
(1997) 08 GAU CK 0025
In the Gauhati High Court
Case No : Writ Appeal No. 515 of 1996

Prasanna Kumar Agarwal

APPELLANT

Vs

State of Bank of India

RESPONDENT

Date of Decision : 28-08-1997

Acts Referred:

State Bank of India Act, 1955 — Section 43, 43

Citation : (1997) 2 GLJ 355 : (1997) 3 GLT 61

Hon'ble Judges : M.Ramakrishna, J and P.C.Phukan, J

Bench : Division Bench

Advocate : M.K.Choudhary, S.Das, K.Agarwal, D.K.Chomal, B.K.Sharma, A.K.Bhattacharyya, Advocates appearing for Parties

Judgement

M. Ramakrishna, C.J.—Dr. Prasanna Kumar Agarwal, the appellant herein, was the petitioner in Civil Rule No. 1786 of 1994 wherein he has challenged the order made on 17th November. 1989 (Annexure IX to the writ petition) suspending the petitioner from service, the show cause notice issued on 29th March, 1994 (Annexure XI) and the contemplated disciplinary proceedings against the petitioner, and he has sought for quashing the same in a petition under Article 226 of the Constitution of India for the reasons set out in the writ petition. Indeed, he has also sought for the above prayer in view of the pending criminal prosecution in the Special Case No.23 (C)/88. being considered in the Court of Special Judge, Assam. The petitioner has also sought for keeping in abeyance the departmental enquiry against him until the aforesaid criminal proceedings are disposed of.

2. There was an order of interim stay granted by the writ Court on 12th May. 1994 staying further proceedings of the departmental proceedings against the petitioner. However, after hearing learned counsel on both sides, the learned Single Judge of this Court by an order on 27th September, 1996 dismissed the writ petition and vacated the interim order of stay granted earlier. Hence this appeal by the writ petitioner.

3. We have heard learned counsel on both sides.

4. A few facts which are necessary for the disposal of the appeal are as follows : It is not in dispute that pursuant to an advertisement calling for applications from the eligible applicants with a view to fill up the post of Medical Officer in the State Bank of India, Regional Office, Shillong, the appellant/petitioner was selected for the post of Medical Officer and by an order made on 20th July. 1983 (Annexure II) the appellant was appointed to the said post.

5. While so serving as Medical Officer in the State Bank of India, Regional Office. Shillong (hereinafter called, the Bank) on 30th January, 1987 a first information report was lodged with the Police having jurisdiction on the allegation that the petitioner having entered into a criminal conspiracy with the Chief General Manager, J.P. Jakhodia, cheated the Bank to the tune of Rs. 1,89,815.70 in the matter of purchase of medicines. A police case bearing No. RC 2/87 SHG was lodged by the CBI (as per Annexure VI). Later, by an order made on 25th November. 1989 (as per Annexure IX), the writ petitioner was suspended with immediate effect. Being aggrieved by the criminal proceedings initiated against him in the above FIR. since the criminal Court having taken cognizance of the said offence of cheating, a petition under section 482 CrPC was filed before the Special Judge seeking to quash the criminal proceedings. It is stated that, that matter is still pending.

6. Pursuant to the criminal proceedings initiated against the petitioner, by a letter dated 29th March, 1994 and 27th April, 1994 issued by the General Manager (Operations) of the Bank, the petitioner was called upon to submit his explanation within fifteen days. The petitioner prayed for keeping the departmental proceedings in abeyance since he has challenged the criminal prosecution before the competent Court. However, he was informed by the General Manager (Operations) that the points on which his explanation was sought for were not covered by the charges on which he was to be tried in the criminal case. Thus, he was again called upon to submit his explanation by a letter dated 27th April, 1994 (Annexure XIII).

