
(2008) 02 AHC CK 0205
In the Allahabad High Court

M.S. Kapoor and Another

APPELLANT

Vs

Rajiv Gupta and Others

RESPONDENT

Date of Decision : 08-02-2008

Acts Referred:

Contempt of Courts Act, 1971 — Section 23

Citation : (2008) 02 AHC CK 0205

Hon'ble Judges : K.K. Misra, J;D.V. Sharma, J

Bench : Division Bench

Final Decision : Allowed

Judgement

D.V. Sharma, J.—The instant appeal has been preferred under the Contempt of Courts Act, 1971 against the judgment and order dated 9th January, 2006 passed by Hon'ble the Contempt Judge rejecting the defence raised by the appellants and directing the appellants to appear in Court for framing of charges.

2. The factual matrix of the case is as under;

Rajiv Gupta was appointed as Probationary/Trainee Officer in the Vijaya Bank Ltd. on 6th of September, 1976; his services were confirmed on the said post. Admittedly, there were no service rules at the time of his recruitment. Thereafter the Bank was nationalised and services rules were framed and given effect w.e.f. 1st of January, 1983 and in the meantime a seniority list of the officers of Vijaya Bank was circulated on 10th June, 1989 in which his name was placed at serial No. 299. The criteria for conferring the seniority was the date of confirmation i.e. by excluding the probationary period of one year of service. The grievance of Rajiv Gupta (respondent No. 1 in the instant appeal) was that for promotees, seniority was accorded from the initial date of their promotion/training. It has also been submitted that after nationalization of bank, Vijaya Bank Officers Service Regulations 1982 which came into force on 1st of January, 1983 does not distinguish the period of training from the period of probation. Consequently, it was for the Bank to add any condition. Thus the seniority of respondent No. 1

should be counted from 6.1.1976 and not from 6.9.1977. It is further contended that on the basis of length of service (during the period there was no rule in existence) the date of initial appointment should be the basis for counting of seniority. Thus it would be the golden rule to determine the seniority on the basis of length of service.

3. Aggrieved by the order of Bank, writ petition bearing No. 5144 of 1984 was filed with the following reliefs;

It is most respectfully prayed to issue a writ in the nature of certiorari quashing the seniority lists dated 30.6.1981 and 25.9.1984, contained in Annexure No. 4 and 6 alongwith the promotion policy declared vide order dated 28.8.1984 in so far as it excludes the period of probation towards computation of seniority and to quash regulation 18(2) as reproduced in para-14 in so far as it allowed seniority with effect from the date of appointment in that grade or scale with a writ of mandamus commanding the opposite parties to count petitioner's service with effect from 6.9.1976 to 5.9.77 towards his seniority and further commanding the Bank to act accordingly.

4. In the petition the petitioner challenged the policy decision dated 28.8.1984 through which the period of probation towards computation of seniority was excluded. The above writ petition was allowed by judgment and order dated 02.12.1994. Thereafter one modification application was also moved on which this Court passed an order clarifying the earlier judgment. The relevant portion of the judgment is reproduced below;

The writ petition is allowed and a mandamus is issued directing the respondents to treat the training period of petitioner towards his service with the Bank and to fix his seniority considering his appointment to the service of the Bank with effect from 6.9.1976.

5. It is further clarified that the petitioner of the above writ petition, now respondent No. 1 in the instant appeal, approached the Bank and the Bank after considering the totality of the circumstances sent a letter referring that the judgment and order dated 2.12.1994 and 1.9.1995 have already been complied with. Relevant portion of the letter is extracted below;

Since the bank has considered you for promotion during the year 1984 onwards, claim made by you to grant notional promotion upto MMG Scale IV does not hold good as the promotion in officers' cadre in our bank is based on selection/assessment of comparative merit of all eligible candidates who participate in promotion process and not an automatic one. We express our inability to accede to your request.

Please note that our consideration of your certain requests in pursuance of the order dated 2.12.1994 and 1.9.1995, passed by the Hon'ble High Court of Allahabad and the order dated 15.4.1996 passed by the Hon'ble Supreme Court of India is in full and final settlement of your claim on the bank.

6. The submission of the petitioner before the Division Bench of this Court and on the basis of regulations that was taken into consideration for adjudging the issue has already been referred to. In this context it is relevant to quote that one Criminal Misc. Case No. 1736 (C) of 1996, Rajiv Gupta v. Sri T.S. Raghwan and Ors. was filed. The learned Single Judge after considering the prose and cons of the whole issue on 9.1.2006 passed the following order;

From the material on record, prima facie, a case is made out to proceed against the opposite parties for framing of charges. Accordingly, opposite parties No. 1 to 6 are directed to appear in this Court on 9th of February, 2006 for framing of charges.

7. Aggrieved by the aforesaid order the instant appeal has been preferred on the ground that the Contempt Judge has failed to appreciate the judgment and order dated 2.12.1994 as clarified by order dated 1.9.1995 passed in writ petition No. 5144 of 1984. It is further urged that the learned Contempt Judge has exceeded his jurisdiction by equating a Civil Contempt to a regular criminal trial and has also ignored the prescriptions made under Chapter XXXV-E of the Allahabad High Court Rules framed in exercise of powers vested by virtue of Section 23 of the Contempt of Courts Act, 1971. We further find that the learned Single Judge after recording his finding in para-5 of the impugned judgment has rejected the defence of the appellants and the proforma respondents quite illegally and arbitrarily and came to the conclusion that a prima facie case for framing the charge was made out.

8. We have given our anxious thoughts to facts of the case and considered the entirety of the matter. The only question which arose for decision is that whether there was any wilful defiance on the part of the Bank or not.

9. Learned Counsel for the Bank Sri Rajiv Gupta was asked to point out under what circumstance he is in a position to say that the Bank has committed defiance of the Court's order and the Bank Officers have not implemented the same and accordingly how a finding could be arrived at by the learned Single Judge that a prima facie case of contempt on account of wilful defiance is made out.

10. On the contrary, Dr. L.P. Misra appearing for the appellants has submitted that the appellants are Officers of the Bank which is a public institution and they have no axe to grind the matter and they do not want to expose themselves for committing contempt. They are ready and willing in a letter and spirit to obey the command of this Court and to give effect to the judgment as per rules and the relief claimed and granted by this Court.

11. It is agreed by the parties that in case any representation is submitted including the ground how the opposite party, Rajiv Gupta has been promoted in defiance of the order, in that case the representation shall be decided by a speaking order.

12. Thus to cut short the controversy it is expedient in the interest of justice to direct the respondents to make a representation to Vijaya Bank within a period of two weeks from today which shall be decided by the Bank within two months thereafter.

13. Thus we direct the opposite parties to file a fresh comprehensive representation alongwith the certified copy of this order as well as complete copy of the writ petition with all annexures before the concerned authority of the Bank within a period of two weeks from today and on such representation being filed as stipulated above, the concerned competent authority shall decide the same by a reasoned and speaking order within a period of 8 weeks of the receipt of the representation as contemplated above, exercising its unfettered discretion on the basis of record before him in accordance with law without being influenced by any of the observations made in this judgment since this Court has not entered into the merits of the present case.

14. Subject to the above observations and directions, this appeal stands allowed by moulding the relief to the extent indicated above. The impugned order dated 09.01.2006 is hereby set aside.

15. No costs.

16. Certified copy of this judgment shall be made available to the learned Counsel for the parties on payment of usual charges within maximum period of 96 hours.