(2002) 07 DEL CK 0023

In the Delhi High Court

Case No : Letters Patent Appeal No. 158 of 1999

Punjab National Bank APPELLANT

Vs

S.K. Poddar RESPONDENT

Date of Decision : 18-07-2002

Acts Referred:

Banking Regulation Act, 1949 — Section 45, 45(7)
Constitution of India, 1950 — Article 12, 226
Delhi High Court Act, 1966 — Section 10

Citation : (2003) 1 LLJ 757

Hon'ble Judges : Madan B. Lokur, J;A.D. Singh, J

Bench : Division Bench

Advocate : V.R. Reddy, Meera Mathur and R.S. Mathur, for the Appellant; Narottam Vyas and S.N. Tewari, for the Respondent

Judgement

Anil Dev Singh, J.—This Letters Patent Appeal field under Clause 10 of the Letters Patent read with Section 10 of the Delhi High Court Act, 1966, is directed against the order of the learned Single Judge dated January 4, 1999 passed in CWP No. 2864/99. By that order the learned Single Judge allowed the writ petition of the respondent and quashed the order dated December 23, 1985 of the Hindustan Commercial Bank dismissing the respondent from its service. The facts giving rise to the appeal are as follows:-

2. The respondent joined the Hindustan Commercial Bank at Calcutta in the year 1960 as a clerk. In course of time he acquired the position of a Manger and was posted in the Maya Puri Branch of the Bank in November 1980. he remained in that branch till July 1983 when he was transferred to Agra as Branch Manager of the Bank. On March 8, 1985, a charge sheet was issued to the respondent inter alia, on the ground that during his tenure as Manager at Maya Puri, New Delhi, and Agra branches of the Bank, he made unauthorised advances. The respondent was advised to explain his conduct within ten days of the receipt of the charge sheet. After the issue of the charge sheet the respondent was placed under suspension by the order of the Assistant General Manager of the bank dated

March, 18, 1985. On April 2, 1985, another charge sheet was served on the respondent. On April 10, 1985, the respondent addressed his Explanation to the Assistant General Manager of the Bank with regard to the first charge sheet dated March 18, 1985. With regard to the second charge sheet dated April 2, 1985 he submitted his Explanation on April 21, 1985. It appears that the concerned authority was not satisfied with the Explanations tendered by the respondent and consequently on December 23, 1985 the respondent was held guilty of gross negligence in discharge of his duties and concealment of facts. Consequently, the respondent was dismissed from the service of the Hindustan Commercial Bank Limited. At this stage it will be apposite to set out the aforesaid order of dismissal dated December 23, 1985:-

"During your tenure as Manager, Mayapuri, New Delhi, and Agra Branch, you made unauthorised advance to the extent of Rs. 6.26 Lacs. You were placed under suspension w.e.f 18.3.1985 in view of the various acts of misconduct amounting to gross negligence in the discharge of your duties which were detrimental to the interest of the Bank. The reply to the Charge-sheet dated 8-3-85 & 2-4-85 received rom you was considered and not found satisfactory. You were also afforded sufficient time to get the unauthorised advances adjusted but you could not get the accounts adjusted. The total amount which has become difficult of recovery due to your acts of omission and commission is as under:-

AGRA BRANCH - Rs. 5.36 Lacs MAYAPUR, N. DELHI BRANCH - Rs. 2.13" ---------- Rs. 6.49 Lacs After carefully considering all the material on record, it has been found that you are guilty of gross negligence in the discharge of you duties and concealment of facts from RO/CO. It has, Therefore, been decided to dismiss you from the services of the Bank with immediate effect. Accordingly, you are hereby dismissed with immediate effect.

This issue with the approval of the Competent Authority."

3. On December 18, 1986, the Hindustan Commercial Bank Limited was amalgamated with the Punjab National Bank by means of a notification issued by the Central Government u/s 45 of the Banking Regulations Act, 1949. After the amalgamation, in December 1988 the respondent filed a writ petition assailing the aforesaid order of dismissal. In the writ petition it was inter alias claimed by the respondent that on February 6, 1986 an appeal against the impugned order of his dismissal from service was preferred by him to the appellate authority followed by a number of reminders. It was also asserted in the writ petition that the dismissal of the respondent was vocative of the principle of natural justice.