7. The writ petitioner has taken a number of grounds to attack the impugned action against him, particularly, the departmental proceedings. This was opposed by the respondents by presenting a detailed counter affidavit by way of objections. Regarding the pleadings in the writ petition, the following five points were raised by the learned Single Judge in the writ petition :

(1) That the Service Rules, as referred to above, are not applicable to the Medical Officers of the Bank as the petitioner's appointment was purely contractual in nature and there was no relationship of master and servant;

(2) The uniform service conditions of Medical Officers, as approved by the Executive Committee of the Central Board, does not provide for any disciplinary action against Medical Officer. As such, the disciplinary proceedings initiated against the petitioner was without jurisdiction.

(3) The State Bank of India (Supervising Staff) Service Rules, the State Bank of India Officers (Determination of Terms and Conditions of Service) Order, 1979 are not applicable to the petitioner.

(4) The disciplinary proceeding is belated which is indicative of the malafides on the part of the respondents.

(5) The show cause notice dated 29th March, 1994 based on vague allegations forming part of the criminal prosecution, is premature and uncalled for. It is also impermissible Under the uniform service conditions. The allegations are made as covered by the criminal prosecution. In such a situation, the disciplinary proceedings should be kept in abeyance.

8. Indeed, these are the points urged by the learned counsel for the writ petitioner in the course of his arguments based upon pleadings. The learned Single Judge dealing with each one of them and providing reasons, by a speaking order held that:

(1) By virtue of the conditions of service laid down in the appointment order and referring to Rule 2 (2) of the State Bank of India (Supervising Staff) Service Rules, which apply to all officers, staff officers and Senior Staff Officers in the Bank, are made applicable to the writ petitioner. Indeed, he has further held that in view of section 43 of the State Bank of India Act, the contentions raised by the learned counsel for the petitioner cannot be sustained. The learned Single Judge further held that there is no immunity from the application of these Rules to a person working as Medical Officer serving the State Bank of India. Therefore. the respondents were competent to proceed against the petitioner as contemplated by the show cause notice issued by them to the writ petitioner under the service rules.

9. As to the parallel departmental proceedings which may likely to prejudice the defence of the accused who is protected under the Code of Criminal Procedure whether departmental proceedings can be kept in abeyance, the learned Single Judge referring to the authorities on this question held against the writ petitioner. Thus the writ petition was ordered to be dismissed holding that there was no merit in the writ petition.

10. Shri AK Bhattacharyya, learned counsel appearing for the appellant having taken us through the grounds of appeal, the salient facts of the case and the findings recorded by the learned Single Judge while disposing of the writ petition, argued the following points :

(1) The learned Single Judge, while considering the facts and circumstances including the conditions of service as laid down in the appointment order, failed to notice that the Medical Officer serving the State Bank of India by virtue of the conditions of service, is entitled to charge certain fees, he is entitled to work only for four hours on week days and two and a half hours on Saturdays and he is not a regular officer of the Bank.

(2) Secondly, regard being had to the pay scale provided to the Medical Officer and the age of superannuation being 60 years, it is not a full time job. Therefore, the conclusions reached by the learned Single Judge while disposing of the writ petition is improper and illegal.

(3) The learned Single Judge committed an error in construing the provision of section 43 of the State Bank of India Act read with Rule 2 (2) of the State Bank of India (Supervising Staff) Service Rules while reaching the conclusion that a Medical Officer is a full time employee of the Bank.

(4) In view of the fact that the conditions of service enumerated in the appointment order treated the petitioner as on contract basis, the service rules cannot be applied to the writ petitioner.

(5) The order of suspension was challenged on the ground of delay and the delay is attributable to the employer and not to the employee and as such the view taken by the learned Single Judge that the Court will not interfere in such matters is not correct.

(6) There was inordinate delay in initiating the departmental proceedings against the petitioner and for no fault of his. That being so, the learned Single Judge ought to have seen that the delay was intentional and on the part of the employer. The conclusion, therefore, on this point is not sustainable in law.

(7) The action taken by the respondents against the petitioner was malafide resulting in his suspension and initiation of departmental proceedings against him. The learned Single Judge ought to have considered this aspect of the matter in its proper perspective.

(8) Lastly, it is argued that the conclusion reached by the learned Single Judge rejecting the prayer of the writ petitioner is erroneous and not sustainable.

