(2002) 11 AHC CK 0115

In the Allahabad High Court

Case No : C.M.W.P. No. 22342 of 1999

Sankatha Prasad Singh — APPELLANT

Vs

Regional Administrative Committee of U.P. Co-operative Primary Agriculture Credit Centralised Services and Others — RESPONDENT

Date of Decision : 12-11-2002

Acts Referred:

Citation : (2003) 2 AWC 1049 : (2003) 1 UPLBEC 16

Hon'ble Judges : Rakesh Tiwari, J;M. Katju, J

Bench : Division Bench

Advocate : M.P. Gupta, for the Appellant; O.P. Singh and S.K. Rai, for the Respondent

Final Decision : Dismissed

Judgement

M. Katju, J.—This writ petition has been filed against the dismissal order dated 26.6.1994, Annexure-11 to the writ petition and the appellate order dated 11.2.1999, Annexure-16 to the writ petition.

2. We have heard learned counsel for the parties.

3. The petitioner has alleged that he was appointed in the Co-operative department as cadre secretary in 1976 after screening. He has further alleged that his work and conduct has been good. He was posted in various places as mentioned in paragraphs 5, 6 and 7 to the writ petition. The present dispute relates to Hallia where the petitioner was posted at Sikta Sadhan Sahkarl Samiti Limited, block Hallia, district Mirzapur.

4. The petitioner had opened his personal S.B. Account in the head quarter branch of District Co-operative Bank Ltd., Mirzapur. The account number is 3173 which is still pending in the said head quarter branch. The petitioner opened another S.B. Account in Hallia branch of District Co-operative Bank at Mirzapur where the respondent No. 3 was posted as Branch Manager on 2.1.1988. The petitioner deposited a sum of Rs. 57,000 in S.B. Account Hallia Branch.

5. It is alleged in paragraph 10 of the petition that the Branch Manager prepared a transfer voucher for head quarter branch of this amount on the same day and delivered the transfer voucher to the petitioner. It is further alleged that in the evening of the same day, the Branch Manager visited the society of the petitioner and obtained back the transfer voucher of Rs. 57,000 which was made for head quarter branch of the District Co-operative Bank, Mirzapur and got it and has cancelled the same. It is alleged that in the pass book, he corrected the entry mentioned cash deposit of Rs. 57,000 and the credit balance was shown as Rs. 1,18,425.27. Photocopy of the passbook of the petitioner bearing account number 3173 is Annexure-1 to the writ petition.

6. In paragraph 11 of the writ petition, it is alleged that the respondent No. 3 the then Branch Manager, Hallia, prepared a transfer voucher and cancelled the same on 2.1.1998 which has been prepared and made for account No. 3173 opened at Mirzapur head quarter branch of the Bank. It is alleged that the petitioner managed to obtain a copy of the voucher from District Cooperative Bank, true copy of which is Annexure-2 to the writ petition. In paragraph 12 of the writ petition, it is alleged that the District Co-operative Bank entered in the personal ledger of the petitioner by amendment vide Annexure-3 to the writ petition. During the preparation of the balance sheet of the Bank on 30.6-1988, this irregularity was noticed against the amount of Rs. 57,000 which was in excess in the deposit side. It is alleged in paragraph 14 of the writ petition that the respondent No. 3 with mala fide intention to show the expenditure of Rs. 57,000 again visited the society of the petitioner and he compelled the petitioner to get the resolution prepared by the respondent No. 3 and deliver the same to him. True copy of the said resolution is Annexure-4 to the writ petition. In paragraph 15 of the writ petition, it is alleged that this resolution has not been entered in any proceeding book of the society and it was prepared under duress of the Branch Manager.

7. In paragraph 16 of the writ petition, it is alleged that the petitioner has sent a letter dated 5.7.1988 stating that the so-called resolution dated 29.6.1988, be quashed vide Annexure-5. Thereafter the petitioner sent a letter dated 19.2.1992 vide Annexure-6 to the writ petition. Thereafter he sent another letter dated 9.3.1992, stating that he has not done any default vide Annexure-7 to the writ petition.

8. In paragraph 20 of the writ petition, it is alleged that a charge-sheet dated 16.6.1993 was given to the petitioner making allegation against the petitioner regarding overdraft of Rs. 57,000. True copy of the charge-sheet is Annexure-8 to the writ petition. In paragraph 21 of the writ petition, it is alleged that the petitioner wrote a letter dated 30.6.1993, demanding the proof of charges vide Annexure-9 to the writ petition. However, when no proof was submitted he sent his reply dated 21.7.1993 uide Annexure-10 to the writ petition. In paragraph 24 of the writ petition, it is alleged that an enquiry was held behind the back of the petitioner and witnesses were not examined in his presence nor was he allowed

to cross-examine the witnesses and he was not given personal hearing. It is alleged that this was an ex parte enquiry. The petitioner was served a dismissal order dated 26.6.1994 vide Annexure-11 to the writ petition. Against that order he filed an appeal which has been dismissed on 11.2.1999 vide Annexure-16 to the writ petition. Hence this writ petition.

