

(2008) 02 GUJ CK 0126

In the Gujarat High Court

Case No : Special Civil Application No. 9396 of 1997

P.S. Patel

APPELLANT

Vs

State Bank of Saurashtra

RESPONDENT

Date of Decision : 08-02-2008

Acts Referred:

Banking Regulation Act, 1949 — Section 10, 10(1), 10(l)(a), 5
Constitution of India, 1950 — Article 14, 215, 226, 311, 51A
Contempt of Courts Act, 1971 — Section 11, 12, 2(c)
Penal Code, 1860 (IPC) — Section 114, 120B, 420

Citation : (2008) 2 GLH 260

Hon'ble Judges : Anant S. Dave, J

Bench : Single Bench

Advocate : I.S. Suphehia for petitioner 1, for the Appellant; A.S. Vakil for respondent 1, for the Respondent

Final Decision : Dismissed

Judgement

Anant S. Dave, J.—The petitioner, a bank employee, who was in permanent service has challenged the order dated 28.10.1997 passed by the respondent discharging him from service on the ground that the petitioner has incurred disqualification to continue in service in terms of Regulation 68 (7)(i)(ii) of the S.B.S. (Officers'') Service Regulations, 1979 (for short "service Regulation") since the petitioner came to be convicted of an offence involving moral turpitude by the High court in exercise of power under the Contempt of Courts Act, 1971 and had undergone the sentence.

1.1. The short facts leading to this petition under Article 226 of Constitution of India, is as follows:

1.2. Initially the petitioner was appointed as a Clerk and later on came to be promoted in the cadre of Officer on 20th November, 1995 and during his service tenure of 11 years, the petitioner has performed his duties without any remarks or any penalty. However, by the impugned order dated 20th October, 1997 which

came to be served upon on 11.11.1997, the petitioner came to be discharged, in view of conviction of the petitioner u/s 2(c) of the Contempt of Courts Act, 1971 by the High Court of Gujarat as per the judgment dated 19.1.1996 in Criminal Misc. Application No. 4059/1995. As per the above judgment, the petitioner was sentenced to undergo simple imprisonment for one month and to pay a fine of Rs. 2,000/-. That appeal against the aforesaid order before the Apex Court came to be dismissed and, thereafter, the petitioner has undergone the sentence and paid up the fine. Learned advocate Shri Supehia for the petitioner has raised mainly three fold contentions, that the order impugned is contrary to the principles of natural justice and no opportunity whatsoever was afforded to the petitioner to explain his version and to submit whether the offence involves moral turpitude and whether without initiating disciplinary action under Regulation 67 against a permanent employee of the Bank order of discharge can be passed. Secondly, it is also contended that there is no provision of appeal against the order impugned and in absence of any remedy, only option available to the petitioner, is to prefer a writ petition before this Court by invoking the powers under Article 226 of Constitution of India and since there is absence of findings by the authority concerned on moral turpitude, the order impugned suffers from the vice of arbitrariness and unreasonableness and, therefore, it is violative of Article 14 of the Constitution of India. Thirdly, the act alleged against the petitioner is not part of performance of his official duty and even if it is presumed that the conviction was pursuant to the order passed by the High Court in contempt proceedings, the same was against the petitioner in his individual status and not as a bank officer.

1.1. Therefore, according to Shri Supehia, learned advocate for the petitioner, the order impugned requires to be quashed and set aside and the petitioner is to be reinstated in service with all consequential benefits including backwages.

2. Shri Vakil, learned advocate appearing for the respondent Bank submitted that the order impugned is passed by the authority after taking into consideration Regulation 68(7)(i)(ii) of the S.B.S. (Officers") Service Regulations, 1979, framed by the Central Board of Directors of State Bank of India in exercise of powers conferred by Section 63 of the State Bank of India (Subsidiary Banking) Act, 1959, which is in consonance with Section 10(1) of the Banking Regulation Act, 1949; and which mandates the bank authority to discontinue the service of an employee of the banking company, who is convicted by a criminal court for an offence involving moral turpitude. Learned advocate appearing for the respondent-Bank has further submitted that in view of the provisions of Section 10(I)(a) of Banking Regulation Act, 1949 and Regulation 68 (7)(i)(ii) of the S.B.S. (Officers") Service Regulations, 1979, no opportunity is to be afforded to the bank employee who is convicted by the Court of an offence involving in a moral turpitude irrespective of the status of such a bank employee whether such employee is permanent or not.

