(2015) 05 RAJ CK 0081

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 760 and 761 of 2011

Vijay Kumar Sharma APPELLANT

Vs

State of Rajasthan RESPONDENT

Date of Decision : 29-05-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190(1)
Penal Code, 1860 (IPC) — Section 408

Citation : (2015) 05 RAJ CK 0081

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Advocate : Kamal Dave and Vijay Kumar Vyas, for the Appellant; Vinay Jain and Kusum Rao, Advocates for the Respondent

Judgement

Gopal Krishan Vyas, J.—Both the above writ petitions are filed by the petitioner Vijay Kumar Sharma against the orders of punishment of dismissal from service passed by the disciplinary authority in the inquiries arising out from the charge-sheets dated 23.2.2000 and 6.6.2000.

2. In the SBCWP No. 760/2011 the petitioner has prayed that the entire process initiated and undertaken in furtherance to the charge-sheet dated 6.6.2000 (Annex.1) may kindly be declared illegal and punishment order dated 7.7.2001, so also, the order of rejection of appeal dated 19.1.2000 received by the petitioner on 24.1.2004 may kindly be quashed and set aside with all consequential benefits.

3. In SBCWP No. 761/2011 the petitioner has prayed to declare the entire process initiated and undertaken in furtherance to charge-sheet dated 23.2.2000 (Annex.1) and further prayed that charge-sheet dated 23.2.2000 and order of punishment dated 21.9.2001, so also, rejection of appeal vide order dated 19.1.2004 received by the petitioner on 24.1.2004 may kindly be quashed and set aside while treating the petitioner in service.

4. First of all this Court is dealing with the controversy raised in SBCWP No. 760/2011.

SBCWP No. 760/2011:

5. As per the brief facts of the case, the petitioner was appointed in the respondent Bank as per the recommendations of the selection committee on the post of Clerk-cum-Cashier vide order dated 6.9.1984. The work of the petitioner was found satisfactory till issuance of impugned charge-sheet before that his entire service record was without any shadow of doubt but vide order dated 31.3.2000 the petitioner was placed under suspension in contemplation of an inquiry and after placing him under suspension two charge-sheets dated 23.2.2000 and 6.6.2000 were served upon him. In the charge-sheet dated 6.6.2000 issued by the Managing Director of the respondent bank in which three charges were levelled against the petitioner related with one single incident. In the charge No. 1 levelled against the petitioner it has been alleged that petitioner has issued deposit receipt of amount to customer Sh. Kishore Singh but did not deposit the said amount in the bank account of the customer and embezzled the same and destroyed the bank vouchers. The allegation No. 2 was with regard to misusing the bank seal and issued false slips and 3rd allegation was regarding failure to discharge duties and responsibilities towards the customers in right perspective and, making embezzlement, destroying the bank record and preparing false documents.

6. As per the petitioner, in the charge-sheet neither list of documents were relied upon nor list of witnesses was mentioned, therefore, a request was made by the petitioner for providing documents relating to the charge, but no documents were supplied and straightway inquiry officer Sh. Prakash Raj Gang was appointed to conduct the inquiry. From prosecution side Sh. Rajesh Tatiya was appointed as presenting officer vide order dated 4.8.2000 but subsequently, the presenting officer was changed vide order dated 26.9.2000 whereby in place of Sh. Rajesh Tatiya sh. Ghyan Singh Solanki was appointed as Presenting Officer. The contention of the petitioner is that the counter folio of the account holder, deposit slip and also the part of slip retained by the bank were never shown to the petitioner despite number of requests and no reasonable opportunity was offered to the petitioner to defend his case despite making specific request to provide defense assistant. The inquiry officer concluded the inquiry on 31.3.2001 and submitted to the Managing Director.

7. The Managing Director, sent the copy of the inquiry report to the petitioner and granted opportunity to file his reply against the inquiry report. The petitioner appeared before the disciplinary authority on 11.5.2001 and filed his written submissions against the inquiry report so also submitted his arguments against the inquiry report.

8. The disciplinary authority without considering the petitioner''s plea of malafide has passed the impugned order dated 7.7.2001 whereby the penalty of dismissal

from service was imposed for alleged misconduct said to be committed by the petitioner. Against the order of termination, an appeal was preferred by the petitioner before the appellate authority of Johdpur Nagarik Sahakari Bank Ltd., that too was dismissed vide order dated 19.1.2004 but order of rejection was received by the petitioner on 24.1.2004.

