
(2010) 12 UK CK 0012

In the Uttarakhand High Court

Case No : Writ Petition No. 2813 of 2001 (M/S)

Sachiv/General Manager, District Cooperative Bank Ltd. Tehri
Garhwal

APPELLANT

Vs

The Presiding Officer and others

RESPONDENT

Date of Decision : 30-12-2010

Acts Referred:

Citation : (2011) 1 UD 235

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon'ble Tarun Agarwala, J.—Heard Mrs. Seema Sirohi, the Learned Counsel for the Petitioner bank and Mr. Sandeep Kothari, the Learned Counsel for the Respondent No. 2/1 to 2/5.

2. The Petitioner has assailed the validity and legality of the award passed by the labour court directing the reinstatement of the workman Neer Pal Singh Dhanai with 25% backwages.

3. The facts leading to the filing of the writ petition is, that Respondent No. 2 workman was appointed as a Clerk in the District Cooperative Bank in the year 1972 and his services were regularised on the said post in the year 1986. From time to time, in the absence of a regular Branch Manager, the work of the Branch Manager was given to the workman in addition to his regular work and, consequently, the Respondent workman has worked as the incharge branch manager in various branches. The Petitioner bank suspended the Respondent workman on 06.04.1998 and thereafter on 19.01.1990 a chargesheet was submitted. The charges levelled against the workman was that he opened an account in his own name and made false entries of deposits and, thereafter withdrew the amount. The workman was further charged that he opened false accounts in the name of fictitious persons and made certain forged entries of

deposits of various amounts and, thereafter, withdrew the amount and, in some cases, allowed overdraft facilities and that the interest amount on it was not charged. The Respondent workman submitted his reply and denied the charges. The employers, instead of initiating a regular enquiry proceedings, issued an order dated 18.01.1994 dismissing the workman from the services of the bank.

4. The workman, being aggrieved, raised an industrial dispute which was referred to the labour court for adjudication. The terms of the reference was as follows:

Whether the employer was justified in terminating the services of the workman w.e.f. 18.01.1994? If not, to what relief is the workman entitled to?

5. Before the labour court, the workman contended that the principles of natural justice were violated and that no opportunity of hearing was provided to him nor any domestic enquiry was initiated by the bank and that inspite of the chargesheet being issued, the services of the workman was terminated arbitrarily. The Petitioner bank also filed the written statement and submitted that on account of the embezzlement committed by the workman, the services of the workman was validly terminated and the order of dismissal was justified and that no relief could be granted to the workman.

6. It transpires that the labour court issued an order dated 21.04.1997 holding that no enquiry was in violation of the principles of natural justice. The labour court further observed that since the employer bank had taken an averment in their written statement as well as in the rejoinder affidavit to the effect that they may be allowed to prove the charges, consequently, the labour court permitted the employer to prove the charges before the labour court.

7. The labour court, after considering the matter, gave an award dated 28.10.1997 directing reinstatement with backwages. The labour court found that no evidence was given by the employer to prove the charge No. 1 & 2 to show that the workman had made fictitious entries of deposit in his account or the fact that he allowed overdraft facilities. With regard to the charge No. 3 & 4, the labour court found that arbitration proceedings had been initiated by the bank against the account holders and that the recovery of the amount alongwith interest in relation to overdraft facilities had been realized from the account holders and that certain other arbitration proceedings were pending against the remaining account holders. The labour court, consequently, observed that the question of opening an account in the name of fictitious account holder by the workman concerned consequently did not arise. With regard to the charge No. 5, the labour court held that the disciplinary proceedings had already been initiated with regard to Rani Chauri Branch and the amount was recovered from the workman concerned, and consequently, the same charge cannot be levelled against him again.

The labour court in the light of the aforesaid concluded that the allegation of embezzlement and defrauding the bank had not been proved and that the workman, if any, committed some irregularity which did not amount to

misappropriation. Consequently, the labour court directed the reinstatement of the workman with 25% wages. The Petitioner, being aggrieved by the award of the labour court, has filed the present writ petition.

