(1996) 01 KAR CK 0040

In the Karnataka High Court

Case No : WP. 16598 of 1994

Smt. Saroja Shivakumar APPELLANT

Vs

State Bank of Mysore RESPONDENT

Date of Decision : 18-01-1996

Acts Referred:

Payment of Gratuity Act, 1972 — Section 4 (6)

Citation : (1996) ILR (Kar) 2655 : (1996) 6 KarLJ 384

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : P.S. Rajagopal, for the Appellant; C.B. Srinivasan, for the Respondent

Judgement

M.F. Saldanha, J.—It is now well settled law that a public authority particularly in its dealings with its employees is required to act fairly but the time has come to amplify that requirement by specifically adding on one more dimension namely the duty to act humanely. Normally, this requirement would have been considered to be implicit in the former but experience has shown that Institutions often act with a degree of rigidity and severity by insisting on technical and strict compliance with the rules which is construed as fair treatment in so far as the letter of the law is observed but this unfortunately falls short of the requirement in so far as when dealing with human beings, the special factors and circumstances, many of which are situational and which are inter-twined with the facts of the case, cannot either be dissected or separated in the process of decision making. This very important aspect has been directly thrown up in the present case which involves a few other significant dimensions of law which I shall presently deal with. The facts are rather simple and can be briefly summarised in that the present petitioner is the wife of late R.Shiva Kumar who was last employed as a Manager by the Respondent-Bank namely the State Bank of Mysore. He was holding the post of Manager of the Lokkanahalli Branch of the Bank in Mysore District. It is alleged that in the course of his duties, he had committed certain acts of misconduct which consisted of opening bogus accounts in the names of certain persons, showing loans having been sanctioned to them which in fact were appropriated by the Manager himself. The Bank''s case is that through such a modus operandi the late Shivakumar is alleged to have misappropriated approximately Rs. 58,000/-. The Bank, by order dated 6.2.92 placed him under suspension. At the relevant time he was in a rather precarious condition in so far as he was suffering from a serious heart complaint in addition to several other attendant circumstances. The suspension order was followed by a charge sheet dated 19.8.92 and an amendment dated 10.3.93. The charge sheet was further added to on 28.9.93. An enquiry was commenced which made some headway in so far as the Enquiry Officer commenced the proceedings, a few hearings were held but before the enquiry could be completed, Shivakumar passed away on 26.11.1993. The Bank did not settle the dues of the petitioner for two reasons the first being that it contended that there was material to indicate that the deceased had committed acts of misconduct involving pecuniary loss of Rs. 58,000/- to the Bank and secondly that there were certain amounts outstanding from him under various heads such as house loan etc. Shivakumar had left behind his widow, a son and daughter and it is contended by the Wife of the late Shivakumar who is the petitioner before me that the family suffered great financial distress as a result of his illness and his death and that in the course of the medical treatment, the family had incurred huge expenditure which meant taking of loans. An application was therefore made requesting that in view of the compassionate employment scheme which was at that time in operation that the petitioner''s son should be employed by the Bank in his place. Similarly, the petitioner wife had agitated the question regarding the various dues payable to the petitioner by the Bank and in view of the fact that the Bank refused to either employ her son or to settle these dues, she has filed the present petition praying for appropriate reliefs.

2. The contentions taken up in the petition are of some consequence. Firstly it is contended that irrespective of the charges that the late Shivakumar had to face, that the disciplinary proceeding had not concluded and that consequently, the same abates on his death which means that the respondents are wrong in seeking to fasten any liability on Shivakumar in respect of those charges which have not reached a stage of finality. The consequent submission is that if the disciplinary proceedings have not concluded with an adverse order against Shivakumar, that the period of suspension will have to be treated as on duty and that therefore, the petitioner would be entitled to claim along with the dues payable to him, the difference in salary between the subsistence allowance paid to him during the period of suspension and his normal salary which he would have been entitled to receive but for the suspension order. Simultaneously, it is contended that the whole function and purpose of formulating the compassionate employment scheme is that when the dependants of an employee are virtually orphaned or plunged into distress that at the earliest point of time the Institute must provide relief by way of employment to another member of the family in order to soften the blow. This Court has had occasion to observe while dealing