3. Learned advocate has relied on the impugned order and reasoning given

therein and submitted that the authority concerned has taken into consideration wider ramification of conduct of the petitioner as bank officer though convicted under the contempt proceedings and after discussing the aspect of moral turpitude and assigning reasons, the impugned order is passed. Learned advocate appearing for the respondent has further submitted that there is a nexus between the conduct of the petitioner in his individual capacity and functioning as a bank officer, particularly when a person who has shown disregard to the rule of law cannot be continued in the banking service where the banking company has to deal with the public at large.

4. In support of the arguments and submission made by Shri Vakil, learned advocate appearing for the respondent relied on various authorities and submitted what constitutes moral turpitude and how the act of the petitioner, though committed in his individual capacity, will attract Regulation 68 of the Regulations and Sub Section 1 of Section 10 of the Banking Regulation Act, 1949. Following are the authorities relied on by Shri Vakil.

1. In The Matter of P. An Advocate,

2. Central Bank of India, Chandigarh v. Balwant Rai Nayyar and Ors. reported in 1996 LAB I.C. 2429 [Panjab and Haryana High Court]

3. State of West Bengal and Ors. v. Sri Ram Nagina Dubey reported in 1992 (6) SLR 22 [Division Bench of Calcutta High Court]

4. Captain Dushyant Somal v. Governor, Reserve Bank of India, Bombay and Anr. Reported in 1991 LAB I.C. 2487 [Allahabad High Court]

5. To counter the same reliance is placed by Shri Supehia on two decisions namely Premkumar P. Pandya v. Dena Bank reported in 1992(1) GLH 568 and K.L. Narasimha v. State of A.P.& Ors. reported in AIR 2001 SCW 5123 in support of his submissions that no findings were given by the authority on moral turpitude and, therefore, impugned order being devoid of reasons deserves to be quashed and set aside.

6. Having heard the learned advocates appearing for the parties and on perusal of the material on record, I am of the view that contentions canvassed by Shri Supehia do not merit any acceptance for the following reasons:

6.1. For considering the facts involved in this petition and applicability of relevant rules with regard to discharge of the petitioner from service of the Bank, it is necessary to refer to certain provisions of Banking Regulation Act, 1949 and State Bank of Saurashtra (Officers") Services Regulation Act, 1979.

6.2. Banking company as referred to Sub section 1 of Section 10 of Banking Regulation Act, 1949, which is also defined in Clause (c) of Section 5 of the Act which reads as under;

"(c) "banking company" means any company which transacts the business of banking [in India]. Explanation.-Any company which is engaged in the

manufacture of goods or carries on any trade and which accepts deposits of money from the public merely for the purpose of financing its business as such manufacturer or trader shall not be deemed to transact the business of banking within the meaning of this clause;"

6.3. Sub Section (1) of Section 10 of Banking Regulations Act, 1949 reads as under:

"10. Prohibition of employment of managing agents and restrictions on certain forms of employment. -

(1) No banking company-

(a) Shall employ or be managed by a managing agent; or

(b) shall employ or continue the employment of any person-

(i) who is, or at any time has been, adjudicated insolvent, or has suspended payment or has compounded with his creditors or who is, or has been, convicted by a criminal court of an offence involving moral turpitude;"

6.4. Clause 68 (7) (i) (ii) of the S.B.S. (Officers") Service Regulations, 1979 reads as under:

6.i) "Notwithstanding anything contained in sub-regulations (2), (3) and (4), where an officer is at any time or has been adjudicated insolvent or has suspended payments or has compounded with his creditors or is or has been convicted by a criminal court of an offence involving moral turpitude, the appointing authority may discharge the officer from the Bank's service without any notice whatsoever, and no appeal shall lie against such discharge".

