
(1991) 07 MP CK 0038
In the Madhya Pradesh High Court
Case No : M.P. No. 132 of 1989

Sudarshan Kumar Dhall

APPELLANT

Vs

Canara Bank

RESPONDENT

Date of Decision : 25-07-1991

Acts Referred:

Constitution of India, 1950 — Article 226, 226(2), 32

Citation : (1991) 2 MPJR 228 : (1992) 37 MPLJ 914 : (1992) MPLJ 914

Hon'ble Judges : V.S. Kokje, J; V.D. Gyani, J

Bench : Division Bench

Advocate : G.M. Chaphekar and S. Bhargava, for the Appellant; D.M. Kulkarni, for the Respondent

Judgement

V.S. Kokje, J.

The petitioner was working as Branch Manager, Laxmi Commercial Bank Limited (for short referred to as "LCB"). The said Bank was amalgamated with the Canara Bank constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. Prior to the said amalgamation while the petitioner was posted as Manager in LCB at Nagpur, he was placed under suspension by an order dated 24th August, 1984. The petitioner had challenged this suspension in M. P. No. 637/85, filed before this Court. During the pendency of that petition the LCB was amalgamated with the Canara Bank on 24th August, 1985. The respondent/Bank informed the petitioner vide letter dated 24-8-1985 (Annexure C to the petition) that in terms of the scheme for amalgamation approved by the Central Government the petitioner had ceased to be an employee of the LCB w.e.f. the commencement of the business on 24-8-1985 and consequently was not an employee of the respondent/Canara Bank. In view of this development M. P. No. 637/85 had become infructuous and for this reason the petitioner withdrew the same with permission to file a fresh petition.

The petitioner challenged the order excluding him from the employment of Canara Bank in the Supreme Court of India by filing a petition under Article 32 of

the Constitution of India. The case was decided on 18-9-1987 along with other connected cases and the judgment is reported in K.I. Shephard and Others Vs. Union of India (UOI) and Others, The Hon"ble Supreme Court has held that the exclusion of the employees like the petitioner was illegal and unconstitutional and directed restoration of all such employees to the employment of the respondent-Canara Bank.

After the aforesaid judgment of Hon"ble the Supreme Court restoring the petitioner to service, the petitioner reported for duty at the Indore Branch of the respondent/Canara Bank on 28-9-1987. His joining report was forwarded to the Dy. General Manager of Bank at Bombay, who by his letters dated 15-10-1987 and 17-10-1987 took a position that the petitioner continued to be under suspension till the completion of the enquiry/criminal proceedings. After waiting for some time for completion of the enquiry the petitioner ultimately filed this petition challenging the action of the respondent/Bank in treating the suspension order as revived after the Supreme Court judgment as also continuation of his suspension and enquiry against him. On 13-3-1989, this Court stayed further proceedings in the enquiry until further orders. The order was confirmed on 28-8-1989.

The respondent has filed a return refuting the stand taken by the petitioner in the petition and has contended that the effect of the Supreme Court order setting aside the order of the Canara Bank refusing to treat the petitioner as its employee was that the position obtaining immediately prior to the passing of that order would come to life and since the petitioner was a suspended employee on 24-8-1985, he shall continue to be so till the suspension order was revoked or merges into dismissal order passed after an enquiry. It was also alleged that the enquiry was not being delayed mala fide and to circumvent the order of the Supreme Court. The petitioner was responsible for the delay in filing the petition. Other allegations have also been denied.

When the case came up for final hearing a preliminary objection as to jurisdiction of this Court in entertaining this petition was raised. It is contended that at the time of his suspension the petitioner was working as Branch Manager at Nagpur, and, therefore, the petition could not be filed at Indore. Shri D. M. Kulkarai, learned counsel for the respondent/Bank has placed reliance on judgment of this Court in M. P. No. 40/88 decided on 25-10-1989; a judgment of the Calcutta High Court reported in 1990 (I) C.L.R. 193; and judgment in Writ Appeal No. 720/90 decided by Andhra Pradesh High Court. We have gone through these judgments, photo copies of which were supplied by the learned counsel for the respondent. In view of the provisions of Article 226(2) of the Constitution of India, this Court will have jurisdiction if cause of action, wholly or in part has arisen within the territorial jurisdiction of this Court. The question whether cause of action has arisen within the territorial jurisdiction of this Court or not will essentially depend on the facts of this case and any number of authorities on the point would not be conclusive. From a perusal of the record, we find that after

