
(1998) 07 KL CK 0023
In the High Court Of Kerala
Case No : W.A. No. 490 of 1998

State Bank of India and Others

APPELLANT

Vs

T.J. Paul

RESPONDENT

Date of Decision : 20-07-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1998) 3 ILR (Ker) 661 : (1998) 2 LLJ 923

Hon'ble Judges : D. Sreedevi, J;AR. Lakshmanan, J

Bench : Division Bench

Advocate : P.G. Parameswara Panicker, for the Appellant;

Judgement

A.C. Lakshmanan, J.—Heard Mr. P.G. Parameswara Panicker for the appellants and Mr. K. Balakrishnan for the respondent. The above Writ Appeal was filed against the judgment in O.P. 10222/1991 on the file of this Court. The State Bank of India is the appellant. The respondent filed the Original Petition praying for issue of a writ of certiorari quashing Ext.P-14 and P-20 orders passed by the disciplinary authority and the appellate authority in the disciplinary action taken against him. The respondent was an Officer of the erstwhile Bank of Cochin which was later on amalgamated with the State Bank of India with effect from August 26, 1985. Before the amalgamation moratorium had been declared by the Reserve Bank of India on the Bank of Cochin on April 27, 1985. While serving as the Manager of the Madras main branch of the Bank of Cochin the respondent granted certain loans and gave accommodation to several borrowers which according to the bank is beyond his powers and without prior sanction or subsequent ratification from the head office of the Bank of Cochin. The loans so granted were beyond his powers and in violation of the orders. Charges were framed against him by the erstwhile Bank of Cochin under Ext.P-6. Annexure to Ext.P-6 memo of charges contained the details regarding the several accounts to which the charge related. He was also placed under suspension pending enquiry. The respondent submitted his explanation, which was found not satisfactory and

hence an enquiry was conducted by an Advocate of this Court who submitted his report under Ext.P-10 dated August 3, 1985. The Enquiry Officer found that charges enumerated in Items 1, 5, 7, 8, 9, 10, 12, 12(a), (b), 13, 14, 15, 16, 17(b), 18, 19, 20, 21, 22, 24, 25(a) were not proved. With reference to Items 2, 3, 4, 6, 9, 12(c), 14, 17(a), 23(c), (d), (e), (f),(h), (j), (l), (n) it was found that there was no sanction or subsequent ratification from the head office. The Enquiry Officer however opined that no reasonable man will be able to conclude that in connection with the said transaction the respondent acted with vested interest and with intention to cause wilful damage and financial loss to the Bank and that he might have allowed the transaction with good intention of promoting the business of the bank and with the bona fide belief that the transaction would be ratified. The Enquiry Officer has further found that as regards Item 23 (e, f, h, j, n) in annexure to the memo of charges the respondent had failed to take sufficient security and is guilty of gross negligence and has acted in violation of head office instructions. In the penultimate paragraph the Enquiry Officer states that with reference to Item No. 25 of the charge sheet, advances were granted to 19 parties and that the respondent was instrumental in recovering substantial amounts from the respective parties and if he had not been suspended abruptly he would have been able to persuade the parties concerned to remit more amounts. The Enquiry Officer finds fault with the management for depriving the respondent by suspending him.

2. The report of the enquiry was submitted to the Bank of Cochin. But the disciplinary action against the respondent has not been concluded before the amalgamation and hence the State Bank of India as the transferee Bank had to complete the enquiry by proceeding from the stage it had reached. The disciplinary authority of the State Bank of India continued the proceedings. The disciplinary authority i.e. the Chief General Manager, Local Head Office, State Bank of India, Chennai after considering all aspects of the case issued Ext.P-12 order provisionally proposing to impose punishment of dismissal from service on the respondent and calling upon him to show cause against the same. The respondent submitted Ext.P-13 explanation. He was also given personal hearing. By Ext.P-14 order dated March 20, 1986, the disciplinary authority imposed the punishment of dismissal from service on the respondent. The respondent filed Ext.P-15 against the order Ext.P-14 of the disciplinary authority to the appellate authority. In continuation of the appeal he also submitted Ext.P-15 representation. The appellate authority dismissed the appeal initially by Ext.P-17 order which was set aside by this Court by judgment dated February 28, 1991 and the appellate authority was directed to pass fresh orders after hearing the respondent. The respondent was heard by the appellate authority and the appellate authority had considered the grounds urged by the appellant in the appeal and the subsequent representation, passed order Ext.P-20 imposing the punishment of removal from service on the respondent. The said order was challenged by the respondent in the present Original Petition. The Original Petition was filed to quash Ext.P-14 and P-20 orders and for a mandamus

directing the management to reinstate the respondent in service with continuity of service and back wages and for cost. The Original Petition was resisted by the appellant bank by filing a detailed counter affidavit.