9. In this writ petition, the petitioner is challenging the order of dismissal dated 7.7.2001 passed by the Managing Director of the bank and order passed by the appellate authority dated 19.1.2004 which is said to be passed on the basis of so called inquiry conducted for the charge levelled against the petitioner under the disciplinary rules of Urban Cooperative Bank Employees Service Rules, 1987 (hereinafter referred to as the Rules of 1987 for short).

10. The learned counsel for the petitioner at the threshold submit that the hole of the disciplinary inquiry conducted by the respondents was in violation of the rules, because no reasonable opportunity to defend was given by the inquiry officer so also by the disciplinary authority, the inquiry was conducted in hot haste manner and in gross violation of principles of natural justice as basic documents referred above elaborating the facts were not provided and the original counter folio and slip kept by the bank were never shown or made part of the inquiry. It is also submitted that proper assistance to defend was not given to the petitioner therefore, it is obvious that the disciplinary authority has only acted malafidely upon the findings given by the inquiry officer without application of mind, therefore, the order of dismissal deserves to be quashed.

11. With regard to order of appellate authority it is submitted that appeal of the petitioner was kept pending for long time and even after receiving the order in appeal in the meeting dated 12.7.2002 and the order was passed after 17 months in the month of Jan., 2004, therefore, it is obvious that respondent has acted in arbitrary manner, so also, the appellate authority did not exercise its power independently, so also, passed an order without applying mind upon the record of inquiry. The main ground of the petitioner was that it is a case of non-furnishing necessary and relevant documents to the petitioner so as to defend himself, the prosecution has failed to prove the charge of embezzlement because the complainant Kishore Singh did not appear before the inquiry officer in spite of service of notice upon him.

12. The learned counsel for the petitioner submits that a complaint was also filed for the same charge upon that an FIR was registered against the petitioner for the same charges, which is evident from para No. 9 of the reply filed by the respondent bank in which it is specifically mentioned at page 8 of the reply that from the preliminary inquiry, it was revealed that petitioner has committed fraud, therefore, a complaint (Annex.R/6) was filed in the Police Station Shastri Nagar, Jodhpur on 14.6.2000 upon that complaint FIR No. 182 was registered on 14.6.2000, but in the FIR after investigation the police gave FR and against that FR the protest petition filed by the bank, is pending in the court of Addl. Chief Judicial Magistrate No. 1, Johdpur.

13. The learned counsel for the petitioner submits that at the time of filing reply of course protest petition was pending, but later on vide order dated 20.3.2000 the Addl. Chief Judicial Magistrate No. 1, Jodhpur accepted the FR while rejecting the protest petition filed by the respondent bank. Therefore, it is a case in which petitioner has been penalized illegally for alleged allegation of fraud for which even the complainant was not examined in the inquiry, in spite of that the disciplinary authority passed an order of dismissal against the petitioner while accepting the inquiry report, therefore, the order of dismissal is unconstitutional and against the principles of natural justice.

14. The learned counsel for the petitioner invited attention of this Court that the order impugned is totally illegal because at the time of punishment order, the disciplinary authority take note of other inquiry related to another charge-sheet dated 23.2.2000 which is evident from the fact that in the order of dismissal at page 20 and 21 the disciplinary authority observed that in another inquiry conducted against the petitioner in pursuance of charge-sheet dated 23.2.2000 the charges were found to be proved by the inquiry officer, but in that inquiry till passing the impugned dismissal order dated 7.7.2001, no final order was passed by the disciplinary authority in the said inquiry, therefore, it is evident from the facts that the disciplinary authority malafidely note of inquiry report of other charge-sheet so as to punish the petitioner in the present inquiry.

