
(2010) 02 AHC CK 0243
In the Allahabad High Court
Case No : Writ Petition No. 3495 of 2002

Sikendar Khan

APPELLANT

Vs

Bank of India, Mumbai & Ors.

RESPONDENT

Date of Decision : 08-02-2010

Acts Referred:

Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 — Section 19

Citation : (2010) 02 AHC CK 0243

Hon'ble Judges : Anil Kumar, J

Final Decision : Dismissed

Judgement

Anil Kumar,J.

1. Heard Sri R.C. Singh, learned counsel for the petitioner and Sri Lalit Shukla, learned counsel for the opposite parties.
2. Sri R.C. Singh learned counsel for the petitioner submits that the petitioner Sikendar Khan while working as Staff Clerk at Balrampur Branch of the Bank of India (hereinafter referred to as the "bank"), was elected as PresidentCumGeneral Secretary of Employee Union of the Bank in Gonda District and in the said capacity he made a complaint against one Sri P.K. Sharma, Branch Manager of the bank at Balrampur to the then Chief Vigilance Officer of the Bank (Shri K.V. Krishnamurthy) regarding bungling in advancement of loans. As a result of said fact, the petitioner was transferred from Balrampur Branch to Kumhrawan Branch where he joined his duties in September,2000.
3. On 12.5.2001 he received a notice from Chief Regional Manager, Varanasi to submit his reply in response to the same within a period of one week with regard to complaint dated 31.10.2000 made by an account holder Smt. Khairatunisha, regarding not depositing a sum of Rs. 7000/ in her saving bank account no. 12985 by the petitioner while he was posted at Balrampur Branch of the Bank.
4. It was further submitted by the learned counsel for petitioner that petitioner could not submit any reply within the time prescribed as he could not contact the

depositor. On 6.9.2001, the petitioner was placed under suspension charge sheet dated 5.10.2001 was also issued and he was asked to submit his reply. In the chargesheet, it was mentioned that the act of the petitioner, if proved, shall constitute gross misconduct under Clause 19.5(j) of the Bipartite Settlement dated 19.10.1966 which provides that "doing any prejudicial to the interest of bank or gross negligence or negligence involving or likely to involve the bank in serious loss." One Sri D.R. Ram (opposite party no.3), Officer, Varanasi Branch of the Bank was appointed as enquiry officer to conduct the enquiry against the petitioner in the matter in question.

5. Sri R.C. Singh learned counsel for the petitioner further submits that in the meantime when the enquiry under contemplation, the complainant Smt. Khiratun Nisha had sent an application by registered post on 2.1.2001 thereby withdrawing her complaint. In view of the said development, the petitioner on 18.10.2001 wrote a letter to the competent authority with the request to revoke his suspension order and dropped the enquiry proceedings. However, in spite of withdrawal of the the complaint by the complainant, enquiry was not dropped and the same was completed by the enquiry officer and on 25.2.2002 a show cause notice alongwith enquiry report was served on the petitioner by the disciplinary authority to submit his reply.

6. In response to the show cause notice dated 25.2.2005, petitioner submitted his written explanation on 9.3.2002 and also appeared before the disciplinary authority for personal hearing on 11.3.2002 and on the said date, the petitioner had submitted his version before the punishing authority. But without considering the reply submitted by the petitioners, the disciplinary authority Chief Manager(Credit), Bank of India, Lucknow Zone, Lucknow by order dated 20.3.2002 had dismissed the petitioner from service.

7. Aggrieved by the said order, the petitioner had preferred an appeal before the appellate authority i.e. Zonal Manager of the Bank at Lucknow on 17.4.2002. The appellate authority by order dated 22.5.2002 had rejected the appeal filed by the petitioner which was communicated to him by letter dated 23.5.2002, hence the present writ petition.

