

(2014) 06 AHC CK 0019
In the Allahabad High Court
Case No : Service Single No. 3531 of 2000

Santosh Kumar Shukla

APPELLANT

Vs

Syndicate Bank

RESPONDENT

Date of Decision : 04-06-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 419, 420, 467, 468
Prevention of Corruption Act, 1988 — Section 13(1), 13(2)

Citation : (2014) 5 ADJ 370 : (2014) 142 FLR 659 : (2014) 3 LLJ 636 : (2014) 4 LLN 325 : (2014) LLR 1059

Hon'ble Judges : Suneet Kumar, J

Bench : Single Bench

Advocate : A.K. Tewari, Mahendra Pratap Singh and Nandita Bharti, Advocate for the Appellant; N.K. Seth and Gopal Kumar Srivastava, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Suneet Kumar, J.—Heard Sri Mahendra Pratap Singh, learned counsel for the petitioner as well as Sri N.K. Seth, Senior Advocate assisted by Sri Gopal Kumar Srivastava appearing for the respondent-bank. The facts briefly is, that, the petitioner was appointed, Class-IV attender with the respondent-bank in 1981, thereafter, in 1982 he was confirmed. The petitioner was advanced housing loan of Rs. 75,000/- in 1988 and as per the housing scheme, applicable to the employees, the petitioner was required to repay the loan in 24 years, monthly installment being of Rs. 357.15 paisa, to be deducted from his salary.

2. The petitioner purchased the plot/house on 26.4.1988 at Aliganj Housing Scheme, and executed an agreement with the bank undertaking to create equitable mortgage and not to sell, mortgage, alienate or create any charge, without the written permission from the bank. On 24.8.1990 the property purchased, under the housing loan scheme, was sold by the petitioner to one Smt. Shireen Rahman for Rs. 1,25,000/- vide registered sale-deed dated

24.8.1990, unauthorizingly without bank's permission, flouting the conditions of housing loan scheme and instructions contained in circular dated 1.9.1983 issued by the Bank thus misutilizing the loan.

3. The petitioner was charge-sheeted on 6.8.1998 for misconduct for causing loss to the Bank under Clause 19.5(J) of the bipartite agreement. The petitioner did not submit reply to the charge-sheet, but participated in the enquiry proceedings, through a defense representative, and admitted the factum of the charge of selling the property without the permission of the bank. The enquiry report was supplied alongwith the show-cause notice, to which the petitioner, replied on 30.8.1999, stating therein, that, accepting the allegations contained in the charge-sheet, as correct, even then, it would not constitute misconduct under Clause 19.5(J), as there was no misutilization of the funds of the bank and further it was contended that the punishment is not commensurate to the guilt. The Disciplinary Authority vide order dated 30.9.1999 agreed with the findings of the enquiry officer and held the petitioner guilty of the charges.

4. Aggrieved by the order, petitioner preferred an appeal which was rejected by the Appellate Authority vide order dated 20.3.2000.

5. The petitioner aggrieved by the orders dated 30.9.1999 and 20.3.2000 has approached this Court. The Court vide interim order dated 13.7.2000 passed the following order:

I have considered the arguments of the learned counsel for the parties and gone through the record.

There is no dispute that the petitioner had apprised the Disciplinary Authority about the circumstances in which petitioner took loan from one Mr. Siddiqui and later on he was compelled to execute the sale-deed as he could not re-pay the loan. The Bank has also realized the penal interest in accordance with Clauses 13 and 16 of the loan agreement and prima facie it appears that the penalty imposed upon the petitioner of dismissal from service is too harsh.

In view of the aforesaid facts and keeping in view that the petitioner is young man of 38 years, the impugned dismissal order dated 30.9.1999 and the order passed in Appeal dated 20th March, 2000 are hereby stayed.

6. The respondent-bank aggrieved by the aforementioned order preferred Special Appeal No. 277 (SB) of 2000 and the Division Bench modified the order, the operative part is as follows:

In view of the fact that the writ petition shall be disposed of shortly, we modify the order passed by the Hon'ble Single Judge only to the extent that the appellant shall pay the salary to the private respondent but will not reinstate him in service in view of the bar of the service regulation, and in case the writ petition filed by the petitioner will fail, it will be open for the respondent of the writ petition to realize the amount from the petitioner of the writ petition. However, it is provided that as far as the matter pertaining to conviction of the

private respondent is concerned, it will be open for the Bank Authorities to act in accordance with law.

