

(2012) 08 KAR CK 0023
In the Karnataka High Court
Case No : Writ Appeal No. 812 of 2006 (S-DE)

Syndicate Bank

APPELLANT

Vs

S. Murali

RESPONDENT

Date of Decision : 08-08-2012

Acts Referred:

Citation : (2012) 08 KAR CK 0023

Hon'ble Judges : V. Suri Appa Rao, J;K.L. Manjunath, J

Bench : Division Bench

Advocate : Pradeep S. Sawkar, for M/s. Sundaraswamy Ramdas and Anand, for the Appellant; Prasanna, for Sri P.S. Rajagopal, for the Respondent

Final Decision : Allowed

Judgement

K.L. Manjunath, J.—The legality and correctness of the order passed in W.P. No. 2551/1999 dated 20.03.2006 is called in question in this appeal by the Syndicate Bank. The facts leading to this appeal are as under:

The respondent joined the appellant-Bank on 13.10.1969 as a Probationary Officer. While he was, serving in Bangalore as Branch Manager of Indiranagar Branch, Bangalore City, he was placed under suspension on 20.02.1993 on the allegations of grave misconduct and charge sheet was issued on 18.01.1995. The Enquiry Officer submitted the report on 10.12.1997. The disciplinary authority after hearing the respondent dismissed him from service by the order dated 31.03.1998. The respondent aggrieved by the order of the disciplinary authority filed an appeal before the Appellate Authority, which appeal also came to be dismissed on 19.05.1998. Challenging the legality and correctness of the order of the Disciplinary authority and the appellate authority, the respondent filed the writ petition before the learned Single Judge.

2. The main contention of the respondent before the learned single Judge was that certain documents sought by him during the course of enquiry were not supplied to him on the ground that they are all privileged documents and on

account of non-furnishing the documents, the entire enquiry proceedings has been vitiated. Therefore, the order of dismissal passed by the disciplinary authority confirmed by the appellate authority is bad in law.

3. The learned Single Judge after hearing the parties came to the conclusion that the Bank has not furnished the required documents sought by the respondent and on account of the same, the interest of the respondent is prejudiced. Therefore, the learned Single Judge set aside the order of dismissal and permitted the Bank to initiate denovo enquiry by furnishing the documents to the respondent and further directed to treat the period from the date of dismissal till the completion of the disciplinary proceedings as one of suspension. This order is called in this appeal.

4. We have heard the learned Counsel for the parties.

5. The main contention of the appellants Counsel before us is that the appellants have furnished all the relevant records which were relied upon by them in the enquiry and that preliminary -Investigation report was not furnished to the respondent as it was a privileged document and that the said document was never relied upon by the witnesses who were examined on behalf of the appellant-Bank. Therefore, the contention of the respondent that on account of non-production of the documents sought by him has prejudiced the case of the respondent and as a result of which, it has affected the principles of natural justice, is without any basis.

6. The learned Counsel for the respondent contends that MWs.1 and 2 were the Officers who inspected the Bank and submitted the preliminary investigation report and since they have been examined as MWs.1 and 2 and as their evidence is based on the investigation, the preliminary investigation report is a vital document and which document was required to be furnished to the respondent. In the circumstances, he requests the Court to dismiss the appeal.

7. Having heard the learned Counsel for the parties and on perusal of the entire evidence of MWs.1 and 2, we are of the view that the Presenting Officer or MWs.1 and 2 did not rely upon the preliminary investigation report and the Enquiry Officer has not submitted any report relying upon preliminary investigation report which was sought to be summoned by the respondent. In such circumstances, we are of the opinion that when the appellant-Bank has not relied upon the preliminary investigation report during the course of enquiry, non-supply of such document does not create any prejudice to the delinquent.

8. We would have agreed with the arguments, advanced by the learned Counsel for the respondent and so also the view expressed by the learned Single Judge, provided either MWs.1 or 2 or the Enquiry Officer had relied upon the preliminary investigation report.

9. Therefore, we are of the opinion that the order of the learned single Judge suffers from infirmity and liable to be set aside. Then the question would be, in

view of our finding that the ground that non-supply of preliminary investigation report is not available to the respondent, whether the order of dismissal has to be confirmed by this Court or not.

10. So far as this point is concerned, we have noticed that MW.1 and MW.2 were not fully cross-examined and they were cross-examined in part. The rest of the evidence was not completed on account of non-supply of the preliminary investigation report. But the learned Single Judge has not considered the fact of non cross- examination of either M.W.1 or M,W.2 in full by the respondent and whether the Enquiry Officer was required to give further opportunity for the respondent to cross-examine the witnesses examined on behalf of the Bank. Since the said fact has not been considered by the learned Single Judge, as the order of the learned Single Judge is based on non-supply of preliminary investigation report, we are of the view that the other contentions of the parties were also required to be considered by the learned Single Judge.

11. In the circumstances, we have to remand the matter to the learned Single Judge with a request to consider all other points canvassed by both the parties. Accordingly, the writ appeal is allowed. The Registry is directed to place the matter before the Hon"ble Single Judge with a request to reconsider the matter afresh in accordance with law.