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(2016) 09 GUJ CK 0029

In the Gujarat High Court

Case No : Special Civil Application No. 18407 of 2011

Naynaben Sureshkumar Patel APPELLANT

Vs

Union Bank of India RESPONDENT

Date of Decision : 14-09-2016

Acts Referred:

Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 — Section 19

Citation : (2017) 2 GLR 1405 : (2017) 1 GujLH 233 : (2017) LIC 762

Hon'ble Judges : Smt. Abhilasha Kumari, J.

Bench : Single Bench

Advocate : Mr. Rishin R. Patel For Mr. Varun K. Patel, Advocates, for the Respondent Nos. 1 and 2; Mr. Hiren Trivedi For Mr. P.P. Majmudar, Advocates, for the Petitioner No. 1

Final Decision : Dismissed

Judgement

Smt. Abhilasha Kumari, J. (Oral) - This petition under Article 226 of the Constitution of India has been preferred, interalia, with a prayer to quash and set aside the order dated 31.07.2010, passed by the Deputy General Manager (HRM), Union Bank of India, the second respondent herein, in his capacity as the Disciplinary Authority, dismissing the petitioner from the services of the respondent-Bank with immediate effect. A challenge has also been made to the order dated 06.11.2010, passed by the Appellate Authority, whereby the appeal of the petitioner has been rejected, as well as the order dated 28.01.2011 passed by the respondent-Bank, rejecting the review application preferred by the petitioner.

2. Briefly stated, the facts of the case are to the effect that the petitioner was working as an Assistant Manager with the respondent Union Bank of India, in its Ashram Road Branch, at Ahmedabad. A Memorandum was issued to the petitioner on 27.07.2009, informing her that during the course of her duties as Assistant Manager, she had made several entries in the system pertaining to Bills Payable and Pay Orders issued. It was stated that in respect of entries regarding

the cancellation of the Pay Orders issued by the Manager, the proceeds of such Pay Orders have been credited into the personal account of the petitioner, instead of in the accounts of the purchasers of the Pay Orders, as per the extant guidelines in force. It was stated that the transactions carried out by the petitioner clearly indicate that they are not genuine in nature and are contrary to the guidelines of the Bank which are in force. The petitioner was, therefore, directed to explain the circumstances under which she credited the amount of the cancelled Pay Orders into her personal account. The petitioner submitted a reply dated 27.07.2009 to the said memorandum, admitting that she had performed the transactions mentioned therein and apologizing for the error on her part. The petitioner also enclosed a cheque bearing No.392612, dated 27.07.2009, for an amount of Rs. 65,533.07Ps. representing the actual amount of the Pay Orders. The petitioner requested the Bank authorities that the lapse on her part be condoned. Another Memorandum dated 27.10.2009 was issued to the petitioner by the respondent-Bank, detailing certain other transactions regarding the cancellation of Pay Orders, the proceeds of which had also been credited into the personal account of the petitioner, instead of in the accounts of the purchasers of the Pay Orders. For these transactions as well, the petitioner gave a reply dated 30.10.2009, admitting the lapse and enclosing a Cheque bearing No.532646, dated 30.10.2009, for an amount of Rs. 28,209/-, representing the amount of the Pay Orders. Pursuant thereto, the petitioner was placed under suspension by an order dated 28.07.2009, pending departmental proceedings against her. In the departmental proceedings, the following Articles of Charge were framed against the petitioner on 31.12.2009 :

"1. Failure to take all possible steps to ensure and protect the interest of the Bank.

2. Failure to perform duties with utmost devotion and diligence.

3. Acting otherwise than in her best judgment in the performance of her official duties.

4. Failure to perform duties with utmost Integrity and Honesty."

2.1. A detailed Statement of Allegations on which the aforesaid charges were based, was enclosed along with a list of documents. A list of witnesses proposed to be examined was also enclosed. The petitioner was called upon to submit her Statement of Defence within seven days from the receipt of the Articles of Charge.

