

(2015) 05 P&H CK 0002

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 11694 of 2012 (O&M)

The Haryana State Cooperative Land Development Bank Ltd. **APPELLANT**

Vs

The Financial Commissioner and Principal Secretary **RESPONDENT**
Cooperation Department and Others

Date of Decision : 25-05-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Penal Code, 1860 (IPC) — Section 109, 271(m), 409, 420, 467
Probation of Offenders Act, 1958 — Section 12, 4

Citation : (2015) 05 P&H CK 0002

Hon'ble Judges : Jitendra Chauhan, J

Bench : Single Bench

Advocate : S.S. Dalal, for the Appellant; Saurabh Mohunta, DAG, Advocates for the Respondent

Final Decision : Allowed

Judgement

Jitendra Chauhan, J.

1. By way of the instant writ petition, under Articles 226/227 of the Constitution of India, the petitioner seeks quashing of the impugned order dated 06.08.2009 (Annexure P-2), whereby the appeal filed by respondents Nos. 3 to 6, was allowed and the order dated 28.11.2011 (Annexure P-5), passed by respondent No. 1, whereby the revision filed by the petitioner was dismissed.

2. Succinctly, the facts of the present case are that the predecessor of respondents Nos. 3 to 6, namely Vishnu Dutt was appointed as Land Valuation Officer with petitioner-Bank on 01.04.1967. During service, he advanced a loan of Rs. 15000/- to one Baldev Singh. The said Baldev Singh failed to repay and subsequently, an enquiry was conducted by the petitioner and during the course of enquiry, it was found that said Baldev Singh had produced forged documents to procure the said loan. A case under Sections 420, 467, 468 and 109 IPC was registered against Vishnu Dutt and he was placed under suspension w.e.f.

01.10.1973 and later on, he was convicted and sentenced to undergo imprisonment for six months. He was removed from service by the competent authority on 21.10.1982. Thereafter, the predecessor of respondents Nos. 3 to 6, filed an appeal before respondent No. 2, against removal, which was accepted, vide order dated 06.08.2009 (Annexure P-2). Feeling aggrieved against the order dated 06.08.2009, the petitioner-Bank filed a revision petition before respondent No. 1, which was also dismissed, by virtue of order dated 28.11.2011. Hence, this writ petition.

3. It is contended that the impugned orders dated 06.08.2009 and 28.11.2011 were passed against the law and facts on record. The predecessor of respondents Nos. 3 to 6, namely Vishnu Dutt, while working as Land Valuation Officer advanced a loan of Rs. 15,000/- to one Baldev Singh on the basis of forged documents. On 18.07.1973, a case was registered against him and he was placed under suspension. He was removed from service after having been found guilty of offence punishable under Sections 420 read with Section 109 IPC and consequently, convicted for a period of six months.

4. The learned counsel refers to Rule 27.1(m) read with Rule 33(e) of the Staff Service Rules of the Haryana State Cooperative Land Development Bank Limited and states that no employee is entitled to be any notice or the salary in lieu thereof if he is removed from service on account of misconduct, dishonesty or moral turpitude established on record.

5. On the other hand, the learned counsel for respondents Nos. 3 to 6 submits that the impugned orders have been rightly passed in favour of the predecessor of respondents Nos. 3 to 6. The sentence of the Vishnu Dutt, since deceased, was suspended by the Additional Sessions Judge, Ambala, therefore, there was no conviction of him. The learned counsel further contends that without opportunity of personal hearing or without conducting any inquiry, his services could not have been terminated by the authority, the termination is against the Rules.

6. I have heard the rival contentions of learned counsel for the parties and have gone through the record carefully.

7. Indisputably, the predecessor of respondents Nos. 3 to 6, namely Vishnu Dutt, while working as Land Valuation Officer advanced a loan of Rs. 15,000/- for tractor to Baldev Singh. The said loan was not repaid and ultimately, an enquiry was conducted in which it was found that the documents procured for loan were forged and an FIR under Sections 420, 467, 468 and 109 IPC was registered against Vishnu Dutt and other guilty persons. Said Vishnu Dutt was placed under suspension for his misconduct and all the accused were convicted and sentenced to undergo imprisonment for six months by the Criminal Court, vide judgment of conviction dated 13.02.1982.

8. Rule 27(1)(a) and 27 (m) of the Haryana State Cooperative Agriculture and Rural Development Bank read as under:--

"27(1)(a) Dishonesty, fraud, misappropriation, embezzlement or misapplication of the funds of the Bank or any of its constituents or committing any offence under IPC in relation to the Bank and its constituents.

27.1(m) Punishment from a Court of law for any offence involving mortal turpitude."

9. Said Vishnu Dutt, was removed from service on 21.10.1982 in exercise of powers conferred under Section 271(m) on account of his misconduct and dishonesty. Though he was released on probation by the Appellate Court but it does not mean that he was exonerated from the charges framed against him or his conviction was set aside. Learned counsel for respondents Nos. 3 to 6, LRs of deceased Vishnu Dutt supports the reinstatement of the deceased in service on the ground that he could not have been dismissed or removed from service in view of the provisions of Section 12 of the Probation of Offenders Act, after he was released on probation. The case law relied by the learned counsel Shankar Dass v. Union of India, AIR 1985, SC 772, is distinguishable on facts. In the cited case law, the employee was convicted in a petty offence on his pleading guilty to the charge. Allegations against him were that he committed breach of trust in respect of a sum of Rs. 500/- only and repaid that amount. The learned Magistrate convicted him under Section 409 IPC and released him on probation under Section 4 of the Act.

10. But in this case, the allegations are very serious. The deceased employee working as Land Valuation Officer with the petitioner-Bank, processed a bogus loan of one Baldev Singh for the purchase of a tractor for Rs. 15000/- which loan was ultimately sanctioned and could not be recovered. The deceased employee was convicted under Sections 420/109 IPC. The deceased employee without visiting the spot made a false verification report to the effect that the loanee owned agriculture land at village Fatehpur, and he has visited the spot and the crop was standing there. He did not verify the authenticity of the forged documents and thus facilitated the loanee to raise the bad debt loan of Rs. 15,000/-. In these circumstances, the deceased employee deserve no leniency and he was justifiably dismissed from service, vide order dated 21.10.1982, by the Managing Director, the Haryana State Cooperative Land Development Bank Ltd., Chandigarh. The Appellate Authority and the Revisional Authority have legally and factually committed grave error in setting aside the dismissal order, and thus both the order are liable to be reversed.

11. Therefore, in view of the above facts and circumstances, the present petition is allowed. The impugned orders 06.08.2009 (Annexure P-2), passed by the Additional Registrar, Cooperative Societies, Haryana, and order dated 28.11.2011 (Annexure P-5), passed by the Financial Commissioner-cum-Principal Secretary Cooperation Department, Haryana are set aside. Consequently, the order dated 21.10.1982 (Annexure P-1) removing the petitioner from service is restored.