
(2007) 08 CAL CK 0055
In the Calcutta High Court
Case No : M.A.T. No. 2053 of 2006

State Bank of India

APPELLANT

Vs

Bakul Chandra Dey and Others

RESPONDENT

Date of Decision : 31-08-2007

Acts Referred:

Citation : (2008) 1 CHN 622 : (2009) 1 ILR (Cal) 289

Hon'ble Judges : S.S. Nijjar, C.J.; Tapan Sen, J

Bench : Division Bench

Advocate : Kashi Kanta Moitra, P.K. Pal Choudhury, A.K. Routh and A. Das Gupta, for the Appellant; S. Mamud and A. Ahmed, for the Respondent

Judgement

S.S. Nijjar, C.J.—We have heard the learned Counsel for the parties.

2. This appeal has been filed by the State Bank of India against the judgment of the learned Single Judge in C.R. 6162 (W) of 1979 dated 12th April, 2006.

3. The petitioner had filed the writ petition challenging the validity and/or legality of the disciplinary proceedings and the order of punishment whereby he was ordered to be dismissed from service on 30th April, 1976. He had alleged that the departmental enquiry was conducted on a concocted allegation manufactured in a calculated manner by respondent No. 5, Branch Manager, to satisfy his personal vengeance. The petitioner complained that the enquiry was not conducted in accordance with the rules of natural justice and the prescribed procedure and rules of the bank. It was also stated that before the order of dismissal was passed, even a copy of the enquiry report was not supplied to him. The relevant facts which appear from the pleadings are that the petitioner was appointed as a messenger/waterman on 15th May, 1967 and posted at Siliguri Branch of the State Bank of India (hereinafter referred to as "appellant-bank"). The service of the petitioner was made permanent with effect from 15th April, 1968. The work of respondent No. 5, Branch Manager, was severely criticized by the employees posted in the Siliguri Branch. The petitioner is one of the

agitators. The Branch Manager in order to cover up his misdeeds used to victimize the honest employees. The petitioner was suspected of leading the agitators. In the fourth week of July, 1969 i.e. 25th July, 1969 the petitioner had fallen seriously ill and he was advised to take complete bed rest. The petitioner could not move out of the residence on that date. In spite of his absence on the said date he was served with the memorandum dated 28th July, 1969 wherein it was alleged that on 25th July, 1969 he had tried to commit a fraud by presenting a letter of withdrawal purported to have been signed by Sri Santosh Kumar Ganguly. The petitioner claimed that the aforesaid charge was wholly concocted. On 28th July, 1969 the petitioner was called by the Manager to his chamber. He was threatened with the dire consequence of dismissal from service and torture by the police unless his confessional statement in the language and words as dictated by the Manager, is written and signed by him. The petitioner being absolutely helpless and under coercion, undue influence and compulsion wrote out a statement as dictated by respondent No. 5, Branch Manager himself. In this statement the petitioner had admitted that he had committed the misconduct. Immediately thereafter the petitioner complained to the police and a daily diary was recorded by the police. Thereafter the petitioner was chargesheeted on 30th April, 1969 and a departmental enquiry was conducted. However, according to the petitioner the enquiry was conducted in utter breach of natural justice and rides and regulation of the bank. Ultimately without giving any consideration to the explanation submitted by the petitioner, the disciplinary authority directed that the petitioner be dismissed from service by order dated 30th April, 1976. Challenging the said order the petitioner had filed the writ petition.

4. The learned Single Judge has come to the conclusion that the findings of the Enquiry Officer reflect the closed and biased mind of the Enquiry Officer. On perusal of the record the learned Single Judge also came to the conclusion that the inference drawn by the Enquiry Officer is baseless and without any foundation. It was observed that

The aforesaid inference of the Enquiry Officer is not only baseless and without any foundation but the same reflects the closed and biased mind of the Enquiry Officer.

In view of the aforementioned reasons, I have no other alternative but to hold that the findings of the Enquiry Officer are totally perverse and the same cannot be relied upon.

In the present case, the petitioner had no occasion to consider the said enquiry report before imposition of the penalty as the copy of the said enquiry report was not supplied. However, the petitioner repeatedly claimed himself as innocent and pointed out various irregularities before the disciplinary authority in relation to the enquiry proceedings conducted against the said petitioner. The disciplinary authority unfortunately, did not consider the representations of the petitioner in an appropriate manner and the unreasoned cryptic order of dismissal only

reflects the total non-application of mind on the part of the disciplinary authority.