6.ii) Without prejudice to what is stated in clause (i) above and notwithstanding anything contained in sub-regulations (2), (3) and (4), the Disciplinary Authority or the Appointing Authority, as the case may be, may impose any of the penalties specified in regulation 67 if the officer has been convicted of a criminal charge or on the strength of facts or conclusions arrived at by a judicial trial. Provided that before a penalty is imposed in terms of this clause the officer employee may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made."

7. In view of the above provisions of the Banking Regulation Act, 1949 and the S.B.S. (Officers") Service Regulations. 1979 action of the bank authority of discharging the petitioner needs to be scrutinized on the touch stone of reasonableness and fairness as envisaged in Article 14 of the Constitution of India and not only that but whether the petitioner being a permanent employee of the bank can be discharged from the service without following procedure in consonance with the principles of natural justice or not.

8. The above provisions reproduced herein-above are relevant for consideration of the facts of the present case.

8.1. It is not in dispute that the Banking Regulation Act, 1949 is applicable to the respondent Bank and it is "Banking Company" within the meaning of Section 5 of Clause (c) of the Act. It is also not in dispute that the petitioner herein came to be convicted by the judgment dated 19.1.1996 passed in Criminal Misc. Application No. 4059/1995 in exercise of power u/s 2(c) read with Sections 11 and 12 of Contempt of Courts Act, 1971 and the petitioner has already undergone simple imprisonment and paid up fine. The above judgment of the High court is final as on date since the appeal against the same came to be rejected by the Apex Court. At the same time there is no challenge to regulation 68 of the Service Regulations, 1979 on the ground that it is ultra- vires to Article 14 of the Constitution of India as it does not provide any opportunity of hearing or even appeal against the order of discharge.

8.2. If, "Service Regulations, 1979" are perused namely Regulation 67 is pertaining to kind of penalties to be imposed on any officer for an act of misconduct or for any other good and sufficient reason, which include minor penalties and major penalties. So far as Regulation 68 is concerned, it is divided into 7 clauses and each clause include various sub-clauses by which procedure is laid down for initiating departmental inquiry including levelling the charge, defence to be submitted by the delinquent officer, examination of documentary and oral evidence and other requirement to be followed by both the delinquent and the disciplinary authority.

8.3. Section 70 is a regulation which provide for provisions of an appeal against the order passed by the disciplinary authority of imposing any of the penalties under Regulation 67 or against the order of suspension as referred in Regulation 69. Thus, there is no provision of appeal against the order passed under Regulation 68, which is distinct and sui- generis. The close perusal of the Clause 7 Sub Clause (i) and (ii) reveal that power can be exercised under Clause 7(i) of Regulation 68 by the appointing authority without giving any notice whatsoever to the person/officer of the Bank convicted by the Criminal Court of an offence involving moral turpitude. The said Clause is non obstante and begins with notwithstanding anything contained in sub-regulations (2), (3) and (4) of the Regulations 68. Therefore, no procedure needs to be followed under Regulation 68 (2), (3) and (4), which pertains to disciplinary proceedings in case of imposing major penalties as envisaged under clause (e) (f) (g) and (h) of Regulation 67. At the same time sub-clause (ii) of clause 7 of Regulation 68 begins with the sentence namely without prejudice what is stated in Clause (i) above and notwithstanding anything contained in sub-regulation (2), (3) and (4), the disciplinary authority or the appointing authority may impose any of the penalties specified in regulation 67 in case if the officer is convicted by a criminal charge or on the strength of facts or conclusion arrived at by judicial trial and in the provisio to the above clause (ii), it is clearly mentioned that such an employee to be given an opportunity for making representation on the penalty proposed to be imposed before any order is made.

8.4. Therefore, sub-clause (i) and (ii) both are distinct and language of the above clauses is very clear and the draftsman of the regulation has thought it fit that different types of circumstances may exist for which authority is invested with the powers, where principle of natural justice may not have to be followed. That sub-clause (i) of Clause 7 of Regulation 68 is pertaining to conviction of an officer by a criminal court of an offence involving moral turpitude which is absent in clause (ii) of the above regulation and it indicates only conviction of a criminal charge or strength of facts or conclusion of a judicial trial and discretion is given to the disciplinary authority to impose any of the penalties as enumerated in Regulation 67 and even opportunity to make representation also against the proposed penalty. Therefore, question of providing opportunity of hearing while exercising power under sub-clause (i) of Clause 7 of Regulation 68 is not envisaged at all when requirement of observing principle of natural justice is dispensed with.

