

(2010) 05 DEL CK 0141

In the Delhi High Court

Case No : C.M. No. 6989 of 2010 in Writ Petition (C) No. 1580 of 1996

Sh. R.P. Gulati

APPELLANT

Vs

Punjab National Bank and Another

RESPONDENT

Date of Decision : 20-05-2010

Acts Referred:

Citation : (2010) 05 DEL CK 0141

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : V. Shekhar and Jatin Rajput, for the Appellant; Jagat Arora, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—This application has been filed for restoration of the writ petition dismissed for non prosecution on 4th March, 2010.

2. The writ petition was listed for hearing on 18th February, 2010. The advocate then appearing for the petitioner had stated that a family member of Mr. Arun Bhardwaj, counsel for the petitioner was indisposed and requested for an adjournment. A perusal of the order sheet showed that for the last several dates the petitioner had been seeking adjournments, generally on the ground of non availability of Mr. Arun Bhardwaj, Advocate. In the circumstances, this Court adjourned the writ petition to 25th February, 2010 and made it clear that no further adjournment shall be granted on that date on any ground and if the counsel for the petitioner was to be not available on that date also, the petitioner should make alternative arrangements. The writ petition thereafter came up for hearing on 4th March, 2010 when adjournment was sought by the counsel appearing for the petitioner again on the ground that the arguing counsel Mr. Arun Bhardwaj was indisposed. As such, it was informed to the counsel appearing for the petitioner that the matter could not be adjourned. The counsel for the petitioner then sought a pass over for the matter to be taken up after lunch stating that she will argue the matter. After lunch, the counsel appeared

along with the petitioner and stated that the petitioner desired to engage a senior advocate to argue the matter and did not desire the counsel present to argue the matter. Finding that the writ petition was pending since 1996 and the challenge therein was to the order dated 13th May, 1985 of dismissal of the petitioner and appellate order dated 23rd December, 1985 and further finding that the petitioner/his counsel in the past also had been delaying the matter, the petition was dismissed for non prosecution.

3. Even though the petitioner as well as his counsel were present on that date, this application for restoration has been got listed after one and a half month. The application is filed by Mr. Arun Bhardwaj, Advocate only. Though he has in the application stated reasons for his absence but it is not stated that he was not attending to the Courts during those days. In any case, it is stated that a senior advocate has now been engaged by the petitioner. If the senior advocate only was to be engaged, he could have been engaged on 4th March, 2010 also. The senior advocate engaged is none else but who before his designation was the advocate for the petitioner.

4. In all the aforesaid circumstances, no case for restoration of the petition is made out and the application is liable to be dismissed.

5. However, to ensure that no injustice is done to the petitioner, the senior counsel for the petitioner has also been heard on the merits, this Court being of the view that if the petitioner is found to have a very good case on merits, he should not be condemned unheard.

6. The petitioner was working as an Accountant with the respondent Punjab National Bank. He was charged with defalcation of accounts and siphoning of the monies of the bank for his personal use. An FIR was lodged on 3rd December, 1982 of the offence committed by the petitioner and he was also charge-sheeted on 24th June, 1983. The petitioner participated in the disciplinary proceedings which culminated in an order dated 13th May, 1985 of dismissal of the petitioner from service. The petitioner preferred departmental appeal which was also dismissed on 23rd December, 1985. Review filed by the petitioner was dismissed by the appellate authority on 12th July, 1986.

7. This writ petition impugning the order of the disciplinary authority and the appellate authority was filed in the year 1996.

8. This Court in the order dated 4th March, 2010 dismissing the writ petition for non prosecution had noted that the counsel for the respondent bank had as far back as on 29th January, 2009 when also the petition had come up for hearing raised a preliminary objection to the maintainability of the writ petition on the ground of laches and delay. The counsel for the petitioner on that date also had sought time to address on this aspect. The petitioner however instead of addressing on the said aspect continued to take adjournments. The senior counsel for the petitioner was asked to explain the delay of over ten years in filing the writ petition.

9. The senior counsel for the petitioner contends that the criminal case pursuant to the FIR lodged against the petitioner was under way all these years and owing whereto the petitioner did not challenge the order of the disciplinary authority and the appellate authority; that the respondent bank however failed to lead any evidence in the criminal prosecution and which was ultimately quashed. It is stated that the present writ petition was filed thereafter.

10. No merit is found in the said contention. It is settled principle of law that the decision of disciplinary proceedings or of an industrial dispute, the facts whereof are also subject matter of criminal prosecution does not take colour from the decision of the Courts in the said criminal prosecution. The test to be applied in a domestic enquiry and/or in a labour dispute is entirely different from the test to be applied in a criminal prosecution while the outcome of a criminal prosecution is based on proof beyond reasonable doubt, the outcome of a domestic enquiry and/or a proceeding before an industrial adjudicator depends upon the preponderance of probability. This Court in *All India Institute of Medical Sciences Vs. O.P. Chauhan and Others*, has held a reference, in that case after ten years of the dispute on the ground of acquittal by the criminal Court, to be bad in law. It was held that the termination, in the long period of ten years, had become a settled fact and the employer could not be expected to keep the post vacant. Reference of such stale disputes was also held to be disturbing, rather than promoting industrial harmony. The factum of acquittal by the criminal court was held to be not relevant, again, for the reason of standards of proof required by a criminal court and in disciplinary proceedings to be different.

