

(1979) 12 BOM CK 0003

In the Bombay High Court

Case No : Misc. Petition No. 874 of 1975

S.V. Panvalkar

APPELLANT

Vs

Bank of India

RESPONDENT

Date of Decision : 06-12-1979

Acts Referred:

Penal Code, 1860 (IPC) — Section 109, 409

Citation : (1980) 41 FLR 55 : (1980) 2 LLJ 398

Hon'ble Judges : B. Lentin, J

Bench : Single Bench

Judgement

B. Lentin, J.—The main question that arises for determination in this petition is whether the termination of the petitioner's services amounts to dismissal by way of punishment or whether it is termination simpliciter.

2. On 9th February, 1961, the petitioner was appointed as a Sub-Officer in Grade III in the respondent-Bank. With effect from 1st April, 1968, the petitioner was promoted to Grade D Officer in the Foreign Exchange Department in the Head Office of the respondent-Bank. At that time, the petitioner was the Chief Promoter and Secretary of Manoj Co-operative Housing Society (referred to hereafter as "the Society"), the purpose whereof was to construct residential quarters for the employees of the respondent-Bank and also for outsiders.

3. On 23rd, April, 1969, an enquiry was instituted under S. 83 of the Co-operative Societies Act in connection with the affairs of the Society. On 4th, October, 1969, the Registrar's nominee, one A. S. Rangnekar made a report finding the petitioner and two other officers of the Society, viz., one Kulkarni and one Pujar negligent in dealing with the funds of the Society resulting in a loss of about Rs. 3,59,000 to the Society. On 21st October, 1969, the Registrar passed an order appointment an officer under S. 88 of the Societies Act to assess the damages. On the petitioner's application, Government by its order dated 29th November, 1969 passed under S. 154 of the Societies Act annulled the Registrar's orders dated 23rd April, 1969 and 21st October, 1969 and by the

same order directed a fresh enquiry into the affairs of the Society.

4. On 17th December, 1969, the Bank issued a show-cause notice to the petitioner calling upon him to explain why he acted in a grossly negligent manner in his dealings as promoter and secretary of the Society and had failed to account for the moneys of the Society as revealed in Rangnekar's report, causing serious financial loss to the other members of the Society and bringing discredit to the officer cadre in the Bank. By this show-cause notice, the petitioner was also asked to show cause why he borrowed from the Bank an amount of Rs. 4,500 for about 8 months without paying it to the Society which was the express condition on which the loan was granted to the petitioner why he did not inform the Bank immediately about the Society's decision to cancel as Secretary of the Society he had issued certificates to various employees of the Bank agreeing to allot flats at various costs per square feet when the title of the land to be purchased was not clear nor was there imminent building construction on hand and finally why the petitioner had opened an account with the Bank in an assumed name of Sudhir Panvalkar. The petitioner was called upon to submit his explanation within 15 days to enable the Bank to consider whether any steps by way of disciplinary action should be instituted against the petitioner.

5. On 26th December, 1969, an order was passed by the Registrar appointing one Godbole as authorised person under S. 88 of the Societies Act. On 30th December, 1969 Government passed an order rescinding its earlier order of 29th, November, 1969.

6. In reply to the Bank's show-cause notice dated 17th December, 1969, the petitioner gave his reply dated 18th/22nd. January, 1970 wherein in the very forefront the petitioner denied "all the ill-founded findings of the enquiry officer which are based on premises which are obviously improper, pervert and with pre-conceived notions" adding that "the enquiry had not been conducted in conformity with the law for the purpose and the procedure adopted at the enquiry are basically militating against natural justice, equity and good conscience". The petitioner thereafter proceeded to deal point with the aspects on which he had been asked to submit his explanation. He concluded with the emphasis that he was unable to disclose everything as the matter was subjudice and, therefore, requested that the petitioner's explanation be treated as confidential.

