
(1989) 01 MAD CK 0081
In the Madras High Court
Case No : Writ Appeal No. 1462/88

T.R. Balaji

APPELLANT

Vs

The Management of Indian Bank and Another

RESPONDENT

Date of Decision : 20-01-1989

Acts Referred:

Industrial Disputes Act, 1947 — Section 12(3)

Citation : (1989) 1 LLJ 421

Hon'ble Judges : S. Mohan, J;K. Venkataswami, J

Bench : Division Bench

Judgement

Venkataswami, J.—When the writ appeal came up for admission, notice of motion was ordered, Mr. Venkataraman, learned counsel appearing on behalf of Messrs. Aiyer and Dolia for the respondents.

2. The writ appeal is directed against the Order of Swamikkannu, J. in Writ Petition No. 4868/1981 dated 17th August 1988 declining to interfere with the Order of the 1st respondent Management dated 16th December 1980 in and by which the Management has terminated the services of the appellant.

3. The learned Judge has elaborately set out the facts leading to the filing of the writ petition. Hence we do not propose to repeat the same except to state the minimum facts necessary for appreciation the contentions raised by the learned counsel on both sides.

4. The appellant was initially recruited temporarily as a sub-staff (Peon) on 4th April 1977. Later on, by virtue of a settlement between the Management and the Employees' Union of the Bank entered into u/s 12(3) of the Industrial Disputes Act, the appellant who was recruited as a temporary sub-staff, was appointed to the post and put on probation for a period of six months from 18th June 1980. It is common ground that the appellant failed to disclose against Column No. 7 in the Form of Application and also against Column - in the Service Joining Report information regarding a relation (father's stepbrother) in the service of the Bank.

On coming to know of this failure on the part of the appellant, the respondent-Management, invoking Clause 2 of the Terms and Conditions of the Appointment Order, has passed the impugned Order of Termination.

5. Challenging the Order of Termination, the appellant preferred Writ Petition No. 4868 of 1981. That Writ Petition came up for hearing before Swamikkannu, J., who, by his detailed Order, following a Division Bench judgment of this Court in K. Palanikumar Vs. Indian Bank and Another, a case more or less identical facts and arising out of an order of termination terminating the services of a probationer passed by the same Management, namely, Indian Bank, dismissed the writ petition. Aggrieved by the Order of the learned Judge, the present writ appeal has been filed. In fact, after hearing the learned counsel on both sides, we reserved judgment on 21st December 1988. However, at the request of the learned counsel for the appellant again the appeal was posted for further arguments and the matter was adjourned on more than one occasion, to find out whether the Management will agree for appointing the appellant afresh. Ultimately, the learned counsel appearing for the Management expressed the inability for giving appointment to the appellant. Hence we are dealing with the case on merits.

6. Miss Vaigai, learned counsel appearing for the appellant, submitted that the Division Bench judgment relied on by the learned single Judge is distinguishable on facts and in any event, there are subsequent judgments taking slightly a different view. According to the learned counsel, in the case on hand, the employment was on the basis of a settlement between the Employee's Union and the Management and, therefore, the failure to disclose the name of the relation in the employment of the Bank will not give the Management the power to invoke Clause 2 of the Order of Appointment. It is also submitted that the non-disclosure/assuming suppression is not material so as to attract the penalty of termination from service. In any event, the appellant was only a sub-staff (peon) and in the case dealt with by the Division Bench, the employee was a clerk, and therefore, the theory of loss of confidence was invoked in that case and the same cannot be applied to the facts of this case. Lastly, learned counsel submitted that in any event this Court can interfere with the punishment imposed and can award a lesser punishment if this Court is satisfied that the contention that the punishment awarded by the Management was not commensurate with the gravity of the offence. In support of the above submission, learned counsel cited the following decisions : L. Michael and Another Vs. Johnson Pumps Ltd., ; Bhagat Ram Vs. State of Himachal Pradesh and Others, ; Shankar Dass Vs. Union of India (UOI) and Another, ; Chandu Lal Vs. Management of Pan American World Airways Inc., ; Jarnail Singh and Others Vs. State of Punjab and Others, ; S.C. Singhal Vs. Union of India and others, ; Ranjit Thakur Vs. Union of India (UOI) and Others,

7. As against this, Mr. Venkatraman, learned counsel for the respondent, placing reliance on the Division Bench judgment of this Court in K. Palanikumar Vs.