11. As against these arguments of Shri. A.K. Bhattacharyya, learned counsel for the appellant. Mr. B.K. Sharma, learned counsel appearing for the respondents, however, maintained that based upon the salient facts and circumstances and the questions of law arising in the writ petition, the learned Single Judge has rightly assessed the questions of law arising in the writ petition and the conclusions reached by him are perfectly justified. Therefore, this Court need not interfere with the order of the learned Single Judge. He maintained that the writ appeal has no merit. He lastly submitted that there has already been inordinate delay in completing the enquiry due to the stay order granted by this Court and that as on today since the criminal proceedings have been heard and disposed of, the Division Bench must allow the departmental proceedings to continue and to complete it at an early date.

12. In view of the arguments advanced by both sides and the findings recorded by the learned Single Judge and the pleadings in the case, the following points arise for our consideration in this writ appeal :

(1) Whether the view taken by the learned Single Judge that the provisions of section 43 of the State Bank of India Act and Rules 2 (2) of the State Bank of India (Supervising Staff) Service Rules, as applied to all Officers, Staff Officers and Senior Staff Officers in the Bank, are also made applicable to the writ petitioner/ appellant and whether by virtue of the said Rules the writ petitioner comes within the purview of the disciplinary proceedings as initiated by the Bank. Whether the conclusion reached by the learned Single Judge on this point is justified.

(2) Regard being had to the protection guaranteed to the citizen while the criminal proceedings are pending before the competent criminal Court, whether the initiation of the departmental enquiry against such person simultaneously, would affect his right of defence and the conclusion reached by the learned Single Judge on this point could be justified.

(3) Whether the appellant was able to make out a case that the conclusion reached by the learned Single Judge while disposing of the writ petition is improper.

13. We will now take up the first point for consideration. Section 43 of the State Bank of India Act, 1955 (hereinafter referred to as the Act) lays down as follows:

"43. State Bank may appoint officers and other employees : (1) The State Bank may appoint such number of officers, advisers and employees as it considers necessary or desirable for the efficient performance of its functions, and determine the terms and conditions of their appointment and service.

(2) The officers, advisers and employees of the State Bank shall exercise such powers and perform such duties as may, by general or special order be, entrusted or delegated to them by the Central Board."

14. By virtue of the power conferred upon the Central Board of the State Bank of India, the Board framed the Rules, known as "the State Bank of India (Supervising Staff) Service Rules". These Rules came into force with effect from 1st July, 1975. Subrule (1) of Rule 2 lays down that these Rules shall apply to all Officers, Staff Officers and Senior Staff Officers in the Bank other than persons who were in the service of the Bank on the 30th of June, 1955 either as Officers or as Assistants. Subrule (2) of Rule 2 lays down that these Rules shall apply to persons in the service of the Bank in any other capacity to such extent and subject to such conditions as the appointing authority may from time to time decide.

15. Rule 3 (a) defines "Central Board", meaning thereby the Central Board of Directors of the State Bank of India. Rule 3 (b) defines "Executive Committee", meaning thereby the Executive Committee of the Central Board. Clause (h) of Rule 3 defines "Senior Staff Officer", which means a person appointed substantively or on probation to a Senior Staff Appointment and includes a General Manager, a Chief General Manager and a Deputy Managing Director. Clause (i) of Rule 3 defines "Staff Officer", meaning thereby a Staff Officer

appointed to the First, Second or Third Grade of Staff Officers. Clause (j) defines "Officer", which means an Officer Grade I or Grade II, and Officer Grade I or Grade II on Probation, a Probationary Officer or a Trainee Officer. Clause (u) defines "Employee", meaning thereby a Senior Staff Officer, a Staff Officer, an Officer or a Person to whom these rules are applied by Rule 2 (2). Clause (v) defines "Salary", meaning thereby substantive salary plus acting allowance, if any, but not house allowance or any other allowance. Clause (x) of Rule 3 lays down that "Public Servant" means a person defined as such in section 21 of the Indian Penal Code as amended from time to time.