7. In September, 1970, the petitioner filed Special Civil Application No. 2035 of 1970 in this Court for quashing the enquiry report under S. 83 of and the appointment of the authorised officer under S. 88 of the Societies Act. That petition was, however, withdrawn by the petitioner on the Court directing Government to dispose the revision application under S. 154 after hearing the petitioner and the Society.

8. Thereafter, the Treasurer of the Society, one M. S. Navalkar filed two criminal complaints in the Court of the learned Additional Chief Presidency Magistrate

alleging that the petitioner had dishonestly misappropriated a sum of Rs. 51,000 and Rs. 80,000 respectively entrusted to him in his capacity as promoter and secretary of the Society and thereby committed criminal breach of trust. On 3rd September, 1970, charges were framed by the learned Additional Chief Presidency Magistrate against the petitioner and two other officers of the Society, viz., Kulkarni and Pandya, under Ss. 409 and 109 of the Indian Penal Code pertaining to the amounts of Rs. 51,000 and Rs. 80,000, respectively.

9. On 3rd November, 1970, the respondent-Bank addressed a letter to the petitioner stating that the petitioner's explanation given in his letter dated 18th/22nd January, 1970 was found by the Bank to be unsatisfactory but that further steps were not taken in the matter in view of the complaints filed by M. S. Navalkar in the Court of the learned Chief Presidency Magistrate. In that letter it was further stated that as the petitioner had been charge-sheeted for serious offences involving moral turpitude, the Bank considered it necessary that he should be suspended from performing his duties in the Bank pending prosecution and accordingly, the petitioner was suspended from performing his duties in the Bank pending prosecution.

10. In reply by his letter dated 17th November, 1970 addressed to the Bank, the petitioner stated that in the matter of the Society several legal proceedings were pending in various Courts in addition to the enquiry pending before the Registrar's nominee which was of a quasijudicial nature. It was further stated that in view of the legal proceedings, the matter of the Society was subjudice and that it would not be possible for the petitioner to refer to the details of the same. The petitioner further stated that he would, however, refer to them generally in order to acquaint the Bank with the nature of the proceedings and the history of the entire litigation which had already been stated by him in his previous correspondence. The petitioner then proceeded to narrate in that letter the various proceedings and the nature thereof and ended with a request that the Bank consider the entire situation. Regarding his suspension, the petitioner made a grievance;

"..... that it was necessary to give me an opportunity to submit my say before a suspension order was passed against me. The order was made effective with immediate effect, making it effective until the case is finally disposed off, without even giving me a show cause notice"

11. On 21st December, 1970, the petitioner's revision application was rejected by Government. On 29th June, 1971 the petitioner filed special civil application in the High Court for quashing the enquiry report under S. 83 and the appointment of the authorised officer under S. 88 of the Societies Act. That special civil application was summarily rejected. The petitioner's application for leave to appeal to the Supreme Court was refused, and his special leave application to the Supreme Court was also rejected.

12. On 9th October, 1971, Godbole passed an order under S. 88 of the Societies

Act holding the petitioner liable to pay Rs. 2,36,000 to the Society, and another amount of Rs. 2,03,000 with the other two officers of the Society, viz., Kulkarni and Pujar. Against that order, the petitioner filed an Appeal No. 28 of 1972 before the Maharashtra State Co-operative Tribunal.

