(2003) 08 MAD CK 0152

In the Madras High Court

Case No : Writ Petition No. 17336 of 2000 and WMP. No. 31099 of 2001

T.D. Thomson APPELLANT

Vs

Indian Overseas Bank and Others RESPONDENT

Date of Decision : 14-08-2003

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2003) 08 MAD CK 0152

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : Perumbulavil Radhakrishnan, for the Appellant; A.L. Somayaji, for P. Chandrasekaran, for the Respondent

Final Decision : Allowed

Judgement

P.K. Misra, J.—The petitioner, an employee of Indian Overseas Bank, has filed this writ petition for quashing the order of dismissal dated 9.8.1999 passed by the third respondent which has been confirmed by the second respondent by order dated 24.2.2000 and has sought for a further direction to reinstate him with all back wages.

2. The petitioner was working as a clerk under the respondent bank. On 28.6.1997, charge sheet was issued by the Deputy Chief Officer, which is as follows :-

" . . . CHARGE SHEET:

It is reported that as an employee of the bank, while working as Clerk at our Mount Road Branch, you have committed certain acts and omissions constituting misconducts within the purview of clauses 17.5,(d), (e), (f), (j), 17.7(a), (b), (c), (d) and (j) of the Bi-partite Settlement dated 14.12.66 between the bank and its workmen as amended up to date and para 17(i) of circular memo ref. 7 (f) 131 of 1994-95 dated 16.3.95 on VI Bi-Partite Settlement and for which you are charge sheeted as follows:

Statement of imputations of misconduct:

1. During the years 1995 and 1996 you were in the habit of coming late to office and further absenting yourself unauthorisedly from office during office hours without obtaining prior permission from the competent authority and thereby failed to discharge your duties and turn out full days work for many days. To quote a few instances, you have unauthorised absented yourself from office on the following days, after signing the attendance register and gone without doing the allotted work/a full days work.

2. During the period 22.7.96 to 30.7.96 you had signed the attendance register and immediately left the branch without attending to any office work and consequently branch had to effect wage cut for the above period of unauthorised absence.

3. Despite counselling, both orally and in writing several time by branch/Regional Office, Madras (Metro) officials to improve your punctually and/or in attendance and ''cautioning'', you have not shown any improvement. But you continued to be wilful in committing the misconduct, again and again.

4. Inspite of the branch advising/explaining to you orally/in writing vide their letter dated 1.8.96 in clear terms their inability to consider your request to sanction computer allowance, you entered into protracted and direct correspondence with the Executives in this regard.

5. When an office order dated 21.4.97 was served by allocating you to Deposits department w.e.f. 23.4.97 you had asked for one day''s time to decide on the matter and further refused to sign the office order. When the said office order was again served on you on 23.4.97, you made the following unwarranted/ uncalled for remarks in the office order :

"accepted subject to and subsequent to payment of computer allowance arrears vide my claim letter dated 12.4.97 addressed to E.D. and clarification regarding your letter dated 1.8.96 issued to me in this regard"

and did not work in Deposits department but continued to work in the previous department, which amounts to wilful insubordination and disobedience of the lawful and reasonable order of the management.

6. You are in the habit of writing letters ''directly to higher authorities at Regional Office and top managements at Central Office casting aspersions on and criticising the officials of the branch, Regional Office and Central Office and the bank without routing the same through proper channel. The correspondences initiated by you as above quite frequently are uncalled for and unwarranted and incompatible with your position in the bank. They are again found to be irrelevant/frivolous and vexatious. The tone and tenor of the letters are in abusive offensive, sarcastic and insinuating language and bereft of respect regard and politeness but designed to camouflage your above misconducts. They are observed to be vexatious, vilifying and overbearing/defiant in their nature

and in violation of Central Office circulars.

7. Despite-the bank declining your request for permission to be one of the co-trustees of St. Joseph''s Educational Trust you had continued to be a co-trustee of the aforesaid trust."