with compassionate employment schemes which are applicable to organisations such as the present one that speedy relief is of utmost consequence in the administration of these schemes as otherwise it not only frustrates the whole purpose but renders the scheme counter productive. The petitioner has contended that the Bank sent her a reply to the effect that they cannot consider her son for employment and that this was obviously because her late husband had been suspended on certain charges. She contends that if the enquiry has abated, the Bank ought to have proceeded with a dean state basis as though no such charges were in existence because these were never established. The last contention is that even if there are any amounts adjustable against the loans etc., that these could easily have been transferred to the son if he was given employment and that if such a procedure had been followed, the Bank would have still recovered its money without having to subject the family to the trauma of having almost the whole of the dues that were receivable by the petitioner adjusted in one whole instalment against the outstanding loan. Obviously, the rationale behind these contentions is that had Shivakumar continued to serve the Bank, that the loans would have been repayable on a deferred basis and if this is the position, merely because of his unfortunate death, the misery should not be compounded by seeking a one time recovery and straight away adjusting the greater part of the terminal dues against these outstanding thereby leaving the widow and the family with hardly anything in the balance.

3. The Bank has contended that the facts of this case are unusual in so far as according to the Bank the misconduct committed by Shivakumar is established by various documents which are on the record of the bank and it is further contended that Shivakumar himself had given a letter to the Bank indicating that due to his extreme distress because of the total breakdown of his health that he was forced into the position of taking away some of the Bank''s money and he had requested for some item within which to make good those amounts. The contention is that he had virtually pleaded guilty to the charges and that therefore, the non-completion of the enquiry is of no consequence because the record itself establishes what would have been the inevitable result in that enquiry. The next contention adopted is that in such a position, the Bank is fully justified in recovering the amount of Rs. 58,000/- which is alleged to have been misappropriated, from the amounts payable to the petitioner. It is further contended that once the Bank parts with the terminal benefits to the petitioner, that the institution has no further hold and that therefore it is only just and fair that they should be allowed to adjust the various loan amounts against these dues and pay only the balance. As regards non-employment of the petitioner''s son, the Bank has contended that in the first instance there were certain disciplinary proceedings pending against Shivakumar at the time of his death and that therefore, this is not a usual run of the mill case where an employee dies in harness, the implication of the defence being that Shivakumar would come within the category of a tainted employee and that therefore, his son would not qualify for compassionate employment, Also, what has been pointed out is that the

Government of India has issued certain instructions in respect of this category of cases which the Bank is obliged to follow and that consequently, the Bank was required, in keeping with the instructions, to refer the matter to the Government of India for an appropriate decision and that it was precluded from taking any decision on its own, Why this was not done and why the Petitioner was informed straightaway that her request cannot be considered has not been explained.