8. The Learned Counsel for the Petitioner submitted that once the labour court had given a finding that the workman had committed an irregularity, the question of his reinstatement in the bank did not arise. In support of her submission, the Learned Counsel for the Petitioner placed reliance upon a decision of the Supreme Court in Divisional Controller, N.E.K.R.T.C. Vs. H. Amaresh, , in which it was held that where an employee is found guilty of pilferage or of misappropriating the Corporation's funds, there was nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of dismissal. It was further held that there is no place for generosity or misplaced sympathy and interference should not be made. The Learned Counsel for the Petitioner further submitted that the provisions of the Cooperative Societies Act and the regulations framed therein were applicable to the workman and, consequently, the Industrial Disputes Act was not applicable. In support of her submissions, the Learned Counsel for the Petitioner placed reliance upon a decision of the Supreme Court in Ghaziabad Zila Sahkari Bank Ltd. Vs. Addl. Labour Commissioner and Others, and submitted that in view of the aforesaid decision, the labour court had no jurisdiction to give an award and, consequently, the award was liable to be quashed.

9. On the other hand, the Learned Counsel for the Respondent submitted that during the pendency of the writ petition, the workman had died and his legal heirs have been impleaded and, that the benefit of the award has not been given either to the workman or to his legal heirs as yet since the complete award was stayed by an interim order of this Court. It was further submitted by the Learned Counsel for the Respondent that there is no finding of embezzlement and that the irregularity, if any, found by the labour court did not amount to misappropriation or nor could it be said that such irregularity committed amounted to losing confidence in the workman concerned. In the light of the aforesaid, the Learned Counsel for the workman Respondent submitted that the award was justified and should not be interfered with. The Learned Counsel for the workman further submitted that criminal proceedings against the same charges were also initiated by the bank and that the criminal court gave a judgment giving a clean acquittal to the workman.

10. Having heard the Learned Counsel for the parties, the court finds that the bank did not choose to initiate a domestic enquiry and preferred to give the evidence before the labour court. The labour court, after sifting the evidence and appreciating the material evidence that was brought on record held that the five charges levelled against the workman were not proved. This is a finding of fact based on material evidence on record, which cannot be interfered with in a writ petition since the court does not find that the findings are perverse nor these findings are against the material evidence on record.

11. In the light of the aforesaid, the question is, whether the findings given by the labour court that the workman did commit some irregularities was correct and that in view of this finding, could it justify reinstatement of the workman or not. The court finds that the labour court has given a categorical finding that the charge of misappropriation had not been proved. The labour court also found that it is not a case where the employee workman opened fictitious account and withdrew the money. On the other hand, the labour court found that the recovery proceedings were initiated against those account holders and the overdraft amount alongwith interest accrued thereon had been recovered. Consequently, the allegation of fraud and misappropriation against the workman was not proved. The error committed by the workman, if any, was noted by the labour court as an irregularity not amounting to misappropriation, which in the opinion of the court was correct and justified. The court is of the opinion that such irregularity does not amount to losing confidence in the workman, which would justify dismissal of the workman. The judgment cited by the Learned Counsel for the Petitioner is not applicable since the loss of confidence can only be equated when the charge of pilferage or misappropriation is proved, which in the present case is absent. Further, the submission of the Learned Counsel for the Petitioner that the award of the labour court and the proceedings initiated under the Industrial Disputes were without jurisdiction cannot be sustained in as much as there is no averment in the writ petition nor was there any averment before the labour court to this effect. Consequently, the court is of the opinion that the Petitioner had acquiesced with the proceedings and is not entitled to raise this ground merely because the position of law has not been cleared by the Supreme Court in the case of Ghaziabad Zila Sahkari Bank Ltd (supra). Further, the court is of the opinion that there would be a travesty of justice to non-suit the workman at this stage, especially when the workman is dead and his heirs would not be able to reap the benefits of the dispute. The court does not find any error in the impugned order. The writ petition is dismissed accordingly.