

(2006) 08 CAL CK 0016
In the Calcutta High Court
Case No : A.P.O. No. 77 of 2001

United Commercial Bank and Another	APPELLANT
Vs	
George Kuruvilla	RESPONDENT

Date of Decision : 24-08-2006

Acts Referred:

Citation : (2007) 2 CALLT 282 : 110 CWN 992 : (2007) 113 FLR 274

Hon'ble Judges : Tapan Mukherjee, J;Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : Jayanta Mitra, C.R. Baksi and Subashis Baksi, for the Appellant;
Bimal Chatterjee and A. Biswas, for the Respondent

Judgement

1. The respondent No. 1 was an officer of United Commercial Bank posted abroad. He was implicated in a disciplinary proceeding on the charge of financial irregularity committed while discharging his official duty abroad. On May 27, 1991 he was put under suspension. He was charge sheeted on October 4, 1993. He was afforded opportunity to defend himself in the said proceeding. He, however, contended in the writ petition that he was not given the benefit of inspection of 39 documents which according to him were relevant for the purpose of defending himself in the said proceeding. The bank could not offer inspection of those documents as according to the bank those documents were destroyed at the instance of the respondent No. 1 and the bank also could not exhibit those documents before the enquiry officer. Without those documents being exhibited the writ petitioner was held guilty of the charges brought against him by the enquiry officer. Before the enquiry officer he also insisted that one Mr. Thomson and one Dr. Alumottill should be produced by the bank so that he could cross-examine them. The bank initially wanted to produce Mr.Thomson as witness. The bank was unsuccessful. The respondent No. 1 thereafter insisted a summon to be issued upon Mr. Thomson. Such request was acceded to. However, Mr. Thomson did not appear before the enquiry officer. In case of Dr. Alumottill same exercise was done at the instance of the respondent No. 1. However, the said gentleman

also did not appear before the enquiry officer. Without those 39 documents being exhibited and without Mr. Thomson and Dr. Alumottill being examined the enquiry officer on the evidence available before him held the respondent No. 1 guilty of the charges. The disciplinary authority proposed a punishment of dismissal from service. However, before the enquiry could be completed a writ petition was moved being W.P. No. 972 of 1997 which was disposed of by the learned single Judge with a direction upon the enquiry officer to dispose of the representation made by the respondent No. 1. The learned single Judge gave direction for inspection of documents. The learned Judge also held that the writ petitioner would be entitled to lead evidence in support of his defence as well as to cross-examine the prosecution witness. The parties accepted the said order by not preferring any appeal. In terms of the said order of His Lordship a representation was made to the enquiry officer with regard to irregularities and deficiencies in the proceeding. The enquiry officer ultimately held the writ petitioner guilty of the charges. The disciplinary authority agreeing with the finding of the enquiry officer proposed a punishment of dismissal from service. At that stage a subsequent writ petition was filed being W.P. No. 2716 of 1997. By the second writ petition the writ petitioner challenged the order of suspension coupled with a prayer for his reinstatement as also for other consequential benefits. By an interim order dated January 2, 1998 the petitioner was given liberty to appear before the authority in terms of the impugned notice and the authority was granted liberty to proceed in accordance with law and pass final order with a corresponding direction not to implement the said final order, if any passed on the same. Accordingly the authority proceeded with the disciplinary proceeding and ultimately passed a final order on May 4, 1998 which was allowed to be challenged in the same writ petition by filing supplementary affidavit. The writ petition was finally heard by the learned single Judge and disposed of by the order impugned passed on March 23, 2001.

