

(1994) 01 SHI CK 0005

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 137 of 1986

UCO Bank Rajgarh

APPELLANT

Vs

Parma Nand

RESPONDENT

Date of Decision : 12-01-1994

Acts Referred:

Banking Regulation Act, 1949 — Section 10, 10(1)
Constitution of India, 1950 — Article 311(2)
Criminal Procedure Code, 1973 (CrPC) — Section 12, 360, 360(3)
Penal Code, 1860 (IPC) — Section 406, 420
Probation of Offenders Act, 1958 — Section 12, 3, 4

Citation : (1994) 2 ShimLC 41

Hon'ble Judges : A.L. Vaidya, J

Bench : Single Bench

Advocate : R.L. Sood, for the Appellant; Bhupender Gupta, for the Respondent

Final Decision : Allowed

Judgement

A.L. Vaidya, J.—The present Respondent, Parma Nand, was posted as a Guard-cum-Peon in the United Commercial Bank, Rajgarh Branch. He was prosecuted u/s 406/420 I.P.C. by Rajgarh Police. In brief, the case put up against him was that in the months of May, June and July, 1978, while acting as a Guard-cum-Peon of the bank, he has dishonestly received from different persons different amounts on different dates by inducing the said persons that the amount shall be deposited in their respective accounts in the bank and the accused was further alleged to have made entries in the respective pass books of such persons to give an impression that the amount has been actually deposited in the bank. There were about 11 persons who became the prey of this Parma Nand and the amount ranged from Rs. 10 to Rs. 300.

2. Parma Nand was convicted of the aforesaid charges vide judgment dated 23-4-1982 passed by the Chief Judicial Magistrate, Sirmour and was sentenced to undergo rigorous imprisonment for a period of six months and also to pay a sum of Rs. 100 as fine on each Court.

3. The aforesaid conviction and sentence were assailed by Parma Nand in an appeal preferred before the Sessions Judge, Nahan, who, after hearing the parties, maintained the conviction u/s 406 I.P.C. only, but instead of sentencing at once, gave the Appellant the benefit of Section 360 of the Code of Criminal Procedure and the convict was ordered to furnish a personal bond in the sum of Rs. 1,000 with one surety in the like amount for one year and was required to be of good behaviour during this period. This judgment was passed on 8-9-1982.

4. The Appellant Bank, on the basis of the aforesaid conviction, issued Ex. PA the dismissal order of Parma Nand on 25-10-1982 and these orders were made applicable retrospectively since 23-4-1982.

5. Parma Nand thereafter filed a suit for declaration to the effect that the order dated 25-10-1982 of the Defendant terminating the services of the Plaintiff as Guard-cum-Peon with retrospective effect from 23-4-1982 was illegal and void and also sought for issuance of mandatory injunction directing the Defendant-Appellant to re-instate the Plaintiff-Respondent with effect from 23-4-1982 and to release the arrears of salary along with incidental allowances. His simple case had been that for his conviction u/s 406 I.P.C. he was not passed any sentence but released u/s 360(3) Code of Criminal Procedure and as a consequence thereof his release amounted to u/s 4 of the Probation of Offenders Act (hereinafter referred to as the Act), and u/s 12 of the said Act he could not suffer any disqualification due to that conviction and on that score the suit, as referred to above, was filed.

6. The Bank contested the suit and pleaded that the Bank was within its legal right to dismiss the Plaintiff and the orders of dismissal were averred to be valid and legal.

The trial Court put the parties on the following issues:

1. Whether the Plaintiff was entrusted, with the duties of a Clerk from time to time, if so to what effect? OPP
2. Whether the Plaintiff was suspended, one hour after the issuance of show cause notice as alleged, if so its effect? OPP
3. Whether the Plaintiff is not entitled to the advantage of Section 12 of Probation of Offenders" Act? OPD
4. Whether the termination of the Plaintiff from the service with retrospective effect from 23-4-1982 is illegal and void as alleged? OPP
5. Whether the Plaintiff has no cause of action OPD
6. Whether the Plaintiff is entitled to get salary and allowances if issue No. 4 is held in affirmative? OPP
7. Relief.

Issues No. 1, 2 and 5 were decided in the negative and Issues No. 3, 4 and 6

were decided in favour of the Plaintiff and as a result thereof the suit of the Plaintiff was decreed.

7. The aforesaid judgment and decree were assailed in an appeal before the lower appellate Court, which, after hearing the parties, partly accepted the appeal to the extent that the suit of the Plaintiff qua the arrears of salary and Ors. incidental allowances from the date of his termination stood dismissed as withdrawn whereas the Plaintiff's prayer for re-instatement in service and declaration of the order of termination dated 25-10-1982 terminating his services retrospectively with effect from 23-4-1982 to be illegal and void stood allowed. The judgment and decree of the trial Court stood modified accordingly.

8. The aforesaid judgment and decree have been assailed in the present appeal on various grounds.

9. The substantial questions of law involved in the present appeal are as under:

1. Whether the Respondent is not entitled to the benefit of Section 12 of the Probation of Offenders" Act since he has not been dealt with under Sections 3 and 4 of the Act especially in view of the fact that provisions of Section 360(3) Code of Criminal Procedure were invoked in this case.

