
(2000) 11 AHC CK 0038
In the Allahabad High Court
Case No : Writ Petition No. 6233 of 1999 (S/S)

Rajendra Pal Singh

APPELLANT

Vs

U.P. Sahakari Gram Vikas Bank Ltd. and Others

RESPONDENT

Date of Decision : 17-11-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 1 AWC 546 : (2001) 1 UPLBEC 894

Hon'ble Judges : Bhanwar Singh, J

Bench : Single Bench

Advocate : S.S. Chauhan, D. K. Singh Chauhan and A.K. Katiyar, for the Appellant; N.N. Jaiswal, C.S.C. Advs., for the Respondent

Final Decision : Allowed

Judgement

Bhanwar Singh, J.—The petitioner has invoked this Court's jurisdiction under Article 226 of the Constitution of India. He has prayed for a writ in the nature of certiorari to quash the order dated 11.11.1999 whereby he was dismissed from service. Another writ in the nature of mandamus commanding the opposite parties to reinstate him with all arrears of his salary and other consequential benefits has also been sought for.

2. According to the factual matrix of the case, the petitioner was appointed as Accountant in the year 1969 in U. P. Sahakari Gram Vikas Bank Ltd., then known as U. P. Sahakari Bhumi Vikas Bank. He was promoted as Field Officer in the year 1973. Since the payscale of the Field Officer and the Accountant was one and the same, he was again placed in the cadre of Accountants in the year 1996 and since then he was continuously working on the said post. He looked after the work of the Field Officer as well. In the year 1994, he was served with a notice to explain regarding irregularities alleged to have been committed by him in getting loans sanctioned to four different agriculturists. The audit team raised an objection that while negotiating for the aforesaid loans, the petitioner had overlooked material points regarding genuineness of documentary evidence on

the basis of which loans were sanctioned. On being asked, the petitioner submitted his reply to the audit objection and the then Manager of the Bank made an enquiry and thereafter submitted his report to the Head Office. In his report, the Manager submitted that the petitioner was not responsible at all and no irregularity had been committed by him. In this way, the petitioner was exonerated but to his utter surprise, the Head Office appointed an enquiry officer 20.10.1994. A charge-sheet was served upon the petitioner who then examined the records and again submitted his reply. The petitioner, however, fell in a trap led by the enquiry officer who showed his inclination of mind that no charge was established and it was on his expression of his intention that the petitioner made an endorsement to the effect that he needed no opportunity of hearing. In the meantime, another enquiry officer was appointed following the transfer of former enquiry officer and proceeding on the reply of the petitioner, the second enquiry officer found him guilty of the charges levelled against him. As a matter of fact, the petitioner was not given any opportunity of cross-examining the witnesses or to adduce his own evidence by the enquiry officer. The enquiry officer did not observe the principles of natural justice as neither any date, time or place was fixed for enquiry nor any information was ever conveyed to him in this regard. The four agriculturists who had taken the loans in question had closed their accounts by depositing the entire dues outstanding against them and thus the Bank did not suffer any loss in any form. The Khasras and Khataunis which were submitted by the agriculturists were examined by the petitioner with due diligence and despite his utmost careful scrutiny, he could not foresee or imagine that some of the entries in the said documents would be expunged by the Supervisor Kanoongo. The report of the Bank Manager absolving the petitioner of any lapse on his part was not taken into consideration by the enquiry officer. The dismissal order passed on the basis of the enquiry officer's report was disproportionate to the alleged technical fault on the part of the petitioner. The said order, therefore, deserves to be quashed.

3. Sri Anil Kumar, the Assistant General Manager (Law) at Head Office of U. P. Sahakari Gram Vikas Bank Ltd., 10-Mall Avenue, Lucknow filed his counter-affidavit on behalf of the opposite parties asserting therein that the petitioner himself, while submitting his reply to the charge-sheet, informed, the enquiry officer that he had been given enough opportunity to examine witnesses and file his reply and since he did not require any further opportunity in this regard, an appropriate decision was taken in the matter on the basis of his reply. It was on the basis of this submission of the petitioner that the enquiry officer proceeded to scrutinise the documentary evidence on record and taking into consideration the relevant aspects, he arrived at a conclusion that the petitioner was guilty of serious irregularities in negotiating the loans with the four agriculturists. Now, therefore, the petitioner cannot be permitted to say that he had been deprived of an opportunity of hearing. In fact he himself refused to avail any further opportunity of either adducing his own witnesses or cross-examining any other witnesses. The order of punishment had been passed by the Managing Director

after considering the reply submitted by the petitioner. In these circumstances, no judicial review of the enquiry report by this Court was possible. The petitioner's petition is, therefore, liable to be dismissed.