4. The learned Single Judge by virtue of the impugned order quashed the dismissal of the respondent from the service of the Bank of the ground that the same was contrary tot he principles of natural justice. The learned single Judge was also of the opinion that there was no material on record to sustain the conclusion reached by the Bank that the respondent had made unauthorised advances to the extent of Rs. 6.49 lakhs to the borrowers. Since the respondent

had attained the age of superannuation in July 1995 the learned Single Judge did not order reinstatement of the respondent in service but instead held him to be entitled to all the consequential benefits as a result of quashing of the order of his dismissal.

5. It may be mentioned that before the learned Single Judge the appellant had submitted to the effect that no writ would lie for knocking down or demolishing the impugned order of dismissal inasmuch as the Hindustan Commercial Bank Ltd. was not as instrumentality of the State within the meaning of Article 12 of the Constitution of India. In support of its submission, the appellant relied upon the decision of the Supreme Court in Arun Madan Vs . Oriental Bank of Commerce . Besides, the appellant had also relied upon the decision of a Division Bench of the Andhra Pradesh High Court in U. Pundarikam v. The Chairman, Hindustan Commercial Bank Ltd., Writ Petition No. 598 of 1987, dated December 21, 1989, to which we will revert to later in the judgment. At this stage it will be sufficient to indicate that the decision was not interfered by the Supreme Court in SLP preferred against it. The learned Single Judge dealing with the objection of the appellant was of the view that the ratio of the aforesaid decisions was not applicable to the facts of the present case. The learned Single Judge noted that at the time of the amalgamation of the Hindustan Commercial Bank with the Punjab National Bank an appeal of the respondent was pending with the former and the latter ought to have taken over the task of disposing of the appeal. The learned Single Judge, however, did not direct the Punjab National Bank to dispose of the appeal, but instead set aside the order of dismissal of the respondent on the ground that the same was contrary to the principles of natural justice. In this regard the learned Single Judge held as follows:-

"14. Relating to the validity of the order impugned, a bare perusal of the order would show that it is contrary to the well established principle. No inquiry was conducted. No finding is given. There is absolutely no material on record to sustain the conclusion reached by the Bank. After hearing the learned counsel for the parties I thought that I should direct the Punjab National Bank to dispose of the appeal preferred by the Petitioner but after a long lapse of time it will be futile exercise. Further the impugned order passed by the Hindustan Commercial Bank Ltd. cannot be sustained and the Punjab National Bank had not taken any steps to dispose of the appeal. I am of the view only course open in law to set aside the order impugned in the writ petition."

Not being satisfied with the order passed by the learned Single Judge, the appellant Punjab National Bank has filed the instant appeal.

6. We have heard the learned counsel for the parties at length. The first question which arises for our consideration and determination is whether the writ petition was competent against the Hindustan Commercial Bank. It is not necessary to debate the question in detail inasmuch as the Supreme Court in Arun Madan''s case (supra) held that the writ petition under Article 226 of the Constitution was not maintainable against the Oriental Bank of Commerce since the order of

termination of its employee Arun Madan was passed before its nationalisation. In this regard, the Supreme Court observed as follows:-

"The order of termination of the service of the appellant was passed before the respondent-Bank was nationalised. The High Court was Therefore right in holding that a writ petition under Article 226 of the Constitution was not maintainable against an order made when the Bank was a public limited company. Therefore, the appeal is dismissed. No costs."

7. Again in U. Pundarikam v. The Chairman, Hindustan Commercial Bank Ltd., SLP No. 6620/90, (page 155 of the paper book), the Supreme Court had occasion to consider the question whether a writ petition would lie against the Hindustan Commercial Bank. Before referring to the view of the Supreme Court it will be necessary to mention that Pundarikam, who was working as a Manager in the Hyderabad Branch of the Hindustan Commercial Bank Ltd. was change sheeted for unauthorised advances allowed by him to the borrowers. His services were terminated by the Bank. Pundarikam challenged the order of his termination by way of writ petition before a learned Single Judge of the Andhra Pradesh High Court. On November 6, 1997 the writ petition was allowed by the learned Single Judge. Thereupon the Hindustan Commercial Bank ltd. filed an appeal which was accepted by the Division Bench of the Andhra Pradesh High Court. The Division Bench by a detailed order came to the conclusion that the Hindustan Commercial Bank was not a State within the meaning of Article 12 of the Constitution. In coming to this conclusion it noted the six tests laid down by the Constitution Bench of the Supreme Court in Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, , for determining as to when a corporation could be said to be an instrumentality or an agency of the State. Applying those tests, the Division held as follows:-

"Applying those tests to the facts of this case, we find that no financial assistance has been extended either by the Central Government or any State Government or the Reserve Bank to the Bank. The Bank cannot be said to be enjoying any monopoly status conferred by the Govt.