2. By the Judgment and order impugned the learned single Judge allowed the writ petition by quashing the final order. The learned Judge held that there had been inordinate delay in issuance of the charge sheet and there was no reason why the petitioner was kept under suspension for about two years five months without implicating him in a disciplinary proceeding by submission of charge sheet. The learned Judge ultimately directed reinstatement of the writ petitioner / respondent No. 1 with all back wages from the date of suspension. The learned Judge, however, granted liberty to the appellant bank to proceed afresh on the self-same charge by giving reasonable opportunity of hearing to the petitioner/ respondent No. 1 to defend himself at the enquiry. The learned Judge also observed that the petitioner would be under deemed suspension from the day when the charge sheet was issued till the proceeding was completed and the earlier order of suspension although liable to be quashed was not interfered with as the learned Judge found the same merged in the final order. In any event, the learned Judge gave the writ petitioner benefit of back wages for the entire period being the date when he was originally put under suspension till he was reinstated

in terms of His Lordship's direction.

3. The present appeal was filed by the appellant bank. The Division Bench admitted the appeal with a direction that the appellant would be entitled to hold the enquiry in terms of the direction of the learned single Judge. However, the direction for payment of arrear salary was stayed. Accordingly the bank proceeded with a fresh enquiry on the basis of the earlier charge sheet after reinstating the petitioner in service. The writ petitioner was, however, not put under suspension second time. While the proceeding was on the writ petitioner took leave for three months and overstayed the leave and never joined the bank making the entire exercise futile. The writ petitioner was again charge sheeted on the ground of unauthorised absence and he was ultimately removed from service by an order of the disciplinary authority passed on May 19, 2003. The writ petitioner accepted the subsequent order of removal and accepted terminal benefits.

4. The learned Counsel appearing on behalf of the respondent No. 1, however, contends before us that entire terminal benefit as per his calculation is yet to be paid.

5. The appeal has now come up before us. We have heard the parties.

6. Mr. Jayanta Mitra, learned senior counsel appearing for the appellant, contends before us that the learned single Judge quashed the earlier order of dismissal on the ground of procedural irregularity as according to the learned single Judge the writ petitioner was denied reasonable opportunity to defend in the said proceeding. In terms of the direction of the Court of Appeal the bank attempted to conduct the proceeding de novo. However, such attempt was made futile by the writ petitioner/respondent No. 1 by absenting himself in his duty as well as in the proceeding. He was removed from service on the ground of unauthorised absence in another disciplinary proceeding. Hence, the instant appeal wherein the appellant questioned the decision of the learned single Judge on the procedural irregularity, has become infructuous and such issue has become academic for this Court to be decided. Mr. Mitra, however, contends that since the issue has become infructuous due to non-cooperation on the part of the writ petitioner/ respondent No. 1 he should not get the benefit of the back wages as directed by the learned single Judge. Mr. Mitra further contends that once the writ petitioner/respondent No. 1 accepted his ultimate termination from service he is not entitled to contend before this Court that he would be entitled to the back wages in terms of the direction of the learned single Judge. He further contends that subsequent incident narrated above does not warrant any further relief to be given to the writ petitioner save and except the terminal benefit which he received after the order of removal in the subsequent disciplinary proceeding.

7. Mr. Bimal Chatterjee, learned senior counsel appearing for the writ petitioner/ respondent No. 1, on the other hand, contends that once the appellant finds the

appeal infructuous and contends so before this Court, they are not entitled to question the validity of a part of the order passed by the learned single Judge. Mr. Chatterjee further contends that in case the Division Bench comes to a conclusion that the appeal has become infructuous it would not be open to the Division Bench to interfere with the order of the learned single Judge or any part thereof as the issue has become academic. In support of his contention Mr. Chatterjee has relied upon a decision of the Apex Court in the case of Sohan Lal Vs. Asha Ram and Others, . The Judgment of the Apex Court is set out below:

This election appeal would have invited adjudication of the issue raised by the appellant but for the fact that the U.P. Legislative Assembly has since been dissolved, fresh elections having taken place and a fresh House having come into existence with newly elected representatives. Perhaps Shri Lekhi's client has a substantial grievance. It is also possible that the decision of the Court below was wrong but we are not inclined to investigate the question at all and, therefore, do not propose to hear either Shri Lekhi or Shri Yogeshwar Prasad. The subsequent events we have adverted to have rendered this litigation so wholly unreal that it will be a waste of this Court's time to consider the issues. For this reason we dispose of this appeal without adjudication. The same fate will be shared by the cross appeal. Parties will bear their own costs.