With the aforesaid observations, the Special Appeal is disposed of.

7. On the strength of the aforementioned order the respondent-bank continued to pay the petitioner his salary, without reinstatement.

8. In the intervening period i.e. after dismissal of the petitioner, a first information report was lodged by the C.B.I. against the petitioner, for alleged irregularity committed by the petitioner in the bank and the petitioner was convicted vide order dated 9.5.2000 by Special/Anti Corruption in Criminal Case No. 3/1993 u/s 120B, 420, 419, 467, 468 I.P.C. and Sections 13(2), 13(1) of Prevention of Corruption Act. The petitioner preferred Criminal Appeal No. 482 of 2000 against his conviction and the Court finally allowed the appeal on merits vide order dated 13.8.2004 and set aside the conviction. SLP (Criminal) 1623 of 2005 filed by the C.B.I. was also dismissed. The case was cited by the Bank to highlight the conduct of the petitioner; since the petitioner was acquitted and discharged on merits, it has no bearing upon the conduct of the employee in the disciplinary proceedings, as it is admitted between the parties that the charges in criminal case and that of the disciplinary proceedings are entirely different.

9. Sri Singh learned counsel appearing for the petitioner does not dispute that there has been any procedural irregularity in conducting the disciplinary proceedings, the procedure prescribed was followed, nor does he dispute the findings of fact arrived at by the enquiry officer and affirmed by the disciplinary authority/appellate authority. Sri Singh further submits that reply was not submitted to the charge-sheet but the charged employee participated in the enquiry proceedings, through departmental representative, and, during the course of the enquiry the allegations contained in the charge was accepted/admitted.

10. To the show-cause notice dated 14.8.1999, issued alongwith the enquiry report, the petitioner vide reply dated 30.8.1999, raised objections that the sale of the house was a distress sale, in order to meet the medical expenses after sustaining injuries in an accident on 9.3.1990, the petitioner had undergone treatment in Civil Hospital and thereafter was shifted to Sanjay Gandhi Post Graduate Institute, Lucknow. For treatment he had taken a loan of Rs. 20,000/- from one Abdul Sagir Siddiqui and since the petitioner could not repay the amount taken for treatment, he was compelled to sell the house in favour of Sri Abdul Sagir Siddiqui, which was registered in the name of his wife.

11. The sole submission of learned counsel for the petitioner is that, accepting the allegations on the face of it to be correct, it does not constitute misconduct as contemplated under 19.5(J) of the bipartite settlement.

12. The allegations is only to the effect that the petitioner was advanced Rs. 75,000/- on 2.9.1988 under the Employees Housing Loan Scheme and an

undertaking was given that until unless the loan is repaid, petitioner shall not transfer the property without the written consent of the bank and no encumbrances would be created on the said property. The loan was utilized for purchasing the Property No. D1/24 vide sale-deed dated 29.11.1988. The petitioner was required to create an equitable mortgage in respect of the property purchased and to deposit the original document with the bank, but neither equitable mortgage was created nor original papers was deposited and subsequently the property was sold for Rs. 1,25,000/- vide sale-deed dated 8.11.1990 and the amount due to the bank on the date of sale was Rs. 82,396.55 paise, which was not paid to the Bank. The allegations, therefore, is that after obtaining the loan the employee had sold the immovable property and thus the bank's money was unauthorizingly used for economic advantage/profit which amounts to gross misconduct as per the provisions of 19.5(J).

19.5 reads as follows:

19.5 By the expression "gross misconduct" shall be meant any of the following acts and omissions on the part of an employee:

(a).....

(b).....

(c).....

(d).....

(e).....

(f).....

(g).....

(h).....

W.....

(j) doing any act prejudicial to the interest of the bank or gross negligence or negligence involving or likely to involve the bank in serious loss.

(k).....

(l).....