On a perusal of the provisions of the Banking Regulation Act 1949, we are unable to hold that the control exercised by the Reserve Bank amounts to deep and pervasive State control. We are also unable to hold that the functions of the Bank are in the nature of Governmental functions."

Consequently, the Division Bench allowed the appeal and dismissed the writ petition. Pundarikam being aggrieved by the order of the Division Bench of the Andhra Pradesh High Court approached the Supreme Court by means of a Special Leave Petition. The Supreme Court on September 6, 1995 dismissed the Special Leave Petition. Keeping in view the aforesaid decisions, we are of the opinion that had the Hindustan Commercial Bank Ltd. survived and was in existence the writ petition against it would not have been maintainable.

8. But that does not conclude the matter. In the writ petition it was specifically

pleaded that the respondent had preferred an appeal against the order of his dismissal to the appellate authority. The fact was not denied in the counter affidavit. The learned Single Judge also took note of the fact that the respondent had filed an appeal against the order of his dismissal which was pending consideration of the Hindustan Commercial Bank Ltd. at the time of its merger with the Punjab National Bank. The question is whether or not the Punjab National Bank, which, it is not disputed, is a State within the meaning of Article 12 of the Constitution and is amenable to the writ jurisdiction, was bound to dispose of the appeal of the respondent after the merger.

9. Mr. Reddy, learned senior counsel appearing for the appellant, submitted that the respondent on is dismissal ceased to be an employee of the Hindustan Commercial Bank and as such after merger of the Hindustan Commercial Bank Ltd. with the Punjab National Bank he could not be deemed to be in the service Punjab National Bank. According to the learned senior counsel, since the respondent was not an employee of the Punjab National Bank there was no legal relationship between the Punjab National Bank and the respondent. Besides, the Punjab National Bank had no legal obligation under the Scheme of Amalgamation to decide the appeal of the respondent. Our attention was drawn to paras 2 and 10 of the Scheme of Amalgamation.

10. On the other hand, the learned counsel appearing or the respondent vehemently contended that it was the responsibility of the Punjab National Bank under the Scheme for taking a decision on the appeal of the respondent which was pending consideration with the Hindustan Commercial Bank on the date of the notification sanctioning amalgamation of the Hindustan Commercial Bank with the Punjab National Bank.

11. In order to appreciate the submissions of the learned counsel for the parties it will be necessary to refer to paras (2) and (10) of the Scheme of Amalgamation notified by the Central Government u/s 45 of the Banking Regulations Act, 1949. These paras, to the extent relevant, read as under:-

"(2) As from the date which the Central Government may specify for this purpose under Sub-section)(7) of Section 45 of the said Act (hereinafter referred to as the prescribed date) all rights, powers, claims, demands, interests, authorities, privileges, benefits, assets and properties of the transferor bank, movable and immovable, including premises subject to all incidents of tenure and to the rents and other sums of money and covenants reserved by or contained in the leases or accounts under which they are held, all office furniture, loose equipment, plant, apparatus and appliances books, papers, stocks of stationery, other stocks and stores, all investments in stocks, shares and securities, all bills receivable in hand and in transit, all cash in hand and on current or deposit account (including money at call or short notice) with banks, bullion, all book debts, mortgage debts and other debts with the benefit of securities, or any guarantee Therefore, all other, if any, property rights and assets benefit of all guarantees in connection with the business of the transferor bank shall, subject to the other provisions of this scheme, stand transferred to, and become the properties and assets of, the transferee bank; and as from the prescribed date all the liabilities, duties and obligations of the transferor bank shall be and shall become the liabilities, duties and obligations of the transferee bank to the extent and in the manner provided hereinafter.

xx xx xx"

If on the prescribed date any suit, appeal or other legal proceedings of whatever nature by or against the transferor bank is pending, the same shall not abate, or be discounted or be in any way prejudicially affected, but shall subject to the other provisions of this scheme, be prosecuted and enforced by or against the transferee bank.

xx xx xx"