4. I have heard the learned counsel for both the parties and perused the record.

5. It is significant to note that all the five loans in question were sanctioned by the bank authorities in the year 1980 and it also remains an undisputed fact that all the agriculturists have repaid the entire amount of the aforesaid five loans and obviously thus there is no financial loss to the bank. The enquiry officer has observed in his report that risk of the loans being repaid was involved on account of the irregularities as highlighted in the enquiry report. In this context, it is noteworthy that the enquiry officer has not examined even a single witness in support of the charges levelled against the petitioner on the risk of the loans being repaid as alleged. It appears that the enquiry officer was wrongly swayed by the petitioner's reply to the charge-sheet in which though he challenged each charge, yet made a prayer towards the end that he had examined the evidence and he had been given opportunity to put up his representation and, therefore, he needed no further opportunity. If these submissions of the petitioner are truly interpreted, they conform to his averment in the writ petition that it was on the basis of an understanding between him and the first enquiry officer who expressed in clear terms that no charge was made out against him, that he had expressed his unwillingness for a fresh opportunity of scrutinising further evidence and filing his representation yet again. It was in these circumstances that he prayed for his exoneration of all the charges. The second enquiry officer had not called upon the petitioner to enquire from him as to whether he would like to cross-examine the witnesses who might have been produced in support of the charges. As a matter of fact, the second enquiry officer ignored a very important aspect of the matter and it was that the petitioner had not admitted any of the charges framed against him in the charge-sheet. Not only that, he rebutted the charge-sheet on all the counts but he also questioned the bona fides of the auditor who raised the audit objection. He had specifically stated that the auditor suffered from prejudice and mala fides against him. The enquiry officer did not bother to call the auditor in the witness box and examine him.

6. Further, the petitioner pleaded in the reply to the charge-sheet that the copies of Khasras and Khataunis which were brought to him by the agriculturists who had sought for the loans, were prepared by the Lekhpal of the village and he exercising his diligence relied upon them. If the Lekhpal had recited a wrong entry in some extract of Khatauni or Khasra, the petitioner could not be held responsible, as it was the Lekhpal concerned who committed the mischief. In fact, the Lekhpal should have been proceeded against for the wrong entries in preparation of the extracts of Khasras and Khataunis. So far as the petitioner was concerned, he has no cogent reason or ground to disbelieve the extracts of the revenue records. The petitioner has also stated that long after the loans being sanctioned on the basis of the copies of Khasras and Khataunis, the

Supervisor Kanoongo during his scrutiny of the records observed that some entries in the revenue records were wrong and not only that, he had also ordered for expunction and rectification of such entries. In this connection, the revenue records of Jasrath, Dhani Ram and Rattu were referred to. If there were wrong or forged entries in the original revenue records on the basis of which copies of Khasras and Khataunis were issued by the Lekhpal, how the petitioner could be blamed for such wrong doings. The petitioner had no role to play in preparation of the revenue records and, therefore, it was wholly untenable to fasten any liability upon him. The original Khata of Jasrath (Charge No. 3) was directed to be rectified by the Supervisor Kanoongo on 9.12.1980 while the loan had been sanctioned on the basis of the extract of that record in April, 1980. Similarly, the Khata of Dhani Ram (Charge No. 4) was ordered to be corrected by the Supervisor Kanoongo on December 9, 1980 while the loan had been sanctioned on the basis of the extract of Khatauni issued in January, 1980. In another case of Rattu (Charge No. 5) the loan was sanctioned on the basis of the extract of Khatauni issued in April, 1980 and the entry was ordered to be expunged in December, 1980.