13. On 29th November, 1971, the respondent-Bank addressed a letter to the petitioner terminating his services with effect from 1st December, 1971. With that letter was enclosed a pay slip for Rs. 5,089.24 being the amount of the petitioner's net salary for the current month and three months pay and allowances in lieu of notice of termination of his service. The petitioner was asked to send his receipt in full and final settlement of his salary and notice pay. It was further stated that the petitioner's claim for gratuity and provident fund dues would be considered on his making the requisite application. This letter was delivered to the petitioner at his residence the same night. The petitioner accepted the letter and signed the receipt as desired by the Bank. The pay slip was encashed by the petitioner on 3rd December, 1971. However, before doing so, the petitioner addressed a letter dated 1st December, 1971, to the Bank expressing his surprise and pain at his services being terminated and strongly protesting in no uncertain terms that the termination of his services was not termination simpliciter and that action had been taken against him without giving him any opportunity to show cause and that the termination was in violation of the principles of natural justice. The petitioner stated that a detailed reply would follow. Accordingly on 3rd December, 1971, the petitioner addressed a further detailed letter to the Bank once again protesting against the termination of his services and reiterating that no opportunity had been given to the petitioner to explain his side of the situation, that no enquiry had been instituted before terminating the petitioner's services that the principles of natural justice had been flouted and that the respondent's action in terminating the petitioner's services was premature.

14. In reply to the petitioner's letter dated 3rd December, 1971, the Bank addressed a letter dated 27th December, 1971 to the petitioner confirming that the Bank's action in terminating the petitioner's services was the result of the "most careful consideration of the entire set of circumstances of your case". taken "entirely independent of any expectations as to the outcome of any legal proceedings pending against you". The letter concluded :

"You are hereby informed that the said decision to so terminate your services was prompted by the Bank's loss of confidence in you as an employee for any further service in a highly sensitive credit institution like the Bank, arising from your conduct in the matter of the affairs of the Manoj Co-operative Housing Society Ltd., considered as a whole."

15. In reply, by his letter dated 28th December, 1971 addressed to the Bank, the petitioner protested that the reasons given by stigma on the petitioner and that it was not a case of termination simpliciter, and that the principles of natural justice had been violated in as much as no opportunity had been given to the

petitioner to defend himself.

16. On 27th March, 1972, the petitioner was convicted in the proceedings before the learned Additional Chief Metropolitan Magistrate in respect of the amounts of Rs. 51,000 and Rs. 80,000 respectively and was sentenced to 6 month's R. 1. and a fine of Rs. 2,000 The petitioner thereupon filed Criminal Appeal No. 402 of 1972 and Criminal Appeal No. 403 of 1972 in the Bombay High Court.

17. On 12th April 1973, an order was passed by the Maharashtra State Co-operative Tribunal rejecting the petitioner's appeal No. 28 of 1972 filed against Godbole's order dated 9th October, 1971. The Tribunal, however, reduced by Rs. 72,000 the amount mentioned in Godbole's order. The petitioner's Criminal Appeal No. 402 of 1972 in respect of his conviction and sentence with regard to Rs. 51,000 was disposed of by the High Court on 12th November, 1973. The petitioner's conviction and sentence was set aside, and he was acquitted with strictures in a detailed judgment that his conviction under S. 409 of the Indian Penal Code was totally misconceived. The petitioner's Appeal No. 403 of 1972 in respect of his conviction and sentence with regard to Rs. 80,000 was disposed of by the High Court on 24th/25th July, 1974 by a detailed judgment running into several pages. That appeal too was allowed and resulted in the petitioner's acquittal, ending with a recommendation by the High Court to the Bank for a sympathetic consideration for the petitioner's stage, it may also be mentioned that shortly prior to the termination of the petitioner's Criminal Appeal No. 403 of 1972, a settlement had been arrived at between the petitioner and the Society. The fact is of some consequence to show that after the petitioner's acquittal in the criminal appeals by the High Court only a civil liability remained qua to the Society.

18. On 5th September, 1974, 5th February, 1975 and 3rd May, 1975, the petitioner made written requests to the respondent-Bank for reinstatement which were turned down by the Bank by its letter dated 21st May, 1975. On 23rd July, 1975 the petitioner filed the present petition for an appropriate writ for setting aside the impugned orders dated 29th November, 1971, 27th December, 1971 and 21st May 1975.

