

(2010) 01 KL CK 0004
In the High Court Of Kerala
Case No : W.A. No. 97 of 2010

Punjab National Bank and Others

APPELLANT

Vs

Prabhakaran, K.

RESPONDENT

Date of Decision : 25-01-2010

Acts Referred:

Citation : (2010) 1 KLJ 529 : (2011) 1 LLJ 356

Hon'ble Judges : P.N.Ravindran, J;K. Balakrishnan Nair, J

Bench : Division Bench

Advocate : M.C. Sen and Shahana Karthikeyan, for the Appellant; V. Premchand, for the Respondent

Final Decision : Dismissed

Judgement

K. Balakrishnan Nair, J.—The Respondents in the writ petition are the Appellants. The writ Petitioner is the Respondent herein.

2. The brief facts of the case are the following: The Respondent was a Senior Manager of the Nedungadi Bank Limited (for short, "the Bank"), which was a scheduled Bank. The Bank was later amalgamated with the first Appellant, the Punjab National Bank. The Respondent entered the service of the Bank as a Clerk, on 8-4-1964. While working as Senior Manager, he was dismissed from service, by Ext. P-16 order of the disciplinary authority, dated 9-8-2002. Ext. P-15 was the enquiry report, submitted by the Enquiry Officer, finding him guilty of the charges levelled against him. The Respondent filed an appeal, Ext. P-17, before the Appellate Authority of the Bank, on 16-9-2002, challenging Ext. P-16. The said appeal was dismissed, by Ext. P-18 order, dated 27-10-2002. In the meantime, the Bank was amalgamated with the first Appellant, on 1-2-2003. The Respondent filed a petition before the first Appellant on 20-5-2003. Even before amalgamation, the Respondent preferred a petition before the first Appellant on 22-11-2002. The said Appellant treated them as review petitions, considered his contentions on merits, and dismissed them, by Ext. P-19 order, dated 10-11-2003. The writ petition was filed, challenging Exts. P-15, P-16, P-18 and

P-19.

3. The Respondent/writ Petitioner attacked the impugned orders, mainly, contending that the enquiry held against him was vitiated by violation of the principles of natural justice. The Appellants/Respondents resisted the writ petition, pointing out that, since the Respondent was already dismissed from the service of the Bank, the writ petition was not maintainable. Secondly, it was contended that the enquiry was held in accordance with the principles of natural justice. The Respondent deliberately stayed away from attending the enquiry and therefore, the Enquiry Officer held the enquiry proceedings *ex parte* and submitted the report, finding him guilty, it was submitted.

4. The learned Single Judge, after hearing both sides, overruled the preliminary objection raised by the Appellants, regarding the maintainability of the writ petition. It was held that the enquiry was held in violation of the principles of natural justice and therefore, the Respondent was entitled to be reinstated in service. Since, in the meantime, the Respondent had already crossed the age of superannuation, the learned Judge held that the writ Petitioner should be given all service benefits. But, the payment of back wages was restricted to 50%. The Bank's request for permitting it to hold a *de novo* enquiry into the charges, was rejected by the learned Single Judge, taking the view that since the delinquent has already retired, it is not just or proper to allow the conduct of an enquiry, at this distance of time.

5. Feeling aggrieved by the said judgment, the Appellants have preferred this Writ Appeal. The learned Counsel for the Appellants submitted that, the writ petition was not maintainable, as the original and appellate orders were passed, while the Respondent was an employee under the Bank. Secondly, it was pointed out that the enquiry was held in accordance with the principles of natural justice and the Respondent was deliberately staying away from the enquiry, raising false pleas regarding his illness. Finally, it was pointed out that at any rate, the Bank should be given liberty to hold a fresh enquiry into the charges leveled against the Respondent and take action in accordance with law.

6. As per the amalgamation order, we notice that all the rights and liabilities of the Bank stood transferred and vested in the first Appellant. Therefore, the Respondent raised the illegality of the original order dismissing him and the appellate order confirming the same, before the first Appellant. The first Appellant, rightly entertained his petitions, treated them as review petitions, and dealt with the matter on merits. If there is any illegality in the original and appellate orders, the first Appellant is answerable for the same. The Appellants cannot take shelter behind the plea that the disciplinary proceedings were completed by the Nedungadi Bank. Even assuming that the proceedings are completed by the Nedungadi Bank, the Respondent can pursue his remedies before the first Appellant and the first Appellant will be liable for redressing the grievance, if any, of the Respondent. If the first Appellant fails to do that, the Respondent can pursue his grievance before this Court also. So, the preliminary

objection raised by the Appellants/Respondents was rightly repelled by the learned Single Judge. When the Bank of Cochin, a private Bank in Kerala, was amalgamated with the State Bank of India, the erstwhile employees of the Bank of Cochin, filed several writ petitions before this Court, which were held to be maintainable, even though in many cases, the impugned actions were completed before the amalgamation of the two Banks took place. So, the precedents are also against the Appellants.

