
(2022) 08 TEL CK 0073

In the Telangana High Court

Case No : I.A.Nos. 2, 3 Of 2019 In Writ Petition No. 19956 Of 2002

S.Vijaya Kumar

APPELLANT

Vs

Executive Committee C.B.And R.Auth.,S.B.I., Mumbai.

RESPONDENT

Date of Decision : 23-08-2022

Acts Referred:

Citation : (2022) 08 TEL CK 0073

Hon'ble Judges : P. Madhavi Devi, J

Bench : Single Bench

Advocate : V Mallik, E Madan Mohan Rao

Final Decision : Allowed

Judgement

1. This Writ Petition is filed seeking a Writ of Certiorari calling for the records pertaining to the order passed on 13.06.2002 by the Executive Committee of the Central Board and Reviewing Authority rejecting the review petition filed by the petitioner on 12.10.2001 and communicated vide Lr.No.A&R/HYD/2512, dt.17.06.2002 and to quash the same and consequently to direct the respondents to conduct a fresh review in accordance with law.

2. Brief facts leading to the filing of this Writ Petition are that the petitioner was appointed as a Probationary Officer in State Bank of India on 07.12.1971 and his services were confirmed on 07.12.1973. Within a span of 3 years, the petitioner was promoted as a Branch Manager and was posted at Tadikalapudi Branch. On 08.02.1978, the petitioner was suspended from service and four charges were framed against the petitioner. During the enquiry, only charge No.1 was proved and the other charges, i.e., charges 2, 3 and 4 were held as not proved. However, the disciplinary authority held that charge No.2 was also proved and dismissed the petitioner from service on 17.07.1982. The appeal of the petitioner was also dismissed by order dt.22.12.1982. The disciplinary authority was also a Member and Secretary to Appellate Authority in Local Board, SBI, LHO, Hyderabad. The petitioner filed W.P.No.194 of 1983 in A.P. High Court and the

Writ Petition was allowed on 26.11.1987 by a Division Bench of the High Court which heard the W.P. with W.A.No.141 of 1986 in the case of similarly placed employees. This Court held that the petitioner was dismissed by an authority who was not competent to pass the said order. This was reversed by the Hon'ble Supreme Court by its judgment dt.18.07.1990 in SLP No.4176 of 1988 and the matter was remanded to the Hon'ble High Court for hearing on other points raised in the W.P. in accordance with law. The Writ Petition was again allowed on 29.03.1991 by holding that the enquiry report ought to have been given to the petitioner along with the show-cause notice. The matter was again taken to the Hon'ble Supreme Court in Civil Appeal No.2935 of 1991 and the Hon'ble Supreme Court remanded the matter to this Court on 06.08.1996 holding that all the points raised in the Writ Petition should be considered by the High Court. When the matter came up again before the Division Bench, the Writ Petition was again allowed on 03.02.1997 on the ground that the three grounds raised by the employee in the additional affidavit filed by the petitioner in the Hon'ble Supreme Court were not denied by the bank and that an opportunity to be defended by a lawyer was not given to the petitioner. However, it was left open to the respondent bank to proceed with the enquiry afresh if it is considered appropriate. This order was again assailed before the Hon'ble Supreme Court and the Hon'ble Supreme Court taking note of the fact that no affidavit was filed in the Court, remanded the case again to the High Court on 24.10.1997 for fresh disposal of the case after giving the parties an opportunity to file an additional affidavit, if required.