2.2. On 03.03.2010, the petitioner submitted her Statement of Defence. In the said statement, the petitioner raised the defence that while she was working as Assistant Manager at Ashram Road Branch during the year 2008-09, she was facing various physical, financial and social problems due to which she was in acute depression. She further stated that her husband was employed in a mill that was closed. He was later employed by the National Textile Corporation in the year 2002. However, he was retrenched and since then, is unemployed. The

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petitioner further stated that she was facing great hardship and had to take care of her husband and two children. She was also facing health problems such as high blood-pressure and had developed a heart ailment. The petitioner enclosed copies of medical reports in this regard. The petitioner further stated that the above problems, coupled with the heavy workload she shouldered at the Bank, put her under great tension and anxiety. The petitioner admitted that as she required financial support for the treatment of her heart ailment, she kept on making entries and passing small amounts to the credit of her own account. The petitioner further stated that she used identifications of other Officers as well, without their knowledge. She explained that in her normal state of mind she would never have done what she did. The petitioner categorically pleaded guilty to the allegations, but simultaneously requested the Bank to show leniency, as she had worked with devotion, diligence and honesty, upto then. The petitioner submitted that as she had refunded the entire amount, no financial loss had been caused to the Bank. Her Statement of Defence was taken into account by the Inquiry Officer, who found all charges against her to be proved to the hilt. The Disciplinary Authority concurred with the findings of the Inquiry Officer. Taking into consideration the nature of gravity of the charges, the Disciplinary Authority was of the opinion that the major punishment of dismissal from service ought to be imposed upon the petitioner. Accordingly, the Disciplinary Authority passed the order of the dismissal of the petitioner from service with immediate effect, vide the order dated 31.07.2010. Aggrieved by the said order, the petitioner preferred an appeal before the Appellate Authority. By the order dated 06.11.2010, the Appellate Authority was of the opinion that the major punishment of dismissal from service with immediate effect, imposed upon the petitioner by the Disciplinary Authority, is commensurate with the acts and omissions proved against the petitioner which had been admitted by her. The appeal of the petitioner was, therefore, rejected. The petitioner filed a Memorandum of Review on 15.01.2011, before the Appellate Authority, which also came to be rejected by the impugned order dated 28.01.2011. Aggrieved by the above-mentioned orders, the petitioner has approached this Court.

3. Mr. Hiren Trivedi, learned advocate for Mr. P.P. Majmudar, learned advocate for the petitioner, has submitted that the petitioner has confessed to her lapse and has also refunded the entire amount that she had credited to her account, subsequent to the cancellation of the Pay Orders. The petitioner has worked with integrity and devotion until these instances occurred. It is further submitted that the petitioner was undergoing tremendous mental pressure and was facing great hardships, both physically and financially, therefore, she did not act from her better judgment and succumbed to her circumstances by committing the lapses. Prior thereto, the record of the petitioner is clean. It is further submitted that the medical reports of the petitioner that are on record, show that she is suffering from heart ailment. This, in itself, ought to have been a circumstance for leniency to be shown to the petitioner.

3.1. It is further submitted that the punishment of dismissal from service is

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extremely harsh and disproportionate to the conduct of the petitioner. Any other punishment, by retaining the petitioner in service, could have been imposed upon her. It is, therefore, prayed that the prayers made in the petition be granted.

4. The petition has been strongly opposed by Mr. Rishin R. Patel, learned advocate for Mr. Varun K. Patel, learned advocate for respondents Nos.1 and 2, by submitting that the petitioner has accepted her guilt with regard to all the charges framed against her. There is no procedural defect in the departmental inquiry and the petitioner was granted ample opportunity of hearing. The petitioner, being a Bank Officer, is expected to act with integrity and honesty, as she is required to handle the money of the depositors. Taking into consideration the aspect that the petitioner has committed a fraud and temporarily embezzled certain amounts that ought to have been credited to the accounts of the purchasers of the Pay Orders, the punishment of dismissal cannot be said to be harsh or disproportionate. On the contrary, it is in proportion to, and commensurate with, her conduct.

4.1. In support of his submissions, reliance has been placed by learned counsel for the respondents upon the following judgments :

(i) Chairman and Managing Director, United Commercial Bank and others v. P.C. Kakkar, reported in (2003) 4 SCC 364.

(ii) State of Meghalaya and others v. Mecken Singh N. Marak, reported in (2008) 7 SCC 580.

5. No other submissions have been advanced by learned counsel for the respective parties.

6. This Court has heard learned counsel for the respective parties, perused the averments made in the petition, contents of the impugned orders and other documents on record.