16. Keeping these definition clauses in mind, we will have to now see whether the terms and conditions of the appointment of the writ petitioner as Medical Officer would come within the purview of Rule 2 (2) of the State Bank of India (Supervising Staff) Service Rules. Annexure II at page 34 in the writ petition is a true copy of the appointment order issued on 20th July, 1983. It has been clearly stated therein that the writ petitioner had been selected and appointed as Medical Officer in the Bank under SBI (DTCS) Order, 1979 read with SBI (Supervising Staff) Service Rules. Accordingly, he has been posted at Regional Office, Shillong and he should report to the Chief Regional Manager, Shillong for duty immediately. Paragraph 2 lays down that the basic salary will be Rs.700/ per mensem in the salary scale of Rs.70040990501150 and the petitioner will be entitled to Dearness Allowances, Medical, Leave Fare Concession and Leave facilities as leave Rules applicable to Medical Officer in the Bank. It says that the working hours will be 4 hours on week days and 2? hours on Saturday. The writ petitioner has been placed on probation for a period of two years from the date of appointment.

17. Let us now see what are the conditions of the State Bank of India Officers (Determination of Terms and Conditions of Service) Order, 1979 (hereinafter referred to as the Order, 1979). Clause (1) of para 2 of the Order, 1979 reads as follows :

"This Order shall apply to the existing officers of the Bank and to the officers of the Bank who are appointed or promoted to any of the grades mentioned in paragraph 4 and to such other employees of the Bank to whom it may be made applicable by the Central Board or the Executive Committee or the competent authority to the extent and subject to such conditions as it may decide."

Clause (2) of paragraph 2 lays down that

"It shall not apply, except to the extent specified by the Central Board or the Executive Committee or the competent authority, to an officer during his tenure of service outside India or to employees engaged in any country outside India and serving there."

18. Clause (f) of paragraph 3 defines "Emoluments" means the aggregate of salary and allowances, if any. Clause (k) of paragraph 3 defines, "Officer" means a person fitted into or appointed to or promoted to any of the grades specified in

paragraph 4 including an existing officer and shall also include any specialists or technical persons so fitted or promoted or appointed and any other employee to whom any of the provisions of this Order has been made applicable under paragraph 2.

Therefore, in the light of these terms and conditions enumerated in the order of appointment, we do not find any such condition or eligibility that the doctors serving the Bank shall be entitled to a fee chargeable to a patient; nor is there any clear plea taken in the writ petition in this behalf.

20. With a view to appreciate the legal contentions urged for the appellant, let us refer to the nature of the allegations made in the FIR. By virtue of the serious allegations made in the FIR, it is seen there from that the writ petitioner is involved in a serious defalcation of a huge amount of money, which is the subject matter of trial in Special Case No.23 (C)/88. A show cause notice was issued to the petitioner on 29th March, 1994 pertaining to the irregularities committed in purchasing medicines and maintaining relevant records in respect of the Bank's dispensary at Zonal Office, Shillong. It is stated therein that a sum of Rs.40,120.46 and a sum of Rs.44,690.17 for supply of medicines, the bills for which were submitted by M/s Agarwal Pharmacy, were paid by the Bank on the strength of the certificates issued by the petitioner on the body of the bills that the medicines were received for use at the Bank's dispensary, whereas actually the medicines were not received at the Bank at all, and these medicines were not entered in the stock book of the Bank's dispensary. The orders for medicines were also hurriedly placed and payments were made hastily at the behest of the petitioner. At the outset it is pointed out that the drug company, M/s Agarwal Pharmacy, from who the bills were issued for having supplied the medicines was owned by the petitioner's father and the petitioner did not disclose the fact to the appropriate authorities. Further, the Stock Registers did not disclose that these medicines were actually received and they were taken to the Stock Book of the Bank's dispensary. 3. In the face of these serious allegations made in the FIR, the Bank has taken a serious note with a view to launch a criminal prosecution. Accordingly, Special Case No.23 (C)/88 was instituted, which was being considered by the Court of Special Judge, Assam. Indeed, the petitioner has sought to quash these proceedings before the Special Judge invoking the provision of section 482 CrPC.

