

(1999) 01 KL CK 0010
In the High Court Of Kerala
Case No : W.A. No. 2736 of 1998

Vincent Varghese

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 20-01-1999

Acts Referred:

Banking Regulation Act, 1948 — Section 10(1)
Constitution of India, 1950 — Article 311
Penal Code, 1860 (IPC) — Section 498A
Probation of Offenders Act, 1958 — Section 12

Citation : (1999) 2 ILR (Ker) 443 : (2000) 1 LLJ 1268

Hon'ble Judges : K. Narayana Kurup, J;Ar. Lakshmanan, J

Bench : Division Bench

Advocate : N. Nandakumara Menon, for the Appellant; P.G. Parameswara Panicker, for the Respondent

Final Decision : Dismissed

Judgement

A.R. Lakshmanan, J.—Heard Mr. N. Nadakumara Menon for appellant and Mr. P.G. Parameswara Panicker for respondents.

2. The unsuccessful Writ Petitioner is the appellant herein. The Original Petition was filed by the appellant challenging Ext. P8 order passed by the Deputy General Manager, State Bank of India, Ernakulam discharging the appellant from the service of the Bank and seeking a direction to the respondent to reinstate the appellant in service with all consequential benefits with effect from the date of his dismissal, and other allied reliefs.

3. The appellant, while working as Clerk-cum-Typist in the 1st respondent Bank, was prosecuted pursuant to a complaint filed by his wife, for the charge of an offence punishable u/s 498A of "the Indian Penal Code (hereinafter to be referred to as "I.P.C."). Section 498A PC deals with the offence of cruelty by husband or his relatives. The Chief Judicial Magistrate, Trichur convicted and sentenced the appellant to undergo rigorous imprisonment for two years and to

pay a fine of Rs. 5,000/-. The conviction and sentence were confirmed, in appeal, by Sessions Court, Trichur, against which the appellant preferred a revision before this Court as Crl. Revision Petition No. 546 of 1991. This Court, by judgment dated March 13, 1992, disposed of the said revision petition setting aside the sentence and directing the Court below to consider whether the appellant could be released on probation for good conduct. This Court directed the Trial Court to pass appropriate orders u/s 4(1) of the Probation of Offenders Act in the light of the report of the Probation Officer. However, this Court found that the appellant was guilty of acts of cruelty both in the legal and physical sense. But, in the particular facts and circumstances of the case, the Court felt that the custodial sentence would not be just or proper and that such a sentence would not serve the intended purpose.

4. While the appellant was continuing in service, the Assistant General Manager of the Bank, the third respondent herein, issued Ext. P2 letter dated May 17, 1993 directing the appellant to show cause as to why he should not be dismissed from service of the Bank under the provisions of Section 10(1)(b)(i) of the Banking Regulation Act. The appellant submitted his reply to Ext. P2 by Ext. P3. The 3rd respondent, by Ext. P4, dismissed the appellant from the service of the Bank on the ground that the release of the appellant on probation under the Probation of Offenders Act would not wash away the guilt of the appellant. Against Ext. P4 order of dismissal the appellant preferred an appeal under paragraph 521 (12) of Sastri Award, which was rejected by communication dated September 15, 1993, The appellant then approached this Court by filing O.P. No. 13312 of 1993. This Court by Ext. P5 judgment, directed the Bank to consider the matter and pass appropriate orders. The Disciplinary Authority, thereafter, passed Ext. P6 order dismissing the appeal and discharging the appellant from service. Ext. P6 order was challenged by the appellant in O.P. No. 14480 of 1995 and this Court, by Ext. P7 judgment, relegated the appellant to prefer an appeal before the appellate authority. Pursuant thereto, the appellant preferred an appeal before the 2nd respondent. By Ext. P8 order, the 2nd respondent dismissed the appeal. Against Ext. P8 order the appellant preferred the present Original Petition, which was dismissed by this Court on October 6, 1998 entering a finding that the appellant is not entitled for a direction for reinstatement. Aggrieved by the said judgment, the appellant has preferred the above appeal.

5. The appellant contends as follows:

A. Ext. P8 order is highly harsh, and authoritarian.

B. The appellant was released on probation for good conduct for a period of two years on the basis of the report and the recommendation of the Probation Officer. Section 12 of the Probation of Offenders Act provides that a person found guilty of an offence and dealt with under the provisions of Sections 3 and 4 of the said Act shall not suffer disqualification, if any, attaching to a conviction of an offence under such law. In view of the said provision it is contended that it should be deemed that there is no conviction at all in the case of appellant.