8. While challenging the above said orders, learned counsel for the petitioner submits that when the complainant disowned her complaint and had stated in her application that the contents of the complaint were not read against the petitioner and she withdraw the same, in view of the said facts and as no financial loss had been caused to the bank. Further, the pass book was not a substantial proof of the amount outstanding to the credit of an account holder and the entry made in the ledger book of the bank was the correct balance as such the money entered in the pass book did not give right to the account holder to claim for money entered unless until the same is entered in Ledger book of the bank, so the impugned orders which were challenged in the present writ petition are arbitrary in nature, against the principle of natural justice.

9. In support of his submission Sri Singh has relied upon the case of State Bank of India (Successor to the Imperial Bank of India) Vs. Smt. Shyama Devi, AIR 1978 Supreme Court, 1263 in which it has been held as under:

"The first of these principles is that the employer is not liable for the act of the servant if the cause of the loss or damages arose without his actual fault or privity and without the fault or neglect of his agents or servants in the course of their employment.

In United Africa Company Ltd. Vs. Saka Owoade(1955 AC 130), the Privy Council laid down that a master is liable for his servant's fraud perpetrated in the course of master's business, whether the fraud was for the master's benefit or not, if it was committed by the servant in the course of his employment. There is no difference in the liability of a master for wrongs whether for fraud or any other wrong committed by a servant in the course of his employment and it is a question of fact in each case whether it was committed in the course of the employment."

10. Sri Singh, on the basis of State Bank of India (Successor to the Imperial Bank of India) (supra) submits that in such a situation the employee could not be said to have been acting in due course of his employment or an agent of the Bank. He was only a agent of the customer. The bank could not be held liable for the loss. It was established that the said employee was not at the relevant time, in charge of the saving bank counter at which the Saving Account of the Bank was dealt with. IN such a situation he acted as an agent of the customer. His Act of misappropriation could not be said to have been committed in the course of his employment with the Bank. Similarly, it could not be said that false and fictitious entries made by the employee to cover up his fraud made the embezzlement an act committed by the employee in the course of his employment with the Bank. So, an employer(bank) is not liable for the act of the servant, if the cause of the loss or damage arose without his actual fault or privity or without the fault or neglect of his agent or servant in the course of his employment.

11. He further submits that in the present case the version of the petitioner had not been considered and the punishment order as well as the appellate order were passed simply on the basis of inquiry report so the said action on the part of the concerned officers of the bank is contrary to law as laid down by this Court in the case of Vijay Shanker Tiwari ETC. Vs. Fooder Corporation of India and others, etc., 2006(4) ESC 2524 (All) (LB).

12. Lastly, it has been submitted by Sri Singh that penalty which is imposed upon the petitioner did not commensurate with the gravity of the misconduct and as per settled proposition of law if penalty is disproportionated by the gravity of misconduct, the same would be violative of Article 14 of the Constitution of India and in support he relies on the following judgments:

(1) Bhagat Ram Vs. State of Himanchal Pradesh, AIR 1983 SC 454.

(2)Ranjit Thakur Vs. Union of India and others, (1987) 4 Supreme Court Cases,611.

(3) Ex. Naik Sardar Singh Vs. Union of India and others, AIR 1992 Supreme Court 417

13. Accordingly, Sri Singh had argued that the order of dismissal as well as appellate order are liable to be set aside.

14. Sri Lalit Shukla learned counsel for the respondents, on the other hand, submits that on the basis of material evidence on record the following facts were clearly established and proved:

(a) As admitted by the petitioner himself he was working in the branch on 19.4.2000 and he received a sum of Rs. 7000/ in cash as deposit in the S/B account no. 12985 of Smt. Khairatunisha and that the petitioner has issued counter foil of payinginslip under his initial as a token of receipt of cash on behalf of the bank and that he made the credit entry in the pass book of the account holder.

(b) Once money is received across the counter at the branch, the same becomes property of the Bank. Still the petitioner took away Rs. 7000/ as has been admitted by the petitioner himself.

(c) The petitioner thereafter accordingly to his story returned back the said amount to Dr. Abdul Hamid Khan, who admittedly has no locus standi to reverse the transaction done by the account holder even if he be the husband of the account holder.