15. The learned counsel for the petitioner argued that in the FIR filed against the petitioner for the same charges, the police after recording statement of complainant and complete investigation filed FR and that FR was accepted even after filing protest petition by the bank, therefore, the punishment awarded to the petitioner is in contravention of the judgment of the Hon''ble Supreme Court reported in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, AIR 1999 SC 1416 : (1999) 2 CTC 579 : (1999) 82 FLR 627 : (1999) 2 JT 456 : (1999) 1 LLJ 1094 : (1999) 2 SCALE 363 : (1999) 3 SCC 679 : (1999) SCC(L&S) 810 : (1999) 2 SCR 257 : (1999) AIRSCW 1098 : (1999) 3 Supreme 376 and in the case reported in G.M. Tank Vs. State of Gujarat and Another, AIR 2006 SC 2129 : (2006) 3 CTC 494 : (2006) 11 JT 36 : (2006) 3 LLJ 1075 : (2006) 5 SCALE 582 : (2006) 5 SCC 446 : (2006) SCC(L&S) 1121 : (2006) 3 SCR 253 Supp : (2006) 3 SLJ 312 : (2006) AIRSCW 2709 : (2006) 4 Supreme 740 . in which the Hon''ble Supreme Court held that in the event of acquittal by the criminal court upon the same charges and same set of evidence, in the event of acquittal in the criminal case, the departmental inquiry deserves to be quashed. In the present case also, for the same charges levelled against the petitioner in the departmental proceedings an FIR No. 182 dated 14.6.2000 was registered against the petitioner upon complaint made by the respondent bank at Police Station Shastri Nagar, Jodhpur but after investigation, the police find that there is no substance in the allegation and filed FR, which is accepted even after filing protest petition by the bank vide order dated 20.3.2002 by the Addl. Chief Judicial Magistrate No. 1, Jodhpur.

16. The learned counsel for the petitioner vehemently argued that it is a case in which the inquiry officer and disciplinary authority has acted contrary to law and gave finding of guilt without even recording statement of complainant Kishore Singh but in the FIR filed by the bank the investigating officer recorded statement of complainant Kishore Singh and gave finding that no offence of fraud is made out against the petitioner and filed FR in the court which is accepted even after filing the protest petition by the respondent bank, therefore, in view of the above cited judgment of the Hon''ble Supreme Court because after investigation police filed FR for the same charges and did not find any substance in the complaint. In view of the above facts, it is submitted that the order of dismissal dated 7.7.2001 and the order of rejection of appeal dated 19.1.2004 may kindly be quashed and set aside.

17. Per contra, learned counsel appearing for the respondents submitted written argument and argued that for the charges levelled against the petitioner under the Rules of 1987 a full-fledged inquiry was conducted after providing full opportunity of hearing in which the charges levelled against him were proved by the prosecution by leading trustworthy and cogent evidence and further argued that after appointment of the petitioner letter dated 4.7.1998 was issued for carelessness of his duties in which the petitioner was given warning. So also, it is stated in the written argument by the learned counsel for the respondents that complainant Kishore singh had submitted an application dated 22.3.2000 to Manager stating therein that he has deposited money 8 times in his saving account for which due counter receipts were issued, but the amount of all the receipts not deposited in the bank account, therefore, inquiry may be conducted. On above letter given by Kishore Singh the Branch Manager checked the record and found that all the receipts were issued by the petitioner and out of which for four receipts the amount has not been deposited in the account so also vouchers are not available in the record. The Branch Manager submitted the report to Managing Director, thereafter, the Managing Director passed an order dated 31.3.2000 by which Sh. Om Prakash Mohnot, Manager was directed to make the inquiry and submit the report within five days. Sh. Om Prakash conducted inquiry and submitted his report on 5.4.2000. In the report the inquiry officer gave conclusion that 4 receipts has been issued by Vijay Kumar Sharma but the amount has not been deposited in the bank as per the bank record. It is also stated in the written argument that upon aforesaid report it was decided to file FIR and accordingly FIR was filed before the Police Station Shastri Nagar, Jodhpur on 14.6.2000 but in the said FIR after investigation the police gave FR, and against that FR protest petition has been filed which is pending in the court, therefore, this writ petition may kindly be dismissed because the petitioner is guilty for committing serious misconduct. In support of his arguments, the learned counsel for the respondent relied upon the judgments (i) 2000 (7) 517, Janatha Bazar (South Kanara Central Cooperative Wholesale Stores Ltd. and Ors. v. Secretary, Sahakari Naukarana Sangha and Ors., (ii) U.P. State Road Transport Corporation Vs. Suresh Chand Sharma, (2010) 126 FLR 157 : (2010) 6 JT 320 :

