
(1978) 10 BOM CK 0002
In the Bombay High Court
Case No : Misc. Petition No. 569 of 1971

N.B. Shukla

APPELLANT

Vs

Bank of Baroda and Another

RESPONDENT

Date of Decision : 12-10-1978

Acts Referred:

Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 — Section 11
Constitution of India, 1950 — Article 12, 226, 311, 311(2)

Citation : (1979) 1 LLJ 291

Hon'ble Judges : B. Lentin, J

Bench : Single Bench

Judgement

1. The important question that arises in this petitioner is whether the order terminating the service of the petitioner amounts to dismissal by way of punishment or whether it is a discharge from service simpliciter. It is to restrain the respondents from acting or enforcing that order, and for other ancillary reliefs, that this petition has been filed under Art. 226 of the Constitution of India.

2. The 1st respondent is the Bank of Baroda (referred to hereafter as "the Bank"). The 2nd respondent is the Union of India in whom, after the coming into force of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, all the assets, capital, shares and properties of the Bank vests. No relief is claimed against the 2nd respondent.

3. On 30th March, 1960, the petitioner was employed by the Bank as a clerk on probation and in 1960 was confirmed or otherwise became a permanent employee of the Bank. However, according to the Bank, the petitioner's services were liable to be terminated by giving him 3 months' notice or salary in lieu thereof and that after the probationary period was over and whilst the petitioner's service was governed by the "Desai Award", his services were liable to be terminated by giving him 3 months' notice or by giving him 3 months' salary in lieu of the notice period. In 1965, the Bank of Baroda Ltd. (Bombay) Employees No. II Co-operative Housing Society Ltd. (referred to hereafter as "the Society")

was formed. The petitioner was a promoter, and thereafter became a Member of the Managing Committee of the Society. In 1969, certain members of the Society approached the Registrar of Co-operative Societies to have an enquiry into the affairs of the Society under S. 83 of the Maharashtra Co-operative Societies Act, 1960 (referred to hereafter as "the Societies Act"). Mr. B. S. Gokral, advocate, was appointed enquiry officer. On 15th April, 1970, he submitted his report to the Registrar. In that report, the enquiry officer made several derogatory observations against the petitioner and certain other office-bearers of the society, of trickery treachery, cheating fraud and misfeasance pertaining to the affairs and funds of the society running into a large amount. He came to a prima facie finding against them. The correctness or otherwise of the findings of the enquiry officer are not germane for the purpose of this judgment. On 21st November, 1970, a letter was addressed by the Societies Advocate to the petitioner stating that the Society would move a resolution for the petitioners expulsion from the Society. On 27th December, 1970, a special general body meeting of the Society was held. A resolution was moved for the petitioner's expulsion. However, after a discussion of 5 hours, it was adjourned sine die. On 6th April, 1971, the Bank addressed a letter to the petitioner setting out the findings of the enquiry officer against the petitioner and called upon the petitioner to submit his written explanation. By his letter dated 14th April, 1971 the petitioner submitted his explanation, stating, inter alia that the findings of the enquiry officer were yet to be tested before an Officer to be appointed under S. 88 of the Societies Act by the District Deputy Registrar, that after a discussion of 5 hours, the resolution for his expulsion had been adjourned sine die at the Special General Meeting of the Society held on 27th December, 1970 and that at the present stage it would not be proper for the petitioner to comment on the report of the enquiry officer as he would be required to make a statement in a quasi-judicial enquiry under S. 88 of the Societies Act, as also that the question of any loss to the Society was sub-judice. On 11th August, 1971, a letter was addressed by the Bank to the petitioner, terminating with immediate effect his services for loss of confidence in him. Hence the present petition. However, to complete the narration of events, on 6th November, 1971, after the present petitioner was filed, Mr. L. C. Chogle was appointed by the District Deputy Registrar under S. 88 of the Societies Act to hold the necessary enquiry. On 24th April, 1978, Mr. Chogle made his report vitiating the enquiry held by the enquiry officer Mr. Gokral on the ground of violation of the principles of natural justice and in view thereof did not go into the merits of the matter. Learned counsel inform me that an appeal has been filed by the Society against Mr. Chogle's and that the appeal is pending.

