

(1997) 12 KAR CK 0006
In the Karnataka High Court
Case No : Writ Appeal No. 1285 of 1996

P. Ramaswamy

APPELLANT

Vs

The General Manager, Canara Bank, Bangalore and Another

RESPONDENT

Date of Decision : 18-12-1997

Acts Referred:

Canara Bank Service Code — Section 10, 11, 16, 19, 21

Citation : (1999) 81 FLR 962 : (1998) ILR (Kar) 570 : (1998) 6 KarLJ 488

Hon'ble Judges : H.R. Rangavittalachar, J;Ashok Bhan, J

Bench : Division Bench

Advocate : M/s Vagadevi Associates, for the Appellant; Sri S.S. Ramdas, Sri S.S. Nargund, Sri V.S. Pai and Sri P.S. Sawkar, for the Respondent

Judgement

Ashok Bhan, J.—Short question which calls for determination in this appeal is whether the employee on reinstatement after his acquittal is entitled to the difference in amount of full wages and the subsistence allowance paid between the date of order of suspension till date of withdrawal of suspension.

2. The facts of the case are :

For the offence allegedly committed under Indian Penal Code, a charge-sheet had been filed by the police against the petitioner-appellant (hereinafter referred to as "appellant"). On coming to know of the filing of the criminal case against the appellant, the respondent-Bank placed the appellant under suspension. During the period of suspension the appellant was paid subsistence allowance by the respondent-Bank. The criminal case pending against the appellant was compounded and the appellant was acquitted. Once the criminal proceedings ended in acquittal, the respondent-Bank revoked the order of suspension made against the appellant and reinstated him in service. Appellant was not paid the difference of amount of full back wages and the subsistence allowance during the period of suspension. No further action was taken against him. The same was withheld by the respondent-Bank, which impelled the appellant to file the writ petition in this Court.

3. Case of the appellant is that the Bank had kept him under suspension wrongly and on reinstatement the appellant was entitled to full wages. As against this, the case of the respondent-Bank is that the Bank kept the appellant under suspension for certain allegations against him. The suspension order came to be passed only because of the pendency of criminal case against the appellant. Appellant did not work during the suspension period and it was not fault of the Bank that work could not be taken from the employee and therefore the employee was not entitled to relief sought in this writ petition.

4. The learned Single Judge found merit in the submissions made by the Counsel for the respondent-Bank. It was held that the Service Code provides that when there is a criminal case pending against the workman of the Bank, he could be kept under suspension. The petitioner was kept under suspension, because the criminal case was pending against him. During the said period the appellant did not work. No fault could be attributed to the Bank and therefore the Bank was right in withholding the balance amount of subsistence allowance, which was payable to the appellant on his reinstatement.

5. Counsels for the parties have been heard.

6. Regulation 21 of the Chapter 11 of Disciplinary Action, provided under the Canara Bank Service Code, reads as under:--

"21. (1) For the purpose of this regulation, the expression "offence" shall mean any offence involving moral turpitude for which an employee is liable to conviction and sentence under any provision of law.

(2) (a) If in the opinion of the General Manager, any employee of the Bank has committed an offence, unless the employee be otherwise prosecuted, the General Manager may either himself take steps to prosecute the employee or get him prosecuted or direct any officer of the Bank competent to enquire into any misconduct of the said employee to take steps to prosecute the employee or get him prosecuted.

(b) If in the opinion of a Branch Manager, any employee working under him in his branch, office or department, as the case may be, has committed an offence, he shall at once report the matter to the General Manager with full particulars. If it appears to General Manager that there are prima facie grounds for the Branch Manager's opinion, he may, unless the employee be otherwise prosecuted, direct the Branch Manager to take steps to prosecute the employee or get him prosecuted.

(3) If on a prosecution instituted against an employee under clause (2) of this regulation:

(a) the employee is convicted, he may be dismissed with effect from the date of his conviction or be given any lesser punishment mentioned in Regulation 4 of this Chapter or be discharged as provided in Regulation 11 of this Chapter.

(b) if the employee is acquitted, it shall be open to General Manager to proceed against him under the provisions set out hereinabove regarding misconduct. If after enquiry it is decided not to continue the employee in service, he shall be liable only for termination of service with 3 months pay and allowance in lieu of notice, and he shall be deemed to have been on duty during the period of suspension if any, and shall be entitled to full pay and allowances minus such subsistence allowance as he has drawn and all privileges for the period of suspension:

Provided that if the employee be acquitted by being given the benefit of doubt, he may be paid such portion of such pay and allowance as the General Manager may deem proper, and the period of his absence shall not be treated as period spent on duty unless the General Manager so directs.

(4) For awarding punishment under sub-clause (a) of clause (3) of this regulation no enquiry as prescribed by Regulations 7 and 9 of this Chapter shall be necessary. Any punishment under clause (3) of this regulation shall be imposed only by the Executive Committee. If no punishment is proposed to be imposed, the Committee shall pass an order to that effect.