the judgment of the Supreme Court restoring the petitioner to service, he had reported for duty at the respondent's Indore Branch on 28-9-1987. It appears that the Indore Branch accepted his joining report without demur and in fact had referred the matter to Head Office with an assurance to inform the petitioner later on about the action to be taken. The petitioner has filed his joining report and the reply received by him from Indore Branch as Annexure D to the petition. Thereafter, on 17-10-1987 the Bombay office of the respondent/Bank addressed a letter to the petitioner at his address at Indore, informing him that he continued to be under suspension. Along with the letter which is annexed to the petition as Annexure E, proceedings of the General Manager dated 15-10-1987 has been enclosed. In none of these letters, the joining of the petitioner at the Indore Branch was objected to. It appears that the plea has been taken for the first time in para 4 of the return where in reply to paras 4 and 5 of the petition, it has been stated that since the petitioner was working at Nagpur prior to his removal from service, he should have reported for duty at Nagpur. It is also contended in the return that respondent's Indore branch simply transmitted the petitioner's application to its Head Office. The record does not bear this out but on the contrary it appears that the petitioner was allowed to join at Indore and was taken on duty, though as a suspended employee there. In any case, even acceptance of the joining report for the purpose of transmission to Head Office would supply part of cause of action to the petitioner in maintaining the petition in this Court. It is unfortunate that a nationalised Bank has raised such a technical plea on hypertechnical grounds when in fact, it had accepted the joining report at Indore and had corresponded thereafter with the petitioner on his address at Indore. In the previous petition M. P. No. 637/85, counter-affidavit was filed on 12-8-1985 on behalf of the LCB by Shri Satyawan Gupta as Chief Personnel Manager of the respondent/Bank. In this counter several preliminary objections were raised to the maintainability of that petition but objection to the territorial jurisdiction of this Court was not taken and actually it was disclosed that the petitioner was employed in the Indore Branch of LCB from April, 1978 to September, 1983. He. was transferred to Nagpur in September, 1983 and Shri N. K. Jain took over as Branch Manager, Indore. He found that the petitioner had committed several irregularities and submitted a report about them. After receiving this report the petitioner was suspended vide order dated 24-8-1984. It is, therefore, clear that the charges against the petitioner relate to his acts of commission and omission as Branch Manager at Indore. There is, therefore, no doubt that a part of the cause of action has arisen within the jurisdiction of this Court. For the aforesaid reasons, we overrule the preliminary objection as to territorial jurisdiction and hold that this Court has jurisdiction to entertain the petition.

It is contended on behalf of the petitioner that he could not have been deemed to be a suspended employee after the judgment of the Supreme Court, because the order of suspension had merged in the order of removal from service and on the setting aside of the order of removal, the suspension could not revive.

Decisions of the Supreme Court reported in *Om Prakash Gupta Vs. The State of Uttar Pradesh*, ; *V.P. Gidroniya Vs. The State of Madhya Pradesh and Another*, *H. C. Mehm v. U.O.I.*, AIR 1974 SC 1281; *Tekraj Vasandi alias K.L. Basandhi Vs. Union of India (UOI) and Others*, have been cited in support of this contention. A decision of this Court in *Laxman Pandharinath Vs. State of Madhya Pradesh*, has also been cited in support of the contention. On behalf of the respondent it has been stated that under the orders of the Supreme Court in *K. I. Shephard's case* (supra) the respondent/Bank was directed to take over the services of the petitioner on the same terms and conditions of employment as were applicable to him as an employee of the LCB prior to amalgamation. According to the respondent as the petitioner was a suspended employee at the time of amalgamation he would revert back to the same position by virtue of the order of the Supreme Court. The rulings of the Supreme Court were tried to be distinguished on the ground that the position in those cases was different. It has been held in those cases that an order of suspension merges in the order of dismissal passed in disciplinary enquiry. In the present case the employee-employer relationship was snapped because of interpretation of the scheme by the respondent/Bank to the effect that the petitioner was an excluded employee. A perusal of the operative portion of the judgment of the Supreme Court in *K. I. Shephard's case* (supra) which is reproduced on page 4 of the petition would show that the direction was to take over the excluded employees on the terms and conditions of the employment under the respective Banking Companies prior to moratorium. The employees were declared to be entitled to the benefit of continuity of service for all purposes including salary and perks throughout the period. The Banks were given liberty to take such action as they considered proper against the employees in accordance with law. This direction cannot be interpreted to mean that the Supreme Court permitted suspension to continue. If the respondent/Bank wanted to contend that, it should have invited attention of the Supreme Court to the suspension as a special feature of the case and could have sought specific directions. In the absence of a specific direction by the Supreme Court to continue the suspension, the fate of the employee shall be governed by the aforesaid cases of the Supreme Court on the point and not by the judgment in *K. I. Shephard 's case* (supra) so far as suspension was concerned.

