
(1990) 11 KAR CK 0012

In the Karnataka High Court

Case No : W.A. No's. 1896 and 1902 with W.P. No's. 16705 and 16708/90

Syndicate Bank

APPELLANT

Vs

Sunder K. Paniyadi

RESPONDENT

Date of Decision : 13-11-1990

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1991) 63 FLR 57 : (1990) ILR (Kar) 4149 : (1991) 1 KarLJ 30

Hon'ble Judges : S. Mohan, C.J.; Jagannatha Shetty, J

Bench : Division Bench

Judgement

Mohan, C.J.—These writ appeals and writ petitions are interconnected. As to what exactly the inter-connection, we will deal with it shortly. We will take up the writ petitions first.

2. The writ petitioners are working as Managers-employees of respondent-1 - Bank (Syndicate Bank) (hereinafter to as the Bank). By order dated April 25, 1990 they were kept under suspension pending enquiry into certain misconduct alleged against them. It is necessary for us to reproduce the relevant portions of the order of suspension :

"Whereas Sri Sunder K. Paniyadi, Employee No. 076467, Manager, Kemmannu Branch, holding outdoor keys/joint custody keys of Kemmannu Branch, is reported to have absented unauthorised this day, i.e., April 25, 1990 from duties and failed to hand over the said keys to the Bank which caused considerable amount of financial loss to the bank besides disrupting normal functioning of the Branch. Further, the said action on his part has also caused inconvenience to the customers of the Branch and is a breach of contract of service and gross violation of the guidelines laid down by the Bank in this regard.

And

Whereas such acts constitute "Misconduct" under the Syndicate Bank Officer Employees" (C) Regulations, 1976 and whereas Disciplinary Proceedings in

respect of them under the Syndicate Bank Officer Employees" (Discipline and Appeal) Regulations, 1976 are contemplated against Sri Sunder K. Paniyadi and/or a case against him in respect of a criminal offence is also under investigation/enquiry.

It is also further ordered that during the period of suspension Sri Sunder K. Paniyadi shall not leave the Headquarters without obtaining prior permission of the undersigned. He is further required to furnish his postal address forthwith for the purpose of further communication, if any, with him.

Whereas Sri. K. R. Kamath, Emp. No. 080925, Manager, Hoode Branch, holding outdoor keys/joint custody keys Hoode Branch, is reported to have absented unauthorisedly this day i.e., April 25, 1990 from duties, and failed to handover the said keys to the Bank which caused considerable amount of financial loss to the bank besides disrupting normal functioning of the Branch. Further, the said action on his part has also caused inconvenience to the customers of the Branch and is a breach of contract of service and gross violation of the guidelines laid down by the Bank in this regard.

And

Whereas such acts constitute "Misconduct" under the Syndicate Bank Officer Employees" (Conduct) Regulations, 1976 and whereas Disciplinary Proceedings in respect of them under the Syndicate Bank Officer Employees" (Discipline and Appeal) Regulations, 1976 are contemplated against Sri K. R. Kamath and/or a case against him in respect of a criminal offence is also under investigation/enquiry.

It is also further ordered that during the period of suspension, Sri. K. R. Kamath shall not leave the Headquarters without obtaining prior permission of the undersigned. He is further required to furnish his postal address forthwith for the purpose of further communication, if any, with him."

3. There were certain agitations launched by the Officers of the Association of the Bank from March 5, 1990. Several Officers indulged in illegal activities to interrupt the functioning of the clearing department as also the normal working of the branches" currency chests. The Bank initiated disciplinary proceedings against these officers. Thereafter, the Bank reviewed the orders of suspension and revoked the order of suspension on July 19, 1990 in the following terms :

"Whereas Sri Sunder K. Paniyadi, Employee No. 076467, Manager, Kemmannu Branch, was placed under suspension by the Competent Authority vide Proceedings No. 69 : PD : IRD : DA : 6 dated April 25, 1990 in exercise of the powers conferred upon him vide Regulation No. 12(1) of Syndicate Bank Officer Employees" (Discipline and Appeal) Regulations 1976.

And

Whereas Regulation No. 12(5)(b) of the Syndicate Bank Officer Employees" (D

and A) Regulations 1976 provides for revocation of the suspension order by the Competent Authority.

