
(2023) 07 CAL CK 0114

In the Calcutta High Court

Case No : R.V.W. No. 72 Of 2021, M.A.T. 827 Of 2020, (I.A. No. CAN 3 Of 2021)

Swapan Kumar Saha

APPELLANT

Vs

Bangiya Gramin Vikash Bank & Ors.

RESPONDENT

Date of Decision : 28-07-2023

Acts Referred:

Code Of Civil Procedure, 1908 — Order 47 Rule 1

Citation : (2023) 07 CAL CK 0114

Hon'ble Judges : Biswajit Basu, J;Suvra Ghosh, J

Bench : Division Bench

Advocate : Debabrata Saha Roy, Indranath Mitra, Subhankar Das, Neil Basu, Sankha Biswa, Baidurya Ghosal

Final Decision : Dismissed

Judgement

Suvra Ghosh, J

1. The case has a chequered history.
2. The applicant/petitioner, being a Scale –II Officer of the Bangiya Gramin Vikash Bank (hereinafter referred to as the Bank) filed a writ petition being W.P. No 15456 (W) of 2016 assailing the penalty imposed upon him by the disciplinary authority vide order passed on 5th May, 2016, removing him from service and depriving him of his retiral dues.
3. Several notices/reminders were issued upon the applicant/petitioner directing him to show cause as to why disciplinary action would not be initiated against him for violation of service regulations and several irregularities detected in his conduct as an officer. Charge sheet was issued against the applicant/petitioner by the Bank on 8th September, 2011 and being dissatisfied by the reply of the applicant/petitioner to the charge sheet, a departmental proceeding was initiated against him upon appointing a Presenting Officer and Inquiry Officer. The Inquiry Officer submitted a report holding the applicant/petitioner guilty, which was forwarded to the applicant/petitioner for submission of his reply. The petitioner

raised objection to the said inquiry report on the ground that it was forwarded to him by the General Manager in the capacity of the disciplinary authority. The applicant/petitioner superannuated on attaining the normal age of superannuation on 28th February, 2015 and though pension was paid to him on his retirement, other retiral dues were withheld.

4. According to the applicant/petitioner, the Chairman was the competent disciplinary authority as on 3rd May, 2013 and the General Manager was not empowered to Act as the disciplinary authority on the said date.

5. The applicant/petitioner filed a writ petition W.P. 21089 (W) of 2011 challenging issuance of charge sheet against him which was dismissed by a coordinate bench of this Court by an order dated 29th September, 2016. The applicant/petitioner was directed to pay cost assessed at Rs. 1,00,000/- which the Bank was directed to withhold from any amount that may be due to the applicant/petitioner on any account whatsoever. The said order was carried in appeal by the applicant/petitioner and by an order dated 28th April, 2016 passed in A.S.T. 19 of 2016, an Hon"ble Division Bench of this Court dismissed the appeal but reduced the cost to Rs. 25,000/-.

6. The disciplinary authority, by an order dated 5th May, 2016, imposed penalty of removal from service and cost of Rs. 25,000/- was directed to be realized from the bank contribution towards the Provident Fund Account of the applicant/petitioner.

7. The applicant/petitioner contended that the service regulations, 2010 stood amended with effect from the date of its publication in the official Gazette on 20th November, 2013. Prior to such publication, the General Manager usurped the power of the disciplinary authority and proceeded against the applicant/petitioner. Since charge sheet was issued by the Chairman who was the disciplinary authority prior to the amendment of the regulations, he cannot act as an appellate authority after amendment, thereby depriving the applicant/petitioner of his right of appeal.

8. The writ petition was disposed of by a judgment passed on 13th May, 2020 without interfering with the order of the authority and upon granting opportunity to the applicant/petitioner to avail of the statutory remedy of appeal. The applicant/petitioner was debarred from agitating the issue of competence of the General Manager in imposing penalty, before the appellate forum. The judgment of the Learned Single Bench was carried in appeal before a Division Bench of this Court and by a judgment passed on 25th March, 2021 the Hon"ble Division Bench varied the judgment under appeal with certain observations. The operative portion of the judgment is set out:-

"Impugned judgment is varied in appellant being entitled to give his response to the enquiry report dated 26th April, 2013, to the General Manager as his disciplinary authority, on there being order in terms of prayer (b) of the writ petition. We make the direction since as on date the Regulations of 2010 stand

amended. We have also been informed that there was change of personnel in office of Chairman and as such appellant can have no apprehension of the same person being appellate authority, who had issued the charge-sheet. We have enquired and have been informed that appellant has crossed retirement age. In the circumstances, appellant will submit his response by three weeks from date. In event there is no response, the order in terms of prayer (b) of the writ petition will stand vacated and the consequences will follow. The appeal is allowed as above and the application accordingly disposed of.”

9. The applicant/petitioner has sought review of the said judgment on the ground that though the Court has opined in favour of the applicant/petitioner throughout the body of the judgment, it has taken a u-turn in the concluding part of the judgment in recording that the applicant/petitioner shall submit his response to the enquiry report dated 26th April, 2013 within three weeks from the date of judgment before the General Manager as his disciplinary authority and the Chairman shall be his appellate authority.