4. The issues that fail for determination in this case are within a relatively narrow ambit. Petitioner''s learned advocate has contended that the charges against the petitioner husband were admittedly not established on the date of his death and that the legal implications of his having died prior to final orders having been passed in the enquiry proceedings would necessarily imply that the enquiry has abated. He submits that in these circumstances, the deceased would have to be relegated to the position of a regular employee and if that is so, any recovery sought to be made on the ground that had the charges been established, the amount of Rs. 58,000/- might have been recoverable from the petitioner is impermissible. As far as this aspect of the matter goes, he has placed strong reliance on a Division Bench decision of the Bombay High Court reported in the case of HEERA BAI DESHMUKH AND ANR. v. STATE OF MAHARASTRA 1986 LAB I.C. 248. The Bombay High court was dealing with a situation where a Government servant under suspension had died prior to the conclusion of the disciplinary proceedings and after considering the legal position, the Court held that the purpose of instituting disciplinary proceedings is only with the objective of imposing a penalty if the misconduct is established. Having regard to the nature of the proceedings and the type of penalty that would follow, the proceedings were categorized as quasi criminal and consequently the Court held that if the employee died prior to the conclusion of those proceedings, that they would abate and that consequently, his heirs would be entitled to the full pay allowances etc., that would have been normally payable to him as though such proceedings were not in existence. The petitioners learned advocate has also brought to my notice certain instructions issued by the State Bank of India in this regard wherein they had obtained legal opinion and it was clarified that in the case of an employee who dies prior to the conclusion of disciplinary proceedings, that alt the dues and terminal benefits would in fact be payable. The respondent''s learned advocate has placed strong reliance on a decision of the Andhra Pradesh High Court reported in the case of D.K. Savitramma Vs. Anantapur District Co-operative Central Bank and Another, . In that case, where the employee had died under more or less similar circumstances the Court had occasion to deal with Section 4(6) of the Payment of Gratuity Act, 1972 which prescribes that it shall be open to an employer to recover amounts outstanding from the deceased employee by adjusting the same against the dues or terminal benefits payable under the Act and drawing an analogy from this decision, the learned advocate submitted that the Bank was fully justified in insisting on recovering an amount of Rs. 58,000/- from the amounts payable to the petitioner on behalf of her late husband. Learned advocate sought to lay

considerable emphasis on the fact that the record indicates that Shivakumar had at one stage given a letter to the Bank admitting the fact that he had committed certain financial irregularities and asking for time to set them right and secondly that the Enquiry Officer has recorded in his report which was submitted long after Shiva Kumar''s death that he had hardly contested the charges 1 to 8 when the enquiry commenced. Learned advocate therefore submitted that this case will have to be distinguished because of these special facts and he submits that the Court would have to draw only one conclusion from this record namely that the act of misappropriation of Rs. 58,000/- was as good as conclusively established and if that is so, that there is no need for the Bank to hold any fresh enquiry in respect of the amounts due from Shivakumar and that the amount in question is straight away adjustable.

5. As far as the first aspect of the case is concerned, one needs to take a very dear and correct perspective of the situation in so far as it is an inflexible principle of criminal jurisprudence that a prosecution abates on the death of an accused person and that regardless of what the nature of allegations may be or what the record may indicate, that one cannot come to the conclusion that had the trial ended, the accused would most certainly have been convicted. This is an anticipatory conclusion or a hypothecated one which the law does not permit and the same principle would hold good as far as disciplinary proceedings are concerned because they are quasi criminal in character. The presumption of innocence that holds good in the case of a criminal trial is equally applicable in these proceedings where the onus of proof shifts to the prosecuting authority. There are numerous instances that the Courts are not unfamiliar with, wherein employees either out of fear inducement or for whatever other reason are prevailed upon to place documents on record admitting their guilt. In the present case, I have scrutinised the so called admissions which to my mind are only generalised and these would not have exonerated the Bank from independently establishing the charges before a adverse verdict could be recorded against Shivakumar and if that is the correct position in law, his having died and the proceeding having abated prior to such an adverse verdict, could have only one result namely that the proceeding having abated, the presumption of innocence which Shivakumar was entitled to, remains undisturbed. I am aware of the reasons behind the submission canvassed on behalf of the respondent Bank namely that instances may arise where employees are guilty of serious acts causing heavy financial loss to an Institution and merely because they die before the charges are established, that may not give rise to an absolute situation whereunder all these misdeeds, are completely wiped off. There cannot be any general principle in regard to these cases because each of them will have to be decided on its peculiar facts but as far as the present one is concerned on the state of the record it was impermissible on the part of the Bank to hold that the material justifies the Institution in coming to the conclusion that the amount of Rs. 58,000/- which forms the subject mater of the charge was recoverable from him. The first contention raised by the petitioner will therefore have to be

answered in her favour.