C. The offence alleged against the appellant does not have any nexus, whatsoever, with the duties of the appellant in the Bank.

D. The 3rd respondent failed to exercise the discretion vested in him under paragraph 521.12 of the Sastri Award inasmuch as he failed to consider whether any lesser forms of punishment mentioned therein could have been imposed on the appellant in the facts and circumstances of the case.

E. In the absence of any enquiry, the order of discharge from service is bad in law.

Along with the Original Petition the appellant has filed Exts. P1 to P8, which are copies of the orders/judgments of this Court in the earlier proceedings, orders issued by the respondents and the representation filed by the appellant.

6. The State Bank of India has filed a counter affidavit opposing the contentions raised in the Original Petition. According to the Bank, the appellant is guilty of the offences charged against him involving moral turpitude. The fact that the appellant was dealt with under the Probation of Offenders Act, according to the Bank, would not obliterate the finding that the appellant was guilty of the offences charged against him and would not obliterate the stigma of his conviction. Section 12 of the Probation of Offenders Act, according to them, does not preclude the department from taking action for the misconduct leading to the offence and to his conviction as per law and the said section is not intended to exonerate a person from departmental punishment. Referring to the judgment of this Court it is argued that any conduct contrary to justice, honesty or good morale involves moral turpitude, which implies depravity and wickedness of character or disposition of the person charged with a particular conduct. It is submitted that the length of service rendered by the appellant is not relevant in the light of the express prohibition contained in Section 10(1)(b)(i) of the Banking Regulation Act against continuance of employment of employees who have been convicted for offences involving moral turpitude. It is further submitted that the respondent Bank is statutorily debarred from continuing the appellant in service in view of the prohibition contained in Section 10(1)(b)(i) of the Banking Regulation Act. When the Criminal Courts have examined the matter and appreciated the evidence on record and held the appellant guilty of the offence, it cannot be nullified in the departmental proceedings.

7. The appellant filed a reply affidavit in the Original Petition contending that by Ext P1 order of this Court in Criminal Revision Petition, the conviction entered by the Courts below has practically been set aside and, therefore, there is no merit in the contention of the Bank in paragraph 12 of the counter affidavit regarding his conviction for an offence involving moral turpitude, and that Section 10(1)(b)(i) of the Banking Regulation Act has no application to the facts of the case in view of Ext. P1 order.

8. The learned single Judge (ABDUL GAFOOR, J.) by judgment dated October 6, 1998, dismissed the Original Petition and entered a finding that the appellant is

not entitled for a direction for reinstatement. The learned Judge, after referring to Section 498A I.P.C., held that the offence under the said section involves moral turpitude and that the expression "Moral Turpitude", though not defined anywhere, means anything done contrary to justice, honesty, modesty or good morals. It was also held that when an offence u/s 498A is established, it can be regarded as one involving moral turpitude and, in such case, Section 10(1)(b)(i) of the Banking Regulation Act is attracted to send away the offender from service. In conclusion the learned Judge has said that in the light of Section 10(1)(b)(i) of the Banking Regulation Act, no authority can impose any lesser punishment than a discharge from service and, therefore, the challenge against Ext. P8 on that ground should also fail and that the appellant is not entitled for a direction for reinstatement.

9. We have heard Mr. Nandakumara Menon for the appellant, who took us through the entire pleading and the orders impugned in this appeal, including the orders passed by this Court in the earlier proceedings and also the orders of the respondents. He also invited our attention to the provisions of Section 498A IPC, Section 10(1)(b)(i) of the Banking Regulation Act, 1949 and Section 12 of the Probation of Offenders Act, 1958. He submitted that the punishment of discharge imposed on the appellant is totally irrational and unreasonable, and that the proportionality of punishment is also the subject matter of judicial review. He invited our attention to the judgment. He would further submit that the offences alleged against the appellant does not have any nexus, whatsoever, with the duties of the appellant in the Bank and that the appellant, who has lawfully and honestly served the Bank for nearly 15 years with clean records of service, ought not have been treated in this fashion and, therefore, the entire reasoning of the single Judge are not plausible.

10. Per contra, Mr. Parameswara Panicker, while denying the contentions of the appellant's counsel, has specifically advanced arguments with reference to Section 12 of the Probation of Offenders Act and cited a few decisions in support of his contentions.