In the case of *Rajinder Kumar Kindra Vs. Delhi Administration through Secretary (Labour) and Others*, Desai J. observed as hereunder:

18. Between appraisal of evidence and total lack of evidence there is an appreciable difference which could never be lost sight of and the High Court ought not to have shortcircuited the writ petition.

In the present case, the impugned order of dismissal is totally perverse and cannot be sustained in law as the same suffers from total non-application of mind and therefore, this Court has no other alternative but to set aside the said order of dismissal and issue appropriate direction for reinstatement of the employee concerned, namely, the petitioner herein with full back wages as in my view, no employer can deny back wages to the employee concerned after issuing an unsustainable dismissal order from service.

5. In view of the aforesaid the learned Single Judge has been pleased to allow the writ petition. Hence this Letters Patent appeal.

6. Mr. Moitra, learned Senior Counsel submits that the learned Single Judge erred in re-appreciating the evidence that was led before the enquiry officer, as if the High Court was sitting in appeal over the findings of the Enquiry Officer. We are unable to accept the submissions made by Mr. Moitra. The learned Single Judge has clearly come to the conclusion that the findings of the Enquiry Officer are based on no evidence; and are perverse. This apart, in our opinion even the confessional statement relied upon by the Enquiry Officer seems to have been recorded under dubious circumstances. Furthermore even a bare perusal of the charge sheet would show that the alleged misconduct is highly improbable. The petitioner was charged with the following allegations:

That, on your own admission, on the 25th July, 1969, you picked up from the savings bank counter at the branch, without any authority, the savings bank pass book relating to Account No. 1371 in the name of Sri Santosh Kumar Ganguly, and, thereafter, presented for payment, through Shri Khageswar Barman, Messenger of the North Bengal University, a letter of withdrawal for Rs. 900/- forging thereon the signature of the Account-holder Shri Ganguly, with an intent to defraud the bank to the extent of the aforesaid amount.

7. It is not disputed that the petitioner is not even a matriculate. The charge against him is that he forged the signature of the account holder Shri Santosh Kumar Ganguly to withdraw a sum of Rs. 900/- there from. This withdrawal slip is said to have been presented through the messenger, viz., Khageswar Barman, working with the North Bengal University. There is no evidence on the record to indicate that the petitioner was personally known to the account holder nor is there any evidence to indicate that the petitioner is familiar with the signatures of the account-holder, nor is there any evidence to indicate that the pass book itself contained the specimen signature of the account-holder. Since the pass

book is issued by the bank, it is not required to contain the specimen signature of the account-holder. In our opinion, the change is clearly trumped up, based on a non-existent event. It is a figment of someone's imagination. A perusal of the entire record indicates that the learned Single Judge has correctly recorded that the bank had failed to produce any evidence which would tend to establish that the petitioner has committed the alleged misconduct. This apart the order of the disciplinary authority, in our opinion, has been rightly set aside by the learned Single Judge on the additional ground that it is not a speaking order. The order passed by the disciplinary authority is as follows:

No. RM III (General)/ 906 Date: 30th April, 1976

Dear Sir,

With reference to the submissions made by you in your letter dated the 22nd April, 1976 addressed to the Branch Manager, State Bank of India, Siliguri in respect to our letter No. R.M. III (General) 704 dated the 5th April, 1976 as no extenuating factor has been brought out by you, it has been decided to dismiss you from the bank's service with immediate effect in terms of paragraph 521(5) (a) of the modified Sastry Award.

2. A payment order representing your upto date subsistence allowance is enclosed.

3. Please acknowledge receipt. Yours faithfully, Sd-Illegible.

Regional Manager.

8. A perusal of the aforesaid order would show that the learned Single Judge rightly came to the conclusion that it would be difficult to say that the disciplinary authority had applied its mind to the case before terminating the services of the petitioner. The disciplinary authority did not advert to any of the submissions made by the petitioner. The findings of the Enquiry Officer have not been evaluated. In fact there is no formal acceptance of the findings of the Enquiry Officer. In our opinion, the learned Single Judge had correctly relied on the ratio of law in the case of Nand Kishore Prasad Vs. State of Bihar and Others, . In paragraph 24 of the aforesaid judgment it has been observed as follows:

24. The desirability of writing a self-contained speaking order in disciplinary proceeding culminating in an order of removal of the delinquent from service, cannot be over emphasized. It is true that the impugned orders do not fully measure up to this devoutly desired standard. Nevertheless they do contain a bald and general allusion to the primary facts and a cryptic inference there from. There is no specific reference to or discussion of the evidence the High Court therefore examined the record of the Disciplinary Tribunal not with a view to make out or reconstruct a new case but only to see whether there was some evidence of the primary facts relied upon by the Domestic Tribunal in support of its conclusion. We do not see any impropriety in the course adopted by the High

Court.

