(2018) 07 UK CK 0082

In the Uttarakhand High Court

Case No : Writ Petition No. 04 (S/B) of 2013, 267 (S/B) of 2013

Umesh Kumar Pahwa & others	APPELLANT
Vs	
The Board of Directors & others	RESPONDENT

Date of Decision : 17-07-2018

Acts Referred:

Indian Penal Code, 1860 — Section 323, 354, 504, 506
Code Of Criminal Procedure, 1973 — Section 482
Constitution of India, 1950 — Article 226

Citation : (2018) 07 UK CK 0082

Hon'ble Judges : SUDHANSHU DHULIA, J;LOK PAL SINGH, J

Bench : Division Bench

Advocate : Umesh Kumar Pahwa, Anil Kumar Joshi

Final Decision : Dismissed

Judgement

PER: LOK PAL SINGH, J.

SUDHANSHU DHULIA, J.

1) Petitioner by means of writ petition no. 04 (S/B) of 2013, seeks a writ, order or direction, in the nature of certiorari for quashing the impugned order

dated 29.09.2011 (Annexure 15 to the writ petition) and appellate order dated 30.12.2011 (Annexure 18 to the writ petition). A prayer has also been

made that petitioner be reinstated to the post held by him before removal from service with all consequential benefits, including arrears of pay,

allowances, annual increments accrued etc. treating him to be in service continuously throughout upto date.

2) During the pendency of Writ Petition no. 04 (S/B) of 2013, another Writ petition no. 267 (S/B) of 2013, has been filed by the petitioner seeking writ

in the nature of mandamus commanding the respondents to grant promotion to him from Scale II to Scale III from the date when juniors to him were

promoted i.e. w.e.f. 30.03.2005.

3) As we can see Writ Petition no. 04 (S/B) of 2013 relates to disciplinary action against the petitioner, and the order passed therein, whereby the

services of the petitioner were dispensed with by the respondents.

4) Brief facts of the case, as narrated in the writ petition are that the Nainital-Almora Kshetriya Gramin Bank was constituted under Regional Rural

Bank Act, 1976. Petitioner was appointed as an officer in Grade JMS I (Junior Management Scale I) on 27.12.1983. Thereafter, on 01.11.1997, the

petitioner was promoted from grade JMS I to MMS II (Middle Management Scale II). The petitioner has put in 28 years of satisfactory service.

Petitioner was posted as a branch manager at Pratap Pur branch of the bank (near Kashipur) District Udham Singh Nagar during the period

27.06.2008 to 21.11.2008.

5) It is contended that in the first week of October 2008, Sri D.K. Sawhney, the then General Manager of the bank, who was officiating as Chairman

organized a three days training camp for the clerks of the bank at Head Office Haldwani. After the training was over, he retained a newly appointed

lady probationer clerk in the bank till late evening and asked the driver of the bank to drop her at his residence, although there was an arrangement for

her stay with another lady staff at Haldwani. On the next day morning, the lady clerk left the house of the General Manager and instructed the driver

to bring her luggage from the house of General Manager. It is further alleged that this immoral conduct of the General Manager of the bank was

severely condemned by all and sundry and the matter was raised by several women organizations of the area, including the wife of the petitioner. In

the meanwhile, new Chairman joined the bank on 20.10.2008.

6) It is also contended that on 17.09.2008, a complaint was made against the petitioner by one borrower of the bank namely, Karamjeet Singh, alleging

therein that the petitioner has sanctioned the limit of loan of Rs. 1,50,000/-which was later on reduced to Rs. 75,000/-. Karamjeet Singh and four other

persons also made complaints against the petitioner. On receipt of the complaints against the petitioner, the Chairman of the bank transferred the

petitioner to another branch of the bank, during pending inquiry pertaining to aforesaid complaints.

7) A show cause notice was issued to the petitioner seeking his explanation. On receipt of the show cause notice dated 03.11.2008, the petitioner

submitted his reply stating therein that the complaints are baseless, frivolous and fabricated. He further contended that since the wife of petitioner

along with a delegation of women had made allegations against the Chairman of the bank, therefore, the Chairman got annoyed with the petitioner. It

is further alleged that the Chairman of the bank criminally intimidated the wife of petitioner. An FIR was lodged against the Chairman in this regard.

Thereafter the Chairman had also threatened the petitioner, it is alleged. Further on 19.12.2008, another women delegation met the Chairman of the

bank and submitted memorandum regarding alleged immoral conduct of the then General Manager in regard to the incident dated 09.12.2008. The

issue was also raised before the State Women Commission. Finally, a criminal case no. 810 of 2009 was registered against the Chairman under

Sections 323, 354, 504, 506 IPC. The Investigation Officer submitted the charge sheet against the Chairman of the bank. On submitting the charge

sheet to the trial court, the learned Magistrate passed an order to summon the Chairman of the bank.