19. The Regional Manager of the respondent-Bank has filed an affidavit in reply to the petition. It is urged that the petition is misconceived as the Bank is not a "State" within the meaning of Art. 12 of the Constitution of India. However, Mr. Vahanvati, the learned counsel appearing on behalf of the Bank, fairly stated before me that in view of the various decisions of this Court and other High Courts to the contrary, it would not be open to him to press this ground before me. In the affidavit-in-reply, it is further contended that the petitioner is guilty of inordinate delay and laches in filing his petition. It is also urged that the petition is misconceived on the ground of acquiescence and abandonment of service by the petitioner. On merits, it is the Bank's contention that this is a case of termination of service simpliciter for loss of confidence.

20. It was urged by Dr. Kulkarni, the learned advocate appearing on behalf of the petitioner, that the discharge of the petitioner and the termination of his services was punitive and by way of punishment for something which had nothing to do with the Bank and not connected with the petitioner's duties as an officer of the Bank. Dr. Kulkarni further urged that the Bank's plea of loss of confidence was merely a guise of getting rid of the petitioner without holding an enquiry. He further urged that the termination of the petitioner's service amounted to dismissal which cast a stigma and without holding an enquiry in violation of the principles of natural justice. Dr. Kulkarni further urged that the petitioner's conduct in the affairs of the Society was beyond the disciplinary jurisdiction of the respondent-Bank. Pausing here for a moment, it may be stated that though in the affidavit-in-reply it is stated that an enquiry was held, Mr. Vahanvati fairly stated that no enquiry had been held and that the statement in the affidavit that an enquiry had been held is a mistake.

21. Thus while the admitted position is that no enquiry had been held by the Bank before terminating the petitioner's services, it was urged by Mr. Vahanvati that holding an enquiry would have served no useful purpose because the order of termination dated 29th November, 1971 was passed as a result of Godbole's order of 9th October, 1971 which was quasi-judicial order under S. 88. Thus Mr. Vahanvati urged that the Bank's plea of loss of confidence was justified and bona fide with the result that the termination of the petitioner's services was termination simpliciter not amounting to dismissal and not casting any aspersion or stigma on the petitioner.

22. There is great deal of force in the contentions urged by Dr. Kulkarni. In the light of the sequence of events, there can be no doubt that the termination of the petitioner's services was by way of punishment, casting a stigma and attracting civil consequences, even without holding an enquiry whereby the elementary principles of natural justice were violated. The reason for the petitioner having been placed under suspension was that he had been charge-sheeted before the learned Metropolitan Magistrate in connection with the two amounts of Rs. 51,000 and Rs. 80,000 in connection with the Society's affairs and that the suspension was pending on the prosecution. Since then and even prior thereto the constant refrain of the petitioner was that the matter was subjudice. It was only after Godbole's order dated 9th October, 1971. Under S. 88 and much prior to the conclusion of the criminal prosecutions, that the Bank issued its order dated 29th November, 1971 terminating the petitioner's service. Hence, it was Godbole's order which was the root cause of his services being terminated. The ground given by the Bank in its letter dated 27th December, 1971 was loss of confidence by reason of the Society considered as a whole. These facts on which there is no dispute, bring to the forefront that the reason of termination of the petitioner's services and the Bank's loss of confidence in the petitioner had not nexus or connection with the Bank of its working or with the function and duties of the petitioner as an officer of the Bank. In view thereof, it was imperative for the Bank to have called for the petitioner's explanation and given him an