2. Whether Section 12 of the Probation of Offenders" Act will have no applicability to the facts of the present case and the bank was legally competent to terminate the services of the Plaintiff inspite of the provisions as contained u/s 12 of the Probation of Offenders" Act.

3. Whether the order of dismissal of the Plaintiff could be made to be applicable retrospectively?

It has been contended at the first instance by Shri R.L. Sood, Advocate, learned Counsel for the Appellant, that the provisions of Section 360 Code of Criminal Procedure were not at all applicable to the facts of the present case and in that view of the matter, the order passed by the learned Sessions Judge, releasing the accused u/s 360(3) Code of Criminal Procedure on furnishing some personal surety bond, was without jurisdiction and accordingly has to be ignored in its totality, meaning thereby that the conviction still stands without there being any such legal order passed u/s 360(3) Code of Criminal Procedure.

10. I think the aforesaid submission put forth on behalf of the Appellant is not at all within the scope of the present civil proceedings. In case the Bank or the State had any grievance to that effect, the redress to that could have been availed of at that particular time and under the provisions of criminal law. The fact remains that the Plaintiff was released u/s 360(3) Code of Criminal Procedure after entering into a personal and surety bond for remaining of good behaviour for one year.

11. There is no doubt that there is no provision just like Section 12 of the Act in the Code of Criminal Procedure. However, it has been contended rightly by the

learned Counsel for the parties that the release of the Plaintiff in the criminal proceedings u/s 360(3) Code of Criminal Procedure for the purpose of the present civil proceedings can safely be taken to be a release under the provisions of the Act. In a way it has been contended that the provisions of Section 12 of the Act, in its strict sense, will not be applicable but the principle enshrined therein can be legally availed of for the interest of justice.

Section 12 of the Act runs as under:

12. Removal of disqualification attaching to conviction: Notwithstanding anything contained in any Ors. law, a person found guilty of an offence and dealt with under the provisions of Section 3 or Section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law:

Provided that nothing in this section shall apply to a person who, after his release u/s 4, is subsequently sentenced for the original offence.

12. It has been the case of the Plaintiff that on the basis of the aforesaid provision of law the Plaintiff would not suffer disqualification, if any, attaching to a conviction under such law, meaning thereby that the conviction of the Plaintiff u/s 406 I.P.C. will not, in any way, amount to a disqualification for continuing with the service the Plaintiff was placed.

13. On the Ors. hand, it has been contended on behalf of the Appellant that the aforesaid provision of law does not absolve the concerned person from conviction but it is not to be considered as a disqualification for the appointment of any convicted person released on probation. Learned Counsel's line of argument has been that the dismissal or termination of the present Plaintiff was on the basis of departmental action taken under the rules in this particular behalf for which the Bank was legally competent to take such action and the aforesaid provisions of Section 12 do not prevent or create a bar for such action to be taken by the Bank.

14. It is not so simple a matter as has been contended on behalf of the parties.

15. In a criminal case u/s 406 I.P.C. the charge against the accused is pertaining to the offence of criminal breach of trust committed by the accused. In such a case the servant of the bank can be dealt with in three different modes. The first being to prosecute the defaulter under the provisions of criminal law and the second being to deal with the defaulter for misconduct through departmental proceedings. The third mode is for the recovery of the amount through a civil Court by the person whose amount has been misappropriated by the Plaintiff.

16. The departmental proceedings on the same matter are altogether independent action which the employer can take against the employee. As referred to above, Section 12 does not create any bar for the departmental proceedings at all. Moreover, Section 12 again does not say anything that the conviction in a criminal case cannot be made the basis for departmental proceedings. It only envisages that notwithstanding anything contained in any Ors. law, a person found guilty of an offence and dealt with under the provisions

of Sections 3 and 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law. This only implies that Section 12 of the Act removes the disqualification attaching to a conviction, in case such a disqualification of conviction is made a bar under any law. What is such law, has to be ascertained in an individual case. For example, some law debars the appointment of a person to some post, in case that person has been convicted of an offence. In such like case the conviction will not be a disqualification. Such like examples for the applicability of Section 12 of the Act can be taken note of. As such it does not mean at all that the employer is debarred on the basis of his conviction to proceed departmentally against the defaulter for his alleged misconduct during his service period.

17. Union of India and others Vs. Bakshi Ram, can safely be relied upon and taken note of for the proposition arising in the present case.