3. On receipt of the aforesaid charge sheet, the petitioner wrote a letter to the Deputy Chief Officer/ the disciplinary authority, calling for certain documents such as copies of Memo issued to various staff members regarding punctuality during 1995-96, office order regarding allocation of work for officials and attendance register between 1989-1993. However, the Chief Manager gave a reply that those documents cannot be made available as they are not required for the purpose of the enquiry. Even though the petitioner did not submit any reply, the disciplinary authority considered necessary to inquire into the truth of the allegations. Enquiry was held and the Enquiry Officer found the petitioner guilty of all the charges. Subsequently, an order of dismissal was passed by the third respondent which has been confirmed in appeal by the second respondent.

4. The aforesaid order of dismissal has been challenged in the writ petition by raising the following main contentions :-

(i) The documents called for by the petitioner having not furnished, he could not give a reply. The petitioner had to remain absent to attend from the enquiry. After 20 months of initiation of enquiry proceedings, list of documents/witnesses was forwarded.

(ii) The person who was listed as witness No. 3 was subsequently appointed as enquiry officer on transfer of the previous enquiry officer. Appointment of a witness as enquiry officer is against the principles of natural justice.

(iii) The second show cause notice was not served on the petitioner.

(iv) Even assuming that the allegations have been established, the punishment of dismissal is grossly disproportionate to the nature of misconduct and cannot be sustained.

(v) The permission required u/s 33(2)(b) of the Industrial Disputes Act having not been obtained, the order of dismissal is illegal.

5. A counter affidavit has been filed on behalf of the respondents refuting the allegations. It has been stated that the documents called for by the petitioner are not relevant for the purpose of the enquiry and therefore, not supplied. Appointment of a person cited as a witness is not ipso facto illegal and since such a person was not examined as witness, it cannot be said that principles of natural justice have been violated. It has been further stated that the second show cause notice has been sent by registered post and the same was returned unserved. The other legal contentions have also been refuted.

6. The documents which had been called for by the petitioner have already been listed earlier. The decision refusing to supply the documents emanated from the

Chief Manager and not from the enquiry officer. Whether the documents are relevant or not was to be decided by the enquiry officer and not by any other officer of the bank. Some of the allegations relate to absenteeism of the petitioner and if the petitioner wanted similar documents in respect of other employees including the officials, it cannot be said that the documents were not necessary for the purpose of the disciplinary proceedings. Possibly, the petitioner wanted to show as to how other employees have been treated for similar irregularities.

7. It is not disputed that Shri Rajkumar Moses, who has been subsequently appointed as enquiry officer in the transfer of previous enquiry officer, has been listed as a witness in the list of witnesses furnished by the bank. Even though such a person may not be having actual bias against the delinquent, legal bias has to be inferred. Appointment of a cited witness as an enquiry officer must be taken to be illegal which vitiated the enquiry.

8. It is not disputed that the second show cause notice has not been served. However, it is the plea of the respondents that second show cause notice has been issued by registered post and had returned undelivered as the addressee was absent. The materials on record, particularly letter dated 22.8.1997, clearly indicate that the petitioner had intimated about the change of address. Issuing second show cause notice in the previous address cannot be held to be valid. It is not the case of the bank that the petitioner had deliberately refused to accept the letter. It was returned as un-served due to the absence of the petitioner. Therefore, in law, it must be taken that the second show cause notice has not been served.

9. For these defects, which obviously have prejudiced the petitioner, the disciplinary action taken against the petitioner cannot be sustained and is liable to be quashed. It would be open to the respondents to appoint a fresh enquiry officer to hold the enquiry. The question relating to supplying of copies of the documents called for by the petitioner should be examined by the enquiry officer and a de novo enquiry should be held.

10. In view of the above conclusion, it is unnecessary to deal with the other two contentions namely, relating to the disproportionateness of the punishment and relating to applicability of Section 33(2)(b) of the Industrial Disputes Act.

11. Subject to the aforesaid observations, the writ petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.