8. On merits Mr. Chatterjee contends that once the learned Judge found that the petitioner/respondent No. 1 was denied opportunity to defend himself in the proceeding due to non-furnishing of copies of the documents as asked for by him as well as for non-consideration of the absence of the material witness the learned Judge was right in allowing back wages to be paid to the writ petitioner/respondent No. 1. Mr. Chatterjee further contends that once the master-servant relationship has shavered by dint of the subsequent order of removal, it is not open to the appellant-bank to reopen the issue, be it the subject controversy on merit, be it the ultimate relief granted by the learned single Judge. In support of his contention Mr. Chatterjee has relied upon an Apex Court decision in the case of Bhagirathi Jena Vs. Board of Directors, O.S.F.C. and Others, and Division Bench decision of this Court in the case of Dena Bank reported in 1988(1) CLJ 373.

9. Although rival contentions have been advanced by both the parties before us on one issue the parties are ad idem that subject controversy because of the subsequent event has taken a peculiar shape which usual circumstance in a case of considering the rival contentions that we are confronted with a distinctive in the changed scenario. We have perused the Judgment of the learned single Judge. The learned single Judge on the issue of suspension found that there was no explanation offered by the bank for the inordinate delay in submission of the charge-sheet after issuance of the suspension. The learned Judge on the disciplinary proceeding held that the delinquent was denied reasonable opportunity by denial of copies of the relevant documents as well as for non-production of the material witnesses before the enquiry officer. We are, however,

unable to find out any observation of His Lordship as to whether the enquiry officer was wrong in holding the delinquent guilty of the charges irrespective of non-production of the said two witnesses referred to above and nondisclosure of the documents relied upon by the delinquent. On the other hand we find that those 39 documents were not tendered as exhibits by the prosecution and those could not be produced as it was the case of the bank that those were destroyed at the instance of the delinquent. The learned Judge did not consider this aspect. The learned Judge also did not come to a conclusion that the finding of the enquiry officer perverse considering the factual matrix so came out in the enquiry. At one place of the Judgment the learned single Judge observed that the enquiry report was perverse. The reason given for such finding was non-consideration of an exhibit being exhibit B-45. The learned Judge did not make that observation with regard to finding of the enquiry officer on the subject controversy which was principally raised in the writ petition with regard to non-furnishing of 39 documents and non-production of the witnesses. In any event we are in total agreement with Mr. Mitra that such issue has now become academic in the changed scenario. We are also in agreement with Mr. Mitra that the delinquent was responsible for making the issue infructuous as the disciplinary proceeding in terms of the direction of the learned single Judge could not be ended in a logical conclusion due to the prolonged absence of the delinquent. If that be the situation in our view granting of back wages in terms of the order of the learned single Judge to the delinquent would be a premium to his wrongful conduct. In this regard we wanted to apply the ratio decided in the case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., and asked the learned Counsel appearing for the parties to have their views on that. Mr. Mitra relying on paragraphs 29, 30 and 31 of the said decision submits that although the Apex Court in that Five Bench decision dealt with an issue of non-furnishing of a copy of the enquiry report the ratio decided in the said decision would be squarely applicable in the instant case whereas Mr. Chatterjee, on the other hand, contends that such decision was bad on a reference made to the Larger Bench on the effect of decision in Union of India and others Vs. Mohd. Ramzan Khan, as to whether the same could be applied in case of non-furnishing of a report per se or facts of each and every case are to be gone into to find out whether such non-furnishing had caused any prejudice to the delinquent or not and, hence, such principle so decided by the Apex Court cannot have any bearing on the subject controversy.