"(10) All the employees of the transferor bank other than those specified in the schedule referred to in the succeeding paragraph shall continue in service and be deemed to have been appointed by the transferee bank at the same remuneration and on the same terms and conditions of service as were applicable to such employees immediately before the close of business on 24th May, 1986.

xx xx xx"

12. Para (2) is not only the vesting clause but something more than that. From the date specified by the Central Government, all rights powers, claims demands, interest, authorities, privileges, benefits, assets and properties of the Hindustan Commercial Bank, whether movable or immovable and both, stood transferred to and have become the properties and assets of the Punjab National Bank. At the same time, the Punjab National Bank from the prescribed date has inherited all liabilities, duties and obligations of the Hindustan Commercial Bank Ltd. to the extent and in the manner provided in the Scheme of Amalgamation. The aforesaid para further provides that in case on the prescribed date any suit, appeal or other legal proceedings of whatever nature, by or against the Hindustan Commercial were pending, the same shall not abate and shall not be ''discounted'' or be in any way prejudicially affected, but the same shall subject to the other provisions of the scheme be prosecuted and enforced by or against the transferee bank. As per para (10) of the Scheme, the services of all the employees of the Hindustan Commercial Bank who were in its employment on May 24, 1986 and other than those specified in the schedule referred to in para (11) of the Scheme have been continued and by a deeming fiction are taken to have been appointed by the Punjab National Bank on the same terms and conditions of service including remuneration as were applicable to such employees immediately before the close of business on the aforesaid date. Mr. Reddy, learned senior counsel, elaborating his argument submitted and pointed out that since the services of the respondent were terminated on December 23, 1985, obviously prior to the specified date, viz., May 24, 1986, the respondent

could not be deemed to have been an employee of the Punjab National Bank and, Therefore, the Punjab National Bank was under no legal obligation to decide the appeal of the respondent. The argument of Mr. Reddy is partially correct. While it is true that the respondent had ceased to be an employee of the Hindustan Commercial Bank prior to the aforesaid specified date and Therefore could not be treated as an employee of the Punjab National Bank, it is equally true that the Punjab National Bank lost sight of the fact that his appeal was pending with the Hindustan Commercial Bank on the date of amalgamation and after the amalgamation it became the duty, liability and obligation of the Punjab National Bank to decide his appeal. It cannot be disputed that in case Hindustan Commercial Bank Ltd. was not amalgamated with the Punjab National Bank the former would have been bound to dispose of the appeal of the respondent. This is so because under the Officers/Employees Discipline and Appeal Rules of the Hindustan Commercial Bank Ltd., effective from May 1, 1985, an order of termination was appealable under Rule 13 thereof. Since it was the duty, liability and obligation of Hindustan Commercial Bank to decide the apple of the respondent consequently under para (2) of the Scheme of Amalgamation it became the duty, liability and obligation of the Punjab National Bank to decide the appeal. Mr. Reddy wanted us to give a restricted interpretation to the following part of para (2) of the Scheme:

"...and as from the prescribed date all the liabilities, duties and obligations of the transferor bank shall be and shall become the liabilities, duties and obligations of the transferee bank to the extent and in the manner provided hereinafter."

According to Mr. Reddy, the liabilities, duties and obligations to which the aforesaid part of para (2) of the Scheme makes a reference pertain to the properties and assets of the Hindustan Commercial Bank and has nothing to do with any other liability, duty and obligation which the transferor bank had in respect of other matters including the appeals of the dismissed employees. It seems to us that the restrictive interpretation which Mr. Reddy wants us to place on the aforesaid provisions is not in consonance with the wide and explicit language and words employed in the aforesaid part of para 2 of the Scheme of Amalgamation. There is nothing to indicate that the aforesaid words of para (2) are hedged in by any limitations. Since the respondent had a right to file an appeal against the order of his dismissal and to secure a determination thereon, that right logically must be available to him even after the amalgamation. It will be doing violence to the language of para (2) in case it is held that such a right was lost after the amalgamation, and a reference to the liabilities, duties and obligations of the transferor bank was made only in the context of the assets of the Hindustan Commercial Bank.