11. We shall now consider the decisions cited by Mr. Nadakumara Menon on behalf of the appellant. In Shankar Dass Vs. Union of India (UOI) and Another, the Supreme Court (a three Judges Bench) has held that Clause (a) of the second proviso to Section 311 (2) of the Constitution of India confers on the Government the power to dismiss a person from service on the ground of conduct which has led to his conviction on a criminal charge and the said power, like every other power, has to be exercised justly, fairly and reasonably. It was further held that the power to impose a penalty carries with it the duty to act justly. In Union of India and Another Vs. Tulsiram Patel and Others, it was held that where a disciplinary authority comes to know that a Government servant has been convicted on a criminal charge, it must consider whether the conduct of the Government servant which led to his conviction was such as warrants the imposition of a penalty and if so, what that penalty should be. For that purpose it

will have to peruse the judgment of the Criminal Court and consider all the facts and circumstances of the case and the various factors set out in *The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others*, The Supreme Court further held that once the disciplinary authority reaches the conclusions that the Government servant's conduct was such as to require his dismissal or removal from service or reduction in rank, he must decide which of these three penalties should be imposed on him and that in doing so, the disciplinary authority must bear in mind that a conviction on a criminal charge does not automatically entail dismissal, removal or reduction in rank of the concerned Government servant. If he fails in all the departmental remedies and still wants to pursue the matter, the Government servant can invoke the Court's power to judicial review subject to the Court permitting it. Where the Court finds that the penalty imposed by the impugned order is arbitrary or grossly excessive or out of all proportion to the offence committed or not warranted by the facts and circumstances of the case or the requirements of the particular service, the Supreme Court held that the court will strike down the impugned order. Referring to *Shankar Doss's* case (supra) it was held that the impugned order of penalty was set aside in that case on the ground that the penalty of dismissal from service imposed on the appellant therein was whimsical and hence he was ordered to be reinstated in service with full backwages. However, the Supreme Court observed that it is not necessary that the Court should always order reinstatement, but can instead, substitute a penalty which, in its opinion, would be just and proper in the circumstances of the case.

12. In *Divisional Personnel Officer v. T.R. Chattappan* (supra) dealing with Section 12 of the Probation of Offenders Act the Supreme Court observed as follows:

"The words 'attaching to a conviction of an offence under such law' in Section 12 refer to two contingencies: (i) that there must be a disqualification resulting from a conviction; and (ii) that such disqualification must be provided by some law other than the Probation of Offenders Act. The Penal Code does not contain any such disqualification. Therefore, it cannot be said that Section 12 of the Act contemplates an automatic disqualification attaching to a conviction and obliteration of the criminal misconduct of the accused. Thus the conviction of a delinquent employee simpliciter without anything more will result in his automatic dismissal or removal from service."

13. In *Union of India v. Parmanand* (1989-II-LLJ-57), which was relied on by counsel on both sides, the Supreme Court held as follows:

"..... There may be cases where the penalty is imposed under Clause (a) of the second proviso to Article 311(2) of the Constitution. Where the person, without enquiry is dismissed, removed or reduced in rank solely on the basis of conviction by a Criminal Court, the Tribunal may examine the adequacy of the penalty imposed in the light of the conviction and sentence inflicted on the person. If the penalty impugned is apparently unreasonable or uncalled for,

having regard to the nature of the criminal charge, the Tribunal may step in to render substantial justice. The Tribunal may remit the matter to the competent authority for consideration on or by itself substitute one of the penalties under Clause (a). This power has been conceded to the Court in *Union of India v. Tulsiram Patel* (supra)."

