(1992) 03 KL CK 0023

In the High Court Of Kerala

Case No : O.P. No. 10338 of 1989

Ramoo Ramesh APPELLANT

Vs

Andhra Bank RESPONDENT

Date of Decision : 25-03-1992

Acts Referred:

Citation : (1992) 65 FLR 823 : (1992) 2 LLJ 838

Hon'ble Judges : Sreedharan, J

Bench : Single Bench

Advocate : C.S. Rajan, for the Appellant; K. Ramakumar, for the Respondent

Final Decision : Allowed

Judgement

Sreedharan, J.—Petitioner was the Manager of Andhra Bank, Ernakulam Branch. He was in Middle Management Grade III. On the ground of certain irregularities, he has been placed under suspension by Ext. P1 order dated August 29, 1984. That order is under challenge.

2. Ext. P2 dated May 7, 1985 is the memo of charges served on the petitioner. By that, 17 charges were levelled against him. Petitioner submitted his written explanation. Thereupon, the charges mentioned in Ext.P-2 were split up.

Ext. P10 dated February 10, 1990 contains 5 charges and Ext. P21 dated March 15, 1990, the remaining 12 charges. Bank has initiated steps to get 12 charges mentioned in Ext. 21 enquired into by the Enquiry Officer. That enquiry is, it is agreed at the Bar, virtually over. According to the learned counsel representing the petitioner, the Bank, with ulterior motive, split up the charges and got 12 charges enquired by the Enquiry Officer. In case the Enquiry Officer exonerates the petitioner from responsibility, it is the petitioner''s case that the Bank will thereupon take up the 5 charges in Ext.P10 for initiating fresh enquiry. The intention of the bank is to keep the petitioner under suspension for an indefinite period.

3. The main argument advanced by the learned counsel representing the petitioner is that the order of suspension was issued by an incompetent authority and so, that order has to be quashed. It is his further contention that even if the order of suspension is found to be valid, the order should be quashed because petitioner has been kept under suspension for about 8 years without any final order being passed in the disciplinary action initiated against him.

4. Learned counsel representing the Bank raised the following contentions:- Petitioner has acquisced in the order of suspension dated August 29, 1984 and he approached the higher authorities for reviewing the order of suspension. The higher authority has found the suspension to be proper. Therefore, it is not open to the petitioner to raise a contention that the order of suspension was issued by an incompetent authority. According to learned counsel, the Bank entrusted the enquiry with the Commissioner for Departmental Enquiries, Central Vigilance Commission. That Enquiry Officer has not been made a party in this proceeding. The Bank has no administrative control over that authority. Therefore, on account of the delay in the enquiry, petitioner cannot ask for cancellation of the order of suspension. Lastly it was contended that no fundamental right of the petitioner has been violated. Therefore, this court is not to interfere with Ext. P-1 order of suspension.

5. Ext.P1 order of suspension was issued by the Assistant General Manager. As per Clause 12 of the Andhra Bank Officer Employees (Discipline and Appeal) Regulations, 1981, hereinafter referred to as "the Regulations", an officer employee may be placed under suspension by the competent authority, "Competent Authority" has been defined in Clause 3 (f) of the Reguations. As per that clause, "Competent Authority" means the authority appointed by the Board for the purposes of these Regulations. Respondents have not placed before Court any order passed by the Board of Directors of the Bankappointing the Assistant Genera! Manager as the competent authority. As per Schedule to this Rule, Assistant General Manager is the Disciplinary Authority in relation to an officer of the petitioner''s cadre. Deputy General Manager is the Appellate Authority and the General Manager is the Reviewing Authority. "Disciplinary Authority" has been defined in Clause 3(g) of the Regulations as the authorities specified in the Schedule, which is competent to impose any of the penalties specified in the Regulation. Since the Disciplinary Authority has not been invested with the power to place an officer under suspension, the order Ext.P-1 issued by the Disciplinary Authority is not proper. An officer can be suspended only by a competent authority, appointed by the Board of Directors. Learned counsel representing the bank tried to sustain the order Ext. P1 by relying on Ext.R-1, a decision taken by the Board of Directors on August 10, 1984. As per that decision, the Board of Directors directed the Chairman and Managing Director to launch appropriate proceedings immediately to safeguard the Bank''s interest and to report developments in this account to the Board.So, as per Ext.R1, the Chairman and Managing Director can be considered as the competent authority appointed by the Board to initiate action against the petitioner. The Chairman and Managing