And

Whereas the undersigned being the Competent Authority at present under the said Regulations, in exercise of the powers conferred upon him thereunder, hereby revokes the suspension order served on Sri Sunder K. Paniyadi and the revocation of suspension of service comes into effect from the date of due service of the proceedings and he shall report for duty within 7 days from the date of due service of the proceedings under reference at the Branch/Office to be indicated by the Deputy General Manager, Zonal Office, Mangalore separately, under intimation to the undersigned as well as to the Deputy General Manager, Zonal Office, Mangalore.

It is also ordered that the suspension order revoked as above is without prejudice to the rights of the Bank to proceed against him departmentally.

It is also ordered that Sri Sundar K. Panjyadi is not entitled for any back wages other than what has already been paid to him as subsistence allowance during the period of suspension."

"Whereas Sri. K. R. Kamath, Employee No. 080925 Manager, Hoode Branch, was placed under suspension by the Competent Authority vide Proceedings No. 68 : PD : IRD : DA : 6 dated April 25, 1990 in exercise of the powers conferred upon him vide Regulation No. 12(1) of Syndicate Bank Officer Employee's (Discipline and Appeal) Regulations 1976.

And

Whereas Regulation No. 12(5)(b) of the Syndicate Bank Officer Employees" (D and A) Regulations 1976 provides for revocation of the suspension order by the Competent Authority.

Whereas the undersigned being the Competent Authority at present under the said Regulations, in exercise if the powers conferred upon him thereunder, hereby revokes the suspension order served on Sri K. R. Kamath and the revocation of suspension of service comes into effect from the date of due service of this proceedings and shall report for duty within 7 days from the date of due service of the proceedings under reference at the Branch/Office to be indicated by the Deputy General Manager, Zonal Office, Mangalore separately, under intimation to the undersigned as well as to the Deputy General Manager, Zonal Office, Mangalore.

It is also ordered that the suspension order revoked as above is without prejudice to the rights of the Bank to proceed against him departmentally.

It is also ordered that Sri K. R. Kamath is not entitled for any back wages other than what has already been paid to him as subsistence allowance during the period of suspension."

On that very day orders of transfer are issued in terms of the following :

"MEMORANDUM

With reference to the Proceedings of the Personnel Manager dated July 19, 1990 revoking the suspension of Sri S. K. Paniyadi, he is hereby informed that he is posted to our Mudgal Branch to work there as Manager until further orders.

In terms of this Memorandum and the proceedings of the Personnel Manager mentioned above he shall report for duty at Mudgal Branch under intimation to us. He shall take charge of Mudgal Branch from the officer who is incharge of that branch under intimation to be concerned Zonal Office, DO, Local Banks, HOLDPD : PAS and other concerned Authorities/Offices. Copies of necessary resolution will be sent separately. He shall also take possession of the Manager's quarters fixed for that branch under information to us.

Seven days joining time is granted. The TA Bill in connection with this posting shall be submitted within 3 days of completing the journey, refunding in cash the sundry advance if any drawn in excess of the T.A. Bill.

Sd/- Deputy General Manager Sri S. K. Paniyadi, Manager, under suspension, Kemmannu Branch."

"MEMORANDUM

With reference to the proceedings of the Personnel Manager dated July 19, 1990 revoking the suspension of Sri K. R. Kamath; he is hereby informed that he is posted to our Tekkalkote branch to work there as Manager until further orders.

In terms of this Memorandum and the proceedings of the Personnel Manager mentioned above he shall report for duty at Tekkalkote branch under intimation to us. He shall take charge of Tekkalkote branch from the officer who is in charge of that branch under intimation to the concerned Zonal Office, DO, Local Banks, HOLD : PAS and other concerned Authorities/Officers. Copies of necessary resolution will be sent separately. He shall also take possession of the Manager's quarters fixed for that branch under information to us.

Seven days joining time is granted. The TA bill in connection with the this posting shall be submitted within three days of completing the journey, refunding in cash the sundry advance if any drawn in excess of the T. A. Bill.

Sd/- Deputy General Manager, Sri K. R. Kamath, Manager, under suspension, Hoode Branch.

