
(1990) 11 AP CK 0021
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 720 of 1990

The Canara Bank and Others

APPELLANT

Vs

Y.L. Sharma

RESPONDENT

Date of Decision : 06-11-1990

Acts Referred:

Banking Regulation Act, 1949 — Section 45(7)

Citation : (1991) 1 ALT 446 : (1991) 1 APLJ 120

Hon'ble Judges : Venkatarami Reddy, J; Sardar Ali Khan, J

Bench : Division Bench

Advocate : E. Manohar, for the Appellant; V. Venkataramana, for the Respondent

Final Decision : Allowed

Judgement

Sardar Ali Khan, J.—This Writ Appeal is directed against the order dated 17-4-1990 passed in W.P. No. 18327 of 1989 allowing the writ petition and setting aside the impugned proceedings issued by the appellant-Canara Bank appointing an Enquiry Officer to inquire into the charges framed against the responden1 herein, by the erstwhile Lakshmi Commercial Bank Limited.

2. The respondent was an employee of M/s. Lakshmi Commercial Bank Ltd., which had merged with the Canara Bank in terms of a scheme of amalgamation dated August 23, 1985. formulated by the Ministry of Finance, Government of India. A charge sheet dated May 4, 1985 was issued to the respondent herein by the Lakshmi Commercial Bank Limited containing several charges of grave financial irregularities and mismanagement on the part of the respondent herein when he was functioning as Branch Manager in the said Lakshmi Commercial Bank Ltd. However, before the enquiry could be completed against the petitioner, the scheme of amalgamation of Lakshmi Commercial Bank Limited with Canara Bank was sanctioned by the Central Government u/s 45(7) of the Banking Regulation Act, 1949 (Act No. 10 of 1949). Under Clause (2) of the said Scheme it is provided that from the date which the Central Government may specify for the purpose under Sub-section (7) of Section 45 of the said Act, all rights,

powers, claims, demands, interests, authorities, privileges, benefits, assets and properties of the transferor bank, movable and immovable, including promises subject to all incidents of tenure etc., shall, subject to the other provisions of this scheme, stand transferred to and become the properties and assets of the transferee-bank and as from the prescribed date all the liabilities, duties and obligations of the transferor-bank shall be and shall become the liabilities, duties and obligations of the transferee bank to the extent and in the manner provided in the scheme. Without prejudice to the generality of the above provisions, all contracts, deeds, bonds, agreements, powers of attorney, grants of legal representation and other instruments of whatever nature subsisting or having effect immediately before the prescribed date shall be effective to the extent and in the manner provided against or in favour of the transferee bank and may be acted upon as if instead of the transferor bank the transferee bank had been a party thereto. It is thus evident that under Clause(2) of the Scheme, the transferee-bank is the successor in title to the Lakshmi Commercial Bank Limited which has been amalgamated with the transferee-bank. Under Clause 10 of the said Scheme it is more specifically provided as hereunder.

"All the employees of the transferor bank, other than those specified in the schedule referred to in the succeeding paragraph, shall continue in service and be deemed to have been appointed by the transferee bank at the same remuneration and on the same terms and conditions of service as were applicable to such employees immediately before the close of business on 27th April, 1985.

The significant words in Clause 10 of the Scheme are that all the employees of the transferor-bank, other than those specified in the schedule referred to in the succeeding paragraph shall continue in service and be deemed to have been appointed by the transferee bank at the same remuneration and on the same terms and conditions of service as were applicable to such employees immediately before the close of business on 27th April 1985. This means that the employees who were not excluded were to continue in service with the same rights and obligations which they had before The date of close of business on 27th of April 1985. This obviously means that if a particular employee had under the conditions of service exiting before 27th of April, 1985 incurred an obligation, to face a charge sheet served on him by the erstwhile Lakshmi Commercial Bank Limited, he will have to discharge that obligation and face the enquiry as a member of the transferee bank after the due date of 27th April 1985 The amalgamation of the transferor -bank with the transferee-bank cannot be construed to mean that the employees who were guilty of certain charges can be left to go scot free when they continue in the service of -the transferee-bank.

3. More over, under the terms of the Joint Conference held with the representatives of the Canara Bank Officers Association at Bangalore on 3rd October, 1985, a clause is included in the said minutes of the Joint Conference as Clause VI dealing with the service regulations which provide that from the date