The judgments of the Supreme Court on the point right from *Om Prakash Gupta Vs. The State of Uttar Pradesh*, ; *V.P. Gidroniya Vs. The State of Madhya Pradesh and Another*, ; *Tekraj Vasandi alias K.L. Basandhi Vs. Union of India (UOI) and Others*, clearly lay down that an order of suspension merges in the dismissal order and on setting aside of the dismissal or removal order the suspension does not revive. The distinguishing feature pointed out by the respondent has also been dealt with in *Laxman Pandharinath Vs. State of Madhya Pradesh*, wherein it has been clearly laid down by a Division Bench of this Court that the order of suspension comes to an end finally along with even an order of removal from service unconnected with the departmental enquiry in contemplation of which the

employee was suspended. In para 8 of this judgment it has been observed as follows : -

"The effect of the termination of the service of an employee is that the relationship of master and servant ceases to exist, and thereafter no departmental enquiry can be held to punish the employee. The termination may be for any cause; the order of suspension must, by its very nature, come to an end. The effect thus is the same, whether the termination of the sendee is in consequence of the enquiry or otherwise. On the reasoning of the decision of the Supreme Court in *Om Prakash Gupta Vs. The State of Uttar Pradesh*, we must, therefore, hold that the order of suspension merged into the order of removal, and that it could not revive when the latter order was cancelled."

We are in respectful agreement with the view taken "in the aforesaid judgment. We, therefore, hold that in this case too, the order of suspension merged with the order of removal Annexure C to the petition and on the Supreme Court's order setting aside the order of removal the suspension could not and did not revive. The petitioner has also raised a plea that the suspension order would not revive because at its very inception it was illegal and without jurisdiction. According to the petitioner as per conditions governing his sendees in LCB he could not have been suspended in the manner in which he was suspended. We need not go into this question as we are holding that the order of suspension merged into the order of removal, and the salary for the period of suspension till 24-8-1985 has already been ordered by the Supreme Court to be paid to the petitioner.

The petitioner's next contention is that the enquiry has become illegal, ultra vires and void because of inordinate delay. The petitioner has also contended that the enquiry proceedings are liable to be quashed on the ground of non-payment of subsistence allowance. Going through the record it does not appear to us that the enquiry can be held to be vitiated on these grounds and could be quashed at this stage. The suspension of the petitioner initially cannot be said to be mala fide. His exclusion from employment vide Annexure C can also not said to be mala fide. This exclusion from service was set aside by the Supreme Court on 18-7-1987 and the petitioner reported for duty on 28-9-1987 and the Head Office of the Bank passed the impugned orders in October, 1987. Thereafter the petitioner has filed this petition on 16-1-1989 and obtained stay against further proceedings in the enquiry on 13-3-1989. In these circumstances, it cannot be said that the enquiry has been delayed on account of any mala fides or apathy on the part of the respondent/Bank. It is true that considerable time has elapsed since the proceedings were initiated but in the circumstances of the case the blame cannot be wholly laid at the doors of the employer. The ends of justice would be met by directing the respondent/Bank to complete the enquiry within a specified time.

We, therefore, partly allow this petition, quash the proceedings of the General Manager dated 15-10-1987 (Annex. F to the petition) communicating the

decision to the petitioner. The petitioner shall be entitled to the benefit of continuity of service for all purposes including salary and perks throughout, the period of suspension as per direction of the Supreme Court in K. I. Shephard's case (supra). The petitioner shall also be entitled to all the benefits of service including salary and perks for the period after the Supreme Court decision also till final order in the disciplinary proceedings are passed, as if he was never placed under suspension. Needless to add the respondent Bank shall be entitled to deduct the amount of subsistence allowance, etc., paid to the petitioner so far from the amount of the salary etc., payable to the petitioner under this order. The respondent/Bank shall pay the arrears of Salary etc. and complete the enquiry within 3 months from today and the petitioner shall cooperate in the enquiry. If the petitioner does not cooperate or causes unreasonable delay in the disposal of the enquiry, the respondents shall be at liberty to place him under suspension in accordance with the rules governing conditions of his service and pray for extension of time granted by this Court for completion of the enquiry as above. In view of the fact that the petitioner shall be receiving salary for the period from 24-8-1985 till date without the employer having taken any work from him, we do not allow him costs of this petition. The parties shall bear their own costs. Security deposit be refunded after due verification.