3. In para 11 of the counter affidavit it is stated that the action taken against the respondent was for granting of loans irregularly in excess of his discretionary powers, for violating instructions and directions in the matter of granting loans and this is on the basis of records. The contentions raised by the respondent in this writ petition is without any force and the appellate authority after going through all the relevant records modified the punishment imposed earlier and the reduction in punishment would indicate that the appellate authority had carefully gone through the records and examined the same independently and therefore the findings in Ext.P-20 is based on sufficient and relevant materials. The Respondent filed a reply affidavit reiterating the submissions made in his affidavit filed in the O.P. and in the reply affidavit he submitted that among the 13 advances enumerated, serial Nos. 4, 6, 8 and 10 were found to be irregular by the Enquiry Officer in the sense that there were not sufficient security for those advances. They are Items 23(d), (f), (h) and (j) in the charge sheet. These four items altogether involves only 3.98 lakhs of rupees. Item 13 in paragraph 4 which is item 23(n) in the charge sheet is already closed. Further even the management did not have a case that the said account was not properly secured. So the other allegations of irregularities and computing the total amounts involved as Rs. 44.71 lakhs was an incorrect statement made knowing them to be not true. In para 7 of the reply affidavit it is further averred that the appellate authority even after remand by this Court did not consider the various points urged by him and that the alleged misconduct was committed by him, the Bank of Cochin Service Code Ext.P-11 was applicable to the respondent and according to the said code the violation of head office instruction is only a minor misconduct but in the case on hand the original as well as the appellate authorities punished the respondent in the light of the State Bank of India Service Rules which rules were made applicable to the erstwhile staff of the Bank of Cochin only with effect from April 1, 1987. Along with his reply affidavit the respondent filed Exts. P-21 and P-22.

4. The matter was heard by Abdul Gafoor, J. and he after perusing the impugned orders has found that the respondent had no intention to cause any wilful damage or financial loss and that therefore what has been proved against the respondent was that there was misconduct so far as the respondent is concerned with regard to Items 23(d, f, h, j, n) in Ext.P-6 charge memo, in so far as he had acted in violation of the head office instruction. It was contended before the learned Judge that even if this is accepted the only misconduct found against the respondent is violation of the head office instructions and therefore going by Rule 2(vi)(c) and (d) read with Sub-rule (vii) the respondent cannot be imposed a penalty of dismissal as contained in Ext.P-14 or removal from service as in Ext.P-20 and that only a minor penalty can be imposed on him. In the words of the learned Judge:

"There was no proof before the enquiry officer with regard to any actual loss caused by reason of any act of the petitioner wilfully done. No evidence had been adduced before the enquiry officer by the disciplinary authority to prove any financial loss. Therefore the contention that even when there is violation of head office instruction there will be financial loss and therefore major penalties, can be imposed cannot be accepted."

Considering Ext. P12 show cause notice which was issued by the disciplinary authority the learned Judge has observed that the disciplinary authority has totally accepted the enquiry report and when the enquiry report does not contain any finding with regard to the financial loss and there is finding that the respondent has no intention to cause financial loss or cause wilful damages, going by the report the penalty of dismissal cannot be proposed because what is proved will come only under minor misconduct. In the concluding part of his judgment the learned Judge has observed thus:

"It is also the contention of the respondents that Ext. P12 show cause notice was issued after amalgamation had taken place and the Bank of Cochin became a part of the State Bank of India and therefore Ext. P11 rules cannot be applied in the case of the petitioner. That contention also cannot be accepted, because the rules relating to penalty and punishment shall be the rules as on the date of commission of the alleged misconduct. As on the date of the alleged misconduct the petitioner was governed by Ext.P11 rules. Therefore the punishment for the alleged misconduct, if any proved, shall also be covered by the said rules in Ext. P11. As already mentioned above, for the proved misconduct the said rules permit imposition of only minor penalty; whereas in the case of the petitioner a major penalty of dismissal was imposed by Ext. P14, which of course was modified as removal from service, an- other major penalty. That is not permissible as per Ext. P11 rules.

Therefore Ext.P14 ad P20 are quashed. The respondents are free to impose punishment permissible in accordance with the rules in Ext.P11."

Aggrieved by the above judgment the Bank has filed the above appeal. Mr. P.G.Parameswara Panicker, counsel appearing for the appellant Bank submitted that the charges proved against the appellant would show that he was guilty of gross misconduct as defined in Rule 22 Sub-clause (ii) and Sub-clause (iv) of the Bank of Cochin Service Code and therefore it should have been held that from the findings of the Enquiry Officer it follows that the respondent is guilty of gross misconduct of disobedience of lawful and reasonable order of the management, doing act prejudicial to the interest of the bank and gross negligence likely to involve the bank in serious loss. According to him the respondent is guilty of gross misconduct as defined in the Bank of Cochin Service Code and that proof of actual loss is not necessary, that it is enough that the misconduct of the respondent was likely to Cause loss to the bank. On the facts and circumstances of the case there is no warrant for interference by the learned single Judge under Art. 226 of the Constitution of India. In support of his contention Mr. Panicker

cited Disciplinary Authority cum Regional Manager and Ors. v. Nikunja Bihari Patnaik JT 1996 (4) S.C. 457 which according to him squarely applies to this case.