13. Sri Singh submits that since no loss has occurred to the bank as the respondent-bank has recovered the amount from the subsistence allowances, as well as from the salary, being paid on the strength of interim order. It is further submitted that the housing scheme and terms and conditions, provided therein, provide for penal consequences, that is, charging of penal interest, it cannot be said that there has been loss to the bank, at the best, even being a misconduct, it would be a minor misconduct falling under 19.7(d) that is, breach of rule of business or instructions.

14. Sri Mahendra Pratap Singh, learned counsel for the petitioner has relied upon the following cases in support of his submission: A.L. Kalra Vs. Project and Equipment Corporation of India Ltd., Union of India (UOI) and Others Vs. J. Ahmed, Rasiklal Vaghajibhai Patel Vs. Ahmedabad Municipal Corporation and Another, Krushnakanat B. Parmar v. Union of India and another, 2012 (30) LCD 519, B.C. Chaturvedi Vs. Union of India and others, Chairman cum Managing Director, Coal India Limited and Another Vs. Mukul Kumar Choudhuri and Others, , State of Uttar Pradesh and Others Vs. Ram Daras Yadav,

15. In rebuttal Sri N.K. Seth, Senior Advocate assisted by Sri Gopal Kumar Srivastava, submits that the conduct of the petitioner, not only amounts to breach of the terms and conditions of the housing scheme and undertaking given by the petitioner, but misutilization of the funds of the bank to earn profits thus causing loss to the Bank. The circular dated 1.9.1983 on the subject, "Officers/ Workmen Housing Loan Scheme Misuse of Facility" (Syndicate Bank Employees Housing Loan Scheme) provides that diversion or misutilization of loan proceeds may attract disciplinary action. Para 13.23 is reproduced:

13.23 - Misutilization of Housing Loan in any form will be viewed very seriously and stringent action will be taken against such employees.

16. As per Clause 4 of the conditions of the agreement, the employee undertakes to mortgage property in favour of the bank and irrevocably undertakes, amongst other things, not to part with the possession/sell the house without prior written consent of the Bank, so long as the loan or interest thereon has not been paid in full, if he sells the house with or without permission of the bank, minimum interest(c) 15% per month, shall be charged. The petitioner gave an irrevocable undertaking on 2.9.1988 that he will not sell, mortgage, alienate or create any charge and encumbrances on the property without written permission from the bank so long as the loan remained unpaid to the bank.

17. The petitioner also submitted a notarized affidavit, wherein, the petitioner has agreed to give the plot of land, together with constructions made thereon, as collateral security by way of equitable mortgage to the bank towards housing loan.

18. Sri N.K. Seth, Senior Advocate has relied upon following cases in support of his argument; State Bank of India and Another Vs. Bela Bagchi and Others, ; Divisional Controller, KSRTC (NWKRTC) Vs. A.T. Mane, ; State Bank of Bikaner and Jaipur Vs. Nemi Chand Nalwaya, ; Depot Manager, A.P.S.R.T.C. Vs. Raghuda Siva Sankar Prasad, The State of Madras Vs. G. Sundaram, State Bank of India and Others Vs. Ramesh Dinkar Punde, State Bank of India and Others Vs. Narendra Kumar Pandey, Vice-Chairman, Kendriya Vidyalaya Sangathan and another v. Girdharilal Yadav, (2004) 6 SCC 325; Union of India and another Vs. G. Ganayutham (Dead) by LRs., State of U.P. and Others Vs. Raj Kishore Yadav and Another,

19. I have considered the rival contentions and perused the record, the only

point which has been pressed, is as to whether selling the property which was purchased out of the funds of the bank and earning profit from the sale would amount to gross negligence causing loss to the Bank.

20. A.L. Kalra's case (supra) has been extensively relied upon by the learned counsel for the petitioner, as the facts of the said case, is similar to the facts of the case in hand. In Kalra's case, the appellant/petitioner applied, and obtained advance for purchasing a plot of land for which he executed requisite agreement with the corporation a Government of India undertaking. The appellant was also advanced vehicle loan. It was alleged that the appellant neither utilized the advance for the purchase of the plot/vehicle nor refunded the amount despite several reminders and disciplinary proceeding was initiated against him. The appellant was faced with two charges of misconduct which exhibited "lack of integrity" and "conduct unbecoming of public servant". The appellant pleaded guilty to all the charges and also agreed to the statement of imputations of his misconduct. After conclusion of the enquiry penalty of removal was imposed.