9. We also find that the law laid down in the case of *Yoginath D. Bagde Vs. State of Maharashtra and Another*, is fully applicable to the facts and circumstances of this case. In that case the Supreme Court has observed as follows:

51... The law is well-settled that if the findings are perverse and are not supported by evidence on record or the findings recorded at the domestic trial are such to which no reasonable person would have reached, it would be open to the High Court as also to this Court to interfere in the matter. In *Kuldeep Singh v. Commr. of Police* this Court, relying upon the earlier decisions in *Nimai Kishore Prasad v. State of Bihar* *State of Andhra Pradesh v. Rama Rao* *Central Bank of India Ltd. v. Prakash Chand Jain* *Bharat Iron Works v. Bhagubhai Balubhai Patel* as also *Rajinder Kumar Kindra v. Delhi Admn.* laid down that although the Court carried sit on appeal over the findings recorded by the disciplinary authority or the Enquiry Officer in a departmental enquiry it does not mean that in no circumstance can the Court interfere. It was observed that the power of judicial review available to a High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and the Courts can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse.

10. In view of the above we do not find any merit in the submissions made by the learned Counsel for the appellant that the learned Single Judge has no jurisdiction to interfere in the findings recorded by the Enquiry Officer.

11. We, however, find that Mr. Maitra, learned Senior Counsel for the bank is justified in submitting that the facts and circumstances of this case do not warrant the grant of full back wages to the petitioner on reinstatement. Learned Counsel submits that the services of the petitioner had been terminated on 30th April, 1976 and since then he has not done any work for the bank. The petitioner has not placed on record any material to show that he has been unemployed since 30th April, 1976. In this long interregnum the petitioner must have taken some other employment. In case he had no other means of livelihood it would not have been possible for him to survive for such a long period of time.

12. In view of the aforesaid submissions of the learned Counsel, we have enquired from the Counsel for the petitioner as to whether the petitioner had been unemployed since the time of his dismissal from the bank. The learned Counsel very fairly stated before this Court, that the petitioner has been doing business of vegetable vendor for the last 30 years. He is, however, unable to place on record the weekly or monthly income of the petitioner from the aforesaid enterprise. The fact of the matter remains that the petitioner has survived for the last thirty years together with his family. Therefore, in the facts and circumstances of this case, it would not be appropriate to direct payment of full back wages. True, until recently it was the consistent view that on the order

of dismissal being declared void, the normal rule is to direct reinstatement with full back wages. But in a number of recent judgments the Supreme Court has held that "reinstatement with full back wages" on the order being declared void, was not an absolute rule. We may have notice the observations of the Supreme Court in the case of U.P. State Brassware Corpn. Ltd. and Another Vs. Udai Narain Pandey, wherein the Supreme Court has considered the entire issue and has concluded as follows:

17. Before advertng to the decisions relied upon by the learned Counsel for the parties, we may observe that although direction to pay full back wages on a declaration that the order of termination was invalid used to be the usual result but now; with the passage of time, a pragmatic view of the matter is being taken by the Court realizing that an industry may not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all to it and/or for a period that was spent unproductively as a result whereof the employer would be compelled to go back to a situation which prevailed many years ago, namely, when the workman was retrenched.

13. As noticed above, the petitioner has not been able to place on the record any material to show that he remained completely unemployed during the period of his forced idleness, the consequential effect of passing of the order of dismissal on 30th April, 1976. In fact, there is an admission that the petitioner has been gainfully employed. In such circumstances, in our opinion the learned Single Judge was not justified in granting full back wages to the petitioner on reinstatement.

14. Thus in view of the above, we partly allow this appeal. The order passed by the learned Single Judge is modified to the extent that the petitioner shall be deemed to have been reinstated in service. He shall, however, be entitled only to 1/3rd of the salary from the date of termination till the date of superannuation. The petitioner shall also be entitled to all consequential benefits, such as retirement/terminal benefits.

Xerox certified copy of this order, if applied for, be given to the learned Counsel for the parties.

Tapen Sen, J.

I agree.