It is under these circumstances, the writ petitions were filed with the following prayer :

1) To quash the order of suspension as also the order dated July 19, 1990 in so far as the back wages had been denied for the period of suspension between April 25, 1970 and July 19, 1990.

2) To quash the orders of transfer.

4. When the writ petitions came up for admission, the learned Judge ordered notice and the matter came up for hearing on September 10, 1990. He was of the view that it requires to be examined whether the transfer was punitive in character and therefore he granted stay of the orders of transfer. Aggrieved by that order of stay dated September 10, 1990, the present writ appeals have been preferred by the Bank. Thus it is obvious that the writ petitions and the writ appeals are interconnected.

5. In support of the writ petitions. Mr. Subba Rao, learned Counsel for the writ petitioners, would urge the following points for consideration :

As to who is the disciplinary authority is specified under Regulation 3(g) of the "Syndicate Bank Officer Employees" (Discipline and Appeal) Regulations, 1976. The authorities to institute disciplinary proceedings are catalogued under Regulation 5. Of course, as per the regulation, an Officer could be placed under suspension, but that order could be passed by the Competent Authority. The authority who passed the order of suspension on April 25, 1990 is not the Competent Authority within the meaning of the Regulations. Therefore, if the initial suspension itself is bad, the revocation orders on July 19, 1990 is of no consequence even assuming that the orders had been passed by the proper authority. In such an event, the writ petitioners will be entitled to all the back wages. To deny the back wages to the petitioners is improper and illegal.

6. As regards transfer, there is a Circular which had emanated by reason of a joint meeting between the representatives of the Management-Bank and the Officers' Association. Under the terms of that Circular, the petitioners are not liable to be transferred because Annexure-C states that the Officers in the Scale of I and II will necessarily be posted to rural Branches for one term in the entire service but should that Officer be not desirous of promotion, he could always forego and avoid posting in the rural Branches. In so far as the policy had been entered into by reason of mutual agreement, the Management is bound to follow that policy. In any event, having regard to the fact that there had been three transfers of the writ petitioners. Within a period of one year and that too the orders of transfer had come to be passed in the middle of the year, they are actuated by mala fides, more so, looked at from the point of view of the Circular dated June 25, 1990.

7. In countering these submissions, Mr. S. G. Sundaraswamy, Senior Advocate for the respondent-Bank, would urge that with regard to imposition of suspension, there is no question of that being done by a Competent Authority. Even otherwise, by reason of delegation, it is open to the Divisional Manager to pass an order of suspension. Therefore no exception could be taken to the orders of suspension. Whatever it may be, the suspension order have been validity revoked on July 19, 1990. The reason why the petitioners had been denied back wages was because of the gross misconduct of locking the Bank and going away

and thereby putting the clients of the Bank of great inconvenience. As a matter of fact, it is clear from Annexure-B that the petitioners did indulge in that misconduct. Therefore, the Bank thought that they did not deserve back wages. Hence, the argument addressed in this regard has to be rejected.

8. Transfer is a necessary concomitant of every service. No person or Officer could say that he would serve in the same station at all times. The policy that is relied on by the other side is only for internal guidance. That is not enforceable in the Court of Law, much more so under Article 226 of the Constitution. If the administrative exigencies warrant transfer, be it thrice in a year or more, that cannot be complained of in this Court. There cannot be any mala fides as contended by the other side in this transfer which was fully warranted. After all the transfer is not punitive in character nor again would that be bad merely because it had been passed in the middle of the year. These arguments are extraneous to the points in issue.

9. Before we go to deal with the submissions, we would rather express our mind as to the nature of the misconduct alleged against the writ petitioners. We have already extracted the proceedings of the Divisional Manager dated April 25, 1990 in and by which the suspension came to be made. If certainly the misconduct alleged against the petitioners, in that they absented themselves unauthorisedly on April 25, 1990 and failed to hand over the keys of the Bank which caused considerable loss to the Bank besides disrupting the normal working of the Bank, is made out the consequences would be serious. Undoubtedly, if it is proved, it cannot be gainsaid that it has caused immense inconvenience to the customers of the Branch. Therefore, we tend to view this seriously. But at the same time, we hasten to caution we are not deciding the guilt of the writ petitioner. All that we are constrained to point out is no Officer of a public institution, more so, a banking institution which on account of nationalisation is regarded as an instrument in social revolution, could behave in this callous fashion. In other words, the petitioners who are the Managers of the Branches of the respondent-Bank cannot hold people to ransom. With that we stop.