21. The appellant approached the Delhi High Court challenging the order on various grounds, including that even if the heads of charges is unrebutted, it would not constitute misconduct within the meaning of the rules. The writ petition was dismissed in limine, thereafter, the appellant approached the Hon"ble Supreme Court.

22. It was contended before the Supreme Court that if rules for granting the advance themselves provided the consequence for the breach of conditions, it would be irrelevant to go in search of any other consequence for initiating any disciplinary action in that behalf unless rules specifically incorporate a rule that the breach of house building advance, rule would by itself constitute a misconduct. The transaction itself provides for repayment and the consequence of failure to repay is provided under the rules, at the best, it is breach of contract and not misconduct, it is not misconduct to constitute a conduct unbecoming of a public servant or failure to maintain an absolute integrity. The Supreme Court accepted the argument and held, non payment of housing loan cannot be an act reflecting upon the integrity of an employee.

23. Supreme Court, in paragraph 30, in J. Ahmed's case (supra) referred to the definition of misconduct in Stroud's Judicial Dictionary which is as under:

Misconduct means, misconduct arising from ill motive; acts of negligence, errors or judgment, or innocent mistake, do not constitute such misconduct.

24. Supreme Court in Rasiklal Vaghajibhai Patel case (supra) held that it is necessary for the employer to prescribe what would be a misconduct so that the workman/employee knows the pit falls, he should guard against. The misconduct has to be defined and enumerated.

25. The allegation against the petitioner is not just violation of the terms and conditions of the Housing Scheme or mere breach of contract but an act of

misconduct, the charge clearly states that by selling the property, the petitioner has misutilized the bank's fund for earning profit; 19.5 of the bipartite agreement states "gross misconduct" shall mean any act or omissions enumerated therein, and sub-clause (j) states "doing any act or negligence involving or likely to involve the bank in serious loss". The money advanced to the petitioner is the money belonging to the bank and that was advanced for the particular purpose, that is, for the purchase of property but the petitioner sold the property once its price appreciated and used the funds for earning profit, whereas outstanding dues of the bank was still payable, thus causing loss to the bank..

26. Consequences of breach of contract and misconduct are entirely distinct and different, in breach, the consequence is as per terms of the agreement, but causing loss or earning profit by using bank's fund is certainly an act likely to cause serious loss to the bank. The bank cannot permit such a conduct as large number of employees are advanced loan at considerably low rate of interest, and in case, the loans are misused by the employees for purposes other than it is advanced for and the bank cannot proceed against them for misconduct, that would adversely jeopardize discipline of the bank. Misutilization of funds of the bank tantamounts to causing loss to the bank and it is gross misconduct.

27. The contention of the learned counsel for the petitioner that the charges on the face of it does not constitute misconduct cannot be accepted. The ratio of Kalra's case will not apply in the facts of the present case as the distinguishing feature is that A.L. Kalra was charged for conduct "unbecoming for a public servant" and "lack of integrity; in the present case, the charge is using the bank's funds for profit and thus causing loss to the bank. The Supreme Court in Kalra's case held that violation of terms and conditions of the housing scheme cannot be held lack of integrity" whereas, in the present case, it is a case of causing loss to the bank by using its fund for making profit by selling the security.

28. Supreme Court in Vijay Singh Vs. State of U.P. and Others, explained the term integrity/doubtful integrity. In paragraph 14 which is as follows:

14..... Integrity means soundness of moral principle or character, fidelity, honesty, free from every biasing or corrupting influence or motive and a character of uncorrupted virtue. It is synonymous with probity, purity, uprightness, rectitude, singleness and sincerity. The charge of negligence, inadvertence or unintentional acts would not culminate into the case of doubtful integrity.