8) Feeling aggrieved against submission of charge sheet and summoning order, the Chairman of the bank preferred a Criminal Misc. Application under

Section C-482 Cr.P.C. to quash the charge sheet and the summoning order. This Court was pleased to quash the charge sheet and summoning order

issued against the Chairman of the bank.

9) The petitioner has, therefore, tried to make out a case that the disciplinary proceedings against him are as a result of the campaign his wife had

initiated against the Chairman of the bank.

10) After issuing show cause notice to the petitioner and considering the reply of petitioner, a charge sheet was issued to him and following charges

were framed:

1. He did not discharge his duties with integrity and honesty and took such actions and committed such omissions which showed lack of probity and

integrity on his part.

2. He committed serious violations of duty and breach of trust reposed in him by the Bank and misused his official position.

3. In the performance of his official duties and in exercise of powers conferred on

him, he unauthorizedly exceeded his authority / powers and did not report the same for / or obtained approval / confirmation from higher authorities for such excessive actions.

4. He flouted instructions of the higher authorities.

5. He adopted such steps and took such actions as were derogatory, prejudicial and detrimental to the interest of the bank.

6. He misrepresented and suppressed material facts from higher authorities.

7. He knowingly and willfully violated Bankâ??s rules and established procedures for his personal gains.

8. Due to his acts, bank is likely to suffer financial losses.

9. He committed such acts which tarnished the image of the Bank.

10. He did acts unbecoming of an officer of the Bank.

11) It is contended that the employer bank decided to initiate inquiry for major punishment in preordained manner and asked the petitioner to submit his statement of defence. The petitioner submitted his statement of defence and inquiry was ordered by the disciplinary authority against him and Sri P.K. Baurai was appointed as Inquiry Officer.

12) The petitioner participated in the inquiry. The department produced witnesses, including the complainant Karamjeet Singh. This witness was cross-examined at length by the petitioner.

13) The petitioner produced Sri Bhajan Singh in his defence. However, Bhajan Singh has no concern in the matter.

14) The inquiry officer after concluding the inquiry found that charge nos. 1, 2, 3, 4, 5, 7, 8, 9 and 10 are proved. However, the bank could not prove other charges. On receipt of the inquiry report the petitioner submitted his reply and contended that the findings of Inquiry officer are perverse to the material placed on record and against the principle of natural justice. He further contended that the Chairman of the bank threatened him not to litigate with the bank, or else he will have to face the consequences.

15) After considering the inquiry report and giving opportunity of hearing to the petitioner, Disciplinary Authority / Chairman of the bank passed the order of removal of petitioner from service.

16) Feeling aggrieved by impugned order of removal dated 29.09.2011, the petitioner preferred an appeal before the Appellate Authority, inter alia, on

the grounds that the findings of the inquiry officer and discussion held by the disciplinary authority are perverse as relevant evidence placed on record

has completely been ignored. It is further contended that their conclusions were based either on no evidence or on hypothetical ground.

17) The Appellate Authority called the petitioner in its meeting and provided him personal hearing of the appeal and after giving ample opportunity of

hearing / personal hearing to him, the Appellant Authority was pleased to dismiss the appeal of the petitioner vide order dated 20.12.2011.

18) Feeling aggrieved against an order of his removal from service, the petitioner has preferred the present writ petition after more than a year on

02.01.2013 for quashing the order of removal and to reinstate him in service.

19) The bank has filed its reply and denied the averments of writ petition. It is contended that when the complaints were received against the

petitioner, he was transferred and inquiry was initiated against him. After the receipt of the show cause notice, the wife of the petitioner along with a

delegation a women made protest against the Chairman of the Bank. Thereafter the wife of the petitioner also lodged false criminal case against the

Chairman of the bank. Though the charge sheet was submitted by the Investigating Officer, but the criminal proceedings were quashed against the

Chairman of the bank by the High Court. It is also contended that there was an agency of Birla Sun Life Insurance Company in the name of the wife

of petitioner, but actually the petitioner was doing the work of agency. It is further contended that the borrowers were compelled by the petitioner to

get the insurance policies from him as he was actually doing the work of Birla Sun Life Insurance Company in the name of his wife. It is next

contended that the borrowers, who were in dire need of money and took loan from the bank to fulfill their financial need, were compelled to get the

insurance policies under duress. They invested the money in insurance policies despite the fact they were not having the funds to invest in insurance

policy. It is further contended that on receipt of the complaints, show cause notice was issued to the petitioner, who submitted his reply. Thereafter, an

inquiry was conducted and charge sheet was issued to the petitioner. Petitioner contested the inquiry and cross-examined the departmental witnesses

and also led evidence in support of his case. The Inquiry officer found the charges proved against the petitioner and submitted the inquiry report to the

Disciplinary Authority. The Disciplinary Authority also gave ample opportunity to the petitioner for defending his case and personal hearing was also

afforded to him. Thereafter, the Disciplinary Authority passed the order of petitionerâ??s removal from service.