10. Learned counsel for the applicant/petitioner submits that such observation by the Court is an error apparent on the face of the record and needs to be reviewed. Since the applicant/petitioner has retired from service on 28th February, 2015, the disciplinary proceedings ought to be dropped and his entire dues cleared. Though the Division Bench has initially held that prior to publication of the amendment on 20th November, 2013 the General Manager could not have assumed the power of the disciplinary authority of the applicant, the Court subsequently accepted the steps taken by the General Manager and allowed the applicant to submit his response to the inquiry report before the General Manager as his disciplinary authority. Learned counsel further submits that in terms of the amendment, the Chairman has been designated as the appellate authority. Since charge sheet was issued by the Chairman prior to amendment, the same authority cannot deal with the appeal in connection with the said charge sheet. Resultantly, the petitioner shall either lose the right to appeal or shall be compelled to prefer the appeal before the authority who issued charge sheet against him earlier at the risk of biased approach of the authority which shall affect his interest adversely.

11. Learned counsel has placed reliance on the authorities in *Balraj Taneja and Others v/s. Sunil Madan and Another* reported in (1999) 8 Supreme Court Cases 396, *P.V. Mahadevan v/s. MD. T.N. Housing Board* reported in (2005) 6 SCC 636 and *M.V. Bijlani v/s. Union of India and Others* reported in (2006) 5 SCC 88 in support of his contention.

12. Per contra, learned counsel for the respondents has submitted that service conditions of the officers and employees of the Bank are governed by the service regulations, 2007 which came into force on 17th November, 2007 and were amended from time to time. The service regulations, 2010 was existing when the disciplinary proceeding was initiated in 2011 and the regulations stood amended by way of a notification published in the official Gazette on 20th November, 2013.

The applicant ought to have preferred an appeal before the Chairman who is the appellate authority and the apprehension of the petitioner is baseless since the person who was the Chairman on the date of issuance of charge sheet ceased to hold the post on the date of imposition of penalty.

13. Learned counsel has relied upon the authorities in Avinash Hansraj Gajbhiye v/s. Official Liquidator, M/s. V. Pharma P. Ltd reported in 2006 (2) Supreme 271, Paramita Das v/s. Pranati Sarkar and Others reported in AIR 2004 Cal 22, The State of West Bengal and Others v/s Kamal Sengupta and Another reported in (2008) 8 SCC 612 and R.V.W. 41 of 2019 in F.M.A. 523 of 2017 in support of his contention.

14. The provision laid down under Order XLVII Rule 1 of the Code of Civil Procedure has been dealt with in a judgment in Parsion Devi and Others reported in (1997) 8 SCC 715. The relevant portion of the judgment is set out:-

“Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review under Order 47, Rule 1 CPC. In exercise of the jurisdiction under Order 47, Rule 1 CPC it is not permissible for an erroneous decision to be “reheard and corrected”. There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction. A review petition has a limited purpose and cannot be allowed to be “an appeal in disguise” ”

15. The same proposition of law has been enumerated in the authority in Paramita Das (supra) and State of West Bengal and Others (supra). In other words, review of a judgment or order by the Court which passed the said judgment or order is permissible only upon discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the judgment/order was passed, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason. The term “any other sufficient reason” has to be interpreted in the light of other specified grounds [Avinash Hansraj Gajbhiye (Supra)].

16. In the judgment under review, this Court has dealt with the submission made by learned counsels for the parties and concluded that the applicant/petitioner was at liberty to submit his response before the General Manager as his disciplinary authority within a stipulated time frame. A conscious decision has been taken by the Court which is in conformity with the observation made in the body of the judgment.

17. This cannot be termed as an error apparent on the face of the record. If according to the applicant it is an erroneous decision of the Court, the same can

be corrected only by the higher forum and not in an application for review.

18. Rule 2(g) of the service regulations, 2010 defines the "competent authority" to be the Chairman in respect of officer and the General Manager in respect of employee. It is to be borne in mind that the petitioner was a Scale-II Officer of the Bank and therefore his competent authority was the Chairman in terms of the 2010 regulations. In view of amendment of the regulations, the General Manager became the competent authority in respect of Scale-II Officer. This fact has been taken into consideration by the Court in the judgment under review wherein the Court has decided that the applicant/appellant is entitled to give his response to the inquiry report to the General Manager in view of amendment of the regulations of 2010 and could have no apprehension of the same person being the appellate authority since there was change of personnel in the office of the Chairman. The appeal was allowed in varying the judgment impugned and no mistake or error apparent on the face of the record is found which may be construed to be a ground for review.

19. The authorities relied upon by the applicant pertain to merits of the issues involved therein and have no manner of application in the facts of the present case, moreso, since the legality and correctness of the decision taken in the judgment is beyond the purview of the review application.