21. Considering the first point in this case, it is necessary to refer to the provisions of section 43 of the State Bank of India Act, 1955, which are already extracted above. We have already referred to the provisions of Rule 2 (2) of the State Bank of India (Supervising Staff) Service Rules. The learned Single Judge referring to the conditions of service incorporated in the order of appointment, produced as Annexure II in the writ petition, and also considering the cumulative effect of section 43 of the State Bank of India Act, 1955 read with the provisions of Rule 2 (2) of the Rules, referred to above, has clearly held that the writ petitioner cannot seek for immunity from facing departmental enquiry on the

ground that Rule 2 (2) was not applicable to him. We would like to have a second look into the legal questions urged before us in this appeal, but at the outset we are satisfied that in the of light the conditions and terms incorporated in the order of appointment referred to above, it is made clear that the services of the writ petitioner as Medical Officer are governed by the provisions of the service rules referred to above. As we have pointed out earlier, these Rules have been framed by the Central Board of the Bank, which are made applicable to the employees of the Bank. The language employed in subrule (2) of Rule 2 of the Rules abundantly makes it clear that these Rules shall apply to any person in the service of the Bank in any other capacity to such extent and subject to such conditions as the appointing authority may from time to time decide, which language of the Rule undoubtedly has made it applicable to a Medical Officer serving in the Bank, though the term "Medical Officer" has not been defined in the services rules.

22. Since the writ petitioner did not take any objection to the terms and conditions incorporated in the order of appointment at the time of joining the service, now he cannot turn round and take a stand which is contrary to the said terms and conditions of the order of appointment. In the light of the conditions incorporated in the order of appointment and when we read with provision of subrule (2) of Rule 2 of the service rules for the purpose of applying the service rules as indicated in Chapter I of the Rules, we have no doubt in our mind that these Rules, are made applicable for the services of Medical Officer serving the Bank. The learned Single Judge thus, therefore, has taken the correct view in recording a finding that the writ petitioner cannot seek for immunity from application of these Rules. When once we take that view that these Rules are applicable to the writ petitioner, then the action taken by the Bank seeking to hold a departmental enquiry regarding his conduct in the light of the allegations made against him, the petitioner cannot escape from the clutches of these Rules to face the enquiry. Therefore, in respectful agreement with the view taken by the learned Single Judge, we approve the said view and the conclusions reached by the learned Single Judge on this point.

23. Dealing with points Nos.(2) and (3) referred to above, we will now consider the legal questions raised as regards the protection available to the writ petitioner under the CrPC read with provisions of Articles 20 and 21 of the Constitution of India.

24. Apart from the decisions referred to in the course of the judgment of the learned Single Judge in *Tata Oil Mills Co Ltd vs. Workmen*, AIR 1965 SC 155, and *Kusheswar Dubey vs. M/s Bharat Coking Coal Ltd*, AIR 1988 SC 2118, there is a recent decision of the Supreme Court in *A.A. Mulla & others vs. State of Maharashtra & another*, AIR 1997 SC 1441, wherein the Supreme Court considered the provisions of Article 20 (1) and Article 21 of the Constitution dealing with the protection available to a Govt servant accused of misconduct in relating to defalcation of some money belonging to the employer and the

Supreme Court had the occasion to lay down the following law :

"After giving our careful consideration to the facts and circumstances of the case and the submissions made by the learned counsel for the respective parties, it appears to us that the ingredients of the offences for which appellants were charged in the first trial are entirely different. The second trial with which we are concerned in this appeal, envisages a different fact situation and the enquiry for finding out facts constituting offences under the Customs Act and the Gold Control Act in the second trial is of a different nature. It may be indicated here that the second trial has been initiated after obtaining necessary sanction for prosecuting the appellants. The principle of double jeopardy and bar of second trial as enunciated by this Court in V.K. Agarwal's case (AIR 1988 SC 1106) (supra) and PV Mohammad's case (1992 AIR SCW 3609) (supra) is applicable in the facts of this case. Not only the ingredients of offences in the previous and second trial are different, the factual foundation of first trial and such foundation for the second trial is also not indented. Accordingly the second trial was not barred under section 403 CrPC of 1898 as alleged by the appellant." (emphasis supplied)