29. The petitioner has misutilized the funds of the bank for personal gain as the petitioner had not created equitable mortgage in respect of the property purchased out of the funds loaned to the petitioner and the property was sold to third party without permission and knowledge of the Bank. The property was created out of the funds of the bank and on the date of sale dues were outstanding to the bank. In the circular of 1983, the bank had taken notice of the

fact that the funds advanced for housing loan was being misutilized by the employees and thereafter, it had cautioned the officers of the bank that while advancing loan an undertaking must be taken in respect of the advances and any breach, of any of the terms and conditions of the housing scheme, would entail initiation of disciplinary proceedings. Breach of contract and misconduct under the services rules or regulations or agreement are entirely different and stand on different footing.

30. Consequences of breach would flow from the terms and conditions of the agreement, penal interest would be charged and in the present case penal interest at the rate of 17.75% was charged. The penal interest is not a penalty arising out of disciplinary proceedings but it is on account of breach of agreement between the parties. An act to constitute misconduct must be an act enumerated in the bipartite agreement. A bare perusal of 19.5(J) which is in two parts : i.) doing any act prejudicial to the interest of the bank.

ii.) gross negligence or negligence involving or likely to involve bank in serious loss.

31. The petitioner's conduct falls in the second part of 19.5(J), property which was created out of funds of the bank and which was also a security to the loan advanced by the bank, was sold without the consent of the bank resulting in serious loss to the bank. The bank was left with no security to recover its dues, under such circumstances the bank had two options, either to continue the employee, indulging in misconduct, in employment, in order to recover the amount from his salary, which would amount to perpetuating indiscipline in the organization and would be a premium to misconduct and the second option which the bank had, in order to restore discipline and to send a message to other employees of the bank, was to proceed against the petitioner for misconduct. In the first case the Bank would recover its money but at the cost of discipline, in the second case discipline of the organization was paramount at the cost of loss. The officials of the Bank, in their wisdom chose the second course which is as per their circular and bipartite agreement.

32. Supreme Court in Disciplinary Authority-cum-Regional Manager and Others Vs. Nikunja Bihari Patnaik, held that there is no defence available to say that there was no loss as a result of the employee's conduct.

33. In A.T. Mane's case (supra) the Supreme Court held that it is not quantum of money that the employee misappropriates. In the said case, only Rs. 93 was found to be misappropriated, the Court held that it is the loss of confidence of the employer which is primary factor for imposition of penalty and not the amount of money misappropriated. Similar view was taken in Nemi Chand Nahwaya's case (supra) as well as in Raghuda Siva Sankar Prasad's case (supra).

34. In the facts of the present case, the petitioner does not dispute the allegations of the misconduct nor it has been argued that there was any legal

infirmity in conducting the proceedings. In that eventuality the punishment of dismissal imposed cannot be substituted by this Court as the petitioner was responsible for causing loss to the bank and it was a deliberate act on his part to earn profit. (Refer: Ramesh Dinkar Punde's case (supra), Narendra Kumar Pandey's case (supra), Girdharilal Yadav's case (supra), G. Ganayutham's case (supra), Raj Kishore Yadav's case (supra)).

35. Regarding quantum of punishment, it is now settled, that the Courts do : not substitute the punishment imposed by the disciplinary authority until and unless the quantum of punishment shocks the j conscious of the Court.

36. Learned counsel for the petitioner, finally contended that the distress sale of the property by the petitioner was under compelling circumstances which was beyond his control to meet his medical expenses, reliance has been placed upon Krushnakanat B. Parmar's case, wherein it has been held that any act or omission done beyond once control and the same was done under some compelling circumstances, the act or omission will not constitute misconduct.

37. The plea of distress sale is an after thought, the petitioner contended that Rs. 20,000/- was incurred towards medical expenses, but the petitioner failed to show that he offered the bank remaining amount, after meeting the medical expenses, towards satisfaction of the loan. The suspended employee has a right to medical expenses under the rules, which was not availed by the petitioner. Service Regulation and Employments of Workmen in Banks provides as follows:

Suspended employees are also eligible for medical aid and hospitalization.

38. In my opinion the conduct of the petitioner of selling the property and making profit, amounts to misutilization of the bank's fund causing serious loss to the bank.

39. The writ petition is devoid of merit and is, accordingly, dismissed, it will be open for the Bank to recover the salary paid to the petitioner as per the order of the Division Bench dated 2.8.2000. The writ petition is dismissed with cost.