10. As observed earlier by us, the subject controversy in this appeal has become infructuous. While observing so we feel that the appeal still has an importance to the extent where the learned Judge directed back wages to be paid. Hence, we propose to decide the question of payment of back wages to the writ petitioner/respondent No. 1 herein. To have a decision on that score we feel that the ratio decided in B. Karunakar (supra) and the genesis of such decision would be squarely applicable in the instant case. In the case of B. Karunakar (supra) the Apex Court observed that the delinquent employee has a right to receive a copy

of the enquiry report before the disciplinary authority arrives at its conclusion with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employees' right to defend himself against the charges levelled against him. Denial of the enquiry report before the disciplinary authority takes its decision is denial of reasonable opportunity to the delinquent and is a breach of principles of natural justice. If we substitute the word denial of copy of the enquiry report by the denial of inspection of the relevant documents and apply the same principle in the instant case we would find that mere denial was not sufficient to warrant quashing of the final order unless the Court comes to a conclusion that such denial has caused prejudice to the delinquent. In the instant case one of the charges levelled against the delinquent was destruction of the documents. The documents were not tendered by the prosecution. The enquiry officer could not have the benefit of those documents to come to a conclusion on the issue raised before him. Hence, we are unable to find out as to how the delinquent could be prejudiced by such non-furnishing. Similarly, on the factual matrix we find that the bank tried their best to produce those persons before the enquiry officer as witnesses at the instance of delinquent. However, they could not be produced. It is not a case that the enquiry officer relied upon a statement of one witness produced by the prosecution before him and the delinquent was not allowed to examine the said witness. Had it been so it could have been a case of violation of principles of natural justice because of denial of reasonable opportunity. Hence, we find that the principle so decided in the case of B. Karunakar is squarely applicable in the instant case.

11. Let us now apply the ratio so decided therein in this case. In paragraph 30(v) the Apex Court dealt with the aspect of relief in case of non-furnishing of the enquiry report. The observation of the Apex Court is as follows:

The next question to be answered is what is the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with backwages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, would be a perversion of justice to permit the

employee to resume duty and to get all the consequential benefits. It amounts rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice.

12. On a close reading of the paragraph quoted supra we would find that the Apex Court was of the opinion that in case the result of the disciplinary proceeding is quashed on such procedural irregularity, to direct reinstatement with all back wages would reduce the rules of justice to a mechanical ritual. The Apex Court was of the view that each and every case was to be considered on its factual matrix. In paragraph 31 of the said decision the Apex Court was of the view that the question whether the employee would be entitled to back wages and other benefits from the date of dismissal to his date of reinstatement should be left to be decided by the authority. In this case, however, the order of dismissal was not given effect to because the same became subjudice in the writ petition. However, considering the present case when we find that the subsequent attempt to have the proceeding ended in a logical conclusion was made futile by the delinquent sustaining the order of payment of back wages would be a premium to the delinquent for his own wrong.

13. The bank had taken unusual time to issue the charge sheet after the order of suspension had been implemented. Hence, we do not propose to interfere with the order, of the learned single Judge to the extent where His Lordship directed payment of back wages from the date of issuance of the order of suspension till the date of issuance of the charge sheet. However, we do not find any reason in the changed scenario to retain the order of payment of back wages for the subsequent period.

14. The appeal succeeds in part. The order of the learned single Judge to the extent which directed payment of back wages from the date of issuance of the charge sheet till he was reinstated, is quashed and set aside.

15. This order would not preclude the writ petitioner/respondent No. 1 to claim terminal benefits, if any due to him by dint of the subsequent order of removal passed by the authority in the second disciplinary proceeding and the bank is directed to release such benefit at an early date, if not already released.

The appeal is disposed of accordingly without any order as to costs.

Urgent xerox certified copy of this order and Judgment be made available to the parties, if applied for, upon compliance of all formalities.