of amalgamation all the officer employees of the erst- while Lakshmi Commercial Bank Limited shall be governed by the terms and conditions of service as applicable to other employees in the Canara Bank. Under Clause VII it is stated that the disciplinary proceedings against any officer employee of the erstwhile Lakshmi Commercial Bank Ltd., for misconducts committed, if any, before the date of amalgamation of erstwhile Lakshmi Commercial bank Ltd., shall be in accordance with the provisions contained in Canara bank officer Employees" (Discipline & Appeal) regulations 1976. Thus, under Clause Vii it is quite clear that the disciplinary proceedings initiated against an officer employee of the Lakshmi Commercial Bank committed before the date of amalgamation shall continue and be dealt with in accordance with the provisions contained in Canara Bank Officer Employees" (Discipline & Appeal) Regulations, 1976. In the letter of appointment, given to the Respondent in the writ appeal dated 15-10-1987 in pursuance of the orders of the Supreme Court for the inclusion of the respondent-Manager in the service of the transferee- Canara Bank in accordance with the decision in K.I. Shephard and Others Vs. Union of India (UOI) and Others, , it is specifically mentioned than the respondent herein is reinstated in accordance with the minutes of the Joint Conference dated 3rd October, 1985 held between the representatives of the management of Canara Bank and of the representatives of the Canara Bank Officers" Association. It is, therefore, not open to the respondent herein to contend that at the time when the minutes of the Joint Conference were finalized on 3rd October, 1985 he was not an employee of the Canara Bank and therefore cannot be considered to be bound by the minutes of the said meeting. The very fact that in his letter of appointment dated 15-10-1987 a clear condition has been laid that the respondent would be bound by the minutes of the conference dated 3-10-1985 is enough to show that he has accepted the employment in the Canara Bank on the terms and conditions stipulated therein. Further more, the respondent- Manager and some other employees moved the Supreme Court by virtue of a writ under Article 32 of the Constitution of India questioning the order of their exclusion. The Supreme Court allowed the writ petition on the ground that the exclusion of the respondent and others was illegal and unconstitutional for want of compliance with the rules of natural justice. In Para 19 of the judgment the Supreme Court observed as follows :

"The writ petitions and the appeals must succeed. We set aside the impugned judgments of the single Judge and Division Bench of the Kerala High Court and direct that each of the three transferee banks should take over the excluded employees on the same terms and conditions of employment under the respective banking companies prior to amalgamation. The employees would be entitled to the benefit of continuity of service for all purposes including salary and perks throughout the period. We leave it open to the transferee banks to take such action as they consider proper against these employees in accordance with law. Some of the excluded employees have not come to court. There is no justification to penalise them for not having litigated. They too shall be entitled

to the same benefits as the petitioners. Ordinarily the successful parties should have been entitled to costs but in view of the fact that they are going back to employment, we do not propose to make orders of costs against their employers. We hope and trust that the transferee banks would look at the matter with an open mind and would keep themselves alive to the human problem involved in it."

It is significant to note that the Supreme Court has observed that the employees who were excluded would be deemed to be in service of the transferee banks with the benefit of continuity of service for all purposes including salary and perks throughout the period. Then the significant observation of the Supreme Court is "we leave it open to the transferee banks to take such action as they consider proper against these employees in accordance with law." Therefore, the question of taking action against such employees who were initially excluded from service under this scheme but were later on included is left open to the transferee bank to take such action as they consider proper against these employees in accordance with law. In the light of the said judgment it is difficult to appreciate the contention raised on behalf of the respondent herein that even though he was served, with a charge sheet for alleged misconduct by the erstwhile Lakshmi Commercial Bank Ltd., he cannot now be penalised by the transferee bank. In other words, what the respondent is saying that once the merger has taken place and Lakshmi Commercial¹ Bank has become extinct, there is no question of the charge sheet surviving against him making him to face the enquiry initiated by the transferee bank. In our opinion such a construction would lead to the conclusion that once the merger has taken place between the two banks, the respondent should be deemed to have been absolved of all the charges framed against him by the transferor bank. The clear cut direction of the Supreme Court that it shall be open to the transferee bank to take such action as they consider proper in accordance with law means that the liability of such employees whose exclusion from the service of the transferee bank has been set aside by the Supreme Court would no doubt be deemed to have been in service throughout in the transferee bank but such action as may be called for may be taken against the said employees in accordance with law. The learned single Judge has also agreed in principle that in accordance with Clause 10 of the scheme all the employees of the transferor bank who have been reinstated in the transferee bank shall be deemed to have been appointed on the same terms and conditions of service as were applicable to such employees before the close of business on 27th April, 1985. Nevertheless, what the learned single Judge has doubted is that the charge memo issued by the erstwhile Lakshmi Commercial Bank Limited cannot exist after its amalgamation with the Canara Bank. This, in our opinion, is not the correct approach to the problem of dealing with the question of disciplinary proceedings initiated against the respondent by the transferee bank. When the employee is appointed on the same terms and conditions of service as were applicable to such employees immediately before the close of business on 27th April, 1985 and in accordance with the conditions" of service and has been served with a charge sheet by the