4. At the outset, I shall dispose of a preliminary objection raised by Mr. Paranjpe, the learned counsel appearing on behalf of the respondents, as to the maintainability of the petition. He urged that the petition is not maintainable on the ground that the Bank is not a "State" within the meaning of Art. 12 of the Constitution, because there is no panel consequence provided for in the Banking

Companies (Acquisition and Transfer of Undertakings) Act, 1970, as also by reason of S. 11 of the Act which provides that the corresponding new Bank shall be deemed to be an Indian Company for the purpose of the Income Tax Act, as also on the ground that banking is an industry to which the Industrial Disputes Act would apply. While conceding that institutions like Air India, L.I.C. and O.N.G.C. would come within the provisions of Art. 12 of the Constitution, Mr. Paranjpe urged that the Bank would not, as the former are monopolistic institutions whereas banking is not.

5. Mr. Paranjpe's challenge to the maintainability of the petition has been negated and is contrary to well-established decisions of the Supreme Court and various High Courts which lay down in no uncertain terms that a nationalised Bank is an authority within the meaning of "other authorities" in Art. 12 of the Constitution and hence is included in the enlarged definition of the term "State" contained therein. In *Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation*, , it was held that the expression "other authorities" in Art. 12 is wide enough to include within it every authority created by statute and functioning within the territory of India or under the control of the Government of India and will include all constitutional or statutory authorities in whom powers are conferred by law. In *Lachhman Dass v. Punjab National Bank*, (1977) 2 S.L.R. 565 , it was held by the Division Bench of the Punjab High Court that the Punjab National Bank is not a company incorporated pursuant to the provisions of the Companies Act but is a body created by statute, viz., the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and is wholly owned by the Central Government and that the "new corresponding Banks are authorities within the meaning of Art. 12 of the Constitution". The decision in the Punjab National Bank's case also negatives Mr. Paranjpe's contention based on S. 11 of the Banking Companies Act of 1970. In *Sukhdev Ratilal Patel Vs. Chairman, Bank of Baroda and Another*, ; it was held by the Division Bench of the Gujarat High Court that the Bank of Baroda fell within the definition of "State" under Art. 12 of the Constitution. Nearer home, is the decision of my learned brother Kania dated 18th/20th April, 1978 in Miscellaneous Petition No. 1290 of 1977 *Kalpaka Transport Co. v. State Bank of India*, where he has held that the State Bank of India is an authority within the meaning of "other authorities" in Art. 12 and hence included in the enlarged definition of the term "State" contained therein.

6. These decisions are a complete answer to Mr. Paranjpe's preliminary objection which must stand repelled.

7. Coming to the merit of the matter, Mr. Singhvi, the learned counsel appearing on behalf of the petitioner, challenged the validity of the impugned order dated 11th August, 1971 on the ground that it is an order of dismissal by way of punishment without observing the rules relating to enquiry and or the principles

of natural justice. Mr. Singhvi urged that in the facts and circumstances of this case, the only inference which could be drawn was that the Bank wanted to punish the petitioner for what it thought was misconduct on his part quo the affairs of the Society. Mr. Singhvi invited me to take into consideration all the factors which contributed to the passing of the impugned order dated 11th August, 1971 and urged that it was on the basis of the prima facie report of the enquiry officer that the petitioner's service was terminated. According to Mr. Singhvi, a reflection or stigma had been cast upon the petitioner by the impugned order which had evil consequences. Mr. Singhvi relied on the decision in *Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc.,* , where it was held that the termination of the services of a permanent servant, otherwise than on the ground of superannuation or compulsory retirement, must per se amount to his removal within the meaning of Art. 311 of the Constitution. Mr. Singhvi also urged that it is not the form, but the substance, of the order that is conclusive as to its true nature and that if the Court holds that the order though in form merely of determination of employment, is in reality a cloak for an order of dismissal as a matter of punishment, the Court would not be debarred, merely because of the form of the order, in giving effect to the rights conferred by statutory rules upon the employees, *S.R. Tewari Vs. District Board Agra and Another*, Mr. Singhvi further contended that the entirety of circumstances preceding or attendant on the impugned order must be examined and the overriding test would always be whether the misconduct is a mere motive or is the very foundation of the order. *The State of Bihar and Others Vs. Shiva Bhikshuk Mishra*,

8. On the other hand, these contentions were faulted by Mr. Paranjpe who urged that the petitioner had no right to the post as it was not contracted that he would occupy it for a particular period or till a particular age and that his service could be terminated at any time merely by giving him 3 months' notice or 3 months' salary in lieu of notice. This according to Mr. Paranjpe, was what the Bank had done by the impugned order and that though not bound to, had given the reason, viz., loss of confidence, so as not to give any grievance to the petitioner that he was left in the dark why his service were terminated. Mr. Paranjpe urged that the impugned order was of termination simpliciter without any stigma or evil consequence and without deprivation or benefits accrued. According to Mr. Paranjpe the order was founded on the subjective factor, viz., loss of the confidence and that the reference therein to the enquiry officer's report was the motive of the order and not its foundation.