6. As far as the second aspect of the matter is concerned, the petitioner''s learned advocate submitted that if the disciplinary proceeding has not concluded in an adverse order, then the petitioner would be entitled to receive the difference in salary as though the deceased had been on duty upto the date of his death. Respondents learned advocate has drawn my attention to the relevant provisions in the rules framed by the Bank which prescribe that only if the employee is cleared of the charges, in that event the employee would be entitled to claim the full salary and not the subsistence allowance for the suspension period. He consequently submitted that in this background since there existed a prima facie case against Shivakumar, that the Bank was justified in placing him under suspension and at no point of time was he exonerated of the charges nor has he been cleared of them. He therefore submitted that the Bank is justified in refusing to pay the difference of salary because Shivakumar could only have qualified for it if he was fully cleared of the charges. I am unable to uphold this submission for the reason that the regulation of the Bank deals with normal circumstances where an enquiry has concluded either one way or the other. We are here concerned with an artificial situation where an enquiry has ended at an inconclusive stage. There can be only two conclusions thrown up by an enquiry, the first being an adverse verdict and the second a favourable one. Undoubtedly, if the verdict is favourable, the suspension would not be justified and therefore the difference is salary would be payable. By process of the same logic, one cannot lose sight of the fact that where an adverse verdict is impossible because of the death, the employee gets relegated to the position that the presumption of innocence which was always in his favour has been revived and by virtue of that presumption the Court will have to hold that the legal position is absolutely analogous to a situation where the verdict was favourable. There can be no other way of looking at the legal position in an artificial situation of this type since an adverse verdict can never result against a dead man and one also needs to take cognizance of the fact that a suspension which might have been justified on the basis of prima facie allegation is a conditional and reviewable order depending on the final outcome of the enquiry. Under these circumstances, if the final outcome was not adverse to Shivakumar, then for purposes of accounting it would have to be deemed to have been favourable to him and therefore the Bank is wrong in having contended that the difference between the subsistence allowance and the actual salary paid to him is not liable to be paid to the petitioner. The second contention would therefore also have to be answered in favour of the petitioner.

7. The last question that arises is as to whether the Bank was justified in having refused to consider the application for compassionate employment. It is in regard to this area as also the earlier ones that I am constrained to observe that this Court most unequivocally point out to public institutions that it is essential that the officers taking these decisions should function like human beings and not like a bunch of zombies. One cannot lose sight of the traumatic position in which the family and dependents are left behind particularly having regard to the sad facts

of this case where Shivakumar was eclipsed by serious ailments for a long period of time, where his family had to incur heavy debts and where the ultimately died of cancer. It is in this background that it is most unfortunate that the Bank refused to consider the request at the point of time when the family most needed the assistance, the demand for the payment of the terminal dues any where technical and unsustainable contentions were taken up and where the request for compassionate employment to the son who was only asking for the job of a Clerk was arbitrarily denied. The justification put forward is wholly and totally hopeless. The defence taken is under the guise of a certain letter received from the Under Secretary, Government of India, Ministry of Finance dated 20.2.1991 that the scheme for appointment on compassionate grounds which has been promulgated by the State Bank of India and hold good for this Institution also, stands virtually amended or abridged. It is contended that the Bank was required in misconduct cases to make a back reference to the Government of India by virtue of this letter. I refuse to accept this for the simple reason that no such back reference was made nor was this communicated to the petitioner but in fact the request for compassionate employment was straight away turned down. I need to examine whether the Bank was justified in its reasoning that if Shivakumar by virtue of the disciplinary proceedings which may have been inconclusive but which was pending against him was relegated to the position of a tainted employee and therefore his son was disqualified from asking for compassionate employment is sustainable. One needs to take cognizance of the fact that I have already held that the charges were never proved and that the correct position in law as far as such situation where the enquiry has abated is that it will have to be ignored. Under these circumstances, such categorisation of Shivakumar was not permissible. There is an additional reason of this in so far as it needs to be pointed out that misconduct is something absolutely personal and it is for this reason that the consequences of misconduct namely punishment can be visited only on the employee. This is a unique situation in which the respondents contend that the misdeeds of the father can be visited on the son. In the first instance, misdeeds were never established but more importantly, there can be no question of transfer or vicarious liability in these circumstances and therefore it was wholly impermissible for the Bank to have taken these circumstances into consideration. As regards the defence that a back reference had to be made to the Government of India by virtue of the letter dated 20.2.91, petitioner''s learned advocate has pointed out to me that these are autonomous institutions and that the scheme in question has been framed in exercise of the statutory powers and that it is not open to the Government of India to amend or abridge the scheme and that too through a mere letter from the Under Secretary. The learned advocate is fully justified in this submission and I need to hold that even if the Bank Officers were under the impression that this letter precluded them from giving employment to the petitioner''s son, that they were wrong in coming to such a conclusion. !t is not as though the Bank has refused compassionate employment because of this letter because that defence is down right false. Had that been so, the Bank would have replied to the petitioner that the matter had been referred to the Government of India and the reply is awaited but this was not the reply which was received. It is precisely because of this attitude displayed by the Bank in having raised frivolous and unsustainable objections in having refused to settle the terminal dues and in having refused to assist by considering the application of compassionate employment, that this Court has been required to lay down in the course of this judgment the principle that apart from the duty to act fairly, it is equally necessary for these Institutions to act humanely while deciding cases such as the present one.

