
(1999) 08 SC CK 0005

In the Supreme Court Of India

Case No : Civil Appeal No. 540 Of 1998

State Bank of India and Another

APPELLANT

Vs

Rattan Singh

RESPONDENT

Date of Decision : 24-08-1999

Acts Referred:

Citation : (2000) 87 FLR 581 : (2000) 2 LLJ 1472 : (2000) 2 LW 802 : (2000) 10 SCC 396 : (2000) SCC(L&S) 913

Hon'ble Judges : Sujata V. Manohar, J;R. P. Sethi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ms. Sujata V. Manohar, J.—The respondent was a clerk-cum-cashier in the Ranchi branch of the State Bank of India at the material time. The appellant-State Bank of India, by an order dated July 23, 1993, placed the respondent under suspension. The order of suspension stated as under:

1. Certain acts of gross misconduct on your part have been brought to the notice of the undersigned. It has, therefore, been decided to place you under suspension from bank service with immediate effect in terms of Para 521(10)(b) of the Sastri Award as retained in the Desai Award.

2. During the period of suspension, you are being attached to Hatia branch to draw your subsistence allowance, which shall be paid in terms of provisions of the Sastri Award as retained in the Desai Award and as modified in Para 5 of XVII of the Memorandum of Bipartite Settlement dated September 8, 1983.

According to the appellant, the order of suspension was a result of the respondent having dishonestly passed and got an amount of Rs. 3 lakhs against a cheque dated July 19, 1993, in respect of an alleged current account in the name of K.P. Sharma which current account was not existing. An FIR was lodged in respect of the said incident on September 30, 1993, after the appellant bank collected the relevant documents along with other evidence. Thereafter, the

investigation was carried out by the CBI and a criminal prosecution has also been launched, inter alia, against the respondent, which is still pending.

2. On September 3, 1996, the respondent filed a writ petition challenging the order of suspension dated July 23, 1993. He contended that no departmental enquiry had been initiated and the respondent was kept under suspension for more than three years and hence, the order of suspension was illegal. This writ petition was dismissed by the learned single Judge. However, in appeal, the Division Bench of the High Court, by its impugned judgment, set aside the order of the learned single Judge and allowed the writ petition of the respondent. Hence, the present appeal has been filed by the appellant-bank.

3. The order of suspension itself states that the order has been issued in terms of paragraph 521(10)(b) of the Sastri Award as retained in the Desai Award. The relevant portions of paragraph 521 of the Sastri Award are as follows:

Para. 521(2)(a) When in the opinion of the management an employee has committed an offence, unless he be otherwise prosecuted, the bank may take steps to prosecute him or get him prosecuted; and in such a case he may also be suspended.

10(b) Pending such inquiry or initiation of such inquiry he may be suspended, but if on the conclusion of the enquiry it is decided to take no action against him he shall be deemed to have been on duty and shall be entitled to the full wages and allowances and to all other privileges for the period of suspension, and if some punishment other than dismissal is inflicted the whole or a part of the period of suspension, may, at the discretion of the management, be treated as on duty with the right to a corresponding portion of the wages, allowance, etc.

4. The words "or initiation of such inquiry" in Clause (10)(b) of paragraph 521 have been added to the said sub-clause pursuant to the Bipartite Settlement dated September 17, 1984.

5. There fore, the suspension of the respondent by the order of July 23, 1993, can be considered as both under paragraph 521(10)(b) as also under paragraph 521(2)(a), since at the relevant time, both a departmental enquiry as well as a criminal prosecution were under contemplation. Thereafter, in view of the pendency of the criminal prosecution, the appellant did not initiate a departmental enquiry. The order of suspension, therefore, cannot be faulted looking to the provisions set out above. When a criminal prosecution on serious charges is pending against the respondent, the bank is entitled to suspend him. In this connection, our attention has been drawn to a decision of this Court in the case of Allahabad Bank and Another Vs. Deepak Kumar Bhola, wherein this Court : said that where the CBI had conducted an investigation resulting in the filing of a charge sheet, this was sufficient for the appellant to conclude that recourse had to be taken to Clause 19.3 to suspend the respondent. The mere fact: of 10 years having elapsed was no ground to allow him to come back to a sensitive post unless he was exonerated. In the case of Punjab National Bank

and Others Vs. Jagdish Singh, , (a decision to which one: of us was a party), it was held that when a bank employee is being prosecuted, the bank has the power to suspend the employee under the Bipartite Settlement Clauses 19.3(a) and 19.12(b). Clause 19.3(a) is similar to paragraph 521(2)(a). The Division Bench of the High Court, therefore, was not right in setting aside the order of suspension.

6. Since the order of suspension was set aside by the Division Bench of the High Court, the High Court has also held that the respondent is entitled to all his legal dues in accordance with law. In doing so, the High Court has relied upon the provisions relating to subsistence allowance in Clause 5 which are in partial modification of paragraph 557 of the Sastri Award and paragraph 17.14 of the Desai Award. In fact, the order of suspension states that subsistence allowance will be paid accordingly. Clause 5(a) deals with the payment of subsistence allowance in cases where the investigation is not entrusted to an outside agency or is not taken up by an outside agency such as the Police or the CBI. Sub-clauses (i), (ii) and (iii) of Clause 5(a), therefore, deal with such cases, viz., where the investigation is neither entrusted to nor taken up by an outside agency such as the Police or the CBI. The second half of Sub-clause (iii) of Clause 5(a) also covers a situation where the investigation is done by an outside agency but the agency has come to a conclusion not to prosecute the employee. None of these situations covers the present case. Therefore, the claim of the respondent to subsistence allowance where a criminal prosecution is pending against him will have to be determined by the appellant-bank de hors Clause 5 and in accordance with law and in the light of the Sastri Award, the Desai Award as also the Bipartite Settlement and any rules or regulations of the appellant-bank. In their absence, the matter will have to be decided at the discretion of the disciplinary authority see in this connection our order dated August 19, 1999, in C. A. No. 3352 of 1997. The appellant-bank has stated that the respondent is receiving at present half of his salary and allowances as subsistence allowance.

7. We have not been shown any provision for the enhancement or otherwise, of the suspension allowance. Therefore, if any representation is made by the respondent or is pending, for enhancement of his subsistence allowance, it should be decided by the appellant-bank in accordance with law and the relevant terms and conditions governing the , grant of suspension allowance. As the quantum 'of subsistence allowance during suspension was not directly under challenge, and the basic challenge under the writ petition was to the suspension order itself, the learned single Judge while dismissing the writ petition had rightly directed the present appellant to examine the respondent's representation in that connection in accordance with law.

8. In the premises, the appeal is allowed, the impugned judgment and order of the Division Bench of the High Court is set aside and the writ petition is dismissed. There will, however, be no order as to costs.