(1983) 01 KAR CK 0009

In the Karnataka High Court

Case No : W.A. No. 638 of 1978

Syndicate Bank and Another APPELLANT

Vs

P.V. Nayak RESPONDENT

Date of Decision : 21-01-1983

Acts Referred:

Constitution of India, 1950 — Article 12
Syndicate Bank Officers (Conditions of Service) Rules, 1966 — Rule 36, 5

Citation : (1984) 2 KarLJ 323 : (1985) 1 LLJ 278

Hon'ble Judges : P. Ramakrishnan, J;K. Jagannatha Shetty, J

Bench : Division Bench

Judgement

Jagannatha Shetty, J.—This appeal is directed against the order dated 10th August, 1978 made by Rama Jois, J. allowing writ petition No. 1724 of 1975 filed by P. V. Nayak - the respondent. To state briefly, the facts are these :

On 25th April, 1960. Sri P. V. Nayak was appointed as a clerk on the establishment of the Syndicate Bank Ltd. He was confirmed in the said post with effect from 25th March, 1961. In 1970, the Syndicate Bank Ltd., was acquired by the Central Government by the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 with effect from 19th July, 1969 and was termed only as Syndicate Bank (called shortly as "the Bank") P. V. Nayak, thereafter was promoted as a special Assistant. Again he was found suitable for promotion to the cadre of officers in the competitive test on 26the August, 1973. Accordingly by order dated 17th October, 1973, he was promoted to the cadre of Junior Officers. The order of promotion stated that he would be on probation for a period of one year and he would be governed by the Syndicate Bank Officers'' (Conditions of Service) Rule, 1966 ("The Rules") and if he was not confirmed he would continue to be on probation. The order further stated :-

"During the period of probation if you are not found suitable to be absorbed permanently in the cadre of junior officers, you are liable to be reposted to your present cadre treating you as if you had continued in the said cadre without the present promotion."

When he was serving as an Assistant Manager at Karur Branch of the Bank, he was served with an order dated 19th August, 1974 in the following terms :-

Dear Sir,

"Your services are terminated with immediate effect in terms of Rule 36 of Syndicate Bank Officers'' (Conditions of Service) Rules 1966. A demand for Rs. 3098/- drawn in your favour being salary for 3 months is enclosed herewith."

On 30th August, 1974, he was relieved from the post of the Assistant Manager in the Karur Branch.

2. P. V. Nayak challenged the validity of the order of termination of his services in writ petition No. 1724 of 1975. The main grounds of attack in the writ petition are : (i) the Rule 36 was not applicable to his case who was on probation and Rule 5 of the Rules alone was attracted; And (ii) That Rule 36 of the Rules confers arbitrary power on the Management to terminate the services of officers.

3. The Bank resisted the writ petition on the ground, among others, that the Syndicate Bank cannot be held to be state or other Authority within the scope of Art. 12 of the Constitution of India and therefore the writ petition was not maintainable. The Bank had the power to terminate the services of the petitioner under Rule 36 since it was of the opinion that continuance of the petitioner was not in the interest of the Bank.

4. The learned single Judge rejected the contention urged for the Bank and held that the Bank is a "State" within the meaning of Art. 12 of the Constitution and Rule 36 was not applicable to the petitioner who was a probationer. Accordingly, he quashed the impugned order of termination without expressing any opinion on the validity of Rule 36.

5. In this Writ Appeal preferred by the Bank, no argument was addressed on the finding recorded by the learned single Judge that the Bank is a "State" within the meaning of Art. 12 of the Constitution. The counsel appears to have wisely accepted that that finding. The contention, however, urged was that Rule 5 or Rule 36 are both applicable to a probationer officer and it would be within the discretion of the Management to exercise the power under one rule or the other to terminate the services of the petitioner. On behalf of the Respondent, it was contended that Rule 36 has no application to probationers and they could be dealt with only under Rule 5 if the Bank is not satisfied about their performance or suitability to continue in service.