3. During the third remand proceedings, the Division Bench of the High Court came to the conclusion that the charge No.2 on violation of principles of natural justice is not sustainable and by way of an interim order directed the appellate authority to reconsider the appeal both in terms of the sustainability of the Charge No.1 and also as regards the quantum of punishment. Thereafter, the appellate authority reconsidered the matter and vide orders dt.09.02.1999, held that charge No.1 was sufficient to dismiss the petitioner from service. Again the matter was placed before the Division Bench of this Court, which passed the order on 28.09.2000 dismissing the Writ Petition as devoid of merits. Against the said judgment, the petitioner filed a petition for Special Leave to Appeal (Civil) in C.C.No.2856 of 2001 before the Apex Court, but the same was withdrawn subsequently with liberty to file a representation/ review before the respondents. Accordingly, the petitioner filed a review application dt.12.10.2001 before the Executive Committee of the Central Board and Reviewing Authority, SBI, Mumbai, for review of the punishment order as well as to consider granting of notional salary and allowances from 17.07.1982 to 09.02.1999. Vide orders dt.16.11.2001, the review application was dismissed by holding that the acts of misconduct committed by the petitioner are grave in nature and the punishment of dismissal from service is justified and that the same has already been upheld by the High Court. Challenging the same, this Writ Petition is filed.

4. Learned counsel for the petitioner, Sri V. Mallik, submitted that against the

order of punishment of dismissal from service, the petitioner had filed W.P.No.194 of 1983 and after remand by the Hon'ble Supreme Court on three occasions, on 09.12.1998 Hon'ble Division Bench of this Court had set aside the order of the appellate authority and remanded the matter for reconsideration by quashing Charge No.2 and also on the aspect of quantum of punishment. He submitted that by virtue of the said order, the original order dt.17.07.1982 had merged with the order of the appellate authority which has been set aside and when this Court had set aside the appellate order, the original order also is set aside and until the final order is passed by the appellate authority on 09.02.1999, there is no order of dismissal and hence, the petitioner is entitled to notional salary and allowances from 17.07.1982 till 09.02.1999. Though he fairly admitted that the issue of dismissal from service is covered against the petitioner on merits by the judgment of this Court in W.P.No.194 of 1983, the issue of doctrine of merger of the original order with the appellate order and the consequences of the interim suspension of the appellate order and ultimate setting aside of the order by the High Court had been left open and therefore, that issue is not covered by the principle of res judicata. On the issue of merger, the learned counsel for the petitioner has relied upon the judgment of a 7-Judge Bench of the Hon'ble Supreme Court in the case of S.S. Rathore Vs. State of Madhya Pradesh 1989 LawSuit(SC) 423 : [(1989) 4 SCC 582], wherein the Hon'ble Apex Court had approved the ratio of a 3-Judge Bench decision in the case of Somnath Sahu Vs. The State of Orissa and others (1969) 3 SCC 384. It is the case of the petitioner that the order of original authority merges into the order of appellate authority even if the appellate authority confirms the order passed by the original authority and when such appellate authority's order is set aside, both the appellate as well as the original orders are set at naught. The learned counsel submitted that the reviewing authority has erred in not considering the claim of the petitioner for notional salary and allowances by holding it to be covered against the petitioner by the judgment of this Court in W.P.No.194 of 1983. He therefore seeks admission of the additional affidavit filed by the petitioner by way of I.A.No.2 of 2019 and admission of additional documents filed by the petitioner by way of I.A.No.3 of 2019 and to allow the writ petition and pass orders granting relief of notional pay and allowances from the date of dismissal of the original order, i.e., 17.07.1982 till the date of the first appellate order dt.09.02.1999.

5. I.A.Nos.2 and 3 of 2019 are allowed and the affidavit and the additional documents are taken on record and only such documents which are relevant for adjudication of the issue are looked into.