9. In view of these rival contentions, I shall first consider whether the petitioner admittedly being a confirmed and permanent employee of the Bank, had a right to the post as urged by Mr. Singhvi or whether his service could be terminated at the sweet will and pleasure of the employer merely by giving him 3 months' notice or 3 months' salary in lieu thereof, as urged by Mr. Paranjpe.

10. Article 522(1) of the Salary Award relied on by Mr. Paranjpe, provides that in

cases not involving disciplinary action for misconduct, the employment of a permanent employee may be terminated by 3 months' notice or on payment of 3 months' pay and allowance in lieu of notice. Article 522(1) makes an exception in cases involving disciplinary action for misconduct, for which a separate procedure for enquiry has been provided by Art. 521, which also enumerates the nature of misconduct for which disciplinary action can be taken by the Bank. It comprises of acts and omissions by an employee qua the Bank. It comprises of acts and omissions by an employee qua the Bank in his capacity as an employee of the Bank and in the discharge of his duties as such employee. It is nobody's case and rightly so, that the alleged misconduct imputed to the petitioner by the enquiry officer pertained to the petitioner's duties as an employee of the Bank. Admittedly the misconduct alleged against him by the enquiry officer was qua the affairs of the Society and not the Bank. Hence there was no question of the Bank following the separate procedure of enquiry envisaged by Art. 521, which provides for the furnishing of a charge sheet and the manner in which the enquiry is to be conducted. Yet it cannot be said that Art. 522(1) gives a blanket right to the employer to terminate at his sweet will and pleasure, the services of an employee whose right to the post has been crystallised on his being confirmed or made permanent. It may well have been different if the petitioner's employment had been contracted for a particular period, which is not so. If Mr. Paranjpe's contention is taken at face value, the result would be strange and startling, namely, that each and every confirmed and permanent employee of the Bank, howsoever long his service, would be permanently temporary or temporarily permanent, with his services liable to be summarily dispensed with merely by notice or salary in lieu thereof. The result would be disastrous and contrary to all canons not only of the principles of the rule of law but also common sense. Article 522(1) cannot be construed as a slavery-bond, for the employee to be left at the will or caprice of the employer. Article 522(1) must also be read with Arts. 512 and 514. Article 512 pertains to the effect on confirmation or permanent appointment of the employee, and states that on confirmation or permanent appointment, an employee shall be entitled to all the privileges enjoyed by, and shall be subject to all the liabilities cast upon, the other permanent members of the staff and makes provision for the addition of the period of his probation to the years of his permanent service for the purpose of grant to him of any gratuity. Surely, one of the privileges, and in fact the right, of a permanent employee is that he cannot be arbitrarily dismissed at the pleasure of the employer. Article 514 provides that after the workman has reached the age of 55 years, he may be retired after giving him 2 months' notice in writing in case his efficiency is found by the employer to have been impaired but otherwise should not be compelled to retire before he is 58 years old. This article further demonstrates the petitioner's right, as a permanent employee, to his post till he attained 58 years or 55 years as the case may be and militates against the "hire and fire" theory propounded on behalf of the Bank.

11. Mr. Paranjpe relied on the decisions in *Shyam Lal Vs. The State of Uttar*

Pradesh and The Union of India (UOI), and in The State of Bombay Vs. Saubhagchand M. Doshi, . Both these cases have no bearing on the present controversy, as they pertain to compulsory retirement and not dismissal. Reliance was also placed on the case of Hartwell Prescott Singh Vs. The Uttar Pradesh Government and Others, , where it was held that reversion to reduction in rank because the temporary post held by him is not his substantive rank. Mr. Paranjpe also relied on the decision in The State of Orissa and Another Vs. Ram Narayan Das, In that case, the petitioner was a probationer having no right to the post under the terms of his appointment and he could be discharged at any time during his probation period. It was held that the order of discharge did not amount to dismissal and did not attract the protection under Art. 311(2) of the Constitution and was a valid order. Reliance was also placed on the case of Ram Gopal Chaturvedi Vs. State of Madhya Pradesh, , where the appellants was a temporary Government servant and was not in quasi-permanent service. It was held that his service could be terminated by one month's under Rule 12 of the M.P. Government Servants (Temporary and Quasi-Permanent Service) Rules 1960, as it did not deprive the appellant of any vested right to any office. There cases were of probationers or temporary Government Servants who had no right to the post and can hence be distinguished from the matter before me where the petitioner, a permanent employee had acquired a right to his post. Reliance was also placed by Mr. Paranjpe on the decision in Parshotam Lal Dhingra Vs. Union of India (UOI), , where it was held that the appointment to a post, permanent or temporary, on probation or on officiating basis or a substantive appointment to be temporary post gives to the servant so appointed no right to the post, and his service may be terminated unless his service had ripened into a quasi-permanent service. The last part of the sentence is important for it demonstrates the effect of an employment crystallising into a permanent employment.