7. The next point to be considered is, whether there was violation of the principles of natural justice. The Enquiry Officer started the enquiry on 15-6-2002. Since the Respondent was laid up, he made a request for adjournment of the enquiry and the enquiry was adjourned to 25-6-2002. Owing to serious illness, the Respondent submitted an application in advance on 20-6-2002, requesting to adjourn the enquiry for 30 days. The said request was accompanied by a Medical Certificate dated 18-6-2002. The Respondent prayed for adjournment of the enquiry upto 17-7-2002. While so, the disciplinary authority served Ext. P-7 communication dated 25-6-2002, on him, directing him to appear before Dr. T.K. Chandrasekharan, at his residence, on 1-7-2002, at 6.30 p.m. By that communication, he was also informed that unless he applied for adjournment of the enquiry, along with a Medical Certificate issued by that Doctor, the enquiry would not be adjourned. According to the Respondent, he received Ext. P-7 only on 2-7-2002. On the same day, he met Dr. T.K. Chandrasekharan, who examined him and directed him to undergo certain laboratory tests on 3-7-2002. The Respondent informed this matter to the Enquiry Officer on 3-7-2002. The same is evident from Ext. P-16 communication of the disciplinary authority. But, the request of the Respondent for adjournment of the enquiry, which was being held on 3-7-2002 and his earlier application for adjournment of the enquiry upto 17-7-2002, were rejected. The Respondent was set ex parte and the enquiry was completed on 3-7-2002 itself. Here, we notice that it was the disciplinary authority, who decided that the Respondent would not be granted an adjournment, unless he obtained a Medical Certificate from Dr. T.K. Chandrasekharan. That is evident from Ext. P-7. We think, it is for the Enquiry Officer to consider the request of the delinquent employee for adjournment and decide whether adjournment should be granted. From Ext. P-7, it is seen that the decision was being taken by the disciplinary authority and under his dictation, the Enquiry Officer was acting. The above facts, disclosed by Ext. P-7 itself, are sufficient to hold that the enquiry was vitiated. Further, the Respondent met the Doctor concerned and was undergoing the laboratory tests, prescribed by that Doctor, on 3-7-2002. Only after the investigation by the Doctor was complete, the Respondent could have obtained a certificate from the said Doctor, regarding his health. But, we notice that the said Doctor had issued a certificate to the Enquiry Authority, directly on 2-7-2002 itself, a copy of which is produced as Ext. R-1(C), certifying that the Respondent was medically fit to attend the enquiry. The procedure followed by the Enquiry Authority in obtaining the Medical Certificate, on 2-7-2002, directly from the Doctor, before the

prescribed investigations were over, itself is quite irregular and improper. Further, a perusal of Ext. R-1(C) would show that the blood pressure of the Respondent was 120/200 mm. Hg. In Ext. R-1(C), it is stated as follows:

His present B.P. is 200/120 mm. Hg. I have advised him for blood examination and E.G.G. The above ailments do not preclude him from attending an enquiry at Calicut. He is fit to report for an enquiry at Calicut on 3-7-2002.

8. Normally, the Courts are to go by the opinion of the experts. But, it is for the Courts to decide if any dispute arises and every view pressed into service as expert opinion, need not be swallowed by the Courts. The Court is held to be the expert of all experts. If a patient's blood pressure is recorded as 200/120 mm. Hg., we think, no Doctor, in his senses, will advise that the patient can undertake the travel from Kannur to Calicut, a distance of more than 80 Kms. and undergo the stress and strain of a domestic enquiry. As mentioned earlier, this opinion was directly given to the Enquiry Officer by the Doctor, even without completing the laboratory investigations prescribed by him. We think, having regard to the above facts, the Respondent was justified in seeking an adjournment of the enquiry, till his blood pressure came to normal range. At any rate, the Enquiry Officer should have waited, till the investigations suggested by the Doctor were over and the Doctor issued a certificate to the Respondent. So, we are of the view that the Enquiry Officer, under the dictation of the disciplinary authority, rushed with the enquiry, and completed it on 3-7-2002, in the absence of the Respondent. Therefore, we fully endorse the view taken by the learned Single Judge that the enquiry was held in violation of the principles of natural justice.

9. Finally, what remains to be considered is, whether the Bank should be given a chance to hold a fresh enquiry into the charges. We notice that the subject-matter of the charges related to the incidents, which took place between 1998 and 2001. Now, we are in 2010.9 to 12 years have elapsed, after those incidents. The Respondent had attained the age of superannuation, more than six years back. So, if we permit the holding of a fresh enquiry, we are sure, the same can never be fair. The memory of the Respondent and his witnesses might have faded and the witnesses concerning the incident may have disappeared also. In this context, we may refer to a decision of this Court in *A.P. Augustine v. Superintendent of Post Offices, Alwaye* 1984 KLT 226, wherein Kochu Thommen, J. (as His Lordship then was) held as follows:

While it may be still open to the Respondents to conduct an enquiry against the Petitioner in respect of the alleged misconduct, I should have thought that any such belated enquiry is unlikely to be fair, for at this distance of time it would be almost impossible for the employee to defend himself effectively by adducing evidence in regard to matters alleged to have occurred over two and a half years ago, and in respect of which he has not yet been informed of the charges and the nature of the evidence relied on against him. His own witnesses may have disappeared or their memory faded. Whatever evidence that he could have adduced in his favour, had the enquiry commenced promptly, would in all

probability have by now vanished. No fair and effective enquiry can be conducted unless it commences within a reasonable time after the incident. To call upon an employee to defend himself at this distance of time is probably to put him at considerable disadvantage and thus deny him the benefits of natural justice.

We, respectfully endorse the above view taken by the learned Judge regarding the effect of delay in holding the enquiry.

10. In the result, the request of the Appellants, to permit holding of a fresh enquiry, is rejected. We notice that the learned Single Judge has passed a just and fair order, taking into account the interests of both sides, by granting only 50% of the backwages, to the Respondent. We find no ground to interfere with the judgment under appeal. Accordingly, the Writ Appeal is dismissed.