8. It is in this background, that the petitioner is entitled to succeed. By virtue of the interim orders passed by this Court, I am informed that the Bank has paid a certain percentage of the dues to the petitioner, The contention is that there are certain other loans which are outstanding and that as far as these area concerned, they should be adjusted against the terminal dues that are payable to the petitioner. Petitioner''s learned advocate points out to me that under the relevant provisions, if another member of the family is given compassionate employment that as far as the Housing Loan is concerned, the same is transferable to that member of the family and that if is recoverable from that person. He submits that the petitioner''s son is fully eligible for being employed by the Bank and that consequently if he is employed, that the Housing Loan in question can be transferred to him. Since the application of the petitions son is still required to be considered, the following directions are issued:-

a) That the Bank shall compute in the first instance the difference in salary payable to the deceased after making adjustment of the subsistent allowance paid to him and shall pay the balance to the petitioner with 10% per annum interest from the date of death upto the date of payment.

b) The Bank shall compute and pay to the petitioner the entire balance of the terminal benefits that were payable to the deceased Shivakumar after deducting the other amounts due from the deceased except the housing loan and after making adjustments for such of the amounts that have already been paid to the petitioner while making these payments. The Bank shall be permitted to with hold an amount that is equivalent to the Housing Loan in respect of which a decision shall be taken after the application of the petitioner''s son for compassionate employment is concerned. The Bank shall not while making this computation adjust the amount of Rs. 58,000/- which the Bank contends was recoverable from deceased Shivakumar.

(c) That the Bank shall within an outer limit of sixty days from today communicate to the petitioner the decision of the Bank in relation to the application of her son for compassionate employment. For purpose of record, the petitioner''s learned advocate shall forward to the Bank a fresh application with whatever supporting material he so desires. It is hoped that the Bank will consider these on merits and the Bank will have to consider it as though it had come on the date when Shivakumar had died for the reason that the Bank was wrong in having disregarded the earlier application. While considering this application, the Bank shall proceed on the basis of the Compassionate Employment Scheme and shall ignore the letter dated 20.2.91 issued by the Government of India, Ministry of Finance and shall take an independent decision.

d) If the petitioner''s son is offered employment by the Bank, and this should normally follow unless there are compelling reasons for the same, the Bank shall in keeping with the provisions of the rules transfer the outstanding Housing Loan to the name of the petitioner''s son and shall at that stage release the equivalent of the Housing Loan that has been earlier withheld.

9. Having regard to the facts of this case and the conclusions arrived at, I would have awarded penal interest which I am refraining from doing. However this is on condition that the respondents compute the aforesaid amounts and make payments to the petitioner within an outer limit of thirty days from today. It is clarified that if this time limit is not adhered to, that the respondents shall be liable to pay interest at 18% per annum on all the heads payable to the petitioner.

10. The petition accordingly succeeds. Rule is made absolute to this extent. In the circumstances of the case, there shall be no order as to costs.