12. In the result, I am of the view that the petitioner had a right to his post of which he could not be deprived, without following the principles of natural justice.

13. Even assuming that the petitioner had no right to the post, even so he would be entitled to protection if the action against him was by way of punishment. It will, therefore, be necessary to see the impugned order at ascertain whether it is by way of punishment or casts a stigma or attracts evil consequences, It reads as under :

"Having regards to the observations of the enquiry officer appointed by the District Deputy Registrar, Co-operative Societies, Bombay, made in his report dated 15th April, 1970 in connection with your part in the affairs of the Bank of Baroda Ltd., Bombay Employees No. 2 Co-operative Housing Society Ltd., Bombay and having further regard to your reply dated the 14th April 1971, to Bank's letter No. STF : 53 : 139 dated the 6th April, 1971 to you in this regard, the Management regrets to inform you that your services will not longer be required by the Bank.

Your services are, therefore, terminated with immediate effect. You will be paid

three months" pay and allowances in lieu of notice period. You may also collect your other dues from the Staff Department.

The reason for termination of your services is loss of confidence."

Though this order purports to take into account both the enquiry officer's report and the petitioner's reply to the Bank, it is abundantly clear that the factor which predominantly weighed with the Bank in terminating the petitioner's service, was the observations and findings of the enquiry officer, regardless of the reply given to the Bank by the petitioner. There is no doubt that the enquiry officer's report is against the petitioner. He has gone all out against the petitioner even to the extent of using exaggerated language to wit, that the petitioner's pocket must indeed be too large and so forth. As against that, it must be remembered that the enquiry made by the enquiry officer under S. 83 of the Societies Act was not a final enquiry but was merely exploratory in character. The enquiry officer made such inquiries as he thought fit and from such persons as he thought fit and submitted his report containing his findings which at best are prima facie and tentative. In his reply dated 14th April, 1971 to the Bank, the petitioner rebutted the findings of the enquiry officer and stated that the findings were based on surmises, conjecture, prejudice and hearsay, which were yet to be tested in a quasi-judicial enquiry under S. 88 of the Societies Act and that the matter was sub-judice. All this apparently seems to have been disregarded by the Bank. It cannot be said that the petitioner's reply was frivolous. Yet what obviously weighed heavily with the Bank was the tentative report which no doubt was the permanent factor which induced the Bank to terminate the petitioner's services for what it thought was misconduct on the petitioner's part. It is futile for Mr. Paranjpe to contend that the report of the enquiry officer was not the reason or factor which led the Bank to terminate the petitioner's services. In so contending, Mr. Paranjpe relied on the words -

"Having regard to the observations of the enquiry officer and having regard to your reply dated 14th April, 1971".

This emphasis on the words "having regard to" is a mere play on words and a guise for the real factor which was instrumental in the petitioner's services being so abruptly terminated. According to Mr. Paranjpe, what did the Bank do ? All it did was, it had "regard" to the enquiry officer's report and had regard to the petitioner's reply and terminated his service. Surely, that is an over-simplification of the matter. The words having regard to have no charm of their own. All that it boils down to is that the Bank not only perused the enquiry officer's report but was overcome and overwhelmed by it, that the Bank pursued the petitioner's reply dated 14th April, 1971 tossed it aside and promptly terminated his service pleading loss of confidence. If termination of the petitioner's service in such circumstances, is not punishment or does not cast a stigma or does not invite evil consequences; what does ? There is no doubt that though the order may be in the form of termination of employment it is in reality and effect an order of dismissal as a matter of punishment casting a stigma and inviting evil

consequences. Taking the entirety of circumstances, preceding and attendant, into account, it is demonstrably clear that the alleged misconduct of the petitioner qua the affairs of the Society was not merely the motive but the very foundation of the order.