Indian Bank and Another, submitted further that this Division Bench judgment was taken up on further appeal to the Supreme Court and the Supreme Court dismissed the Special Leave Petition.

8. Before going into the decisions cited by the learned counsel for the appellant, we have to consider whether the learned Judge was right in placing reliance on the Division Bench judgment of this Court reported in K. Palanikumar Vs. Indian Bank and Another, . As pointed out earlier, that Division Bench judgment arose out of an order of termination of the services of a probationer by the very same Management, namely, Indian Bank. The Division Bench confirmed an order of the learned Single Judge (one of us) (the Honourable the Officiating Chief Justice) in K. Palanikumar Vs. Indian Bank and Another, . In the judgment reported in K. Palanikumar Vs. Indian Bank and Another, after noticing various judgments of the Supreme Court and of this Court, it has been held as follows at pp. 417-419 :

"4. In the instant case the petitioner was required to state in his application in column (h) the names of all relatives, if any, working in Indian Bank and the nature of relationship together with the name of the Branch where they are working. Admittedly the petitioner's stepbrother was working in the Bombay Fort Branch of the Bank. However, the petitioner did not furnish any information as against that column (h) but left it blank. Thereafter as seen above by an order dated 15th November, 1978 the petitioner was appointed subject to the condition that he would be on probation for a period of six months from the date of joining. It was further stated that notwithstanding anything contained in this letter his services were liable to be terminated at the sole discretion of the Bank before the expiry of the probationary period without assigning any reason therefor, but with one month's notice or on payment of one month's salary and allowances in lieu of notice. Therefore, according to the respondent-Bank the impugned order dated 14th May, 1979 comes to be passed as per clause (3) of the appointment order. That alone would be enough. However, the impugned order which I have extracted above, goes on to proceed that the petitioner had suppressed the fact about his brother being employed in Bombay Fort Branch of the Bank. It requires to be noticed at this stage that after the appointed order dated 15th November, 1978 the petitioner was called upon to file in the particulars of column 11 of service joining report which also required him to give the name or names of relations, if any, in the service of the Bank and nature of relationship. That was also left blank. I do not think the Court can be called upon to adjudicate the question as to whether this suppression is a material suppression or immaterial suppression.

5. First and foremost, where the services of a probationer are terminated in accordance with the terms of the contract, the ruling as laid down in State of Maharashtra v. Veerappa R. Saboji : (1979)IILLJ393SC and P. Christopher Jobez Vs. Indian Bank and Another, would apply. As a matter of fact in the latter case a Division Bench of this Court observed as under at 279 :

"We have already pointed out that though the impugned order of termination of

the services results in certain serious consequences to the petitioner, it is not penal in character, for the service conditions specifically provide for termination of services on giving three months' notice or payment of three months' salary in lieu of notice and it is only that power which has been exercised by the second respondent in this case.

Such an order, not being an order passed in the course of a disciplinary proceeding, no complaint of violation of the principles of natural justice could be made. In *The Municipal Corporation of Greater Bombay Vs. P.S. Malvenkar and Others*, the Standing Orders of the Bombay Municipal Corporation enabled the Corporation to terminate the services of the employees on the one month's notice. In exercise of that power the services of an employee were terminated for unsatisfactory record of service. The question arose whether it is termination simpliciter or whether it is punitive in character. The Industrial Court dealing with that question set aside the order of termination on the ground that the impugned order of termination is of a punitive character passed without a domestic enquiry and, therefore, it could not be sustained. When the matter came before the Supreme Court, it took the view that it is reasonable to regard the order of termination as punitive in character so as to invite the application of clause (2) of Standing Order 21 read with Standing Order 23 which provided for an elaborate enquiry in cases of termination of an employment of misconduct as a result of disciplinary enquiry. The Supreme Court in support of its view referred to a series of its decisions rendered earlier.

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7. The ratio of this decision squarely applies. Then again it requires to be noted at this stage that the Sastri Award which undoubtedly is binding between both the parties in paragraph 522 states.

"We now proceed to the subject of termination of employment. We give the following directions (1) In cases not involving disciplinary action for misconduct and subject to clause (6) below, the employment of a permanent employee may be terminated by three months' notice or on payment of three months' pay and allowances in lieu of notice. The services of a probationer may be terminated by one month's notice or on payment of a month's pay and allowances in lieu of notice."

