, 1947 — Section 2 (A), 2 (K)

Citation : (2006) ILR (Kar) 2380 : (2006) 3 KCCR 159 SN : (2006) 3 LLJ 852

Hon'ble Judges : H.N. Nagamohan Das, J

Bench : Single Bench

Advocate : M.N. Prasanna, for P.S. Rajagopal, for the Appellant; Pradeep S. Sawkar, for Sundarswamy Ramdas and Anand, for the Respondent

Final Decision : Allowed

Judgement

H.N. Nagamohan Das, J.—In this writ petition, the petitioner has prayed for a writ in the nature of certiorari to quash the order dated 20.07.1999 passed by the Disciplinary Authority dismissing the petitioner from service and the order dated 27.10.1999, passed by the Appellate Authority confirming the order of the Disciplinary Authority and also the order dated 11.05.2000 passed by the Revisional Authority in so far as it is adverse to the interest of the petitioner and for consequential reliefs.

2. The petitioner joined the services of respondent-bank in the year 1972 as a clerk. In the year 1998, the petitioner was working in the respondent-bank in its branch office situated at Car Street, Udupi. The petitioner is an active member of the recognised Workmen Trade Union in the respondent-bank. During the year 1998, the petitioner was elected as Deputy General Secretary of the Trade union. During the year 1998, there were several demands raised by the Trade Union pending consideration by the respondent-bank. Since the respondent-bank failed to react to the demands of the union, the Trade Union resolved to agitate against the bank pressing their demands. Consequently, on 19.11.1998, after the office

hours, the Trade Union held a demonstration in front of the head office of the respondent-bank at Manipal. The respondent-bank reacted to this agitation by issuing charge sheets to 23 workmen including the petitioner alleging that they have indulged in shouting derogatory/ indecent/defamatory/personally abusive inhuman slogans against the Chairman and the Managing Director and other executives of the bank. The petitioner submitted his reply on 10.12.1998 denying the charge levelled against him. The Disciplinary Authority being not satisfied with the explanation of the petitioner, initiated disciplinary enquiry proceedings. The enquiry officer submitted his report stating that the charges levelled against the petitioner as proved. The Disciplinary Authority by accepting the report of the enquiry officer, passed the impugned order of penalty dismissing the petitioner from service. The Appellate Authority by the order dated 27.10.1999 confirmed the order of penalty. Subsequently, the Revisional authority modified the order of penalty by reducing the basic pay by two stages for a period of eight years, denied back wages and consequential benefits on reinstatement. The petitioner, being aggrieved by the penalty levied by the Revisional Authority, is before this Court.

3. Sri M.N. Prasanna, learned Counsel for the petitioner contends, that the respondent-bank passed the impugned order of penalty to victimise the petitioner for his legitimate trade union activities. He contends that initially the respondent issued identical charge sheets to 23 workmen. Subsequently, the respondent dropped the enquiry proceedings against all the charge-sheeted workmen except the petitioner and as such the same is discriminatory and victimisation of petitioner. He contends that the alleged misconduct committed by the petitioner do not fall under Clause-19 of the bipartite settlement. The impugned order of punishment is disproportionate to the nature of charges levelled against the petitioner.

4. Sri Pradeep S. Sawkar, learned Counsel for the respondent-bank contends that the petitioner is a workman and he is having an alternative and efficacious remedy of raising an industrial dispute. Hence, the writ petition is liable to be rejected. He contends that the misconduct committed by the petitioner squarely falls under Clause 19.5(j) of the bipartite settlement. The petitioner has admitted the charge levelled against him. The reviewing authority by taking a lenient view, passed the impugned order of penalty and the same is in accordance with law. He justifies the impugned order of penalty.

5. Heard arguments on both the sides and perused the entire writ papers. The following questions will arise for my consideration:

1. Whether the writ petition is liable to be rejected on the ground that the petitioner is having an alternative and efficacious remedy under the Industrial Disputes Act
2. Whether the misconduct committed by the petitioner is in contravention of Clause 19.5(i) of the bipartite settlement?

3. Whether the impugned order of penalty is disproportionate to the nature of charges levelled against the petitioner and that the same is discriminatory and victimisation

On question No. 1

6. Section 2(K) of the Industrial Disputes Act (the I.D. Act for short) defines an industrial dispute means any dispute or difference between employers and employers or between employers and workmen or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any persons.

7. Section 2(A) of the ID. Act specifies, that where an employer discharges, dismisses, retrenches or otherwise terminates the service of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workmen or any union of workmen is a party to the dispute.