20) The petitioner preferred an appeal against order of removal from service, the Appellate Authority gave personal opportunity of hearing to the

petitioner and thereafter dismissed the appeal by detailed and reasoned order.

21) It is contended that the bank services are fiduciary in nature. The petitioner failed to discharge his duties honestly and in the interest of bank,

rather he worked against the interest of bank and lost the faith of the employer. Bank services being the services of trust and faith and no bank

employee should be permitted to continue in service, who has lost the faith of the employer.

22) We have heard the petitioner in person and learned counsel for the respondents and carefully perused the entire material brought on record.

23) Petitioner would submit that since the wife of the petitioner raised her voice along with a group of women against the General Manager of the

bank in regard to an immoral incident of the then General Manager of the bank with a lady clerk of the bank, the petitioner has been victimized for

said reason. Petitioner would also submit that he did nothing wrong while he was posted at Partap Pur branch and the employer bank failed to prove

the charges levelled against him and he has been removed from service without any valid reason or ground. He would further submit that disciplinary

proceedings were initiated for instituting major penalty against him for his alleged acts of misconduct, during the period when he was posted as Branch

Manager at Pratap Pur branch.

24) The bank produced the witness Karamjeet Singh (complainant), who was cross-examined by the petitioner. The details of the amount and the

source of the money given to the petitioner were asked in cross-examination, to which witness Karamjeet Singh replied that all the notes were in the

denomination of Rs.100/-; regarding the source of money, the witness replied that as the petitioner has asked to arrange the money, he had to make

arrangement for the same as he was in dire need of securing the loan. In fact, while cross-examining the witness, the allegations of demanding bribe

were proved by witness Karamjeet Singh in his statement.

25) The petitioner has contested his case on the ground of bias. His case is that since his wife has raised her voice against the then General Manager,

the petitioner has falsely been implicated by the Chairman of the bank. The petitioner has produced Mr. Bhajan Lal in his defence and would submit

that the witness Bhajan Lal has supported his case.

26) Per contra, counsel appearing on behalf of the employer bank would submit that on receipt of the complaints from the borrowers, show cause

notice was issued to the petitioner and a reply was submitted by him. Since the reply of the petitioner was not found satisfactory and considering the

serious allegations levelled against the petitioner, charges were framed and an Inquiry Officer was appointed to conduct the departmental enquiry. The

Inquiry Officer gave ample opportunity of hearing to the petitioner to put forward his case as well as to cross-examine the departmental witnesses and

to lead the evidence. The departmental witnesses, including the complainant Karamjeet Singh, were thoroughly cross-examined by the petitioner. The

defence witness Mr. Bhajan Lal failed to support the case of petitioner as he was stranger to the facts of the case. The departmental witnesses,

including the complainant fully supported the case of the employer bank. Learned counsel for the bank would further submit that the Inquiry officer

after considering the charges levelled against the petitioner and statement of departmental witnesses as well as the defence witness, found the

charges of misconduct proved against him and submitted the inquiry report to the Disciplinary Authority.

27) Learned counsel for the bank would further submit that the disciplinary authority on receipt of the inquiry report, afforded opportunity of personal

hearing to the petitioner and relying upon the inquiry report and considering the fact that charges nos. 1, 2, 3, 4, 5, 7, 8, 9 and 10 have been fully proved

against the petitioner proving his misconduct during service to the hilt. Further findings have been recorded that continuance of the petitioner in service

is not in the interest of bank as the bank services are of fiduciary nature. Since the misconduct was proved against the petitioner and it was found that

his services are prejudicial to the interest of bank, an order of removal of petitioner from service was passed, in accordance with law.

28) The petitioner has tried to built a case on the grounds of malice and bias against the employer bank on the allegations that his wife made complaint

against the General Manager of the bank.

29) Admittedly complaint was made by Karamjeet Singh, a borrower of the bank on 17.09.2008 and other borrowers of the bank also made

complaints against the petitioner. Thereafter a show cause notice was issued to the petitioner. The complaints were received by the bank against the

petitioner, thereafter the petitioner set up a case of malice and biasness on the ground of complaint made by his wife against the Chairman of the

bank. Admittedly the wife of the petitioner made complaint after the receipt of complaint as well as issuance of show cause notice to the petitioner

from the bank, which clearly indicates that the wife of the petitioner lodged the complaint as a counter blast. The incident highlighted by the petitioner

of malice and bias is subsequent to the proceedings initiated against him as this incident occurred in October 2008, whereas the complaint against the

petitioner is of September 2008. The charge sheet submitted on the FIR lodged by the wife of the petitioner against the Chairman of the bank, as also

the summoning order, were quashed by the High Court. The order of quashing the charge sheet and summoning order has attained finality in favour of

the Chairman of the bank. The petitioner could not prove any mala fide, illegality and prejudice allegedly committed against him by the employer bank.