13. The learned senior counsel for the appellants referred to a decision of the Division Bench of the Allahabad High Court in Civil Misc. Writ Petition No. 30073 of 1992, Suresh Chandra Gupta v. The Management, Punjab National Bank and the Management of Hindustan Commercial Bank Ltd, dated April 22, 1999, in

support of the proposition that the Punjab National Bank did not have any obligation or liability towards the respondents as he was not in the employment of the Hindustan Commercial Bank Ltd. on May 24, 1986. In this regard, the learned senior counsel invited our attention to the following observations of the Division Bench of the Allahabad High Court:-

"Before parting with the matter it must be said that the copy of the Notification or amalgamation of the two Banks has been field as Annexure-CA1 to the counter affidavit which does indicate that liability of the Punjab National Bank was extendable only to the employees who were in employment on 24.5.86. The petitioner''s termination order is 8.11.1983. Therefore, the liability of the Punjab National Bank did not extend to cover the case of the petitioner."

The above decision of the Allahabad High Court has no application to the case in hand. In that case the petitioner, who was Manager of the Hindustan Commercial Bank Ltd. at Madras, was charge sheeted on September 17, 1983. After his Explanation was taken his services were terminated. An appeal was filed by the petitioner before the Assistant Labour Commissioner, Madras, u/s 41(2) of the Tamil Nadu Shops and Establishment Act. The Assistant Labour Commissioner held that he had no jurisdiction to deal with the matter an consequently dismissed the appeal of the petitioner. After the appeal of the petitioner was turned down by the Assistant Labour he approached the Madras High Court in a writ petition. The learned Single Judge of the Madras High Court set said the order of the Assistant Labour Commissioner on the ground that he had the jurisdiction to deal with the matter. The Punjab National Bank filed an appeal before the Division Bench of the Madras high Court. The appeal was allowed by the Division Bench and ultimately the matter came before the Supreme Court by way of a Special Leave Petition. The Supreme Court while dismissing the SLP observed as follows:-

"After hearing learned counsel for the parties we do not find any error in the view taken by the Division Bench of the High Court of Madras warranting interference. The appeal is accordingly disposed of but there will be no order as to costs. This order, however, will be without any prejudice to the appellant''s right to pursue any other remedy available to him under the law."

After a lapse of more than two and a half years from the date of the dismissal of the Special Leave Petition, the petitioner field a writ petition before the Allahabad High Court challenging his order of termination from service. It was contended on behalf of the Punjab National Bank that the petitioner was not justified in challenging the order of termination passed by the Hindustan Commercial Bank Ltd. as the Hindustan commercial Bank Ltd. was not a ''State'' within the meaning of Article 12 of the Constitution. On the other hand, it was contended on behalf of the petitioner that the Hindustan Commercial Bank Ltd. having merged with the Punjab National Bank, a writ would lie against the Punjab National Bank since the order of termination was passed without holding any enquiry. The Allahabad High Court took the view that there was no averment in the writ petition that the order of termination was contrary to the terms of employment of the petitioner or the Hindustan Commercial Bank Ltd. in any manner flouted the regulation governing the employment. The Allahabad High Court also did not accept the argument of the petitioner based on violation of the principles of natural justice. Unlike the instant case, the petitioner therein had not preferred any appeal against his termination which may have been pending with the Hindustan Commercial Bank Ltd. at the time of its amalgamation with the Punjab National Bank. Thus, the Allahabad High Court had no occasion to consider the impact of pendency of an appeal, preferred by a dismissed employee, against the order of his termination by the Hindustan Commercial Bank Ltd., at the time of amalgamation of the Hindustan Commercial Bank Ltd. with the Punjab National Bank. Therefore, the issue in hand did not arise in that case and was not dealt with by the Allahabad High Court.

14. In view of the reasons indicated above, we have no hesitation in holding that the Punjab National Bank was bound to decide the appeal of the respondent which was preferred by him to the management of the Hindustan Commercial Bank Ltd. before the amalgamation and which had remained undecided till date. At the same time we are of the opinion that the learned Single Judge was not right in quashing or setting aside the order of dismissal passed by the Hindustan Commercial Bank Ltd. The learned Single Judge would have been right in case it had given a direction to the Punjab National Bank to consider and dispose of the appeal of the respondent. The question whether any illegality was attached to the order of dismissal dated December 23, 1985 passed by the Hindustan Commercial Bank Ltd. against the respondent ought to have been left to the Punjab National Bank for being considered and decided by it in appeal preferred by the respondent.

15. In the circumstances, Therefore, we allow the appeal and set aside the impugned order passed by the learned Single Judge. We also direct the Punjab National Bank to consider and decide the appeal of the respondent expeditiously. Accordingly, the appeal is disposed of.