14. Mr. Paranjpe however, relied on the decision in *The Municipal Corporation of Greater Bombay v. P. S. Malvankar and others*, (Civil Appeal No. 216(L) of 1977), decided by the S.C. on 5th May, 1978, and *Air-India Corporation, Bombay Vs. V.A. Rebellow and Another*, In the former case, the employee was informed that her service would stand terminated from a particular dates as her record of service was unsatisfactory. Her grievance was that the order terminating her service violated the principles of natural justice as no enquiry was held and she was not given a reasonable opportunity of defending herself against the vague and general allegations which formed the basis of the order. It was held that the order was not punitive in character and was upheld. In *Rebello's* case it was held that motive, if not mala fide, is not open to question.

15. These decisions can be of no assistance to Mr. Paranjpe inasmuch as in the first case the order was held not to be punitive in the facts and circumstances of that case. In the matter before us, what can be more punitive than to terminate the petitioner's service because of the tentative findings of the enquiry officer, is difficult to imagine, and that too without holding any enquiry and without awaiting the result of the quasi-judicial enquiry under S. 88. *Rebello's* case can also be of no assistance to the Bank, if the impugned order cast a slur or stigma on the petitioner which it undoubtedly does, and if the alleged misconduct is the very foundation of the order, which it is.

16. Mr. Paranjpe also relied on the case of *Ram Gopal Chaturvedi Vs. State of Madhya Pradesh*, . In that case, the appellant as member of the subordinate judiciary was a temporary Government servant whose services were terminated with effect from a particular date. Certain unsavoury instances pertaining to the appellant had come to the notice of the higher judiciary, whereupon some inquiries were made, behind the appellant's back. He was given an order of termination without giving any reason. It was held that the impugned order did not involve any element of punishment nor did it deprive the appellant of any vested right to any office. That decision can be of no assistance to the Bank as that was a case of simple termination of a temporary employee, which is not the case in the matter before me, but which is a case attracting evil consequences, casting a stigma and being the nature of punishment. In *The Chartered Bank, Bombay Vs. The Chartered Bank Employees' Union*, relied on by Mr. Paranjpe, the chief cashier withdrew the guarantee given by him for his assistant. Thereupon the latter's services were terminated, the reason given in the notice of discharge being the withdrawal of the guarantee. It was held that use of the power by the Chartered Bank under Art. 522(1) of the award was not a colourable exercise of power. This is yet another decision which can be of no assistance to Mr. Paranjpe in the facts and circumstances of that case, viz., the

peculiar circumstances obtaining in the cash department of the giving a guarantee by the chief cashier and the fact that the Bank did not want to go into the squabble between the chief cashier and the assistant as the security of the cash department itself was involved.

17. Loss of confidence is a phraseology often used and as often abused. The instant case is an illustration of the letter. It is true that banking is highly specialised and a sensitive instrument of finance and credit. Its employees must be above suspicion. They handle not only large amounts but are also privy to several secrets. From an employee of a financial institution like a Bank, is expected integrity in his dealing with the Bank and its customers. It must necessarily entail the fullest confidence not only of the public in the Bank but also of the Bank in its own staff. Loss of faith in the integrity of an employee of a sensitive institution like a Bank would be a good reason for loss of confidence in such an employee. However, all this must necessarily be subject to the employee's dealings with the Bank and its customers in the course of his duties as an employee of the Bank. It is one thing for the Bank to lose confidence in its employee for an act of commission or omission in his dealings qua the Bank or its customers. It is quite a different thing for the Bank to affect loss of confidence in its employee for an act, allegedly done by him, *de hors* his duties as an employee of the Bank and having no nexus with his duties as an employee of the Bank, and that too on a *prima facie* report of the enquiry officer containing tentative observations and findings which had yet to be tested by a quasi-judicial enquiry under S. 88 of the Societies Act. To say, as Mr. Paranjpe does, that the very institution of an enquiry under S. 83 of the Societies Act would be a factor for the loss of confidence, is even to go to a further extent, which I am not prepared to do. In fact, as it now transpires, after his petition was filed, this very report of the enquiry officer has been totally vitiated and set aside by Mr. Chogule on the ground that the enquiry officer himself had violated the principles of natural justice. Thus the petitioner was doubly right, and has been proved to be so, when he informed the Bank in his reply, that the findings of the enquiry officer were not only sub-judice but were based on hearsay, conjecture and prejudice. Unfortunately, the Bank took for granted and as a gospel truth, all that the enquiry officer had stated in his report (which has been vitiated for failure to follow the elementary principles of natural justice), and therefore, chose to ignore the petitioner's correct plea that the matter was sub-judice and had yet to be investigated by a quasi-judicial authority. In these circumstances, the Bank's version that it had regard to the petitioner's reply must sound hollow and its protestation of loss of confidence must appear a guise for dismissal in violation of the principles of natural justice under the cloak of simple termination.