5. Per contra Mr. K. Balakrishnan submitted that Ext. P14 and P20 are vitiated by errors apparent on the face of records and that the charge against the respondent was that he violated the head office instructions with vested interest and caused wilful damage to the interest and affairs of the bank and that, the management never stated in Ext. P6 memo of charges, when, where and how the respondent has acted with vested interest. There was not even a whisper in the deposition of the management's witness regarding the violation of instruction, that it was motivated by vested interest or that it was wilful. The same was the position with regard to the allegation of causing wilful damage and financial loss. In this connection he invited our attention to the categorical statement in Ext.P10 enquiry report of the Enquiry Officer. He submitted that at any rate what is proved in the enquiry against the respondent admittedly are some bona fide mistakes. Clause XX (IX) (c) of Ext. P11 disciplinary code says that in awarding the punishment by way of disciplinary action, the authority concerned shall take into account the gravity of misconduct, the previous records if any of the employee and any other aggravating or extenuating circumstances that may exist. According to the respondent the management has imposed the extreme penalty to vindicate its stand.

Referring to Ext.P20 order passed by the appellate authority learned counsel for the respondent submitted that the findings herein are perverse as the facts and figures relied therein are exaggerated and based on no evidence. In any event, he submitted that the punishment imposed on the respondent is without jurisdiction and authority and the only finding against the respondent in the enquiry report is that there is failure to take sufficient enquiry in respect of 5 sub-items which is violative of the head office instructions as held by Enquiry Officer.

6. Our attention was drawn to certain provisions of the Bank of Cochin Service Code. The expression "Gross misconduct" has been defined in para 22(iv) (a) to (o). It is relevant to extract only Clause (h) and (i) which was strongly relied on by Mr. Panicker:-

(h) Wilful insubordination or disobedience of any lawful and reasonable order of the Management/ or of a superior;

(1) doing any act prejudicial to the interests of the Bank, or gross negligence or negligence involving or likely to involve the Bank in serious loss;"

The punishment provided for gross misconduct in Clause 22(v) are as follows :-

" an employee found guilty of gross misconduct may

(a) be dismissed without notice, or

(b) be warned or censured, or have an adverse remark entered against him or

(c) be fined, or

- (d) have his increment stopped/ basic pay reduced, or
- (e) have his misconduct condoned and he merely discharged from service."

7. The expression "minor misconduct" has been defined in para 22 Sub-clause (vi) (a) to (n). Counsel for both sides strongly relied on only Clause (c) and (d) which reads as follows:-

"(c) neglect of work, negligence in performing duties;

(d) breach of any rule of business of the bank or instruction for running of any department. "

8. An employee found guilty of minor misconduct, the following punishment alone can be imposed under para 22 Sub-clause (vii): -

"vii) An employee found guilty of minor misconduct, may:

- (a) be warned or censured; or
- (b) have an adverse remark entered against him; or
- (c) have his increment stopped for a period not longer than six months; or
- (d) have his misconduct condoned."

As already noticed the appellant Bank in their counter affidavit has only alleged that the action taken against the respondent was for granting of loans irregularly in excess of his discretionary powers and for violating instructions and directions in the matter of granting loans. In our opinion the violation of head office instructions and negligence in any event are only minor misconduct in terms of items (c) and (d) of para 22(vii) of Chapter VII of the Bank of Cochin Service Code of Ext. P11 which governs the respondents' service conditions at the relevant point of time. Clause 22 Sub-clause (vii) of Ext. P11 empowers the employer bank to impose only four types of punishment on employees found guilty of minor misconduct as extracted above. Any other type of punishment is not contemplated under Ext. P11 Service Code for a minor misconduct. The punishment in question viz., removal from service imposed on the respondent does not fall in any one of the four categories mentioned above. Therefore we are of opinion that the punishment of removal from service imposed on the respondent herein is arbitrary and in excessive exercise of jurisdiction vested on the appellant bank. The memorandum of charges Ext.P6 also says that the respondent has made several advances unauthorisedly while working as Manager of the Madras branch and that there has not been much progress in recovery/regularisation of the advances inspite of the directions given to the respondent vide the bank's letter dated February 4, 1984. A complete list of irregularities noted in the Inspection Report with regard to the advance of grant by the respondent without discretionary power/prior permission and without observing lending norms was also enclosed along with Ext. P6 charge memo. The bank has alleged that the above action alleged to have been committed by the respondent

