

(1993) 04 GUJ CK 0032

In the Gujarat High Court

Case No : Spl. Civil Application No. 3346 of 1991

P.J. Radadia

APPELLANT

Vs

State Bank of Saurashtra

RESPONDENT

Date of Decision : 26-04-1993

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 360

Citation : (1993) 1 GLR 896 : (1994) 1 LLJ 430

Hon'ble Judges : C.K. Thakker, J

Bench : Single Bench

Advocate : K.P. Hathi, for P.V. Hati, for the Appellant; A.S. Vakil, for S.B. Vakil, for the Respondent

Final Decision : Dismissed

Judgement

C.K. Thakker, J.—This petition is filed against an order of dismissal passed by the Regional Manager of the State Bank of Saurashtra on January 8, 1991 and confirmed by the Zonal Manager (Appellate Authority) on March 15, 1991 being illegal, ultra vires and unconstitutional.

2. To appreciate the controversy raised in the petition, few relevant facts may now be stated:

It is the case of the petitioner that he was working as Cashier-cum-Clerk with the respondent-Bank of Jasdan Branch. A complaint was filed against him on September 15, 1989 in connection with offences punishable under Sections 420, 419 and 467 of the Indian Penal Code. It was alleged against the petitioner that by tampering with a demand draft of a customer of the Bank, the petitioner misappropriated an amount of Rs. 1,65,000/-. A criminal case came to be registered against him. The petitioner pleaded guilty to the charge on March 15, 1990 and prayed for grant of probation. Judicial Magistrate (First Class), Jasdan after considering the facts and circumstances, released the petitioner on probation for a period of three years by a judgment and order dated April 30,

1990. In the meanwhile, however, the petitioner was suspended by an order dated August 15, 1989 by the Bank after criminal case was filed and the petitioner was arrested. After the judgment by the Criminal Court, the petitioner applied for reinstatement in service but a notice came to be issued by the respondent-Bank on September 13, 1990, asking him to show cause as to why he should not be dismissed from service with effect from the date of the judgment of Judicial Magistrate (First Class), Jasdan, i.e., from April 30, 1990. The petitioner submitted his reply. By the impugned order, the Regional Manager dismissed the petitioner from service with retrospective effect and the order came to be confirmed by the appellate authority. Being aggrieved by these orders, the petitioner has approached this Court by filing the present petition.

3. Mr. P.V. Hathi, learned Counsel for the petitioner, contended that the order is illegal, inasmuch as no retrospective effect could have been given to the order of dismissal. He also contended that Clause 19.3(b) of Bipartite Settlement of 1966 by which such power is conferred on the Bank to dismiss an employee with retrospective effect must be held to be arbitrary, unreasonable and ultra vires. It was submitted that there was total non-application of mind on the part of the Bank in not considering the material fact that the petitioner was not convicted and sentenced but was granted probation and, hence, he could not have been dismissed from service. No reasonable opportunity was afforded to the petitioner and the Bank had prejudged and pre-determined the issue. The order is thus violative of Article 311 of the Constitution of India. Finally, it was submitted that the appellate authority recorded some additional reasons for which no opportunity of being heard was given to the petitioner. The order passed by the appellate authority was, therefore, violative of the principles of natural justice and fair play.

4. Mr. A.S. Vakil for Mr. S.B. Vakil, on the other hand, supported the order passed by the respondent-authority. He submitted that when probation was granted to the petitioner, it could not be said that he was not convicted. In fact, probation was granted to the petitioner only because he was convicted. Benefit of probation can be granted only after recording conviction against the offender. He submitted that Clause 19.3 (b) on which reliance was placed by the Bank is legal and valid. It was pursuant to the settlement dated October 10, 1966 known as "First Bipartite Settlement of 1966" that the Bank is entitled to dismiss its employees with retrospective effect. It is specifically stated in the affidavit of Mr. P.L. Vijaykumar, Deputy Manager (Law), State Bank of Saurashtra, that the Bank is entitled to dismiss its employee retrospectively by exercising power under Clause 19.3(b) of the Settlement and that the said settlement still holds good and the Banking Company and their workmen who are parties to that settlement are bound by provisions contained therein. An order of the retrospective dismissal was, thus, legal and valid.