Director did not pass the order of suspension. It was issued by the Assistant General Manager, Disciplinary Authority. So, it has to be held that Ext.P1 order of suspension was issued by an incompetent authority. Where the order of suspension is passed by a person who has no authority to do so, it has to be set aside.

6. Learned counsel representing the respondent submitted that this Court is not to interfere with the order of suspension because the petitioner has not alleged violation of any of his fundamental rights under the Constitution. According to counsel, in the absence of even a plea of violatiion of fundamental right under the Constitution, this Court is not to interfere with the order of suspension. I do not find any force in this argument, because of the following observation made by Their Lordships of the Supreme Court in A.L. Kalra Vs. Project and Equipment Corporation of India Ltd., at 193:

"The distinction sought to be drawn between protection of Part XIV of the Constitution and Part III has no significance".

In the instant case, this aspect is not of any importance because, Bank, which is an "Other Authority" under the Constitution, has kept the petitioner under suspension pursuant to an order passed by an officer who had no authority to keep him under suspension.

7. Petitioner has been kept under suspension for more than 8 years. The Bank should have got the charges enquired into within a reasonable period of time. If the disciplinary proceedings are allowed to continue for an indefinitely long period and the officer kept under suspension, it would imply that the Bank is vested with a total arbitrary and unfettered power of placing its officer under suspension for an indefinite duration. No court can accept such a power with the Bank. Learned counsel representing the Bank would submit that the enquiry is being held by Commissioner for Departmental Enquries, over whom the Bank have no control, and so they are helpless in expediting the enquiry. I do not find any merit in this contention. As seen from Ext. P1, petitioner was suspended on August 29, 1984. Ext.P-21 chargesheet is dated March 15, 1990. After suspension for nearly six years, the charge was not served on the petitioner. It is only after Ext.P21, the enquiry was entrusted with the Commissioner for Departmental Enquiries. Further 5 charges out of 17 mentioned in Ext. P2 has been split up and no action has been initiated on that charge-sheet, Ext.P1O, dated February 10, 1990.

8. Petitioner was charge-sheeted by the Central Bureau of Investigation on April 24, 1987. That ended in the petitioner''s acquittal by Court on May 16, 1990. The respondent Bank got the Enquiry Commissioner impleaded as 4th respondent by order on CMP. 19907/1990. This Court allowed impleadment on December 12, 1990. The Commissioner was served with notice in January, 1991. The Bank did not move this court for directing the Commissioner to complete the enquiry till date.

9. Petitioner has been kept under suspension almost for 8 years. By virtue of the order of this Court, he is being paid full salary. But, he has not been given a posting. There is no justification in this action on the part of the Bank, If the guilt is established, he is bound to be suitably punished in accordance with law. But, he is not to be kept under suspension for such a long period. Even after the pending enquiry is over, there is no knowing whether Bank will not proceed with Ext. P10 memo of charges for keeping the petitioner under continued suspension.

10. In the circumstances detailed above, I quash Ext.P-1 order. Learned counsel representing the Bank submitted that there may be great difficulty in permitting the petitioner to resume duties, when the performance of those duties by him in the past had led to the imputation of grave irregularities. I do not find any real difficulty in the matter. It is open to the Bank to permit the officer to resume duty in any post of equal grade and emoluments in any one of its Branches spread throughout India. Bank should give him a posting without delay.

11. Original Petition is ordered in the above terms.

12. Issue photo copy of the judgment to the parties on usual terms.