opportunity to show cause, instead of acting ex parte on Godbole's report. Admittedly no such opportunity was given to the petitioner despite the petitioner repeatedly pointing out to the Bank this lapse on its part. As Godbole's order was the basis and foundation of the Bank losing confidence in the petitioner and for that reason terminating the petitioner's services, it was imperative that his explanation should have been called for. Merely because Godbole's order under S. 88 was a quasi-judicial order did not absolve the Bank from giving an opportunity to the petitioner to show cause why his services should not be terminated as it clearly cast a stigma on the petitioner. If thereafter the Bank had found the petitioner's explanation unsatisfactory, it would have been different. But not even to give such an opportunity and despite that to terminate his services is clearly violative of the principles of natural justice. In *General Medical Council v. Spaceman*, [1941] A.C. 627, a registered medical practitioner who was a correspondent in a divorce suit was found by the Divorce Court to have committed adultery with the respondent, who was his patient. The General Medical Council gave him notice that the meeting of the Council would be held to decide whether to remove his name from the Medical Register for infamous conduct in a professional respect. At the hearing, his plea to call fresh evidence on the question of adultery was turned down by the Council which accepted the decree nisi as prima facie proof of adultery and directed erasure of the practitioner's name from the register. It was held that while the Council was entitled to regard the decree in the divorce suit as prima facie evidence tendered by the practitioner and that having refused to hear such evidence, it had not made "due enquiry" under the Medical Act, 1858. The present case stands on a better footing than Specimen's case where at best notice had been given to the respondent unlike the present matter where the petitioner had received not an inkling that the Bank was going to act ex parte on Godbole's report. It is also not without its own significance that while acquitting the petitioner on merits in Criminal Appeal No. 402 of 1972, the High Court observed in no uncertain terms in a long and detailed judgment that the petitioner's conviction under S. 409 of the Indian Penal Code was totally misconceived and deserved to be quashed. So also in Criminal Appeal No. 403 of 1972, after acquitting the petitioner on merits, the High Court at the end of a lengthy and recommending sympathetic consideration of the petitioner's reinstatement if he asked for it. There are but two factors which bring to the forefront the necessity of having given a hearing to the petitioner instead of directly acting on Godbole's report even though it was quasi-judicial report. Obsessed as it apparently was by the pending prosecutions and Godbole's report, it is clear that the Bank acted more in haste than with circumspection in not giving an opportunity to the petitioner to show cause why his services should not be terminated in view of Godbole's report and in summarily terminating his services under the guise of a seemingly innocuous order of termination. Merely because Godbole's order was upheld by the Tribunal (less Rs. 72,000) and merely because the petitioner and the Society arrived at a settlement later, is no vindication of the Bank's earlier hasty attitude. A person

may well arrive at a settlement for many reasons including peace of mind and freedom from constant litigation and so forth. Furthermore, what also cannot be lost sight of is that there is a letter on record dated 22nd July, 1974 written by the Solicitors of the Society to the petitioner wherein it has been stated that the Society has no grievance or complaint whatsoever against the petitioner for dishonest criminal misappropriation of any of its funds. Two days latter, the High Court allowed the petitioner's appeal on merits and set aside the conviction and sentence in lengthy and detailed judgment. This lends verisimilitude to the statement in the letter dated 22nd July, 1974 that the Society has no grievance or complaint against the petitioner for dishonest criminal misappropriation of any of its funds. In the circumstances, the petitioner was proved to be correct when he consistently told the Bank not to pre-judge the issue, that the matter was subjudice and that a hearing should have been given to him. The Bank's plea of loss of confidence was convenient mode of getting rid of an unwanted employee without observing the principles of natural justice, by resorting to the expedient of issuing a seemingly innocuous letter of termination which in effect and substance, was nothing but a punishment and which cast a stigma on the petitioner and visited him with civil consequences.