transferor bank which has become extinct, it cannot be said that the charge sheet served by the transferor bank lapses with its merger with the transferee bank. In fact, the learned counsel for the appellant appearing in this case expressed his willingness to comply with the technicality of serving a fresh "charge sheet, if it is so ordered, on the respondent and to proceed with the disciplinary proceedings. We do not think that it would be necessary to issue a fresh charge sheet in the matter on the ground that the charge sheet issued by the transferor bank has ceased to exist with the merger of the said bank with the transferee bank. The relevant provisions of the scheme, viz., Clauses 2 and 10, which have been quoted in this judgment and Clauses VI and VII of the minutes of the meeting dated 3rd October, 1985 arrived at between the representatives of the Management of Canara Bank and of representatives of the Canara Bank Officers' Association and the positive direction of the Supreme Court as contained in Paragraph 19 of its judgment, reproduced above, show that the employees would be entitled to the continuity of service for all purposes including salary and perks throughout the period and it shall be open for the transferee bank to take such action as they consider proper against these employees in accordance with law. I This clearly means that the respondent continues to be in the service of the transferee bank for all intents and purposes including his liability, if any, to face the charge sheet served on him by the transferee bank. The second point stressed by the learned single Judge is that the settlement dated 3-10-1985 is not binding on the respondent as it was arrived at much earlier to the reinstatement of the respondent in the appellant-bank on 15-10-1985. But, what has been overlooked is that in the letter of appointment-dated 15-10-1987 itself it is mentioned that the re-instatement of the respondent shall be in accordance with the minutes of the Joint Conference held on 3-10-1985 between the representatives of the Management of the Canara Bank and the representatives of the Canara Bank Officers' Association. Hence, there is very little room left for the respondent to contend that he is not bound by the minutes of Clauses VI and VII of the minutes of the Conference held on 3-10-1985. Even apart from the above, it is clear that the settlement arrived at between the Management and the Officers' Association binds the employees who join the service of the institution after such settlement has been finalised between the parties concerned. It would be difficult to visualise that every time when a new employee joins the organisation a new settlement would have to be signed between the management and the employees in order to make the settlement binding on such an employee. The learned single Judge placed square reliance on a decision reported in *University of Kashmir and Others Vs. Dr. Mohd. Yasin and Others*, wherein the facts are of an entirely different texture. In that matter reliance was sought to be placed on the enquiry report of the University to take a hostile decision against the respondent-Professor. It so happened that the enquiry report was made under the Kashmir and Jammu Universities Act, 1965 which was later repealed. Thereafter the services of the Professor were not extended by the Chancellor as contemplated u/s 52 (4) of the Kashmir and Jammu Universities Act, 1969 within sixty days as stipulated therein. As a result

of the combined operation of the above two propositions of law, the Supreme Court eventually held that while the Professor had no right to continue in service as he had not been appointed under the provisions of 1969 Act the termination of his services in that case on the strength of the report finalised under the provisions of the 1965 Act, which was repealed, cannot be sustained.

4. Sri E. Manohar, learned counsel appearing for the appellant-Bank, invited our attention to a decision of the Supreme Court, reported in Bihar State Road Transport Corporation Vs. State of Bihar and Others, wherein it was held that the Bihar State Road Transport Corporation being the successor in title of Rajya Transport Authority was liable to pay the wages of the employees for the period stipulated therein, as the employee was entitled to be in the service of the appellant-corporation by virtue of the continuity of service guaranteed to him by the terms of the merger of the Rajya Transport Authority with the Bihar State Road Transport Corporation. In Prafulla Kumar Sen Vs. Calcutta State Transport Corporation and Others, it was held that the misconduct, if any, committed by an employee prior to the time when the Calcutta State Road Transport Corporation took over the transport business of the State Government, would attract the disciplinary proceedings initiated by the Calcutta State Road Transport Corporation on the ground that the Corporation has taken over the entire transport undertaking of the State Government and all its rights and obligations. In Abdul Rahim and Another Vs. Chief Executive Officer, Andhra Pradesh, also, the same principle has been upheld that the disciplinary proceedings against the employees initiated by the Government could be continued by the Road Transport Corporation which has become the successor in interest of the Government.

5. Sri V. Jagannadha Rao, learned counsel appearing for the respondent, stressed the point that the scheme promulgated u/s 45 of the Banking Regulation Act of 1949 is not legislative in character but is only administrative and, therefore, a contract of service cannot be transferred to the transferee-bank. We are of the opinion that such a distinction of the scheme being administrative in nature and not legislative does not have a bearing on the matter on hand. The main question is that the scheme has been promulgated u/s 45 of the Banking Regulation Act, 1949 and sanctioned by the Central Government under Sub-section (7) of Section 45. Thereafter, it has come into force as a result of which the transferee bank has become the successor in title of the transferor bank with all its rights and obligations as enumerated in the scheme. Therefore, the terms of the scheme will have to be given effect to irrespective of the fact whether it is legislative or administrative in character. We are, therefore, of the opinion that this writ appeal deserves to be allowed and the order of the learned single Judge set aside. The appellant-Bank may continue the disciplinary proceedings against the respondent in accordance with law.

6. For all the above reasons, the Writ Appeal is allowed and the judgment of the learned single Judge dt. 17-4-1990 passed in W.P. 18327/89 is set aside. In the circumstances of the case there will be no order as to costs.