(d) Admittedly, the petitioner did not take permission from his higher authorities at the branch before taking away Rs.7000/ from the custody of the Bank.

(e) Thus, it is amply clear that taking away Rs. 7000/ from the custody of the bank by the petitioner was certainly an unauthorized act even if the story of the petitioner is to be believed and this tantamount to misappropriation of bank's cash received by the petitioner during the course of his duties in the bank.

15. Sri Lalit Shukla learned further submits that the petitioner after the initiation of the disciplinary action against him had own over the complainant for ostensible reasons and subsequent to which the complainant had submitted her letter dated 8.10.2001 withdrawing the complaint which seems to be quite illogical. The complainant Smt. Khairatunisa did not appear as witness in the departmental inquiry as she being an outsider, the bank had no control on her and the management cannot force her to depose as a management witness. But the petitioner did not take any steps to produce her as defense witness to establish and proof that he was not guilty of charges but he had failed to do so further on the basis of other oral and documentary evidences it was established that the petitioner had received an amount of Rs. 7000/ for depositing the same in the saving bank account of the account holder, issued counterfoil of the paying

in slip duly initialed by him and entered the same in the credit side in the pass book of the complainant on 19.4.2000 but since the petitioner did not deposit the same, the amount was never reflected in the bank's books/ledgers. Thus, it is amply proved that the petitioner misappropriated Rs.7000/ so received from the account holder. The withdrawal of the complaint at a later stage after initiation of disciplinary action was clearly an attempt by the petitioner to save himself from disciplinary action, the said facts were proved during inquiry proceedings, so the dismissal order dated 20.3.2002 passed by the disciplinary authority as well as the appellate authority order dated 22.5.2002 are perfectly valid and needs no interference. In support of his contention, Sri Shukla has relied upon the following judgments:

(1) State of U.P. and others Vs. Raj Kishore Yadav and another, (2006) 5 Supreme Court Cases 673

(2) State Bank of India and others Vs. Ramesh Dinkar Punde (2006) 7 Supreme Court Cases, 212.

16. I have heard the learned counsel for the parties and perused the record.

17. As per the admitted fact of the present case, on 19.4.2000, petitioner received a sum of Rs.7000/ in cash for depositing the same in saving bank account no. 12985 of Smt. Khiratunisha and after receiving the same had also issued counterfoil payinslip duly signed by him to the complainant that he had received the said amount. In addition to said fact, he had also made entry of the said transaction in the pass book of the account holder by entering the amount in the credit side in the pass book. However, the said amount was not deposited with the bank. On the basis of the said fact, petitioner was placed on under suspension thereafter chargesheet was also issued to him on the said instance the inquiry was initiated.

18. On the basis of the inquiry report submitted by the inquiry officer, disciplinary authority had passed an order of dismissal dated 20.3.2002. While passing the dismissal order, disciplinary authority had given categorical findings of fact to the effect that the charges held as proved against Sri Khan, CSE in the departmental enquiry involves misappropriation of money by not depositing the amount in the bank which he received for depositing in the Saving bank account no. 12985 maintained in the Branch and making fictitious entry in the pass book and issuing counterfoil of the payinslip duly initiated by him for having received the money. Moreover, banking is such an industry where utmost integrity and honesty are required from the people serving the Bank. Banking Industry runs on the trust of depositors so there cannot be any place for persons who lack in integrity and honesty in the services of the Bank and who indulge in misappropriation of bank's money.

19. Further, the appellate authority while dismissing the appeal, had also given categorical findings that I find that the disciplinary proceedings were properly held in accordance with principles of natural justice/ provisions of Bipartite

Settlement and the punishment imposed was just, commensurate to gravity of charges as levelled and held proved. Bank is a Public Financial Institution which runs on the trusts on the depositors which they have on the bank and the bank in turn repose the same on its employees and expects all its employees to maintain a high degree of honesty and integrity. Any employee who resorts to acts of misappropriating bank's fund, cannot be trusted and hence can not be allowed to be retained in bank's service. Therefore, there was no reasons / ground for the undersigned to interfere with the punishment order issued by the Disciplinary Authority as contended by the appellant.