7th December, 1979

23. Loss of confidence is a phraseology often used and as often abused. I agree with Mr. Vahanvati when he says that in a highly specialised and a sensitive financial institution like a Bank, its employees who handle not only large amounts but are also privy to secrets and confidence must be above suspicion and that from an employee of a financial institution like a Bank, is expected integrity in his dealing with the Bank and its customers. Mr. Vahanvati is also correct when he emphasises that it must necessarily entail the fullest confidence not only of the public in the Bank but also of the Bank in its own staff. However, all this must necessarily be subject to the employee's dealings with the Bank and its customers. It is one thing for the Bank to lose confidence in its employee for an act of commission or omission in his dealings with the Bank or its customers. It is quite a different thing for the Bank to affect loss of confidence in its employee for an act allegedly done by him de hors his duties as an employee of the Bank and having no nexus with his duties as an employee of the Bank and then on that ground purport to terminate his service by a seemingly innocuous letter of termination without giving him an opportunity to show cause. In the present case at the cost of repetition, it must be emphasised that the trouble which the petitioner had to face and go through had nothing whatsoever to do with his duties as an employee of the Bank or its customers but were in relation to the affairs of the Society which had nothing to do with the working of the Bank or his duties as an officer of the Bank. Before cognisance of such acts could have been taken by the Bank, as it did ex parte on Godbole's report, the petitioner should have been heard in the matter and an opportunity should have been given to him to show cause. It is simple as that. In *L. Michael and Another Vs. Johnson Pumps Ltd.*, relied on by Mr. Vahanati, it was held that loss of confidence is often

subjective or individual reaction to an objective set of facts and motivation and that the Court is concerned with the latter and not with the former, although circumstances may exist which justify a genuine exercise of the power of simple termination. It was further held that in a reasonable case of confidential or responsible post being misused or a sensitive or strategic being abused, it may be high risk to keep the employee, once suspicion has started and disciplinary enquiry cannot be forced on the matter and in such a case, a termination simpliciter may be bona fide, not colourable and loss of confidence may be evidentiary of good faith of the employer. At page 666 of the Report, it was observed as under :

"..... The Tribunal has the power and, indeed, the duty to x-ray the order and discover its true nature, if the object and effect, if the attendant circumstances and the ulterior purpose be to dismiss the employee because he is an evil to be eliminated. But if the management, to cover up the inability to establish by an enquiry, illegitimately but ingeniously passes an innocent looking order of termination simpliciter, such actions is bad and is liable to be set aside."

24. In the matter before me, it has not been the case even of the Bank that it apprehended that the petitioner would or did misuse or abuse the post he held with the Bank (as in the Johnson Pumps case) or that the reason which led to his removal had anything to do with the Bank or his duties as an officer of the Bank. The Bank may have found it difficult or may not have wanted to hold an enquiry as the acts of the petitioner had nothing to do with the Bank or his duties as an employee of the Bank. That, however, would not permit the Bank to cover up such a defect and yet be rid of an unwanted employee by ingeniously passing an innocent-looking order of termination simpliciter in colourable exercise of power.

25. Mr. Vahanvati urged that once it is held that loss of confidence is bona fide, the order is immune from challenge even if the opinion is erroneous. It is one thing to form a bona fide opinion, be it erroneous. It is altogether a different thing to remove by a seemingly innocuous order of termination an unwanted employee by claiming bona fides. In this case, bona fides could have been established by the Bank by simply telling the petitioner; "We have received Godbole's report, prima facie we are impressed by it, show cause why your services should not be terminated." Instead of doing so, the Bank chose to act ex parte on the basis of that report and decided to get rid of the petitioner willy-nilly under the guise of a seemingly innocuous order of termination affecting loss of confidence. Mr. Vahanvati's contention that even if an equity had been held against the petitioner, the same would have served no useful purpose in view of Godbole's order, merely indicates that the Bank had decided to be rid of the petitioner. If the Bank had already made up its mind to do so on the basis of Godbole's report, Mr. Vahanvati is right that inviting the petitioner's explanation would have been an idle formality. Surely not exactly a convincing glimpse of bona fides on the part of the Bank as Mr. Vahanvati seeks to make out.