(2010) 6 SCALE 87 : (2010) 6 SCC 555 : (2010) 5 SLR 128 , (iii) Divisional Controller, KSRTC (NWKRTC) Vs. A.T. Mane, (2004) 8 JT 103 : (2004) 3 LLJ 1074 : (2004) 8 SCALE 308 : (2005) 3 SCC 254 : (2005) SCC(L&S) 407 : (2005) 1 SLJ 227 , (iv) Divisional Controller, N.E.K.R.T.C. Vs. H. Amaresh, AIR 2006 SC 2730 : (2006) 4 CTC 345 : (2006) 110 FLR 931 : (2006) 6 JT 428 : (2006) 3 LLJ 232 : (2006) 7 SCALE 163 : (2006) 6 SCC 187 : (2006) SCC(L&S) 1290 : (2006) 3 SCR 585 Supp : (2007) 1 SLJ 211 : (2006) AIRSCW 3701 : (2006) 5 Supreme 573 , (v) Doongarpur Kendriya Sahakari Bank Ltd. Vs. Dhirendra Kumar, (2002) 92 FLR 815 : (2002) 4 LLJ 75 : (2002) WLC 61 : (2002) 2 WLN 16 , (vi) The High Court of Judicature at Bombay, Through Its Registrar Vs. Shashikant S.Patil and Another, AIR 2000 SC 22 : (2000) 67 ECC 16 : (1999) 8 JT 493 : (1999) 6 SCALE 673 : (2000) 1 SCC 416 : (2000) SCC(L&S) 144 : (1999) 4 SCR 205 Supp : (2000) 2 SLJ 98 : (2000) 1 UJ 134 : (1999) AIRSCW 4137 : (1999) 9 Supreme 42 . (vii) Rajasthan State TPT Corpn. and Another Vs. Bajrang Lal, (2014) AIRSCW 2058 : (2014) 3 JT 604 : (2014) 2 LLJ 257 : (2014) 3 SCALE 615 : (2014) 4 SCC 693 and (viii) 2015 (1) WLN 20 (SC) Deewan Singh v. LIC and Others and submits that the Hon''ble Supreme Court has held in number of cases that if employee of bank embezzled or misappropriated any amount or loss the confidence then there should not be sympathy to continue him in service and he should be dismissed from service. Further, it is held that in such cases judicial review should not be made. The learned counsel for the respondent argued that it is a case in which the petitioner is guilty of committing misconduct and misappropriated the bank money, therefore, the instant writ petition may kindly be dismissed.

18. After hearing the learned counsel for the parties, I have perused the entire record and considered the arguments advanced by the parties, so also perused the judgments cited by the parties.

19. In this case, admittedly, the petitioner was charge-sheeted vide charge-sheet dated 6.6.2000 (Annex.1) in which following charges were levelled against him which reads as under:

20. Upon perusal of above charges it is revealed that allegation against the petitioner was with regard to the amount which is said to be deposited by Kishore Singh to whom receipts were issued by the petitioner. For the same charges, as per the respondents, a complaint was filed in the Police Station Shastri Nagar, Jodhpur upon which FIR No. 182 dated 14.6.2000 was registered under Section 408 IPC against the petitioner. In the inquiry, so called complainant Kishore Singh did not appear to prove the charge levelled against the petitioner which is evident from the impugned order dated 7.7.2001 in which it is specifically observed by the disciplinary authority that in spite of sending registered notice to the complainant to appeal in the inquiry, the complainant did not turned up to prove the allegation against the petitioner. The relevant part of the said observation made in the order dated 7.7.2001 is as follows:

21. Upon perusal of the above facts incorporated in the order it is abundantly

clear that charge-sheet was issued to the petitioner with regard to complaint of one Sh. Kishore Singh but the said Kishore Singh did not appear in the inquiry nor he claimed any amount for which allegation was levelled against the petitioner that he has issued the deposit slips and not deposited the amount, but in the investigation of FIR No. 182 dated 14.6.2000 the investigation was made by the investigating officer from the said Kishore Singh and other witnesses of the bank and after investigation when no evidence found for charge the police filed FR in the court of Addl. Chief Judicial Magistrate No. 1, Jodhpur in which a protest petition was filed by the respondent bank for taking cognizance against the petitioner under Section 190(1) of Cr.P.C. but learned Magistrate after considering the entire facts and protest petition passed an order on 20.3.2002 whereby the FR filed by the police for the same charges levelled against the petitioner in the charge-sheet dated 6.6.2000 accepted. It is strange that in the written argument and in the reply filed by the respondents to the writ petition it is specifically mentioned that protest petition is still pending. Meaning thereby, the respondents are misleading this Court while submitting false information in the Court. In para No. 6 of the written argument following facts are submitted which reads as under:

"As from the preliminary enquiry it was revealed that petitioner has committed fraud, therefore, it was decided to file FIR and accordingly, the FIR was filed before Police Station, Shastri Nagar, Jodhpur on 14.06.2000. Of course in this case police has given F.R. and against which protest petition has been filed by the bank and same is pending in court."

22. The above fact is totally false because vide order dated 20.3.2000 the Addl. Chief Judicial Magistrate No. 1, Jodhpur accepted the FR No. 167/2000 filed by the police while rejecting the protest petition filed by the bank. In view of the above, it is a case in which the respondents misled this Court so as to take defence for rejection of this writ petition.

23. In this case, in addition to other ground raised by the petitioner with regard to conduct of respondents in conducting inquiry in haste manner, it is submitted that as per the facts of the case for the same charges levelled in the charge-sheet dated 6.6.2000 complaint was filed by the respondent bank at the Police Station, Shastri Nagar, Jodhpur where FIR No. 182 dated 14.6.2000 under Section 408 IPC was registered in which after making investigation from complainant Kishore Singh police filed FR which was accepted by the court. Admittedly, as per finding of inquiry officer and disciplinary authority, the complainant account holder Sh. Kishore Singh did not appear before the inquiry officer so as to prove the facts and charges levelled against the petitioner for alleged misconduct of fraud/embezzlement in spite of that the inquiry officer held petitioner guilty on presumption, whereas in the FIR filed by the respondent bank, the independent agency investigated the charge and after making thorough investigation from complainant Kishore Singh and other witnesses of the bank filed FR before the competent trial court where the respondent bank

filed protest petition but the learned trial court while rejecting the protest petition, accepted the FR vide order dated 20.3.2000. The respondent bank in spite of knowing the fact that FR has already been accepted, has tried to mislead this Court while submitting in written argument that protest petition is still pending. Meaning thereby, it is a case in which after investigation from complainant and other witnesses, police filed FR but in the inquiry in spite of the fact that Kihsore Singh upon whose complaint the inquiry was initiated did not appear before the inquiry officer and without evidence the inquiry officer gave finding that petitioner is guilty of committing misconduct of fraud or embezzlement. In the opinion of this Court, the order of dismissal is not sustainable in law.

24. The Hon''ble Supreme Court in the case of Capt. M. Paul Anthony (supra) held that if both the proceedings based on the same set of facts which is sought to be proved by the same witness, the finding recorded by the trial court will override and finding recorded against the employee in the inquiry. Here in this case, the disciplinary inquiry was initiated on the basis of complaint made by Kihsore Singh but he was not examined in the departmental inquiry on the contrary in the FIR filed by the respondent bank the police made investigation from the complainant Kishore Singh and gave finding that no case is made out for committing fraud by the petitioner and upon filing FR by the Police, the learned trial court accepted the FR even after filing protest petition by the respondent bank. The relevant part of the said judgment in the case of Capt. M. Paul Anthony (supra) reads as under:--

"34. There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, ''the raid conducted at the appellant''s residence and recovery of incriminating articles therefrom.'' The findings recorded by the Inquiry Officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by Police Officers and Panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the Inquiry Officer and the Inquiry Officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the "raid and recovery" at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex- parte departmental proceedings, to stand."