20. After taking into consideration the aforesaid facts, the dismissal order and the appellant order which are based on findings of facts and not perverse in nature, cannot be said to be arbitrary as argued by the learned counsel for the respondents, so the arguments advanced by the learned counsel for the petitioner in this regard has no force, accordingly, the same is rejected.

21. Next arguments advanced by the learned counsel for the petitioner that Smt. Khiratunisha in whose complaint, the entire proceedings were initiated and the sole basis of passing of the dismissal order. Later on, during the pendency of the enquiry proceedings were withdrawn by the complainant as such there was no justification or reasons on the part of the authorities concerned to conduct an enquiry and pass the impugned orders also got not force. As in the present case initially the reply was submitted by the petitioner dated 18.10.2001 (Annexure 8 to the writ petition) and later on, in his representation (9.3.2002) against the show cause he in clean terms had admitted that he had received the money from the complainant Smt. Khiratunisha and issued counterfoil of the bank for the said purpose and made an endorsement in the pass book, clearly amounts to admission of guilt on the part of the petitioner which was certain unauthorized act on his part, and if the version of the petitioner is to be taken as true for a moment that by the act of the petitioner the complainant had not suffer any losses the money was returned to her husband even then it amounts to misappropriation of the bank's money during the course of his duties in the bank as the bank is a Public Financial Institution which runs on the trust of the depositors which they have on the bank and the bank in turn response the same on its employees and expects all its employees to maintain a high degree of honesty and integrity, so the petitioner cannot held to be not guilty of any offence.

22. As the Hon'ble Supreme Court in the case of K. Raveendran Vs. Deputy General Manager, Canara Bank, (2004) 13 Supreme Court Cases, 681 has held that:

" In order view, an officer of the bank who is guilty of misappropriation and forgery cannot be dealt with leniently in the manner as was sought to be done by the Industrial Tribunal and the Single Judge. The Division Bench is absolutely right in holding that in case of a bank, and, that too, a nationalized bank, if a person is found guilty of misappropriation of forgery, confidence would be lost in

such a person. In such cases, no question arises of taking a lenient view."

23. And in the case of Sate Bank of India and others Vs. Ramesh Dinker Punde, (2006) 7 SCC 212 in which Hon''ble Supreme Court has held as under:

"The scope of judicial review is very limited. Sympathy or generosity as a factor of impermissible. In our view, loss of confidence is the primary factor and not the amount of money misappropriated. In the instant case, the respondent employee is found guilty of misappropriating the corporation funds. There is nothing wrong in the Corporation losing confidence or faith in such in employee and awarding punishment of dismissal. In such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering therefor with the quantum of punishment awarded by the disciplinary and Appellate Authority."

24. Last argument raised by Sri R.C. Singh learned counsel for the petitioner that the penalty imposed must be commensurate with the gravity of the misconduct, and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution and on the said proposition of law, he submits that the impugned orders which are passed in the present case are liable to be set aside, also got no force, as in the present case, admittedly, the petitioner had misappropriated the amount of Rs. 7000/ which was deposited by the depositor, make a entry in the pass book after issuing the counterfoil for the said purpose and also not deposited the same with the bank so the misconduct on the part of the petitioner cannot be treated so lightly in view of the law as laid down in the case of A Sudhakar Vs. Postmaster General, Hyderabad and another, (2006) 4 Supreme Court Cases, 348 wherein the Hon''ble Supreme Court has held:

" A person, when dismissed from service, is put to a great hardship but that would not mean that a grave misconduct should go unpunished. Although the doctrine of proportionality may be applicable in such matters, but a punishment of dismissal from service for such a misconduct cannot be said to be unheard of Maintenance of discipline of an institution is equally important."

25. Accordingly, the punishment of dismissal awarded to the petitioner by the disciplinary authority and the order of dismissal of appeal by the appellate authority are perfectly valid and needs no interference.

26. For the foregoing reasons, the writ petition lacks merit and is dismissed.

27. No order as to costs.