Contrary to it, the departmental witnesses, including the complainant, have succeeded in proving the misconduct of petitioner. The petitioner himself

has admitted the fact that his wife owns an agency of Birla Sun Life Insurance Company and so many bank customers to whom the loan was

sanctioned by the petitioner obtained the insurance policies from his wife. It is an admitted and proved fact that though the agency of Birla Sun Life

Insurance was in the name of wife of the petitioner but actually the petitioner was doing the work of insurance agency. The act of the petitioner was

contrary to the interest of the bank as those who were taking loans from the bank were compelled to invest the money in insurance policies.

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30) From the evidence available on record as well as the facts and circumstances narrated above, it is abundantly clear that during his service tenure

as Branch Manager at Pratap Pur Branch, petitioner acted contrary to the interest of bank for his personal interest. The illegal act of the petitioner of

accepting bribe from the borrowers in lieu of sanctioning loan to them and subsequently reducing the sanctioned loan limit without there being any

reasons, amply proves that he misused his position as a bank manager and the charges levelled against him were found fully proved.

31) The disciplinary authority also afforded opportunity of personal hearing to the petitioner and passed the order of his removal from service. The

petitioner has made false and incorrect averments in the writ petition that principle of nature justice has been violated and he has not been given ample

opportunity of hearing and the proceedings were drawn against him in biased manner as his wife first raised voice against the illegal conduct of the

General Manager and subsequently against the Chairman of the bank.

32) We find no substance in the submission of the petitioner that while passing the order of removal against him the opportunity of hearing was not

given to him and the employer has acted in preordain manner.

33) The Honâ??ble Apex Court, in the case of State Bank of India and others vs S.N. Goyal, (2008) 8 SCC 92, has held that the banking services

are based on fiduciary relations and breach of fiduciary relations at the hands of any employee of bank should be dealt with iron hands. The relevant

paragraph of the judgment (supra) is extracted hereunder:

â??41. At the relevant point of time the respondent was functioning as a Branch Manager. A bank survives on the trust of its clientele and

constituents. The position of the Manager of a bank is a matter of great trust. The employees of the bank in particular the Manager are expected to

act with absolute integrity and honesty in handling the funds of the customers/ borrowers of the bank. Any misappropriation, even temporary, of the

funds of the bank or its customers/borrowers constitutes a serious misconduct, inviting severe punishment. When a borrower makes any payment

towards a loan, the Manager of the bank receiving such amount is required to credit it immediately to the borrowerâ??s account. If the matter is to

be viewed lightly or leniently it will encourage other bank employees to indulge in such activities thereby undermining the entire banking. The request

for reducing the punishment is misconceived and rejected.â??

34) While exercising writ jurisdiction under Article 226 of the Constitution of India this Court is reluctant to re-evaluate the evidence on record, which

is against the petitioner. The writ petition no. 04 (S/B) of 2013 is devoid of merit and the same is liable to be dismissed. The same is hereby dismissed.

35) Now, we have to decide the controversy involved in Writ petition no. 267 (S/B) of 2013. Writ petition no. 04 (S/B) of 2013 was filed for quashing

the order of removal of petitioner from service dated 29.09.2011, contained as Annexure 15 to the writ petition. Subsequent thereto, the petitioner has

filed this writ petition, being WPSB no. 267 of 2013 for seeking the promotion from Scale II to Scale III officer from the date when his juniors were

promoted, i.e., w.e.f. 30.03.2005. It is also prayed that difference of salary be paid to him at the rate of eight per cent interest per annum. Since the

petitioner was removed from service by order dated 20.09.2011, thereafter the petitioner has no right to file the subsequent writ petition (WPSB no.

267 of 2013) during pendency of WPSB no. 04 of 2013. The petitioner has to claim all the relief in one petition, but in any case, if the petitioner was

aggrieved by denial of promotion to him by the bank from Scale II to Scale III officer, then he had a liberty to sought relief for promotion before filing

the WPSB no. 04 of 2013. Since the relief for promotion was not sought for the reasons best known to the petitioner during his service tenure,

therefore, he has waived his alleged right of promotion by filing subsequent writ petition.

36) Even otherwise, in view of the fact that the order of removal has been affirmed, therefore, writ petition no. 267 (S/B) of 2013 has rendered

infructuous. The same is, accordingly, dismissed as infructuous. There shall be no order as to costs.