18. Mr. Paranjpe is correct when he says that natural justice cannot be in a straight-jacket. But what cannot be accepted is his contention that by inviting the petitioner to give his reply to the report, the Bank can be said to have followed the principles of natural justice. This is a curious way of following the principles of natural justice. The very order indicates that the Bank accepted the enquiry

officer's report as gospel truth, regardless of the tenable and cogent contentions of the petitioner and despite the fact that it was merely a prima facie report made after such exploratory investigation as the enquiry officer thought fit and which report itself, as events have shown, was vitiated as being violative of the principles of natural justice., Mr. Paranjpe relied on the decision of the Supreme Court in Bhawani Shankar Sharma Vs. Union of India (UOI), In that case, the appellant was given an opportunity to make a representation which he did which was considered by Government as also his records. The appellant's contention that he had not been given a reasonable opportunity to make a representation against the action proposed to be taken against him was rejected. That decision can be of no assistance to Mr. Paranjpe and is clearly distinguishable from the facts of the present case. In that case, it was held that the conclusion that the officer's work was inefficient was based on his records as well as the opinion based on his records by the superiors and that inefficiency is something which cannot be concretised. In these circumstances, the Supreme Court was unable to hold that the appellant had not given a reasonable opportunity to make a representation against the action proposed to be taken by the Government. Furthermore, while calling for the petitioner's explanation to the report, the Bank did not state that it was so doing to consider why his services should not be terminated. In short, it was not a show cause notice issued by the Bank. This is brought out to the forefront by the last para of that letter which says -

"As we observed from the above findings that you are being held responsible, we call upon you to submit your written explanation within 7 days of the receipt of this letter on the findings of the enquiry officer".

19. Thus there is not even the iota of the hint that the petitioner's explanation was being sought to ascertain whether he should be retained in service or not. Yet, despite this, after the petitioner gave his reply, his services were abruptly terminated under the guise of a simple termination under the guise of a simple termination order. A grosser illustration of the violation of the principles of natural justice is difficult to envisage. Mr. Paranjpe also relied on the decision in Somnath Sahu Vs. The State of Orissa and Others, , where the termination order in which the grounds were given for loss of confidence was upheld. That decision also can be of no assistance to Mr. Paranjpe, as in that case it was found that to punitive element was involved, unlike in the matter before me.

20. On behalf of the petitioner Mr. Singhvi relied on the decision in L. Michael and Another Vs. Johnson Pumps Ltd., , where it was held that loss of confidence is often subjective feeling or individual reaction to an objective set of facts and motivations and that the Court is concerned with the latter and not with the former, although circumstances may exist which justify a genuine exercise of the power of simple termination. It was further held that in a reasonable case of a confidential or responsible post being misused or a sensitive or strategic position being abused, it may be high risk to keep the employee, once suspicion has started and disciplinary enquiry cannot be forced on the matter and in such a

case a termination simpliciter may be bona fide, not colourable, and loss of confidence may be evidentiary of good faith of the employer. It was observed at page 666 of the report -

".... The Tribunal has the power and, indeed, the duty to Ex-ray the order and discover its true nature if the object and effect, if the attendant circumstances and the ulterior purpose be to dismiss the employee because he is an evil to be eliminated. But if the management to cover up the inability to establish by an enquiry, illegitimately but ingeniously passes an innocent looking order of termination simpliciter, such action is bad and is liable to be set aside. Loss of confidence is on new armour for the management; otherwise security of tenure, ensured by the new industrial jurisprudence and authenticated by a catena of cases of this Court, can be subverted by this neoformula. Loss of confidence in the law will be consequence of the loss of confidence doctrine".

The underlined portion of the above observation of the Supreme Court is attracted to the circumstances of the present matter. The Bank may have found it difficult to hold an enquiry as the alleged acts of the petitioner had nothing to do with the Bank or his duties as an employee of the Bank. Thus it took recourse to the ingenuity of passing the seemingly innocent-looking order of termination under the guise of loss of confidence.