7. The petitioner has unequivocally admitted her guilt and accepted the charges levelled against her. There is, therefore, no contest on the part of the petitioner, insofar as the charges against her are concerned, which have been found to be proved. Neither has the petitioner challenged the departmental proceedings on the basis of any procedural defect or irregularity in conducting the same. Nor is it the case of the petitioner that the principles of natural justice have been violated by the respondent-Bank. The only ground on which the petitioner is contesting the action of the Bank is that the punishment of dismissal from service is too harsh and is disproportionate to her conduct and past record. This ground, therefore, is the only one that is required to be examined in the present petition.

8. In the above context, reference may be made to the judgment of the Supreme Court in the case of Chairman and Managing Director, United Commercial Bank and others v. P.C. Kakkar (supra), referred to by the learned counsel for the respondent-Bank, wherein the Supreme Court has held as below:

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"12. To put difference unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court/Tribunal, there is no scope for interference. Further to certain litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the Disciplinary Authority or the Appellate Authority to reconsider the penalty imposed.

13. *****

14. A Bank Officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/ employee of the Bank is required to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank officer, Good conduct and discipline are inseparable from the functioning of every officer/ employee of the Bank. As was observed by this Court in Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik, it is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organization more particularly a Bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one''s authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. These aspects do not appear to have been kept in view by the High Court."

9. Further, in State of Meghalaya and others v. Mecken Singh N. Marak (supra), the Supreme Court has laid down the following principles of law :

"15. While considering the question of proportionality of sentence imposed on a delinquent at the conclusion of departmental inquiry, the Court should also take into consideration, the mental set up of the delinquent, the type of duty to be performed by him and similar relevant circumstances which go into the decision making process. If the charged employee holds the position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct, in such cases has to be dealt with iron hands."

10. The case of the petitioner can be tested on the touchstone of the above principles of law. As stated earlier, apart from the proportionality of the punishment, the petitioner has not raised any other issue regarding the legality, or otherwise, of the departmental inquiry. Insofar as the proportionality of the punishment is concerned, it is required to be noted that the petitioner was working as an Assistant Manager in the respondent-Bank. As held by the Supreme Court in Chairman and Managing Director, United Commercial Bank and others v. P.C. Kakkar (supra), a Bank Officer is required to exercise very high standards of honesty and integrity, as he or she is required to deal with the

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moneys of the depositors and the customers. As further stated by the Supreme Court in State of Meghalaya and others v. Mecken Singh N. Marak (supra), if the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct, in such cases, has to be dealt with, with iron hands.

11. The petitioner is a Bank Officer. It is, therefore, incumbent upon her to maintain high standards of honesty and integrity while dealing with financial matters. The very nature of her position requires impeccable credentials where honesty is the first and foremost prerequisite. The petitioner was occupying a position of trust where utmost honesty and integrity are required in her day-today functioning.

Whatsoever be the nature of her financial condition, or the family pressures in her personal life, the petitioner cannot compromise on honesty and integrity in her work. Neither can health issues be considered as an inducement to act dishonestly. Such pressures cannot be considered as mitigating factors, requiring leniency to be shown towards the petitioner. The petitioner has admitted that she credited money into her own account, which ought to have been credited into the accounts of the purchasers of the Pay Orders. As rightly stated by the respondents, the petitioner has committed a fraud with the Bank, which is quite alarming. Such actions by Bank Officers would erode the confidence of the general public. The petitioner was aware that she had acted dishonestly. The refund of the money cannot wash that away.

12. Regarding the medical reports of her heart ailment annexed by the petitioner, no opinion can be expressed by this Court on such issues. However, this much can be safely discerned that the reports do not show that the petitioner was suffering from any life-threatening ailment. Even if that had been the case, it could not have served as an excuse for the petitioner to act dishonestly in the performance of her duties. No purported social, financial or personal difficulties faced by the petitioner, can condone any act of dishonesty that may have been committed by her in the discharge of her duties. A Bank Officer deals with the hard earned money of citizens. If Bank Officers, themselves, start indulging in dishonest transactions, one shudders to think what the condition of innocent depositors would be.

13. The major punishment of dismissal from service, imposed upon the petitioner, is required to be considered from this point of view. If so considered, it cannot be said that the said punishment is disproportionate to the conduct of the petitioner, or that it shocks the conscience of the Court.

14. Taking into consideration the above aspects, this Court does not find any merit in the petition, which deserves to be rejected. It is, accordingly, rejected. Rule is discharged.

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