7. Obviously, thus, it was obligatory upon the second enquiry officer to examine the revenue records and also summon the concerned Lekhpal, Kanoongo and the Agriculturist-loanees as well. A sweeping observation by the enquiry officer that the forged copies of the revenue records were relied upon by the petitioner while exercising his power as Field Officer in getting the loans sanctioned is nothing but imaginary and based on conjectures and surmises. As a matter of fact, it was obligatory on the part of enquiry officer to have arrived at a conclusion on the basis of cogent piece of evidence that the petitioner in his capacity as Field Officer was a party to the evil designs of the agriculturists. The enquiry Officer's doubt regarding some agriculturists being fictitious is again absolutely untenable in the absence of the evidence of either village Pradhan, Lekhpal, Kanoongo or some such authority. The enquiry officer has not examined even a single witness who could depose that either the petitioner was a party to the conspiracy hatched by some persons with a view to fetch loans or he had some under-hand dealing in getting the loans provided to some dummy persons. Similarly the petitioner did not commit any wrong if he was instrumental in getting the loan sanctioned to Mahadeo Prasad (Charge No. 1) who submitted the extracts of Akar Patra No. 23 in support of his loan application. In addition to the said Akar Patra, the petitioner also obtained a certificate indicating that the land of Mahadeo Prasad was "Do-fasli". His land being under consolidation proceedings, only the copy of Akar Patra No. 23 was available. The enquiry officer thus failed to observe the principles of natural justice by adopting a wrong method of submitting his report merely on the basis of charge-sheet and the petitioner's reply thereto. It would be relevant to quote Rule 81 of the U. P. Co-operative Societies Employees Service Regulations, 1975 which postulates as follows :

"81. Disciplinary proceedings.

(1) The disciplinary proceedings against an employee shall be conducted by Inquiring Officer appointed by the appointing authority or by an officer of the Bank authorised by the appointing authority :

Provided that the officer at whose instance disciplinary action was started shall not be appointed as an inquiry officer nor shall the Inquiring Officer be the appellate authority.

(a) The Inquiring Officer during inquiry shall observe the principle of natural justice for which it shall be necessary that the employee shall be served with a charge-sheet containing specific charges, the evidence in support of the each charge and he shall be required to submit explanation in respect of the charge within a reasonable time which shall be not less than 15 days.

(b) Such employee shall also be given an opportunity to produce at his own cost or to cross examine the witnesses in his defence and shall also be given an opportunity of being heard in person, if he so desires.

(c) If no explanation in respect of charge-sheet is received or the explanation submitted is unsatisfactory the competent authority may award him punishment considered necessary."

8. A careful reading of the above provisions would reveal that the enquiry officer could not have followed any other procedure than the one prescribed above unless, of course, the petitioner would have admitted his guilt on all the counts. It may be noted that the petitioner did not admit at all any one of the five charges, rather rebutted them with all vehemence on his part. It was on the basis of his denial on each count that he requested the first enquiry officer in the last para of his reply that he be exonerated of all the charges and observed further, may be on the basis of some understanding with the first enquiry officer that he needed no further examination of any record or submission of any reply. What is important to mention here is that the petitioner had not foreclosed his right to cross-examination of the witnesses who could be examined in support of the charges in case the enquiry officer decided to hold further proceedings of the enquiry in accordance with the provisions of Rule 81 as quoted above. He simply said that he needed no opportunity to scrutinise further any record nor he would like to present any representation. He did not at all utter or express his willingness to accept the verdict of the enquiry officer without following the prescribed procedure of conducting the enquiry. In other words, he did not succumb to the unlawful authority of the enquiry officer of proceeding to arrive at a conclusion in a way and by adopting a wrong procedure in contravention of the globally approved principles of natural justice. Having regard to all above lapses on the part of the enquiry officer. I am inclined to hold that the enquiry report on the basis of which the petitioner has been dismissed, was discriminatory, illegal and against the canons of natural justice. The petitioner has been deprived of a reasonable opportunity of cross-examining the witnesses in support of the charges and of leading his own evidence.

9. Some facts cannot be lost sight of e.g., the fact that all the loan amounts pertaining to the charges levelled against the petitioner have been repaid with upto date interest. Secondly, the auditor raised objections long after the loans were sanctioned and it was for the first time in the year 1994 that the petitioner was asked to explain as to how he relied upon the documents which were submitted to him fourteen years back in the year 1980. Thirdly, the correction of the revenue records in pursuance of the orders of the higher authorities long after the loans were sanctioned was a pointer towards the innocence of the petitioner. Fourthly, the petitioner had no blot in his career and the accumulated effect of all these factors, as may be observed, would be that the petitioner's dismissal in the circumstances of the case was not at all justified as it was an arbitrary and excessive punishment.

10. In view of the fore-going reasons, I hold that the Enquiry Officer's report being based on perverse findings, is illegal and unreasonable and hence deserves to be set aside.

11. Accordingly the writ petition succeeds and it is allowed with costs. The dismissal order, Annexure-1 is hereby quashed and a writ of certiorari is issued to this effect. Further a writ of mandamus is issued commanding the opposite parties to reinstate the petitioner in his service with all consequential benefits.