11. The Supreme Court recently in *Southern Railway Officers Assn. and Another Vs. Union of India (UOI) and Others*, has also held that order of dismissal can be passed even if the delinquent official has been acquitted of the criminal charge. It was further held that acquittal in a criminal case by itself is not a ground for interfering with an order of punishment imposed by the Disciplinary Authority. The Supreme Court in *State of Rajasthan Vs. B.K. Meena and others*, had also reiterated that the principles of natural justice do not require that the employer should wait for the decision of the criminal court before taking disciplinary action against the employee and held that it is not in the interest of administration (in that case of State) that persons accused of serious misdemeanour should be continued in office indefinitely and for long periods awaiting the result of criminal proceedings. Such a situation was held to be serving the interest of the guilty and the dishonest only. To the same effect is *Noida Entrepreneurs Assn. Vs. Noida and Others*, . It was further held that the purpose of criminal prosecution and departmental enquiry are different. Disciplinary proceedings were held to be with the purpose of maintaining discipline and efficiency in service and it was further held that it is expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible.

12. I have recently discussed the law in this aspect in the judgment dated 4th May, 2010 in WP(C) No. 4420/2002 titled *Daya Swaroop Saxena v. The Presiding*

Officer.

13. It was further enquired from the senior counsel for the petitioner as to what is the challenge by the petitioner to the disciplinary proceedings. The senior counsel for the petitioner invites attention to the written submissions filed earlier. A perusal thereof shows that most of the grounds of challenge invoked by the petitioner were not such which would have interfered with the defence of the petitioner to the criminal prosecution. The petitioner thus has no valid explanation for having filed this petition after more than 11 years of the order of his dismissal from service. The Supreme Court in *Hindustan Petroleum Corporation Ltd. v. Sarvesh Berry* 2005 Lab. I.C. 1624 has held that the purpose of departmental inquiry and prosecution are entirely different and distinct aspects.

14. The counsel for the respondent bank who appears on advance notice has also drawn attention to a letter dated 24th November, 1982 written by the petitioner to the bank. The petitioner in the said letter admitted that he had utilized for his personal use a sum of Rs. 1,25,000/- deposited by various parties in their accounts and had failed to deposit the cash with the bank. The petitioner in the said letter agreed to deposit the said sum of Rs. 1,25,000/- with the bank within three days of the letter. The counsel for the respondent bank contends that the petitioner having expressly admitted his guilt, the question of this Court interfering in the order of the disciplinary authority does not arise.

15. The senior counsel for the petitioner does not dispute that the said letter was written by the petitioner. He however contends that the same was written under duress and was retracted by the petitioner. However, the senior counsel is unable to show any averments in the writ petition as to what was the duress or circumstances under which the petitioner was compelled to write the said letter. The counsel for the respondent bank contends that no such particulars have been given. The petitioner having of his own written the said letter to the respondent bank and in the absence of any pleadings explaining the circumstances in which the said letter was written, it cannot be doubted that the respondent bank had a genuine reason for dismissing the petitioner from the service of the bank. An employer cannot be expected to keep an employee in whom the employer has bona fide lost confidence and especially the employer such as the bank that deals with public monies. In view of the letter admittedly written by the petitioner, it cannot be doubted that the respondent bank has valid reasons for doubting the integrity of the petitioner. The Supreme Court in *Damoh Panna Sagar Rural Regional Bank and Another Vs. Munna Lal Jain*, has held that a bank officer is required to exercise highest standard of honesty and integrity and the discipline of an organization more particularly a Bank is dependent on each of its officers and on each of its officer operating and acting within their allotted sphere. The Supreme Court in *Noida Entrepreneurs Association (supra)* has also held that mere acquittal of a government employee does not automatically entitle the government servant to reinstatement.

16. It was further enquired whether the petitioner had reimbursed the sum of Rs. 1,25,000/- as undertaken by him in the letter aforesaid. It is informed that upon the petitioner not paying the said amount, the respondent bank instituted a civil suit for recovery of the said amount against the petitioner and in the said civil suit a settlement was arrived at, where-under the petitioner agreed to pay Rs. 1,25,000/- to the respondent bank and the respondent bank agreed not to press the claim of interest. It was enquired from the senior counsel for the petitioner whether the said payment was made by the petitioner without prejudice to his right to challenge the departmental proceedings. He replies in the negative. In my view the payment of Rs. 1,25,000/-, which the respondent bank had alleged that the petitioner had siphoned off/defalcated, nails the guilt of the petitioner. There could be no other reason for the petitioner to pay the said amount.

17. From all the aforesaid, I am satisfied that no injustice is being meted out to the petitioner. In these circumstances, need is not felt to go into the plethora of judgments filed by the petitioner along with its synopsis of submissions.

18. The application is therefore dismissed. I refrain from imposing any costs on the petitioner.