14. *Allahabad Bank and Another Vs. Deepak Kumar Bhola*, is a case of suspension of an employee pending criminal trial for offences involving moral turpitude. The Supreme Court was considering the case of the respondent therein who was an employee of the Bank, committing forgery and wrongful withdrawing of money from the bank by him, which he was not entitled to withdraw. The Court held that there was an offence involving moral turpitude. The Court further held that an offence involving moral turpitude must depend upon the facts of each case and that one of the most serious offences involving "moral turpitude" would be where a person employed in a banking company dealing with money of the general public, commits forgery and wrongfully withdraws money which he is not entitled to withdraw. In the said case the Supreme Court held that the appellant Bank had jurisdiction to suspend the employee under Clause 19.3 of the First Bipartite Settlement, 1966 and that the very fact the investigation was conducted by the C.B.I., which resulted in the filing of a charge-sheet, alleging various offences having been committed by the respondent, was sufficient for the appellant to conclude that pending prosecution the respondent should be suspended. Mr. Nandakumara Menon next relied on the decision reported in *Joy v. State of Kerala* 1991 (1) KLT 153 wherein, THOMAS, J. (as His Lordship then was) held that a conviction by a Criminal Court is not sufficient to invite the consequence of rendering a member (of the Board of Directors of a Co-operative Society) disqualified unless has been sentenced for an offence involving "moral delinquency". That was a case of a person convicted of an offence under the Kerala Gaming Act, 1960. The charge was that the game of cards was played with money in the residence of the first petitioner therein and since the game was not one for mere skill, the players were charge sheeted. The learned Judge held that if the game played involved more skill than chance, the game would not have crossed into prohibited region, and that the very idea of prohibiting such games in gaming houses is to prevent perpetration of serious crimes. The learned Judge found that the measures is more in the nature of a preventive step and that the game of cards, even if played with money, and in whatever form, does not normally involve any transgression of code of justice or morality to a degree which could be characterised as wickedness of character. On the facts of the said case, the Court held that one cannot take the view that the offences for which the petitioners therein were convicted involve moral delinquency or moral turpitude. In *Saseendran Nair v. General Manager* 1996 (2) KLT 482 which is a decision rendered by a Division Bench of this Court comprising of K.T. THOMAS, J (as His Lordship then was) and N. DHINAKAR, the question posed for consideration was whether the offence u/s 138 of the Negotiable Instruments Act, 1991 involved moral turpitude. DHINAKAR, J.,

speaking for the Bench, observed that an offence u/s 138 of the Act need not necessarily take within its wings the offence of cheating as defined in Section 415 of the IPC and that a cause of action for criminal prosecution u/s 138 of the Negotiable Instruments Act will arise not on the date of issuance of the cheque, but only when the drawer of the cheque fails to pay the amount within the statutory period after he is called upon by the payee through a notice. In conclusion he has held that as the act of issuing a cheque without sufficient funds was not generally regarded as morally wrong or corrupt, the Bench was fortified in their view that an offence u/s 138 of the Negotiable Instruments Act would not normally involve moral turpitude. The next decision relied on by Mr. Nandakumara Menon is the judgment in O.P. No. 7288 of 1998 rendered by this Bench on November 20, 1998. That was a case of removal of a person from service solely for the reason that he was convicted in a criminal case against which an appeal was pending and sentence suspended. In that case, a private complaint was filed against the petitioner, who was a police officer, before the Magistrate's Court alleging offences under Sections 341, 324 and 325 IPC. The Magistrate found the petitioner guilty of offence punishable u/s 325 IPC, convicted and sentenced him to undergo imprisonment for six months with a fine of Rs. 20,000/-. On appeal, the Additional Sessions Court suspended the sentence until further orders. Based on the conviction imposed, the Director General of Police dismissed the petitioner from service. Following the judgments of the Supreme Court in Shankar Doss's case (supra) and Dy. Director of Collegiate Education v. S. Nagoor Meera 1995 LIC 1615 (SC) this Court held that the retention of the petitioner in service can, by no stretch of imagination, be construed as one against the interest of public service. Applying the test rendered in the above two judgments, the Bench held that the petitioner has been found guilty only of an offence u/s 325 IPC, which is comparatively a trivial offence and, therefore, there is nothing wrong in continuing such a person in service. We are of the opinion that the above judgments have no application to the facts of the case on hand and are distinguishable on facts and on law.

15. Counsel for the appellant also relied on the decision reported in In Re "P" an Advocate AIR 1963 SC 1313 wherein the Supreme Court held that mere negligence or error of judgment on the part of an Advocate will not amount to professional misconduct, but different considerations arise where the negligence of the Advocate is gross and such gross negligence involves moral turpitude or delinquency. The Supreme Court also opined that in dealing with this aspect of the matter, the expression "moral Turpitude of delinquency" is not to receive a construction. It was held that if it is shown that an Advocate, in the pursuit of his profession, has done something with regard to it which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency, then it is open to the Bar Council u/s 10(2) of the Bar Councils Act, 1926 or a Tribunal consisting of members of the Bar constituted under (X IV A.R. 18 of the Supreme Court Rules to say that the Advocate has been guilty of infamous conduct in a professional respect. The Supreme Court

further observed that the relevant rules Order IVA of the Supreme Court Rules refer not only to professional misconduct, but to other misconduct as well and that an Advocate invites disciplinary orders not only if he is guilty of professional misconduct, but also if he is guilty of other misconduct, and this other misconduct, which may not be directly concerned with his professional activity as such, may nevertheless be of such a dishonourable or infamous character as to invite the punishment due to professional misconduct itself.