26. Mr. Vahanvati urged that the petitioner had taken a loan from the Bank for

purchasing a flat, that the petitioner had also sanctioned loans to other employees for purchasing flats and hence, even in his dealings with the Bank, the Bank had lost confidence in the petitioner. There is nothing to commend this contention except the ingenuity with which it has been advanced. No such ground has even been made out by the Bank in its letter dated 7th December, 1971, in which the only ground given for the purported loss of confidence is the petitioner's dealings with the affairs of the Society and nothing else. The loss of confidence affected by the Bank had nothing to do with the petitioner's dealings with the Bank but only his dealings with the Society.

27. In the result, the order of termination though seemingly innocuously worded in the form of termination simpliciter, is in effect an order of dismissal by way of punishment which casts a stigma on the petitioner and attracts civil consequences and has been passed in violation of the principles of natural justice and hence is liable to be set aside.

28. Coming to the ground of laches, Mr. Vahanvati urged that the petition was filed 3 1/2 years after the termination of the petitioner's services and on that ground invited me to dismiss it. Mr. Vahanvati was critical that the petitioner did not file his present petition in 1971 despite the fact that he had even then threatened the Bank with legal proceedings. Mr. Vahanvati also urged that in any event there was no reason why the petitioner could not have been filed between December, 1971 and March, 1972. It is true that though the services of the petitioner were terminated on 29th November, 1971, he did not file the present petition till 23rd July, 1975. The reason given in the petition is the pendency of the criminal proceedings and also the Bank's delay in replying to the petitioner's representations for reinstatement. One cannot entirely lose sight of the fact that in this matter of the Society, the petitioner had been agitating, litigating and defending himself in various proceedings on different fronts enough to drive a normal person to distraction. If in that, he did not take upon himself yet another proceeding, he cannot be much blamed. What also cannot be lost sight of is that the petitioner was waiting for the conclusion of the criminal proceedings and on his conviction and sentence being set aside by the High Court, wrote not less than 3 letters to the Bank asking for reinstatement as recommended by the High Court for the Bank's sympathetic consideration. Even to those letters the Bank took its own sweet time to reply in the negative. It was thereafter when the petitioner realised that the Bank was bent in not reinstating him, that he had no choice but to file this petition Mr. Vahanvati urged that if the petitioner had filed the present petition earlier the Bank may have withdrawn the termination order and may have held an enquiry against him and that it would be a great prejudice to the Bank to pay the petitioner 3 1/2 years salary without his being in the employ of the bank. It is now futile for the Bank to be wiser after the event. The petitioner had repeatedly and consistently been telling the Bank to withdraw the termination order, to give him a hearing, to hold an enquiry and otherwise observe the principles of natural justice. Despite the petitioner's repeated protestations, the Bank refused to do anything of the kind. If the Bank had been

less hasty and more circumspect, it would not now find itself as it does in the predicament of its own making.

29. Mr. Vahanvati relied on the decision of the Supreme Court in Executive Committee of Vaish Degree College, Shamli and Others Vs. Lakshmi Narain and Others, where it was held that certain admitted facts in that case would put the Court on its guard while exercising its discretion to grant a declaration or injunction, one of the admitted facts being that if the declaration or the injunction were granted to, party would have to be paid his full salary with interest and provident fund for full nine years, i.e., from 1966 to 1975, even though he had not worked in the institution for a single day during this period. The decision in Vaish Degree College case must be read in the light of the peculiar facts and circumstances of that case, particularly from the admitted fact that the College was in such impecunious circumstances that by paying in respondent in that case his full salary from 1966 to 1975, the institution would go bankrupt. This was one of the main reasons which impelled the Supreme Court in that case to refuse the declaration sought for by the respondent. It can hardly be said, nor mercifully was it urged before me, that the financial capacity of the respondent-Bank is on a par with that of the institution in Vaish Degree College case.

