(2014) 12 AHC CK 0072

In the Allahabad High Court

Case No : Special Appeal No. 1088 of 2014

State Bank of India and Others APPELLANT

Vs

Rajesh Kumar and Others RESPONDENT

Date of Decision : 04-12-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 2 ADJ 525 : (2015) 146 FLR 496 : (2015) 1 UPLBEC 113

Hon'ble Judges : Dhananjaya Yashwant Chandrachud, C.J;Pradeep Kumar Singh Baghel, J

Bench : Division Bench

Advocate : S.K. Kakkar, Advocates for the Appellant; Siddharth Khare, Advocates for the Respondent

Judgement

Dr. Dhananjaya Yashwant Chandrachud, C.J. and Pradeep Kumar Singh Baghel, J. —This appeal arises from a judgment of the learned Single Judge dated 5.11.2014. The respondent applied for appointment on the post of an Assistant Clerk in pursuance of an advertisement which was issued by the State Bank of India in August 2009. The respondent was appointed on 3.12.2010 and joined his services as an Assistant Clerk at Dohri Ghat Branch of the Bank in district Mau. He was deputed for training and on successful completion thereof, he was placed on probation by an order dated 13.6.2011. The probationary period was extended by three months since the work of the respondent was not found to be satisfactory. The services of the respondent were terminated by an order dated 27.8.2011 of the Regional Manager at Gorakhpur by cancelling his appointment, treating it as void ab initio.

2. The ground on which the order of appointment was cancelled was that at the written examination conducted by the Bank on 8.11.2009 in pursuance of the recruitment process, it was not the respondent who had appeared but, according to the Bank, some one else had appeared against the candidature of the respondent impersonating him. The Bank treated this as a suppression of a

material fact that the respondent had not appeared at the written examination and had allowed some one else to appear. The appointment was treated as void ab initio particularly, placing reliance on Clause 17(i) of the General Instructions, which stipulated that if it was detected at any stage of the recruitment that a candidate does not fulfill the eligibility norms and/or that the candidate had furnished any incorrect or false information or suppressed any material fact, the candidature would stand cancelled and if such shortcomings are detected even after appointment, the services are liable to be terminated. Similarly, reliance was placed on a condition of the letter of appointment under which suppression of material facts would lead to the appointment being regarded as void ab initio.

3. The Bank filed a counter affidavit in response to the petition filed by the respondent challenging the order of termination. The case in the counter affidavit was that a re-verification was done after the appointment was made, when the Bank had called upon the respondent to submit his photographs and also provide his signatures. In the meantime, the Gorakhpur Office of the Bank received the file from the Zonal Office, which had conducted the examination, which contained the photographs of the person who had appeared at the written examination as well as in the interview along with the call letter. According to the Bank, the photographs submitted by the respondent did not tally with those of the person who had appeared at the written examination giving rise to an apprehension of impersonation. The Branch Manager of the Bank, by a letter dated 29.4.2011, informed the controlling authority to have the matter investigated. Thereafter, the matter was referred to a hand-writing (forensic) expert for verification of the thumb impression and the signatures on the call letter of the present incumbent who was actually working in the Bank. The report of the forensic expert was relied upon by the Bank in support of its contention that the respondent had been guilty of impersonation. The report of the forensic expert dated 6.7.2011 was annexed to the counter affidavit and, insofar as is material, reads as follows:

"On the basis of the above differences in the pattern and the flow of ridges, the thumb impression of Right Thumb of the person who appeared in the Examination marked as DTI-1 which is on the Call Letter taken at the time of examination is different with the specimen thumb impression of Right Thumb of Sri Rajesh Kumar marked as RTI-2."

4. On these facts, the learned Single Judge came to the conclusion that the termination of service of the respondent was for an act of impersonation and fraud. Hence, the termination of the respondent was not a termination simpliciter, but the foundation and basis of the termination was a misconduct of impersonation in the written examination. The learned Single Judge relied upon a letter of the Bank dated 13.9.2011, which specifically contained a statement that the respondent had been impersonated at the written examination. This, it was held, would amount to a stigma warranting a proper disciplinary enquiry before termination. The learned Single Judge has directed reinstatement with payment of 50% back wages.

5. When this special appeal came up for hearing on 27.11.2014, the Court directed that another special appeal, being Special Appeal No. 998 of 2014 be also listed together with the present special appeal since common issues have been raised.

6. During the course of the hearing, it is clear from the records that the basis and foundation of the order of termination is an allegation that the respondent did not appear at the written examination which was conducted by the Bank on 8.11.2009 and had been impersonated by some one else. The foundation and basis of the order of termination is an act of misconduct by the respondent. The Bank has terminated the services of the respondent on the basis that it was not the respondent who had appeared at the written examination but some one else had appeared on his behalf, as a result of which, the employment was procured by an act of fraud and by suppressing material facts. The order of termination is not even facially an order of termination simpliciter since the order itself carries a stigma by referring to the fact that the respondent had been impersonated at the written examination.

7. In this view of the matter, the order of the learned Single Judge insofar as it directs reinstatement of the respondent and holds that the termination should have been preceded by a full fledged disciplinary enquiry, cannot be faulted. As the record before the Court would indicate, the termination of service was preceded by a report of a forensic expert. The forensic expert opined that the material produced before him establishes an act of impersonation. In a disciplinary enquiry, if this allegation is to be proved, the employee, who was a probationer, would have an opportunity of stating his defence and rebutting the case of the Bank. But more importantly, once it is evident from the order of termination that the cancellation of appointment was on account of a misconduct allegedly committed by the respondent, a disciplinary enquiry ought to have been held.

8. However, on the issue of back wages and other consequential benefits, we are of the view that the learned Single Judge, while exercising jurisdiction under Article 226 of the Constitution, ought to have taken due steps to structure the relief so as to protect the public interest. We deem it appropriate and proper to grant liberty to the State Bank of India to hold a disciplinary enquiry against the respondent in accordance with law. The competent authority would consider whether, in accordance with the applicable service rules, the respondent should be placed under suspension in contemplation of a disciplinary enquiry. We direct that the Bank shall take a decision on whether it intends to commence a disciplinary proceeding against the respondent within a period of three months of the receipt of a certified copy of this order. In the event that within the aforesaid period of three months, the Bank decides to hold a disciplinary enquiry against the respondent in terms as aforesaid, the impugned direction of the learned Single Judge for the payment of 50% back wages and other consequential benefits, shall stand set aside and the ultimate decision in regard to the payment

of the back wages and other consequential benefits shall abide by the result of the disciplinary proceedings. The special appeal is, accordingly, disposed of. There shall be no order as to costs.