At the same time, it is also necessary for me to refer to paragraph 485 of the Award wherein it is stated :

"We respectfully agree with the said direction and direct that ordinarily the period of probation should not exceed six months. However, in case of persons whose work is not found to be quite satisfactory during the said period but who are likely to improve and give satisfaction if a further opportunity is given to them the period may be extended by three months provided due notice in writing is given to them and their consent in writing is obtained before the extension of their period of probation."

Therefore, strictly in accordance with these two paragraphs of the Sastri Award the probation under the order of appointment dated 15th November 1978 was fixed at six months and was held to be terminable at the sole discretion of the Bank. This case does not involve any disciplinary action whatever. Nor is it punitive in character. That would be sufficient to uphold the order. Nevertheless arguments have been addressed as to whether this requirement in the light of paragraph 493 of the Sastri Award could be held to be a reasonable requirement. I have already held that it is not within the province of the Court to go into the reasonableness or otherwise of this requirement. The reason according to me is that the Bank is an institution wherein confidence and confidence alone counts. Where, therefore, an employee, namely, the respondent-Bank, is satisfied that the applicant has not come forward to furnish an information which is required to be furnished it must have lost confidence to continue him in service and that is why the order impugned clearly mentions about suppression. In this connection it is worthwhile referring to *Gopalan v. Managing Director* (1979) KLT 848. That was a case in which the petitioner's appointment was a mistaken appointment in ignorance of his character and antecedents which he successfully kept away from the employer not only by non-disclosure (despite requirement to disclose) but also by making a false declaration that he was not previously employed anywhere. It was held that it was a case of not mere "suppressio veri" but one of suggestio falsi and that Ext. P. 6 communication informing the petitioner that he had been discharged from service of the Bank as at close of business on 23rd February 1978 was merely a declaration that there had been no appointment of the petitioner to the service of the Bank. In the instant case it is not necessary for me to go to that extent as the Division Bench of the Kerala High Court has declared in the decision cited. Suffice it to state that it is a mere termination of probation. It is well-settled that probation means satisfaction of the employer. Once the employer is not satisfied in terms of the contract, it is well open to the employer to dispense with the services of the particular employee."

The judgment has been confirmed by the Division Bench and the Division Bench has held as follows *K. Palanikumar Vs. Indian Bank and Another*, :

"Admittedly the appellant did not fill up the relevant columns at both the stages and thereby he suppressed the information. Learned counsel for the appellant contends that the appellant need supply the information only if he wanted to get the job on the strength of his brother being in the service of the Bank, but if he wanted to get the job on his own merit, he need not mention that particular fact.

xxx xxx xxx The next contention of the learned counsel for the appellant is that in certain other cases where the employees had suppressed certain material facts, they have been treated differently and this amounted to violation of Arts. 14 to 16 of the Constitution of India. In the affidavit, the appellant gave three instances wherein the three persons have been dealt differently. The counter filed on behalf of the Bank has explained the circumstances under which those persons were dealt with. That will show clearly that the case of the appellant was

not identical with that of the other three persons and, therefore, there cannot be any violation of the provisions of Arts. 14 to 16 of the Constitution."

As pointed out earlier, the SLP filed in the Supreme Court against this judgment of the Division Bench was dismissed. As pointed out earlier, the ratio laid down by the Division Bench judgment squarely applies to the facts of this case. Therefore, the learned Judge was right in applying the principles laid down by the Division Bench and dismissing the writ petition.

9. Let us now consider whether the decisions cited by the learned counsel for the appellant would help to interfere with the order of the learned Judge. At the outset, we would like to mention that the assumption that the impugned order is by way of punishment and the contentions based on such assumption cannot be accepted. For, the impugned order is one terminating the probation within the period of probation. This order cannot be considered as an order of punishment. On this ground, the decisions cited by the Learned counsel for the appellant can be distinguished. Further, most of the decisions relied on by the learned counsel for the appellant relate to orders passed against permanent employees. On that ground also, the decisions can be distinguished. On a reasonable consideration of all the decisions cited by the learned counsel for the appellant, we do not think that there is any case for not following the ruling of the earlier Division Bench in *K. Palanikumar Vs. Indian Bank and Another*, . The question of interfering with the punishment will not arise as, in our view, the impugned order is not one by way of punishment.

10. In the result, the writ appeal fails and the same is dismissed. There will be no order as to costs.