21. The decision in L. Michael's case has been referred to by the Division Bench of this Court in Siddanath Kadam v. Dadaji Dhakji and Co. (1977) I L.I.C. 602, relied on by Mr. Paranjpe. In that case, the employees was discharged without enquiry on the ground of loss of confidence when he was found working privately in another garage after leaving office on a false pretext. It was held that this was enough for the employers and that the "loss of confidence" plea can be confined not only to the employee holding confidential posts, but also to others. It was further held that every contract of employment implies trust and confidence as its indispensable ingredients and that well founded suspicion against employees holding posts of highly confidential nature may be considered enough for loss of confidence. It was further held that in other instance, the proof of his having worked privately after leaving the office on false pretext should be held enough for the employer's loss of confidence in him. It was observed -

".... These are matters of rational inferences and prudent calculations, of the employer from the facts discovered and cannot be the matters of pleading and evidence".

However, Dadaji Dhakji's case easily be distinguished from the present matter. In that case, the employee was found and was established to be working privately in another garage and were still, after leaving his own master's office on a false pretext. Hence the employer's loss of confidence was held to be justified. On the other hand in the matter before me, nothing was established against the petitioner merely by the prima facie and exploratory report of the enquiry officer which still had to be tested by a quasi-judicial authority. In Dadaji

Dhakji's case, the employees guilt was established unlike the present case. This then is the distinguishing feature between Dadaji Dhakji's case and the present matter. L. Michael's case was analyzed by the Division Bench at page 605 of the report as under :

"L. Michael's case (1975) Lb. I.C. 399 S.C., thus only registers a warning against accepting the pleas of loss of confidence when it is insupportable by any material and proves to be a mere pretence for getting rid of an unwanted employee. The attack is directed not against the doctrine of "loss of confidence" itself but against the indiscriminate use thereof, without investigation if the same is a cover for capricious, arbitrary and fanciful "hire and fire" strategy and without regard to whether it is a colourable exercise of the power. In other words, the plea of loss of confidence is not liable to be rejected under this authority, when the same is based on good grounds and dependable material as is found to be in the present case."

It can hardly be said that the Bank's plea of loss of confidence is based on "good ground", much less on "dependable material", based as it is on the report about which enough has been said already.

22. Mr. Paranjpe relied on the decisions in *Air-India Corporation, Bombay Vs. V.A. Rebellow and Another*, (referred to earlier in another context), where it was held that once there is bona fide loss of confidence, the order is immune from challenge, even if the opinion formed is erroneous. This authority is also distinguishable. It is one thing to form a bona fide opinion, be it erroneous. It is altogether a different thing to be obsessed by Prima facie findings in the teeth of a cogent and tenable reply and then claim to have arrived at a bona fide opinion. These are factors which do not proclaim bona fides but militate against bona fides. It is certain the opinion formed by the Bank was premature. Bona fides appear to have been recorded in the haste in which the opinion was formed. It cannot behave the employer to come to an opinion by way of wishful thinking based upon an inconclusive report such as this and then claim immunity on the ground of bona fides.

23. Mr. Singhvi relied on the decisions in *Sirsi Municipality by its President Sirsi Vs. Cecelia Kom Francis Tellis*, , where it was held that even where there are no specific rules violation of implied rules of the natural justice in exercise of a quasi-judicial statutory power results in a legally void decision and that the obligation to observe the rules of natural justice is imperative in such a situation. Mr. Paranjpe attempted to distinguish that decision on the ground that it was a case of dismissal attracting penal consequence and was not a case of discharge simpliciter. To that extent Mr. Paranjpe is correct, but then neither is the matter before me. Mr. Singhvi also relied on the decision in *General Medical Council v. Speckman* (1943) A.C. 627. In that case a registered medical practitioner who was a co-respondent in a divorce suit was found by the Divorce Court to have committed adultery with the respondent, who was his patient. The General Medical Council gave him notice that the meeting of the Council would be held to

decide whether to remove his name from the Medical Register for infamous conduct in a professional respect. At the hearing, his plea to call fresh evidence on the question of adultery was turned down by the Council which accepted the decree nisi as prima facie proof of adultery and directed erasure of the practitioner's name from the Register. It was held that while the Council was entitled to regard the decree in the divorce suit as prima facie evidence of adultery, it was bound to hear any evidence tendered by the practitioner and that having refused to hear such evidence it had not made "due enquiry" under the Medical Act, 1858. Mr. Paranjpe attempted to distinguish that case on the ground that while in Speckman's case, the decree nisi was used as the basis for removing his name from the Register, in the present case the findings of the enquiry officer were not the basis and were not relied on by the Bank for terminating the petitioner's service. I do not agree for the reasons discussed earlier.