25. Similarly, in the case of G.M. Tank (supra), the Hon''ble Supreme Court has

gave the following verdict, which reads as under:

"20. It is thus seen that this is a case of no evidence. There is no iota of evidence against the appellant to hold that the appellant is guilty of having illegally accumulated excess income by way of gratification. The respondent failed to prove the charges leveled against the appellant. It is not in dispute that the appellant being a public servant used to submit his yearly property return relating to his movable and immovable property and the appellant has also submitted his return in the year 1975 showing his entire movable and immovable assets. No query whatsoever was ever raised about the movable and immovable assets of the appellant. In fact, the respondent did not produce any evidence in support of and/or about the alleged charges levelled against the appellant.. Likewise, the criminal proceedings were initiated against the appellant for the alleged charges punishable under the provisions of P.C. Act on the same set of facts and evidence. It was submitted that the departmental proceedings and the criminal case are based on identical and similar (verbatim) set of facts and evidence. The appellant has been honourably acquitted by the competent Court on the same set of facts, evidence and witness and, therefore, the dismissal order based on same set of facts and evidence on the departmental side is liable to be set aside in the interest of justice.

31. In our opinion, such facts and evidence in the department as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though finding recorded in the domestic enquiry was found to be valid by the Courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony''s case (supra) will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed."

26. In the light of the aforesaid judgments, I have considered the facts of the present case and find that charges levelled against the petitioner in the charge-sheet dated 6.6.2000 and the allegation levelled in the FIR registered against the petitioner on the basis of the complaint filed by respondent bank are identical. In the department inquiry in spite of sending notice the complainant did not turn up nor his statement were recorded in the inquiry so as to prove the complaint filed by him, so also complainant Kishore Singh did not demand any amount on the basis of so called receipts alleged to be issued by the petitioner and in the FIR filed by the respondent bank upon same allegation, investigation was made from the complainant Kishore Singh by the investigating officer of FIR No. 182 and gave finding that no offence of fraud is committed by the petitioner, therefore the investigating officer filed FR in the FIR registered against the petitioner on complaint made by the respondent bank. The Addl. Chief Judicial Magistrate No. 1, Jodhpur accepted the FR vide order dated 20.3.2002 even after filing protest

petition by the respondent bank. The fact of accepting the FR is concealed by the respondent even in the written argument submitted by the respondent bank, therefore, it is obvious that respondent bank is somehow wants to held petitioner guilt for alleged offence which is not proved.

27. In the opinion of this Court when in the FIR after investigation from complainant, police filed FR then there is no question to maintain the order of dismissal passed by the respondent bank in an inquiry initiated against the petitioner in pursuance of charge-sheet dated 6.6.2000 in which even the statement of complainant were not recorded nor he attended the inquiry, therefore, the order of dismissal and order of appellate authority are not sustainable in law in the light of the aforesaid judgments rendered by the Hon''ble Supreme Court.

28. I have considered the judgments cited by the learned counsel for the respondent bank. In my opinion, there is no quarrel with regard to the proposition that in the event of proving any charge of embezzlement and fraud against the employee, the court should not interfere in the order of punishment, but it is a case in which charges are not proved in the inquiry, so also, in the investigation of police. More so, the disciplinary authority acted contrary to the basic principle of law so as to dismiss the petitioner from service while taking into account the finding of other inquiry in which no punishment order was passed on the date of dismissal of petitioner''s services. In the opinion of this Court, it is a case of bias and malafide exercise of the jurisdiction against the petitioner because there is no finding in the inquiry that any amount was claimed by the complainant and any amount was paid to the complainant Kishore Singh by the respondent bank, therefore, the dismissal/termination order dated 7.7.2001 and the order rejecting the appeal passed by the appellate authority dated 19.1.2004 deserve to be quashed and set aside.

SBCWP No. 761/2011:

29. In this writ petition, learned counsel for the petitioner submits that the respondent bank issued two charge-sheets to the petitioners under Urban Cooperative Bank Employees Service Rules, 1987 (hereinafter referred to as the Rules of 1987 for short) on 23.2.2000 and 6.6.2000 respectively and present writ petition is related with charge-sheet dated 23.2.2000 in which the petitioner was punished vide order dated 21.9.2001 by the respondent No. 3 whereby the petitioner was dismissed from service.