25. As a matter of fact, this principle of double jeopardy referred to above is more vicious than the question as to whether when the criminal proceedings are pending for the offences charged in the FIR. whether departmental proceedings based upon the said charges could be considered for the purposes of staying further proceedings in the departmental enquiry. Indeed, as the learned Single Judge already pointed out in the course of his order, the essential facts and circumstances on which the departmental proceedings are based are different from the actual charges of defalcation referable to the specific provision of the Indian Penal Code, namely, section 408 IPC. Thus, the facts and circumstances, including the questions of law required to be proved in the departmental proceedings in the instant case are entirely different.

26. As the Supreme Court has taken the view in Kusheshwar Dubey's case (AIR 1988 SC 2118) (supra) referring to the provision of Schedule 2, Items 3 and 6 of the Industrial Disputes Act, 1947, that the disciplinary proceedings could be continued along with the criminal trial against the delinquent simultaneously. It is stated therein that:

"It is neither possible nor advisable to evolve a hard and fast, straight jacket formula valid for all cases and of general application without regard to the particularities of the individual situation. In the instant case, the criminal action and the disciplinary proceedings were grounded upon the same set of facts and therefore the disciplinary proceedings should have been stayed."

The decision of the Patna High Court was reversed.

27. Thus, therefore, if the grounds upon which the departmental proceedings are initiated are different from the specific allegations of offences referable to section 408 IPC, and distinguishable, there is no wrong in taking action for departmental

proceedings while the criminal proceedings were pending. As a matter of fact; as on today, this decision need not be referred to, because, as on today, it is stated that the criminal proceedings have been disposed of. Thus, the question has now become only academic.

28. It is stated that by virtue of the order made by the Bank, the Bank is paying subsistence allowance to the petitioner and that there is no specific order made by the Bank that the writ petitioner shall not leave the headquarters during the period of the disciplinary proceedings. It is very unfortunate that on account of the stay order granted by this Court there has been undue delay in completing the departmental proceeding. However, by virtue of the order made by the learned Single Judge under appeal, that order of stay has been vacated. Indeed, the criminal proceedings have also been disposed of. The departmental proceedings can be taken up immediately and the matter may be heard and disposed of on priority basis. In the light of the conditions incorporated in the order of appointment and by virtue of Rule 2 (2) of the Rules, the Rules have been made applicable to all the employees of the Bank, the writ petitioner is amenable to the disciplinary" proceedings drawn up against him by applying the slid Rules. He cannot seek immunity from these disciplinary proceedings.

29. It is also brought to our notice that by virtue of the amendment made by the Bank to the Rules, dated 11th June. 1994, the petitioner is also entitled to pension, apart from Provident Fund and Gratuity, which were also permissible.

30. As a matter of fact, as has been held by the learned Single Judge, we may go one foot further and hold that even in cases of contractual employment, an employee serving under the contract is not absolved from answering a show cause notice with a view to taking up departmental proceedings in respect of misconduct alleged against him.

31. Therefore, considering all these aspects of the matter including the questions of law raised in the appeal, we hold that the conclusion reached by the learned Single Judge on all these points must be held to be proper and correct. We do not see any good ground to interfere with the order under appeal.

32. In the result, the appeal fails and it is dismissed. The respondents shall be entitled to the costs of the proceedings throughout. The Advocate's fee is assessed at Rs.2,000/ (Rs. two thousand only).

After the pronouncement of the order : It has now brought to our notice that after the Special Court disposed of the criminal proceedings in Special Case No.23(C)/88, there was a revision petition before this Court. It is stated that the revisional Court while disposing of the revision petition setting aside the order of the Special Court, remitted the matter for reconsideration. This information was not supplied to us earlier. However, that does not make any difference in the judgment.