(5) If the employee prefers an appeal or revision application against his conviction and is acquitted on such appeal or revision, in case he has already been dealt with as above, he may apply within 2 months from the date of such acquittal to the Executive Committee for reconsideration of his case and the Executive Committee shall review his case and may either reinstate him or pass orders that he may be proceeded against as provided in sub-clause (b) clause (3) of this regulations.

(6) If after steps have been taken to prosecute the employee under clause (2) of this regulation he is not put on trial within a year of the commission of the offence, the employee may be dealt with as if he has committed an act of misconduct as defined in this Chapter provided that if the authority which was to start prosecution proceedings refuses to do so or comes to the conclusion that there is no case for prosecution, the employee may proceed against under the provisions of sub-clause (b) of clause (3) of this regulation but he shall be deemed to have been on duty during the period of suspension, if any, and shall be entitled to the full salary and allowance minus such subsistence allowance as he has drawn and to all other privileges for such period. If after enquiry it is decided not to continue the employee in service, he shall be liable only to termination with 3 months pay and allowance in lieu of notice:

Provided that if during the pendency of the enquiry the employee is put on trial enquiry shall be stayed after which the provisions of clause (3) of this regulation shall apply:

Provided further that if the employee is put on trial after the conclusion of the enquiry but before the passing of the order thereon, the passing of the order shall be stayed after which the provisions of clause (3) of this regulation shall

apply:

Provided further that if the employee is put on trial after the conclusion of the enquiry and order thereon an appeal under Regulation 20, if one is pending, shall be stayed after which the provisions of clause (3) of this regulation shall apply.

(7) An enquiry under clause (6) of this regulation shall be commenced only if directed by the General Manager and to such enquiry the provisions of Regulations 8, 10, 11, 16, 17, 18, 19 and 20 of this Chapter shall apply.

(8)(a) Upon or after taking steps to prosecute an employee under clause (2) of this regulation, the General Manager (and no other officer) may suspend the employee. Such suspension, unless earlier terminated shall continue till and terminate on the passing of an order under clause (3) if he is put on trial, or when an order exonerating or punishing him is passed after enquiry held under clause (6) if he is not put on trial but an enquiry is held under clause (6).

(b) For the period of suspension he shall be paid subsistence allowance as provided by Regulation 12, clause (2) of this Chapter".

7. Invariably, the rules provide for keeping the employee under suspension, where the employer proposes to take departmental action or during the pendency of trial in a Criminal Court. In case the employee is convicted then the employer is authorised under the rules to take appropriate action against such employee in accordance with law and in reference with the particular rules framed by that employer. After acquittal, the employer can take departmental action against the employee. In case no action is taken against the employee or after the disciplinary action taken the employee is found innocent then the employee is entitled to reinstatement in the service.

8. On reinstatement the question arises whether the employee who had been undergone suspension is entitled to the difference in the full wages and the subsistence allowance paid during the period of suspension. In some of the statute, it has been provided with, the employer is at liberty to pass appropriate orders regarding withholding the difference in the balance of the amount between the period of suspension. In case after acquittal the employee is reinstated in service then the employee is deemed to be in service for all purposes and further would be entitled to all other consequential benefits.

9. The Bank Regulations in the present case empowers the Bank to place the employee under suspension, when the employee is involved in an offence involving moral turpitude for which he is liable to conviction and sentence under any provision of law. The employee can be kept under suspension during the period of trial. In case the employee is convicted then his services can be dispensed with and in case he is acquitted, the Bank can institute Disciplinary Proceedings for the said misconduct and in case the employer, after enquiry decides not to continue the employee in service he shall be liable for termination of services with three months pay and allowances due thereof. But in case, no

further action is taken or after taking departmental action, he is found not guilty, he shall be entitled to reinstatement and full pay and allowances minus such subsistence allowance as he has drawn and all other privileges for the period of suspension. (referred to in sub-clause (b) of clause (3) of Regulation 21).

10. In this case the respondent-Bank did not proceed against the appellant departmentally, after his acquittal by the Court. He was reinstated in service without further action. Under such circumstances, under clause (3)(b) of Regulation 21, employee is deemed to have been on duty from period of suspension and was entitled to full pay and allowance during the period of suspension. The learned Single Judge has failed to appreciate this aspect of the matter. Regulation 21 was not taken note of while Dismissing the writ petition. Therefore the learned Single Judge fell into an error on record.

11. In view of this the appellant was entitled to the difference in the full wages and the subsistence allowance which had been paid to him during the period of suspension.

12. For the reasons stated above this appeal is accepted, order of the learned Single Judge is set aside and the respondent-Bank is directed to pay the difference of the amount in full wages and subsistence allowance paid during the period of suspension from the date of suspension till the date of withdrawal of the suspension. No costs.