Paras 10, 11 and 13 of the case supra are very much relevant and are reproduced hereunder for the sake of convenience:

10. In criminal trial the conviction is one thing and sentence is another. The departmental punishment for misconduct is yet a third one. The Court while invoking the provisions of Section 3 or 4 of the Act does not deal with conviction; it only deals with the sentence which the offender has to undergo. Instead of sentencing the offender, the Court releases him on probation of good conduct. The conviction, however, remains untouched and the stigma of conviction is not obliterated. In the departmental proceedings the delinquent could be dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge. [See Article 311(2)(b) of the Constitution and Union of India and Another Vs. Tulsiram Patel and Others,

11. Section 12 of the Act does not preclude the department from taking action for misconduct leading to the offence or to his conviction thereon as per law. The section was not intended to exonerate the person from departmental punishment. The question of reinstatement into service from which he was removed in view of his conviction does not therefore, arise. That seems obvious from the terminology of Section 12. On this aspect, the High Courts speak with one voice. The Madras High Court in R. Kumaraswami Aiyar Vs. The Commissioner, Municipal Council and Another, and Embru (P) v. Chairman Madras Port Trust (1963) 1 Lab LJ 49 (Mad) the Andhra Pradesh High Court in Akella Satyanarayana Murthy Vs. Zonal Manager, Life Insurance Corporation of India, Madras, the Madhya Pradesh High Court in Prem Kumar v. Union of India 1971 Lab IC 823 ; The Punjab and Haryana High Court in Om Prakash Vs. The Director Postal Services (Posts and Telegraphs Department), Ambala and Others, ; AIR 1973 P&H 1) (FB), The Delhi High Court in Director of Postal Services v. Daya Nand 1972 SLR 325 : 1972 Lab IC 736 have expressed the same view. This view of the High Courts in the aforesaid cases has been approved by this Court in T.R. Challappan's case .

13. Section 12 is thus clear and it only directs that the offender "shall not suffer disqualification, if any, attaching to a conviction of an offence under such law". Such law in the context is Ors. law providing for disqualification on account of conviction. For instance, if a law provides for disqualification of a person for being appointed in any office or for seeking election to any authority or body in view of his conviction, that disqualification by virtue of Section 12 stands removed. That in effect is the scope and effect of Section 12 of the Act. But that is not the same thing to state that the person who has been dismissed from service in view of his conviction is entitled to reinstatement upon getting the benefit of probation of good conduct. Apparently, such a view has no support by the terms of Section 12 and the order of the High Court cannot, therefore, be sustained.

18. Thus, the apex Court has held that the competent authority even in view of Section 12 of the Act was legally competent to dismiss an employee who has been convicted for some offence. The Appellant's submission in this behalf as such has to be accepted favourably.

19. On the basis of Ex. PA dated 25-10-1982 the Plaintiff was dismissed taking into account the bipartite settlement dated 19-10-1966, para 19.3 (a), read with Section 10(1)(b) of the Banking Regulation Act, 1949.

Para 19.3 (b) reads as under:

(b) If he be convicted, he may be dismissed with effect from the date of his conviction or be given any lesser form of punishment as mentioned in Clause 19.6 below.

Clause 19.6 again reads as under:

19.6. An employee found guilty of gross misconduct may:

- (a) be dismissed without notice; or
- (b) be warned or censured, or have an adverse remark entered against him; or
- (c) be fined; or
- (d) have his increment stopped; or
- (e) have his misconduct condoned and be merely discharged.

Section 10 of the Banking Regulation Act, 1949 runs as under:

10. Prohibition of employment of managing agents and restrictions on certain forms of employment.- (1) No banking company

- (a) ...
- (b) shall employ or continue the employment of any person-
 - (i) who is, or at any time has been, adjudicated insolvent, or has suspended

payment or has compounded with his creditors, or who is, or has been, convicted by a Criminal Court of an offence involving moral turpitude; or

(ii) ...

The aforesaid provisions of the Act empower the competent authority to employ or deny the employment of any person who has been convicted by a criminal Court of an offence involving moral turpitude.

20. Here in the present case, it is not the employment, but continuance of the employment of the Plaintiff, which is involved. This continuance on the provision of the aforesaid Act can be stopped prospectively and not retrospectively. The provision of bipartite settlement, referred to above, no doubt, empowers the dismissal with effect from the date of conviction, but not retrospectively. The statutory provision of the Banking Regulation Act nowhere empowers the competent authority to pass an order of dismissal from the service retrospectively but on the Ors. hand it empowers that such a person cannot be allowed to continue the employment who has been convicted by a criminal Court of an offence involving moral turpitude which words clearly reflect the prospective operation of this provision as intended by the legislature. These provisions have to be complied with which have got the force of law.

21. The order of removal of the Plaintiff from service could, under the law, be passed without giving show cause notice to the Plaintiff especially when the order of removal of the Plaintiff is solely based on the admitted "conviction" of the Plaintiff. The order cannot as such be assailed to be against the principles of natural justice. Even in the case of a Government servant such an order without notice can be passed under Article 311(2)(a) of the Constitution of India based upon the conviction of the servant.

22. Thus on the basis of the aforesaid provision, the order of dismissal conveyed to the Plaintiff would be operative from 25-10-1982, the date when such an order was issued and not retrospectively since 23-4-1982 as referred to in the order.

No Ors. point has been stressed.

23. In view of the foregoing reasons, I accept the present appeal, set aside the judgment and decree passed by the two Courts below and dismiss the suit of the Plaintiff except that the dismissal order shall be operative from 25-10-1982 and prior to that the Plaintiff was entitled for every monetary benefit he was Ors. wise entitled under the law. The parties are, however, left to bear their own costs.