10. Who is the Competent Authority is mentioned under Regulation 3(f). It reads as follows :

"3(f). "Competent Authority" means the authority appointed by the Board for the purposes of these regulations."

Regulation 5 talks of the Competent officers. It reads as follows :

"5. Authority to institute disciplinary proceedings and impose penalties :- 1) The Managing Director or any other authority empowered by him general or special order may institute or direct the Disciplinary Authority to institute disciplinary proceedings against an officer employee of the Bank.

2) The Disciplinary Authority may himself institute disciplinary proceedings.

3) The Disciplinary Authority or any authority higher than it may impose any of

the penalties specified in Regulation 4 on any officer employee."

Regulation 12 enables the Competent Authority to impose an order of suspension. As contemplated under Regulation 12, suspension is not punitive in character. After all what has been done by the suspension is removing the officers from the sphere of action, nothing more nothing less. Under these circumstances, the question of Competent Authority may not arise at all. All that we need to do is to extract Annexure-C.

"April 16, 1990.

ORDER

Whereas Regulation No. 5 of Syndicate Bank officer Employees" (Discipline and Appeal) Regulations, 1976 confers upon the Managing Director of the Bank to empower any other Authority, by a general or special order, to institute or direct the Disciplinary Authority to institute Disciplinary Proceedings against an Officer-Employee of the Bank.

And

Whereas the undersigned being the Managing Director of the Bank, in exercise of the powers conferred upon him under the above referred regulation, hereby empowers Sri. B. V. Bhat, Division Manager, S. R. D. Head Office, Manipal, to institute Disciplinary Proceedings against any Officer Employees in Junior Management Grade Scale I, Middle Management Grade Scale II and III, working in any of the Branches/Officers, during the absence of the personal Managers, either on Tour or on Leave, until further orders. Further, he is also the Competent Authority under Regulation No. 12 of the Syndicate Bank Officer Employees" (Discipline and Appeal) Regulations, 1976 in respect of the above referred to category of Officers.

A copy of this Order be sent to the concerned Officer Employee whenever Disciplinary Proceedings are instituted against him under the said Syndicate Bank Officer Employees" (Discipline and Appeal) Regulations, 1976.

Sd/- (P. S. V. MALLA) Managing Director."

Therefore, the Competent Authority namely, the Managing Director has come to pass the orders of suspension. No exception could be taken to the same. It has been revoked on July 17, 1990. No doubt at the time of revocation, it was stated that excepting the subsistence allowances, the writ petitioners would not be entitled to any back wages. We think, in the circumstances, that was fully warranted. It is entirely a matter for the Management as to how the period of suspension should be treated depending upon the misconduct alleged. About that misconduct, we have already expressed our opinion as to how serious it is, if it comes ultimately to be established. Therefore, we reject first of the arguments of Mr. Subba Rao.

11. As rightly contended by Mr. S. G. Sundaraswamy, learned Counsel for the

Bank, the transfer is a necessary concomitant of every service. Therefore, if the administrative exigencies warrant a transfer, this Court cannot, as though it is exercising the supervisory jurisdiction over the Bank, say how it should meddle its affairs. It is entirely the look out of the Bank. The mere fact that the writ petitioners were subject to three transfers or it had come to be passed in the middle of the year will be of no consequence whatever in examining the validity of the transfer, nor again, the so-called policy which is adumbrated in a Circular could ever be enforced by this Court. The Circulars are intended only for the internal guidance the breach of which will not give rise to any cause of action in favour of the writ petitioners.

12. We find no scope whatever to conclude that the orders of transfer are actuated by mala fides. This was in pursuance of general toning up of administration. Therefore, we reject that argument as well.

13. In the result, the writ petitions will stand dismissed. Normally we would have been inclined to award costs, but having regard to the fact that the petitioners are employees of the Bank, we do not propose to mulct them with costs.

14. In view of the above, no order is necessary in the writ appeals.