6. Sri E. Madan Mohan Rao, learned counsel representing the respondents, however, submits that the issue of dismissal of the petitioner from service has been considered at length by the Division Bench of this Court in W.P.No.194 of 1983 and has been confirmed and therefore, the said issue is covered by the principle of res judicata and seeking such a relief again is not maintainable. He further submits that the issue of merger of the original order with the appellate

order and the consequences of setting aside of the appellate order had been left open for consideration by the Division Bench while setting aside the appellate order. It is submitted that by way of an interim direction, when the appellate order has been set aside to the appellate authority for reconsideration, the original order was in force and even if there is an interim suspension of the original order during the pendency of the writ petition, the interim orders do not survive when the writ petition is finally decided. He submits that the doctrine of merger would apply only when the original order is either confirmed or set aside or modified by the appellate authority and when the order of the appellate authority has been ultimately confirmed by the High Court in the Writ Petition, the doctrine of merger would apply, but it cannot be said that the original order has been set at naught when only the appellate order has been set aside to the appellate authority only for following the principles of natural justice and reconsidering the quantum of punishment. He submits that the petitioner had never challenged the order of punishment dt.09.02.1999 nor has he filed any review seeking consideration of the issue which was left open on the earlier occasion by this Court. He submits that the petitioner, though filed an SLP before the Hon'ble Supreme Court, he had withdrawn the same and therefore, the prayer for notional salary and allowances cannot be raised in the review application. He therefore sought dismissal of the Writ Petition.

7. Having regard to the rival contentions and the material on record, this Court notices that the issue on merits of the punishment of dismissal from service is already settled as the Division Bench of this Court in W.P.No.194 of 1983 has dismissed the Writ Petition filed by the petitioner. Therefore, the only issue for consideration in this Writ Petition is with regard to the eligibility of notional salary and allowances from 17.07.1982 to 09.02.1999 and whether the order dt.17.07.1982 subsists when the appellate order dt.22.12.1982 has been set aside on 09.12.1998. As rightly pointed out by the learned counsel for the respondents, by way of the interim order dt.09.12.1998, this Court in W.P.No.194 of 1983 had only set aside the appellate order to the appellate authority for reconsideration on Charge No.1 and also the quantum of punishment. Therefore, the original order was neither suspended nor set aside by this Court and the fresh appellate order was passed on 09.02.1999 again confirming the order of punishment of dismissal from service. Therefore, the original order of punishment was in force till the final appellate order was passed and the petitioner would not be entitled to notional salary and allowances for the said period. Once the petitioner's appeal against the punishment order has been considered and no relief was granted, there is no cause for any further relief to the petitioner. The judgments relied upon by the learned counsel for the petitioner in the case of S.S. Rathore Vs. State of Madhya Pradesh (1989 LawSuit(SC) 423 : [(1989) 4 SCC 582] supra) and in the case of Somnath Sahu Vs. The State of Orissa and others ((1969) 3 SCC 384 supra) also do not come to the rescue of the petitioner. In the case of Somnath Sahu Vs. The State of Orissa and others ((1969) 3 SCC 384 supra), a 3-Judge Bench of the Hon'ble Supreme

Court was considering the doctrine of merger of the original order with the appellate order and it was held that it is the appellate decision alone which subsists and is operative in law and is capable of enforcement. Further, the Hon'ble Supreme Court has also held that if the appellate order is defective in law, there would not be any merger of the original decision with the appellate decision. In the case of S.S. Rathore Vs. State of Madhya Pradesh (1989 LawSuit(SC) 423 : [(1989) 4 SCC 582] supra), a 7-Judge Bench of the Hon'ble Supreme Court has affirmed the ratio in Somnath Sahu Vs. The State of Orissa and others ((1969) 3 SCC 384 supra). However, in the case before this Court, the respondents have clearly established that the appellate order was not set aside on merits but was set aside only to cure a defect. The original order of the respondents has thus not been set aside even during the pendency of the Writ Petition before this Court.

8. In view thereof, this Court is of the opinion that the original order has never been suspended and was subsisting until the final order dt.09.02.1999 was passed by this Court. In view of the same, this Court does not see any merit in this Writ Petition.

9. In the result,

(a) The Writ Petition is accordingly dismissed. No order as to costs.

(b) I.A.No.2 of 2019 is allowed.

(c) I.A.No.3 of 2019 is allowed.

10. Pending miscellaneous petitions, if any, in this Writ Petition shall also stand dismissed.