6. The primary question for consideration in this appeal, therefore, is whether Rule 5 alone is attracted to the case of probationers and not Rule 36 in any event.

7. Mr. Tukaram Pai for the Bank urged that Rule 36 makes no distinction between a probationer and a confirmed officer. It applies to every officer of the Bank irrespective of the fact whether he is under probation or a confirmed officer.

According to the counsel, Rule 5 could be invoked if the Management feels that the probationer is not suitable for continuance as an officer whereas the power under Rule 36 could be exercised when the Management is of opinion that the continuance of the probationer is undesirable in the interest of the Bank. He, however, urged that Rule 5 does not apply to confirmed officers and for them Rule 36 alone applies although the two rules are not mutually exclusive.

8. To appreciate these contentions, we may now broadly analyse the Rules. Chapter II of the Rules in which Rule 5 is located, provides for recruitment and appointment. Chapter VIII contains rule dealing with discipline and disciplinary action against officials and Rule 36 providing for termination of service is found in Chapter IX.

Rule 5 reads :-

"5. Probation. (a) Every officer appointed shall be initially on probation for a period of one year or such extended or reduced period at the discretion of the Management.

(b) Every officer on successful completion of the probationary period shall be confirmed in the cadre of officers applicable to him but the management at its sole discretion may, (i) in the case of the direct recruit terminate the services of the probationer without assigning any reason whatsoever at any time during the probationary period paying a month''s salary; (ii) in the case of appointment by promotion, revert him to his previous cadre, at any time during the probation."

Rule 36 provides :-

"36. The management may terminate the services of any officer by giving him three months'' notice in writing or 3 months" salary in lieu of such notice if in the opinion of the management, continuation in service of such officer is not desirable in the interest of the Syndicate."

It will be seen from Rule 5 that it deals with probationers who are directly recruited and also promoted. In other words it applies to all probationers irrespective of their mode of recruitment. Rule 5(b) consists of two parts; the first part deals with the case of a directly recruited probationer. It states that in the case of a direct recruit, that services of the probationer would be terminated without assigning any reason whatsoever during the probationary period by paying month''s salary. The second part deals with the case of a probationer appointed by promotion. If such a probationer is not found suitable the management could revert him to his previous cadre at any time during the period of probation. The power to deal with both the categories of probationers save for misconduct is thus exhaustively and expressly located in Rule 5 and it must therefore necessarily follow that the power is impliedly excluded from the operation of any other rules.

9. Rule 36 confers power on the management to terminate the services of any officer by giving him three months'' notice in writing or three months salary in

lieu of such notice if the management feels that the continuance in service of such officer is not desirable in the interest of the Bank. When Rule 5 provides for terminating the services of the directly recruited probationers without assigning any reason after paying a month''s salary, we fail to see why three months'' salary should be paid or three months notice should be given in writing to such a probationer. The intendment of the rule-making authority, having regard to the different requirements to be observed under both the rules appears to be very clear that Rule 5 is only concerned with probationers as it expressly provides for and Rule 36 which is general in terms deal only with confirmed officers.

10. Our view also finds confirmation from the subsequent amendment made to Rule 36. In exercise of the powers conferred under S. 19 of the Banking companies (Acquisition and Transfer of Undertakings) Act, 1970, the Board of Directors of the Bank in consultation with the Reserve Bank of India and with the previous sanction of the Central Government have at their meeting held on 12th February, 1977, substituted the following rule in place of the original Rule 36 with a declaration that the substituted rule shall always be deemed to have been Rule 36 of the rules. The substituted rule reads :-

"The Management may terminate the services of a confirmed officer by giving him three months notice in writing or three months'' salary in lieu of such notice."

It thus becomes very clear that Rule 36 was intended to be applicable and in fact expressly made applicable only to confirmed officer. The learned single Judge, therefore has taken a correct view of the matter.

11. In the result, the appeal fails and is dismissed with costs. Advocate''s fee Rs. 250/-.