9. A counter-affidavit has been filed on behalf of the respondent Nos. 2 to 4. In paragraph 6 of the same it is alleged that an amount of Rs. 57,000 was deposited in the bank by the petitioner but the amount related to Sadhan Sahkart Samlti, Sikta which has been deposited by the petitioner in his own bank account. In paragraph 7 of the counter-affidavit it is alleged that the petitioner in collusion with the Branch Manager of the Bank of Hallla branch was trying to embezzle Rs. 57,000 from Sadhan Sahkari Samlti, Sikta. In paragraph 9 of the counter-affidavit it is alleged that the petitioner in collusion with the Branch Manager prepared a false and fabricated resolution and embezzled Rs. 57,000 from the society. In paragraph 12 of the counter-affidavit it is stated that the enquiry has been conducted and charge-sheet has been issued to the petitioner on 16.6.1993. In paragraph 16 of the counter-affidavit it is alleged that the charge-sheet was issued and time was given to submit his explanation and the charge of embezzlement was clearly proved.

10. We have also perused the rejoinder-affidavit. In paragraph 15 of the same, it has been reiterated that no enquiry was conducted against the petitioner and the entire action was done behind the back of the petitioner and he was not allowed to cross-examine the witnesses and the alleged enquiry was ex parte.

11. In this case, the real question is whether the rules of natural Justice were complied with or not before passing the impugned dismissal order.

12. It is settled law that the rules of natural justice are not a straight -jacket formula. The facts of each case have to be seen in order to determine whether the principles of natural justice have been violated. In the present case, there were serious allegations of embezzlement against the petitioner and he was given a charge-sheet dated 16.6.1993 vide Annexure-8 to the writ petition. In his reply dated 22.7.1993, Annexure-10 to the writ petition, the petitioner denied the charges and stated that he does not want to produce any witness but he wants an opportunity of personal hearing. He further alleged that there was some conspiracy against him.

13. In the impugned dismissal order dated 26.6.1994, Annexure-11 to the writ petition, it has been stated that the petitioner did not want to produce any witness but wanted a personal hearing, and hence 9.11.1993 was fixed for personal hearing before the Committee. However, the petitioner did not appear before the Committee on that date. Hence, the Committee gave another opportunity of personal hearing and fixed 24.12.1993, for the same and on that date, the petitioner was heard but he produced no proof in support of his version. It was found that in collusion with the Branch Manager, Hallia, the

petitioner on 2.1.1988 had got an over-draft of Rs. 57,000 and has embezzled this amount. In order to conceal this embezzlement, the petitioner has misused his office as Secretary of the Society and he has got a fictitious resolution of Sikta Sadhan Sahkari Samiti, passed on 29.6.1988 in his signature and seal of the society and had got the above amount debited in the account of the Samiti and credited to his own account. The petitioner was given another show cause notice on 20.1.-1994 but he gave no reply to the same. Hence on 28.2.1994, the District Administrative Committee passed a resolution directing him to deposit the said amount falling which he will be dismissed from service and an F.I.R. will be lodged against him. Despite the said resolution, the petitioner never deposited the aforesaid amount which he has embezzled. Hence on 26.6.1994, the District Administrative Committee taking a serious notice of this, directed realisation of the embezzled amount with interest and to lodge an F.I.R. against the petitioner. The petitioner filed an appeal against the said order which was dismissed on 11.2.1999 vide Annexure-16 to the writ petition.

14. We have perused the appellate order also and find no illegality in the same. Finding of fact has been recorded by both the authorities that the petitioner has embezzled the amount in question by passing farzi resolution which was a serious misconduct. In our opinion, sufficient opportunity of hearing was given to the petitioner. As stated above, the rules of natural justice are not a straightjacket formula and it all depends on the facts of each case whether the hearing was adequate or not. vide The Maharashtra State Financial Corporation Vs. M/s. Suvarna Board Mills and another, .

15. In Kamal Singh v. Chancellor 1981 UPLBEC 393 and Hira Nath Mishra and Others Vs. The Principal, Rajendra Medical College, Ranchi and Another, it has been held that the principles of natural justice cannot be applied mechanically without considering the facts of each case. In Kumaun Mandal Vikas Nigam Ltd. v. G.S. Pant 2001 (1) AWC 83 : AIR 2001 SC 24 it was held that the doctrine of natural justice is not synonymous with fairness in the concept of justice. It was held that the rules of natural justice are flexible. In The Maharashtra State Financial Corporation Vs. M/s. Suvarna Board Mills and another, it was held by the Supreme Court that where a notice was issued calling upon the petitioner to pay the dues failing which possession of his property will be taken, no other show cause notice is required before taking possession. It has been held in several decisions of this Court vide Writ Petition No. 7538 of 20O1, Prakash Chandra Bansal v. General Manager, decided on 13.12.2001, Writ Petition No. 19658 of 2001, K.K. Singh v. Gomti Gramin Bank, decided on 19.12.2001 and Ram Prakash v. Allahabad Bank 2000 (3) UPLBEC 193. etc., that a bank operates on public confidence and hence the highest degree of discipline and integrity is required to be maintained by its employees in order to maintain public confidence in the Bank. Hence greater integrity and discipline is required from bank employees as compared to other employees, otherwise the public will lose confidence in the Bank and there may be a run on the bank to withdraw money. In the present case, we are satisfied that there was sufficient compliance of

natural justice.

16. In view of the above, we find no merit in this petition and it is dismissed accordingly. Interim order, if any, is vacated.