would amount to serious misconduct involving financial loss, violation of head office instructions with vested interest and causing wilful damage in the interest and affairs of the bank. There was no allegation involving any act of moral turpitude. The respondent was not accused of manipulation or falsification of accounts and/or records or of fraud, forgery, misappropriation or defalcation or criminal breach of trust etc. He was not accused of connivance or collusion with any borrower or any other person nor was he accused of any favouritism. He was not accused of misuse and/or abuse of his official position and authorities. He was not accused of corrupt practices or of illegal gratification. All the charges uniformly refer to the lack or absence of head office sanction or confirmation or approval or ratification as the case may be. According to the respondent the Madras branch was the first metropolitan branch opened by the erstwhile Bank of Cochin Ltd. and he was posted to the Madras branch with effect from December 18, 1977 and prior to his taking over the Madras branch the working results of the branch were very poor. He has also furnished the details of the working results of the branch which were very poor in his reply to the show cause notice and also at the time of enquiry. He was transferred to Calcutta in September 1981 and there also he showed progress which by any standard was remarkable. He was the first branch manager in Calcutta and was awarded first prize for deposit mobilisation. He also submits that the position of the Madras branch as set out by the Inspector will highlight his performance and the position of the branch after he was transferred to Calcutta. The charges levelled against him relate only to the Madras branch. The respondent has served the bank for 19 years. He worked as Branch Manager of the branches at Calicut, Palghat, Coimbatore, Madras and Calcutta and according to him he has done business to the tune of crores of rupees and was instrumental in making profits to the tune of several lakhs and only five advances made by him while working at Madras alone have come under adverse comment. We are of the opinion that since the offence alleged to have been committed by the respondent comes within the purview of the Bank of Cochin Service Code Ext. P11 which is only a minor misconduct viz., neglect of work and negligence in performing duties and breach of any rule of business a major penalty of dismissal imposed by Ext.P14 which was modified as removal from service, another major penalty cannot at all be imposed. The management can only impose punishment permissible in accordance with the rules and regulations in Ext.P11 for a minor penalty.

9. According to the learned counsel for the respondent the Bank if at all can impose the punishment as provided only for a minor misconduct and therefore removal from service is wholly unwarranted. As an alternative plea Mr. Balakrishnan, learned counsel for the respondent on instruction submitted that the respondent is ready and willing to forego his entire salary for the period in question and that the bank may be directed to reinstate him in service without back wages. When we requested Mr. P.G. Parameswara Panicker, counsel for the appellant bank to ascertain from the bank whether the bank is willing to reinstate the respondent without back wages, Mr. Panicker on ascertainment and

instruction from the bank submitted that the bank was not willing to reinstate him. Thereupon both parties were directed to argue the matter on merits and accordingly submissions were made by both the counsel as -above. We are of the opinion that what is proved in the enquiry against the respondent admittedly are some bonafide mistakes. Clause 22(ix) (c) of the disciplinary code says that in awarding punishment by way of disciplinary action the authority concerned shall take into account the gravity of misconduct, the previous record if any of the employee and any other aggravating or extenuating circumstances that may exist. In this case individual materials have been furnished by the respondent that his previous records were good and exemplary. He had an unblemished career except the charge memo in question which is the subject-matter of this proceedings. Therefore the major penalty of removal cannot at all be imposed on the respondent. The respondent has narrated his excellent track record in his Original Petition. The very same management has conferred several commendation letters on him testifying this. Several times he stood first in the deposit mobilisation campaigns. The rise and decline of the business of the Madras branch will speak volumes about the personal drive and initiative of the respondent. Records show that he produced best results during his tenure as branch manager.

10. A Division Bench of the Madras High Court to which one of us is a member (AR. Lakshmanan, J) reported in *S. Murugadas Vs. State Bank of India and Another*, held that while considering the power of the Court to interfere with the punishment held that the High Court can interfere with the quantum of punishment where punishment is only disproportionate to the proved charges but also harsh and excessive and that the Court can impose appropriate punishment in exceptionally rare cases to shorten the litigation. In that case the employee of the bank was removed from service for making a false claim of Rs. 2,728/-. The Madras High Court modified the punishment by reinstatement of the employee in service with continuity of service but without backwages for the period in question.

We, therefore, confirm the order of the learned single Judge, dismiss the appeal and quash Exts. P. 14 and P.20. The writ of mandamus will issue directing the appellant bank to reinstate the respondent in service with continuity of service and backwages, promotion and all other monetary benefits by way of salary, increments, etc. The Bank is at liberty to impose punishment permissible for minor penalty as per rules in Ext.P11. C.M.P. No. 1302 of 1998 stands dismissed.