

(2008) 10 KAR CK 0001
In the Karnataka High Court
Case No : Writ Appeal No. 1394 of 2008

Vijaya Bank and Others

APPELLANT

Vs

Sri Mohan Das Ramana Shetty

RESPONDENT

Date of Decision : 03-10-2008

Acts Referred:

Payment of Gratuity Act, 1972 — Section 4 (6), 4 (6) (a)

Citation : (2008) ILR (Kar) 5022 : (2009) 2 LLJ 241 : (2009) 1 SLR 750

Hon'ble Judges : P.D. Dinakaran, C.J.;Mohan Shantanagoudar, J

Bench : Division Bench

Advocate : V. Rupa, for Harikrishna S. Holla, for the Appellant;

Final Decision : Dismissed

Judgement

P.D. Dinakaran, C.J.—The above writ appeal is directed against the order dated 9-7-2008 made in Writ Petition No. 21279 of 2002 filed by the respondent herein to quash the proceedings dated 26-11-2001 passed by the 3rd appellant herein viz., the Deputy General Manager, Personnel Department (IRD), Vijaya Bank, Head Office, where the Disciplinary Authority had in a disciplinary action initiated against the respondent-employee, based on the findings of the enquiry into the charges arrayed against the respondent-herein, imposed the following punishments:

(a) Reduction to a lower stage in the time scale of MMGS II by one stage for a period of one year which will have the cumulative effect of postponing his future increments.

(b) Removal from service which shall not be a disqualification for future employment.

The aforesaid penalties are to run concurrently i.e., in all penalty of removal from service, which shall not be a disqualification for future employment, is imposed on Sri Mohandas R. Shetty, the Charge Sheeted Official.

The respondent-employee appealed against the said proceedings of the Deputy General Manager dated 26-11-2001 on 8-01-2002 and the same was dismissed by order dated 3-4-2002. According to the Disciplinary Authority viz., the 3rd appellant herein, the charges levelled against the respondent are very grave in nature and attracts major penalty.

2. They are related to allowing overdrawings, failure to obtain prior permission for approval from the controlling authorities in all 67 charges. After a full-fledged enquiry, the enquiry officer who inquired into the charges, of course, after giving a fair and reasonable opportunity to the respondent and following the procedure contemplated under the Regulations, found all 67 charges levelled against him vide charge-sheet dated 16-5-2001 constitutes serious misconduct within the meaning of Regulation 3(1) read with Regulation 24 of the Vijaya Bank Officer Employees" (Conduct) Regulations, 1981 which are actionable under Regulation 4 of Vijaya Bank Officer Employees" (Discipline & Appeal) Regulations, 1981 and the same were proved. It is on this finding the Disciplinary Authority-3 respondent has opined that the charges proved against the respondent-employee have caused serious financial losses and therefore, it would not be proper to continue the service of the respondent-employee in the Bank.

3. In fact, the respondent also has admitted the misconduct committed by him before the enquiry officer. Accordingly, the penalty of removal from service was imposed by the 3rd respondent and the same was as referred to above confirmed by the Appellate Authority by proceedings dated 3-4-2002. At this context it is pertinent to note that the Appellate Authority in his proceedings dated 3-4-2002 had observed that the Branch Office vide their letter dated 16-10-2000 had informed that the chance of recovery of the alleged losses from the respondent-employee is remote and the relevant portion of the order of the Appellate Authority dated 3-4-2002 reads as hereunder:

The branch vide their letter dated 16-10-2000 had informed that the chance of recovery is remote in all the commented accounts except 17 accounts as mentioned in the charge sheet. In 9 cases, legal notice has been issued and Bank has filed a suit in seven accounts. Branch also informed that outstanding balance in various loans sanctioned by the appellant is Rs. 2,24,25,630/- and MOI Rs. 16,25,866/-. Under the circumstances, there is likely huge financial loss to the Bank on account of the irregularities committed by the appellant in various loan accounts during his tenure as Branch Manager of K.R. Puram branch.

7. Disciplinary Authority while imposing the punishment has taken into consideration all relevant records pertaining to the matter, representation of the appellant and gravity/magnitude of the admitted Acts of misconduct committed by him and his past service records. The irregularities committed by him which he has voluntarily admitted have far reaching consequences and Bank is likely to incur huge loss.