30. The learned counsel for the petitioner submits that the day on which the impugned order of punishment dated 21.9.2001 was passed by the respondent No. 3, the petitioner was not in service because in pursuance of the charge-sheet dated 6.6.2000 initiated against the petitioner, he was already dismissed from service vide order dated 7.7.2001 by the respondent No. 3. Meaning thereby, the order of punishment dated 21.9.2001 impugned in this writ petition was passed by the respondent No. 3 to dismiss the petitioner from service knowingly well

that petitioner is not in service. The learned counsel for the petitioner submitted that admittedly the day on which the order of punishment in this writ petition was passed the petitioner was not in service but due to bias and malafide attitude of respondent No. 3 the petitioner was again dismissed from service. The learned counsel for the petitioner further argued that biasness of the respondent No. 3 further emerges from the fact that in the order dated 7.7.2000 passed by the respondent No. 3, the finding of inquiry report of the charge-sheet dated 23.2.2000 were taken into account to punish the petitioner, which is evident from the order of punishment dated 7.7.2001 passed by the respondent No. 3.

31. Meaning thereby prior to passing the order impugned dated 21.9.2001 impugned in this writ petition, the respondent No. 3 already made his mind to dismiss the petitioner from service again because the findings of inquiry report of the present case was taken into account so as to punish the petitioner. It is further submitted by the learned counsel for the petitioner, the respondent No. 3 was adamant to remove the petitioner from service malafidely, therefore, on this count alone, the order impugned may be quashed.

32. The learned counsel for the petitioner contended that it is a case in which no proper opportunity of hearing was given to the petitioner nor the relevant documents were given to the petitioner so as to defend himself, therefore, it is obvious that the inquiry in pursuance of charge-sheet dated 23.2.2000 was conducted in hot haste manner and in gross violation of principles of natural justice. It is also brought to the notice of this Court that Managing Director acted as per the recommendation of the inquiry officer without application of mind, therefore, the order impugned may be quashed.

33. Against the order of appellate authority, it is submitted that the then Chairman Amrit Lal Gehlot provided 3 opportunities to the petitioner but the appellate order does not make any reference to those hearing nor the minutes of those hearing have been shown in the appellate order, therefore, the order of appellate authority deserves to be quashed.

34. Per contra, the learned counsel for the respondent submitted that there is no illegality in the order dated 21.9.2001 passed by the disciplinary authority because charges levelled against the petitioner were found to be proved. The learned counsel for the respondents submits that any employee against whom two inquiries are pending, the disciplinary authority can dismiss him twice from service and in this case dismissal order was passed by the respondent No. 3 because charges levelled against the petitioner were proved in the inquiries.

35. After hearing the learned counsel for the parties it emerges from the facts that the day on which the impugned order of dismissal dated 21.9.2001 was passed by the respondent No. 3 no relationship of master and servant was in existence because was already dismissed from service vide order dated 7.7.2001 in another inquiry. In view of the above, the conduct of the disciplinary authority, respondent No. 3 in dismissing the petitioner from service twice clearly indicates

his biasness and malafide attitude because on 21.9.2001 there was no master and servant relationship was in existence in between the petitioner and the respondent bank. I have also perused the order of termination passed on 7.7.2001 in which there is reference of finding given in the inquiry report of the present charge-sheet. Meaning thereby before passing the impugned order dated 21.9.2001 the disciplinary authority already made up his mind to dismiss the petitioner from service in the second inquiry also.

36. All above facts clearly indicates that it is a case of complete biasness and arbitrary exercise of power of the disciplinary authority who has passed an order dated 21.9.2001, therefore, the order dated 21.9.2001 which is passed in gross violation of the principles of natural justice is not sustainable in law. However, now when the order of dismissal dated 7.7.2001 has been set aside in SBCWP No. 760/2011, therefore, matter requires re-consideration by the disciplinary authority while treating the petitioner in service.

CONCLUSION:

(1) SBCWP No. 760/2011:

37. In view of the discussion for SBCWP No. 760/2011, the writ petition is hereby allowed and the order of dismissal/termination dated 7.7.2001 and the order rejecting the appeal passed by the appellate authority dated 19.1.2004 are hereby quashed and set aside with all consequential benefits. However, the petitioner will be entitled only for 50% salary from the date of dismissal to the date of reinstatement.

(2) SBCWP No. 761/2011:

38. In view of the discussion for SBCWP No. 761/2011, the writ petition is partly allowed and the order dated 21.9.2001 passed by the respondent No. 3 and the order of appellate authority dated 19.1.2004 are hereby quashed and set aside and the case is remitted to the disciplinary authority to decide the case afresh after providing a reasonable opportunity of hearing to the petitioner and providing all relevant documents in accordance with law while treating the petitioner in service.