30. On the aspect of acquiescence, Mr. Vahanvati urged that the petitioner having accepted the 3 months pay and allowances sent to him in lieu of notice and having passed a receipt of 29th November, 1971, in full and final settlement, and having encashed the pay-slip on 3rd December, 1971, the petitioner promptly wrote a brief but strong protest to the Bank by his letter dated 1st December, 1971, promising to follow it up by a detailed protest, which he did by his letter of 3rd December, 1971. Merely because the petitioner gave the receipt in the form demanded by the Bank, viz., in full and final settlement, cannot spell out acquiescence on the part of the petitioner. The Bank's letter dated 29th November, 1971, was delivered to the petitioner that very night at his residence. If the petitioner had not signed the receipt dated 25th November, 1971 in the form desired by the Bank, the Bank would have withheld even the meager amount of Rs. 5,000 and odd. It does not behove the Bank to hold the petitioner to ransom and then urge acquiescence on his part. The Bank's theory of acquiescence is further set at naught by the fact that to this day, the provident fund and gratuity admittedly payable to the petitioner have not been claimed by him.

31. It was next urged by Mr. Vahanvati that the petitioner abandoned his service with the Bank inasmuch as between August to October, 1972, he had taken up other employment and since 23rd, January, 1978 has been working with the New India Co-operative Bank Ltd., as Branch Manager. This theory of abandonment urged in all seriousness by the Bank, leaves a bad taste in rejoinder, the petitioner had stated that from August to October, 1972 he had taken up another employment at Rs. 500 per month and that since 23rd January, 1978, he is

earning a monthly amount of Rs. 1,150 (which is less than 50% of the salary he would have drawn in the respondent-Bank) by this employment in the New India Co-operative Bank Ltd. These figures and periods are not controverted by the Bank. The petitioner has expressed in his affidavit and across the Bar through his learned advocate, his willingness to adjust these amounts earned by him against his claim of back wages from the respondent - Bank. The defence of abandonment of service taken up is worthless and unworthy.

32. My attention was invited by Mr. Vahanvati to the decision of the Supreme Court in *Kamini Kumar Das Choudhary v. State of West Bengal and others* (supra), where it was held that acquiescence and presumed abandonment of the right to complain inferred from inordinate delay, laches and public interest or public policy also are well establishment grounds for refusal to exercise discretion under Art. 226. I respectfully agree. Fortunately, for the petitioner and unfortunately for the Bank, this ratio can have no application in the facts and circumstances of the present case.

33. Mr. Vahanvati finally urged that this was a case where no reinstatement should be granted as the petitioner was an officer holding a responsible post in a sensitive institution like a Bank. To accede to this contention of Mr. Vahanvati would be tantamount to defeating the very purpose of all that the petitioner has been struggling for against all odds since the past several years. There is no reason why reinstatement should not be granted except on the decision of the Supreme Court in *Ruby General Insurance Co. Ltd. v. Chooria* (supra), where it was held that grant of reinstatement was not proper as the dismissed employee was a stenographer holding a sensitive post with his employer. That decision in that case can be of no assistance to the respondent-Bank in this case, inasmuch as in the *Ruby General Insurance Company* case the Court had come to the conclusion that the concerned employee in order to create evidence of having worked overtime had kept copies of confidential letters dictated by his employer. It was observed by the Supreme Court that if such was the conduct of the employee it would not be in the interest of the employer to order reinstatement where once again he would have to work in close contract with the same employer. No such thing can be said of the present petitioner who has neither retained documents of the Bank nor misused any records of the Bank nor committed any act in dereliction of his duties as an officer of the Bank.

34. In the result, the petition is allowed in terms of prayers (a) and (b) with the addition in prayer (b) of the words "and other benefits which the petitioner would be entitled to". The impugned order dated 29th November, 1971, 27th December, 1971 and 21st May, 1975, are set aside. The Bank shall be entitled to adjust against the petitioner's backwages his earnings at the rate of Rs. 500 per month from August to October, 1972 and at the rate of Rs. 1,150 per month from 23rd January, 1978, till reinstatement. The Bank shall pay to the petitioner the costs of the petition.

35. Rule is made absolute accordingly.

36. Operation of this order stayed till 14-1-1980.