4. Aggrieved by the said order of the 3 respondent dated 26-11-2001 and the

order of the Appellate Authority dated 3-4-2002, the petitioner has preferred the writ petition No. 21279 of 2002 before this Court and the learned Single Judge by his order dated 9-7-2008 after hearing both sides, particularly extracting the admission of the charges by the respondent-petitioner himself, held that there is no justification to interfere with the orders impugned. With the risk of repetition we propose to extract the admission of the charges by the respondent himself which reads as hereunder:

I plead guilty of all the charges framed against me in the above said charge sheet.... A letter dated 7-9-2001 duly signed by me in the presence of the D.R. is handed over to you with a request to hand over the same to the Disciplinary Authority. Further, I request you to view the matter leniently.

The learned Single Judge accordingly by his order dated 9-7-2002 held that the admission of the guilt by the petitioner is on his own volition and without being influenced in any way or by any assurance given by the Bank regarding leniency of penalty imposed. While thus dismissing the writ petition, the learned Single Judge confirmed the order of the punishment of removal imposed on the petitioner and held that in so far as the contribution of the Bank towards the provident fund is concerned, the petitioner is entitled for the same.

5. But however, since the loss of the Bank is not yet quantified, the respondent-Bank was directed to pay the contribution of the provident fund with statutory interest under the Regulations with a further direction to the petitioner to execute an indemnity bond for the said amount and gave the following directions:

14. Consequently, the following order is passed:

a) Petition stands allowed in part.

b) The respondent-Bank shall pay the Gratuity, leave encashment and their contribution towards the Provident Fund with interest under the Regulation within eight weeks from the date of receipt of this order.

c) It is clarified that it is only the Provident Fund, which will carry interest as regulated by the Bank.

d) The petitioner shall execute an indemnity bond for the said amount i.e., the amount payable by the Bank towards their Contribution of the Provident Fund.

e) Rule made absolute to the extent indicated above.

Against the said directions, the Bank has preferred this appeal.

6. Smt. Rupa, learned Counsel appearing for the appellant-Bank invited our attention to Section 4(6) of the Payment of Gratuity Act, 1972 and contended that the petitioner is not entitled for gratuity as the same is liable to be forfeited and to that extent the order of the learned Single Judge is required to be interfered with.

It is apt to refer to Section 4(6) of the Act in this regard.

4(6) Notwithstanding anything contained in Sub-section (1),:

(a) the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;

b) the gratuity payable to an employee may be wholly or partially forfeited:

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

7. The object of having gratuity scheme is to provide a retiring benefit to the workman who has rendered long and unblemished service to the employer and thereby contributed to the prosperity of the employer, but it is not correct to say that any misconduct, however grave, may not be visited with the forfeiture of gratuity in view of Section 4(6) of the Act as rightly pointed out by the learned Counsel for the appellant. In other words, if the workman is guilty of serious misconduct, then the gratuity can be forfeited in its entirety vide *The Management of Tournamulla Estate Vs. Workmen*, It is also a settled law that a bare looking at Section 4(6)(a) shows that the right of the employer to forfeit the amount of earned gratuity sine qua non to the extent of damage or loss so caused but such a power in our considered opinion is not automatic. If the employer fails to prove before the Controlling Authority which is functioning under the Act the extent of damage or loss so caused by the employee because of his act of alleged major misconduct, the right to forfeit the gratuity u/s 4(6)(a) is not available to the employer. In other words, before forfeiting the gratuity amount, the employer should afford an opportunity to the employee to the extent why his amount of gratuity be not forfeited, which leads to the conclusion that if no material is brought on record to show that the service of the employee was terminated for any act, willful omission or negligence causing damage, loss or destruction of the employer's property, and if the extent of such damage is not quantified, the provisions of Section 4(6)(a) do not come into operation.

8. The statutory provision for forfeiture of gratuity therefore, must be construed strictly and employer, in the eye of law, has to prove before the Controlling Authority, the extent of damages or loss so caused by the employee, because of his act of alleged misconduct, or/and otherwise the employer is not entitled to invoke Section 4(6)(a). Such proof presupposes a statutory requirement of giving an opportunity to the employee before the Controlling Authority. In short, the decision to forfeit can be taken only after assessing the loss, which can be arrived at only after affording an opportunity to the employee concerned to be heard, which is mandatory before taking such a decision.

9. It is only under such context and background of the case and well settled principle laid down on the point, the learned Single Judge had, in our considered opinion, rightly directed.

(b) The respondent-Bank shall pay the Gratuity, leave encashment and their contribution towards the Provident Fund with interest under the Regulation within eight weeks from the date of receipt of this order.

(c) It is clarified that it is only the Provident Fund, which will carry interest as regulated by the Bank.

(d) The petitioner shall execute an indemnity bond for the said amount i.e., the amount payable by the Bank towards their Contribution of the Provident Fund.

safeguarding the interest of the parties.

10. Therefore, having no reason to interfere with the order of the learned Single Judge, the writ appeal is dismissed.