9. As laid down by the Apex Court in various cases particularly as discussed in the case of Ashok Kumar Sonkar Vs. Union of India (UOI) and Others, that exclusion or inapplicability of principles of natural justice can be considered by the Court in a given case when prejudice is shown or otherwise. The application of principles of natural justice is not necessary were it would be a futile exercise and a Court of law does not insist on compliance with useless formality. It will not issue any such direction where the result would remain the same, in view of the fact situation prevalent or in terms of legal consequences.

In the present case, moral turpitude was already established and in existence when the petitioner was punished under the Contempt of Court Act and by affording opportunity which was riot envisaged under the Rule, no fruitful purpose would have been served. Therefore, the contention about following procedure as envisaged and violation of principles of natural justice cannot be accepted, particularly, when Regulation 68(7)(i) specifically excluded applicability of hearing the petitioner.

10. Thus, only question remains to be concluded is whether in the facts of the present case, the conduct of the petitioner of undergoing simple imprisonment and paying fine pursuant to the judgment of the High court in the contempt proceedings in exercise of power under the Contempt of Courts Act, 1971 can be said to be a conviction by a criminal court of an offence involving moral turpitude. To test the above proposition, Article 215 of the Constitution of India is perused, it is clear that the High Court is a court of record and is empowered to take suitable action in case of breach of its order. Even otherwise also the High Court has an ample power under Code of Criminal Procedure, 1973, including inherent power to take suitable action and even enhancing the punishment imposed by the trial court and, thus High Court is a competent Court and judgment passed in contempt proceedings against the petitioner convicting for an offence u/s 2(c) of the Contempts of Courts Act is also a disgraceful behaviour against good morals and being unethical involves and act of moral turpitude. It is

categorically held by this Court that the petitioner herein had shown disgraceful conduct and utter disregard to the rule of law and, therefore, ingredients of Section 2(c) of the Contempt of Courts Act, 1971 were attracted and, the petitioner came to be punished for criminal contempt. Thus, offence of moral turpitude need not always be an offence under Indian Penal Code, it may be simply an offence of moral turpitude. The petitioner has misbehaved in a manner which can be said to be opposed to good morals and unethical and, therefore, following observations of the Supreme Court in case reported in *In The Matter of P. An Advocate*, in para 7 are relevant, which define expression moral turpitude as under:

"7. It is true that mere negligence or error of judgment on the part of the Advocate would not amount to professional misconduct. Error of judgment cannot be completely eliminated in all human affairs and mere negligence may not necessarily show that the Advocate who was guilty of it can be charged with misconduct, vide *In the Matter of Mr. B. Minuswami Naidu Vs. A., B.L., High Court Vakil*, and *In Re: Prem Narain, Advocate*, . But different considerations arise where the negligence of the Advocate is gross. It may be that before condemning an Advocate for misconduct, courts are inclined to examine the question as to whether such gross negligence involves moral turpitude or delinquency. In dealing with this aspect of the matter, however, it is of utmost importance to remember that the expression "moral turpitude or delinquency" is not to receive a narrow construction. Wherever conduct proved against an Advocate is contrary to honesty, or opposed to good morals, or is unethical, it may be safely held that it involves moral turpitude. A willful and callous disregard for the interests of the client may, in a proper case, be characterized as conduct unbefitting an Advocate. In dealing with matters of professional propriety, we cannot ignore the fact that the profession of law is an honourable profession and it occupies a place of pride in the liberal professions of the country. Any conduct which makes a person unworthy to belong to the noble fraternity of lawyers or makes an advocate unfit to be entrusted with the responsible task of looking after the interests of the litigant, must be regarded as conduct involving moral turpitude. The Advocate son-record like the other members of the Bar are Officers of the Court and the purity of the administration of justice depends as much on the integrity of the Judges as on the honesty of the Bar. That is why dealing with the question as to whether an Advocate has rendered himself unfit to belong to the brotherhood at the Bar, the expression "moral turpitude or delinquency" is not to be construed in an unduly narrow and restricted sense".