5. Having heard the learned Counsel for the parties, I am of the opinion that no case has been made out to interfere with the order passed by the disciplinary

authority and confirmed by the appellate authority. It is an admitted fact that a criminal case was filed against the petitioner wherein, he pleaded guilty and was convicted. The contention of the petitioner that when probation is granted, it cannot be said that a person is convicted is devoid of any merit. The point is concluded by decisions of the Hon"ble Supreme Court in the case of *The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others*, and reiterated in the case of *Union of India v. Bakshi Ram* reported in 1990-I-LLJ-498. In both the cases, the Court held that the release of the offender on probation does not obliterate the stigma of conviction. In criminal trial, conviction is one thing and sentence is another. The Court while invoking the provisions of the Probation of Offenders Act, 1958 or Section 360 of the Code of Criminal Procedure, 1973, does not interfere with conviction. It only deals with sentence the offender has to undergo. Instead of sentencing the offender, the Court releases him on probation of good conduct. The correction however, remains untouched and undisturbed. In fact, finding of guilt and conviction by a competent Court is a *sine qua non* for the order of release of offender on probation. Here justice is tempered with mercy intended to reform the offender with a view to seeing that he does not become hardened criminal. I am, therefore, unable to accept the argument of Mr. Hathi that the order releasing the petitioner on probation obliterated conviction and hence the petitioner could claim reinstatement.

6. It is an admitted fact that even after conviction, a show cause notice was issued to the petitioner, his reply was considered and thereafter the order of punishment was passed. The said action can never be said to be illegal or contrary to law. The provisions of Article 311(2) of the Constitution of India cannot be pressed into service by the petitioner inasmuch as he cannot be said to be a "civil servant" within the meaning of Article 311.

7. So far as retrospective effect of the order of dismissal is concerned, a mention needs to be made to a decision of the Hon"ble Supreme Court in the case of *R. Jeevaratnam v. State of Madras*, (1967-I-LLJ-391). In that case, the appellant had accepted some amount by way of illegal gratification. After giving opportunity of being heard, he was dismissed from service with retrospective effect. When the said action was challenged the Hon"ble Supreme Court held that such an order can be said to be a composite order consisting of two parts and both are severable. The first part operates as a dismissal from service whereas the second part relates to the date on which it becomes effective. The Court then observed (p. 393):

"An order of dismissal with retrospective effect is, in substance, an order of dismissal as from the date of the order with the super-added direction that the order should operate retrospectively as from an anterior date. The two parts of the order are clearly severable. Assuming that the second part of the order is invalid, there is no reason why the first part of the order should not be given the fullest effect. The Court cannot pass a new order of dismissal, but surely it can

give effect to the valid and severable part of the order."

8. The Court, therefore, did not hold in R. Jeevaratnam's case (supra) that in no case an order of dismissal could be passed with retrospective effect but observed that even when such order was not in accordance with law, it could be given prospective effect. In the instant case, there is a binding settlement which empowers the respondent-Bank to dismiss its employees retrospectively and thus even that action is permissible. I, therefore, do not find any substance in that contention also.

9. Regarding the additional ground said to have been taken into account by the appellate authority, I am of the opinion that no new ground was considered by the appellate authority. The appellate authority observed, "I am convinced that he (the petitioner) had committed acts of gross misconduct, even moral turpitude and has lost the confidence of the Bank, which is basic requirement for acceptance of an employee in a financial institution like a Bank". This cannot be said to be a new ground, inasmuch as all the facts were on record. To recall them, the petitioner was working in a Bank. He was serving as Cashier-cum-Clerk and, thus, he had to deal with cheques, drafts and currency of the bank as well as of customers. It was, therefore, a post of trust. A person who had to deal with public money, must be honest and above board. If such person misappropriates any amount, it can certainly be said to be loss of confidence and an offence involving of moral turpitude. Moreover, when the petitioner is convicted and after issuing notice, impugned action is taken, it cannot be said to be arbitrary, unreasonable or capricious.

10. In view of the above discussions, I do not find any substance in any of the contentions raised by the learned counsel for the petitioner and the petition requires to be dismissed. In the result, the petition is dismissed. Rule is discharged. In the facts and circumstances of the case, however, there is no order as to costs. Any amount which he is ultimately entitled and which is required to be paid will be paid to him as expeditiously as possible.