8. A reading of the definition of industrial dispute as defined u/s 2(K) of the I.D. Act makes it clear, that individual disputes are not governed under mis definition. The workmen as an organisation or trade union may take up the cause of individual workman. But a workman for his individual case is not entitled to pursue his remedy u/s 2(K) of the I.D. Act. The individual disputes relating to discharge, dismissal, retrenchment or termination of the services of an individual workman are governed u/s 2(A) of the I.D. Act. In the instant case, the grievance of the petitioner is in respect of levy of penalty of withholding back wages, and reduction in basic pay by two stages for a period of eight years. Therefore, the grievance of the petitioner who is an individual is not an industrial dispute as defined either u/s 2(K) or Section 2(A) of the I.D. Act. Therefore, I decline to accept the contention of the learned Counsel for the respondent that the petitioner is having an alternative and efficacious remedy under the Industrial Disputes Act.

9. The Supreme Court in the case of Common Cause, A Registered Society Vs. Union of India and Others, , held that under Article 226 of the Constitution, the High Court has been given the power and jurisdiction to issue appropriate writs in the nature of mandamus, certiorari, prohibition, quo-warranto and habeas-corpus for the enforcement of fundamental rights or for any other purpose. Thus, the High Court has jurisdiction not only to grant relief for the enforcement of fundamental rights but also for "any other purpose" which would include the enforcement of public duties by public bodies. Every executive or administrative action of the State or other statutory or public body is open to judicial scrutiny and the High Court or the Supreme Court can, in exercise of the power of judicial review under the constitution, quash the executive action or decision which is contrary to law or violative of fundamental rights guaranteed by the Constitution.

10. The Supreme Court in the case of Air India Statutory Corporation, etc. Vs.

United Labour Union and others [overruled], held, that the legal right of an individual may be founded upon a contract or a statute or an instrument having the force of law. For a public law remedy enforceable under Article 226 of the Constitution, the action of the authority needs to fall in the realm of public law; be it a legislative act of the State, an executive act of the State or an instrumentality or a person or authority imbued with public law element.

11. It is not in dispute that respondent is a State under Article 12 of the Constitution of India. The individual disputes of the petitioner do not fall u/s 2(K) or Section 2(A) of the ID. Act. In view of the law declared by the Apex Court in the decisions referred to supra, this Court is having the jurisdiction to entertain the writ petition filed by the petitioner. Hence, I hold question No. 1 in negative and in favour of petitioner.

On question No. 2

12. The respondent in its statement of objections admit that the petitioner was charged for committing gross misconduct under Clause 19.5(j) of the bipartite settlement and the same reads as under:

Doing any act prejudicial to the interest of the Bank or gross-negligence or negligence involving or likely to involve the bank in serious loss.

The charge against the petitioner was that on 19.11.1998 in the evening at about 5.00 P.M., the petitioner and thirty other staff members of the respondent-bank under his leadership assembled near the head office building and raised and shouted derogatory and defamatory slogans against the Chairman and the Managing Director and other executives of the bank. A reading of Clause 19.5(j) of the bipartite settlement do not prohibit raising of slogans by the petitioner and others outside the head office of the bank. The raising of alleged defamatory and derogatory slogans against the Chairman and the Executive Director of the bank can neither be called a prejudicial act nor a gross negligent act. Even if the alleged slogans shouted by the petitioner and others are prejudicial to the interest of the bank or gross negligent in character, the same has not involved the bank in serious loss. P.W.1 and P.W.2 the two witnesses examined by the prosecution in the enquiry proceedings do not speak anything relating to the bank involving into the serious loss on account of the slogans raised by shout by the petitioner and others. In the absence of any evidence and in view of the language employed in Clause 19(5)(j) of the bipartite settlement, the charge against the petitioner is not violative of Clause 19(5)(j) of the bipartite settlement Hence I answer point No. 2 in negative.

On question No. 3

13. It is not in dispute that the respondent issued identical charge-sheets to 23 workmen including the petitioner. The enquiry proceedings against all the workmen are dropped except the petitioner. The respondent has not specified the distinguishing features in respect of the petitioner treating him differently from

other similarly charge-sheeted workmen. There is no iota of evidence, which would distinguish the case of the petitioner from those against whom the enquiry proceedings are dropped. In the absence of any convincing reply from the respondent-bank and in the absence of any evidence, discrimination against the petitioner is writ large and this Court cannot over look the same. The charge against the petitioner is raising of derogatory and defamatory slogans against the Chairman and the Executive Director of the bank. The petitioner and others to ventilate their grievance about their service conditions, held demonstrations before the head office of the respondent-bank. It is on record that when some employees raised slogans against the Chairman and the Executive Director, the petitioner and others controlled the same and diverted the slogans in respect of their demands. Under these circumstances, and in the absence of involving the bank to a serious loss, the levy of punishment on the petitioner alone is discriminatory and victimisation. Hence I hold question No. 3 in affirmative.

14. For the reasons stated above the following;

ORDER

I. Writ petition is allowed.

II. The impugned order of penalty dated 11.5.2000 passed by the Chairman and Managing Director of the bank in so far as it is adverse to the petitioner is hereby quashed.

III. The petitioner is entitled for all consequential and monetary benefits.

IV. Ordered accordingly with no order as to costs.