10.1. Another decision in the case of *Captain Dushyant Somal v. Governor, Reserve Bank of India, Bombay and Anr.* reported in 1991 LAB.I.C.2487, learned Judge of Allahabad High Court in a case where the petitioner-the employee was held guilty of unauthorisedly removing his son from custody of his wife and failed to produce child despite order passed by High Court and convicted in committing civil contempt was considered to be "moral turpitude" within the meaning of Regulation 46(3) and in paragraph 17 and 18 which are reproduced herein as

under after discussing other decision in detail to Regulation 46(3) and 47 of the Staff Regulations:

"17. "Morality is something altogether artificial and arbitrary" (vide the Mother Vol.8 page 143) and its notion may even vary from person to person, place to place and time to time but that provides not justification to at least public servant to flout the authority of law and show disrespect to constitutional institution viz., the Judiciary in utter disregard to the imperatives of the fundamental duties enshrined in clauses (e) and (j) of Article 51-A of the Constitution. In a society overridden and overburdened by right-consciousness, it is high time that the people be made conscious by their fundamental duties which in my opinion are akin to moral duties. A deliberate act of commission or omission done in derogation of the fundamental duties, at least by a public servant, would certainly tantamount to "gross moral turpitude" for in my opinion a deliberate failure on the part of a public servant to perform a duty constitutionally enjoined upon him is something which is bound to reflect his morals and it should be viewed with all seriousness as otherwise the insertion of the fundamental duties in the constitution by the constitution Forty-Second Amendment Act 1976 would not achieve its laudable objects. "The reign of law is in the mind and will of god" said Dr. Radhakrishnan in his treatise "the Bhagwat Gita" and in that sense the petitioner was not only legally bound but it was his moral duty and obligation to have restored his son to the lawful custody of the mother in respectful obedience of the High Courts" order passed in this regard after hearing the petitioner. The petitioners" deliberately failed to perform his legal, moral and constitutional duty and therefore, such an act of commission or omission of the petitioner certainly involved "Gross moral turpitude" within the meaning of Regulation 46(3) of the Staff Regulations. In view of this the opinion formed by the Punishing authority in exercise of its discretion under Regulation 46(3) is neither illegal nor improper warranting interference under Article 226 of the Constitution. 18. It is established from the judicial record that the petitioner was held guilty of unauthorisedly and forcibly removing his son from the lawful custody of his wife and he was held guilty for contempt of court in that he had failed to produce the child even after an order was passed in that regard by the High Court. The offence of contempt of court in the instant case did involve moral turpitude and in view of the above discussion it was certainly a case of gross moral turpitude." Therefore, above proposition on moral turpitude propounded by the Apex Court in the matter of Mr. "P" (supra) and by Allahabad High Court in Captain Dushyant Somal (supra) the conviction of the petitioner u/s 2(c) of the Contempt of Court Act by the High Court is a case of moral turpitude and fall within Regulation 68 (7)(i) of the S.B.S. (Officers") Service Regulations, 1979.

10.2. In view of the above, when the authority while discharging the petitioner from service has considered the aspect of moral turpitude as under:

"It is evident from the judgment of the High Court that Shri Patel displayed utter disregard for the dignity and decorum of the judiciary. On the contrary, by

hurling baseless allegations, against the judge, he showed scant respect for the court. His action of causing lowering of the authority of the judge in the eyes of all concerned is deplorable and not acceptable to a set standard of behaviour. His attempt to achieve the goal of getting reversed the judgment of civil judge, Malia by adopting irregular and coercive methods to get undue favours under pressure is highly condemnable and it can be considered as an act involving moral turpitude since his actions have disclosed vileness of character. Such persons whose actions are opposed to good morals and unethical can no longer be continued in the Bank's service. The very presence of such an individual who has no respect for the set rules and takes the authority for a ride, is an alarming factor and responsible for continuous botheration and worry for the authority under which he works. Not only this, his presence in the bank will give danger signals to his colleagues who will not be able to discharge their duties in a normal manner under a lurking fear of being involved/victimised in a scandle. Further, Shri Patel remained unauthorised absent and served imprisonment sentence. But, he failed to report in time these developments. Under the circumstances, I hereby decide to discharge him from Bank's service. No appeal lies against this order in terms of clause 68 (7) (i) (ii) of the S.B.S. (Officers") Service Regulations, 1979."