20. In the said backdrop, we are of the view that the judgment does not call for interference under Order 47, Rule 1 of the Code of Civil Procedure and the review application, being R.V.W. 72 of 2021 is liable to be dismissed.

21. Accordingly the review application being R.V.W. 72 of 2021 is dismissed.

22. The applicant will submit his response to the inquiry report by three weeks from date, in terms of the judgment dated 25th March, 2021 in M.A.T. 827 of 2020. In the event there is no response, the order in terms of prayer (b) of the writ petition will stand vacated and consequences will follow.

Biswajit Basu, J

1. I have the privilege of going through the draft judgment of my learned sister, I am in full agreement with its conclusions and reasons in support thereof, however, I would like to add a few observations of my own.

2. The applicant is seeking review of the judgment and order dated March 25, 2021 passed in MAT 827 of 2020 by the Hon"ble Division Bench, of which my learned sister was a member. The said appeal was directed against the judgment and order dated May 13, 2020 passed in W.P. No. 15456(W) of 2016 by the learned Single Judge.

3. The General Manager of the respondent-Bank, acting as the Disciplinary Authority, on May 05, 2016 passed the order of punishment for removal of the applicant from service without disqualification for future employment. The applicant, in the aforesaid writ petition challenged the legality and propriety of

the said order of punishment, inter alia, on the grounds that the Service Regulations, 2010 of which the applicant is a subject, does not authorize the General Manager to act as the Disciplinary Authority of the applicant on May 03, 2013 i.e. the date when he assumed the charge, the said authority vests upon the General Manager only after the amendment of the Service Regulations, 2010 with prospective effect from November 20, 2013. The other limb of challenge to the said order of punishment was that the right of the applicant to prefer an appeal against the order of punishment has been taken away inasmuch as after the amendment of the Service Regulations, 2010, the Chairman of the Bank who issued the charge-sheet, has become the appellate authority.

4. The learned Single Judge dealt with the said grounds of challenge and disposed of the said writ petition granting liberty to the petitioner to prefer an appeal before the appellate authority. The applicant impugned the judgment and order of the learned Single Judge in appeal on the selfsame grounds. The Division Bench, in its judgment under review, had considered both the grounds of the said challenge and varied the judgment and order of the learned Single Judge thereby allowed prayer (b) of the aforesaid writ petition, subject to the appellant responding to the Enquiry Report dated April 26, 2013 within a period of three weeks from the date of judgment, in default of which the order allowing the said prayer (b) of the writ petition was directed to be vacated. The prayer (b) of the writ petition is quoted below for the sake of convenience:-

"(b) A WRIT of and/or in the nature of Mandamus do issue setting aside and/or quashing the order of punishment bearing order no. 12/2016 dated 05.05.2016, passed by the General Manager & Disciplinary Authority, forthwith."

5. The Division Bench, in the judgment under review, has also answered the second ground of challenge of the appellant holding that there was a change of personnel in the Office of the Chairman, as such the appellant can have no apprehension of the same person being the Appellate Authority.

6. The applicant, instead of availing the opportunity granted to him by the Appellate Court, is seeking review of the judgment passed in the appeal on the selfsame grounds which he canvassed in the said appeal to impugn the judgment of the learned Single Judge. The applicant has set up the

consequence of exercising the liberty granted to him by the Appeal Court to respond the enquiry report as another ground of review because according to him, reply to the said charge-sheet would entail the consequences of re-opening the Disciplinary Proceeding after more than 12 years from the date of issuance of Charge-sheet, that too, after seven years after the date of retirement of the applicant.

7. The grounds on which the applicant is seeking review of the judgment passed in appeal are beyond the scope of Order XLVII of the Code of Civil Procedure, besides effect of exercising the liberty granted by the Appellate Court in its judgment cannot be a ground for seeking review of such judgment inasmuch as

same would amount to exercise of appellate jurisdiction. The applicant, in fact, under the garb of review, is inviting us to go into the merit of the judgment under review upon re-assessment of the materials-on-record, which is impermissible under the aforementioned provisions of the Code.

8. Dr. Saha Ray, learned counsel for the applicant argued that the conclusion of the said judgment is not agreeing with the reasoning of it, which comes under the purview of "error apparent on the face of record" rendering the said judgment open to review but such contention does not get support of the record inasmuch as each of the grounds of challenge to the judgment of the learned Single Judge were dealt with by the Division Bench in arriving to its conclusion.

Review must be confined to error apparent on the face of the record, error must be such as would be apparent on mere looking of the record without requiring any long-drawn process of reasoning, reappraisal of the entire evidence on record for finding the error would amount to exercise of appellate jurisdiction which is not permissible in review [See MEERA BHANJA(SMT) vs. NIRMALA KUMARI CHOUDHURY(SMT) reported in (1995)1 Supreme Court Cases 170)].

The said argument of Mr. Saha Ray for the aforesaid reason does not appeal to us, as a result I agree with the conclusion arrived at by my learned Sister in dismissing the R.V.W. 72 of 2021.

There shall however be no order costs.

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