24. In the result, following the ratio of the Division Bench in Dadaji Dhakji's case, I hold that the Bank's plea of loss of confidence is liable to be rejected as it is not based "on good ground and dependable material."

I. Summarise my conclusions so far as under :

(a) the petitioner had a right to the post and his services could not be terminated without observing the principles of natural justice.

(b) assuming the petitioner had no right to the post, the impugned order is by way of dismissal by way of punishment, casts a stigma and attracts evil consequences.

(c) in either case the principles of natural justice have been violated.

(d) hence in any view of the matter the impugned order is liable to be set aside.

25. It was next contended on behalf of the petitioner that the impugned order is illegal inasmuch as 3 months' pay and allowance in lieu of notice were not tendered simultaneously with the order of discharge. Reliance was placed on Art. 522(1) of the Sastry Award which provides that the services of a permanent employee can be terminated by 3 months' notice or on payment of 3 months' pay and allowances, the emphasis being on the words "on payment". On behalf of the petitioner it was urged that this was not done by the impugned order which stated that the petitioner will be paid 3 months' pay and allowances in lieu of notice period, the emphasis being on the words "will be paid". On behalf of the petitioner, reliance was placed on the decision in Senior Superintendent, R.M.S., Cochin and Another Vs. K.V. Gopinath, Sorter, In that case, the rule provided that the service of the temporary Government servant may be terminated forthwith by payment of his dues. It was held that for the termination to be effective, it had to be simultaneous with the payment of whatever was due to him.

26. This aspect of the matter has not been urged in the petition as a ground for setting aside the impugned order and Mr. Paranjpe is justified in his grievance

that it takes him by surprise and that if this point had been taken up in the petition, the Bank would have been in a position to show that this was a disputed question of fact because though pay and allowance had been offered to the petitioner, he declined to accept the same. In these circumstances, I do not think that the petitioner can successfully challenge in this petition the impugned order on this ground, urged for the first time in arguments.

27. Mr. Singhvi finally urged that the impugned order is discriminatory and violative of Art. 14 because likes have not been treated alike for out of 5 persons in identical situation, only 3 (including the petitioner) were picked out for punishment. How in the present matter, in the report, made by the enquiry officer, all the 5 persons, including the petitioner were inculpated. Against all of them the Registrar had ordered an enquiry under S. 83 of the Societies Act. All these 5 persons were asked by the Bank to give their explanation. The replies of all these persons to the Bank were also identical, except of one M. Raj Gopal who submitted a separate explanation. However, out of these 5 persons only the petitioner and two others, viz., S. V. Shah and B. K. Shah (who are petitioners in Miscellaneous Petitions Nos. 571 of 1971 and 570 of 1971 respectively) were picked out for dismissal, whereas the other two viz., M. Raj Gopal and K. C. Bhatt, were retained in service. Though the report of the enquiry officer inculpates all the 5 of them the inculpation of the other two, viz., Raj Gopal and K. C. Bhatt, is to be a lesser extent than the inculpation of the other three, Regarding Raj Gopal, the explanation given by the Bank is that he was retained as he was merely the President of the General Body of the Society and did not participate, or have any obligations, in the day-to-day management of the Society. Regarding K. C. Bhatt, the explanation of the Bank is that he was retained because he was only the Chairman of the Managing Committee of the Society, who appeared to be a passive observer and did not appear to have benefited or defalcated any amount. From this explanation given by the Bank, thought it might be difficult to come to a positive finding of discrimination against the petitioner which Mr. Singhvi invites me to do, these facts bring to the forefront that the ground of loss of confidence in the petitioner was arbitrary.

28. Mr. Paranjpe contended that in the event of the impugned order being struck down, this was a fit case where re-instatement should not be ordered as the Bank had lost confidence in the petitioner but that compensation in lieu thereof, viz., salary and other benefits accrued to the petitioner to date, should be ordered to be paid to him. I do not agree. To do so would defeat the very purpose of what all this is about. If the Bank acted with undue haste, which it did, in dismissing the petitioner, it can hardly be allowed to perpetuate a wrongful dismissal merely by buying out the petitioner instead of reinstating him as prayed for by this petition.

29. In the result, the petition is allowed with costs and the rule is made absolute in terms of prayers (a), (b) and (b) (I) of the petition.

30. Operation of order stayed till 16-11-78.