... it cannot be said that the authority has not considered relevant aspects of moral turpitude and there are no findings in this regard. The impugned order is not devoid of any reasonings and it is not arbitrary or unreasonable or violative of Article 14 of the Constitution of India.

11. The case relied on by Shri Supehia has no applicability in as much as in the facts of the present case, it is not a question of any pendency of criminal proceedings or contempt proceedings but the petitioner has undergone punishment in view of his attempt to challenge the verdict of this Court before the Apex Court failed. The decisions relied on by Shri Vakil right from In The Matter of P. An Advocate, defines moral turpitude reproduced and the decision of Punjab and Haryana High Court reported in 1996 LAB I.C. 2429, clearly lays down that when the provisions of Section 10 of the Banking Regulation Act, 1949 is applicable, no hearing is to be afforded to such an employee. Though, another decision in case of Shiam Kumar Moudgil and etc. v. State Bank of India and Ors. reported in 1990 LIC 1469 where provisions of Sub section (1) of Section 10 of the Act were made applicable, in that case moral turpitude accrued due to the punishment awarded u/s 120-B, 420 and 114 of the Penal Code. It is further held that Section 10 of the Banking Regulation Act, 1949 is applicable to the State Bank of India. While dealing with Article 311 of the Constitution of India, the Court referred to the earlier decisions of the Apex Court and found that the above Article 311 of the Constitution of India is not applicable to a bank employee.

12. Thus, when there is no challenge to Clause 68 or even submissions that provisions of Sub Section (1) of Section 10 of the Banking Regulation Act, 1949,

do not apply to the case of the petitioner, no further exercise is necessary at this stage, in view of the fact that punishment awarded pursuant to the outcome of the contempt proceedings against the petitioner and the sentence undergone by him is not disputed. It cannot be gainsaid that petitioner being a citizen and also serving as responsible bank officer was found guilty of showing utter disregard to rule of law, a basic tenet to which everyone is committed to irrespective of any position. The question arises only to the extent that whether the above act of the petitioner in the capacity of individual can have any bearing on his performance or discharge of the duties as a bank officer. The object of Sub Section (1) of Section 10 of Banking Regulation Act, 1949 and Clause 68 of the S.B.S. (Officers'') Service Regulations, 1979, is one and the same to see that banking company dealing with public at large in number of commercial transactions need an employee with immaculate character, unimpeachable integrity and believing in the regime of rule of law. An employee like the petitioner who is punished by the High Court for criminal contempt for the reasons stated in the order passed in contempt proceedings cannot be continued for a while where an employee is duty bound to discharge his duties by adhering to certain rules and regulations for better administration and management of the banking company. A person who is found guilty by the highest court of the State on contempt of court proceedings against which an appeal before the Apex Court has failed cannot be considered to be an employee worth keeping in the banking job, which involves a relationship of mutual trust and faith and discharge of duty has direct nexus.

13. That the contention about disciplinary action ought to have been followed in view of another subsidiary charge of absenteeism, the above contention is devoid of merit in as much as it was consequential to the action of respondent authority of exercising power under Regulation 68 of the Service Regulations Act, and, therefore, it was not mandatory for the authority to follow the procedure laid down under Regulation 67 of the said regulation.

14. For the reasons discussed here-in-above the contention with regard to act of the petitioner has no relevancy with the performance of the duty also fails.

15. Considering the above reasonings and in absence of any challenge to Regulation 68 of the S.B.S. (Officers'') Service Regulations, 1979 and Sub Section (1) of Section 10 of the Banking Regulation Act, 1949, the order impugned in the context of the factual background of the case cannot be said to be in any manner arbitrary or unreasonable or violative of principles of audi alteram partem and violative of Article 14 of the Constitution of India, which require any interference in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India. The petition fails and is hereby rejected. Rule is discharged accordingly with no order as to costs.