16. In support of his contention, learned counsel for the Bank relied on the following decisions:

1. Pawan Kumar Vs. State of Haryana and another,
2. Allahabad Bank and Another Vs. Deepak Kumar Bhola,
3. Karam Singh Vs. State of Punjab and another,
4. The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others,
5. Sowarn Singh v. State Bank of India 1986 (2) SLR 238
6. Shiam Kumar v. State Bank of India 1990 LIC 1469
7. Union of India and others Vs. Bakshi Ram,
8. Harichand v. Director of School Education (1998 II LLJ 831) (SC).

Sowarn Singh's case (supra) was decided by a learned single Judge of the Punjab and Harayana High Court. That was a case of conviction under the Excise Act, but the offender was released on probation under the Probation of Offenders Act. The learned Judge has also considered the provisions of Article 311 of the Constitution, Section 12 of the Probation of Offenders Act and Section 10(1)(b)(i) of the Banking Regulation Act and paragraph 521(2)(b) of Sastri Award. The learned Judge, following various decisions, held that an employee convicted under the Excise Act, but released on probation under the Probation of Offenders Act can still be dismissed from service. The learned Judge was of the view that release on probation of good conduct may not be a disqualification for contesting the elections of any statutory body but a person could still be dismissed from service if he was convicted by a Criminal Court, though released on probation, if the offence proved against him involve moral turpitude. The decision in Shiam Kumar's case (supra) also was rendered by a learned Judge of the Punjab and Haryana High Court. In that case, the dismissal of an employee from service was challenged by filing a civil suit. The dismissal order was passed by the State Bank of India in view of the conviction of the employee under Sections 120B, 420 and 114 IPC, which involved moral turpitude. The Court held that the employee was liable to be proceeded against according to Section 10 of the Banking Regulation Act and the provisions of Sastri Award and that the said order cannot be challenged on the ground that it was based on mere conviction and not on the conduct which led to conviction. However, the Court in this case held that the

order of dismissal was arbitrary on the ground that nothing was available on record to show that the disciplinary authority took notice of the relevant facts and circumstances of the case or that dismissal was the only punishment which could be imposed. The Court also observed that the order of dismissal had the effect of depriving the appellants before the Court of all benefits of their life-long service in the Bank and also took notice of the fact that the F.I.R. was lodged in that case in the year 1963 and the order of dismissal was passed in 1982. Hence, it was held that the order of dismissal was arbitrary and whimsical. The Court therefore, allowed the case to the extent of substituting the punishment of dismissal from service with that of compulsory retirement from service from the date of the order of the Court with all retiral benefits according to the rules and regulations applicable to them, but without any backwages. The Court also held that Section 10 of the Banking Regulation Act laid down the mandate that a person convicted for an offence involving moral turpitude should not be employed or continued in the service of the Bank. The decision in Harichand's case was rendered by a Bench of two Judges of the Supreme Court. In that case the appellant was convicted for an offence u/s 408 IPC and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs. 1000/-. In appeal the Sessions Judge upheld the conviction, but set aside the sentence and directed release of the appellant on probation u/s 4(1) of the Probation of Offenders Act, 1958. By reason of the appellant's conviction, the respondent Director of School Education dismissed the appellant from service, which was challenged in a writ petition before the High Court. The High Court summarily dismissed the writ petition, against which the appellant employee approached the Supreme Court. It was contended before the Supreme Court that the conviction should not have been taken into account for the purpose of removing the appellant from Government service by reason of the provision of Section 12 of the Probation of Offenders Act, 1958. The Supreme Court held in paragraph 7 of the judgment as follows:

"7. In our view, Section 12 of the Probation of Offenders Act would apply only in respect of a disqualification that goes with a conviction under the law which provides for the offence and its punishment. That is the plain meaning of the words "disqualification", if any, attaching to a conviction of an offence under such law" therein. Where the law that provides for an offence and its punishment also stipulates a disqualification, a person convicted of the offence, but released on probation does not, by reason of Section 12, suffer the disqualification. It cannot be held that, by reason of Section 12, a conviction for an offence she should not be taken into account for the purposes of dismissal of the person convicted from Government service".

The decision in Karam Singh 's case was also rendered by a Bench of two Judges of the Supreme Court Karam Singh Vs. State of Punjab and another, . That was also a case of a policeman convicted under Sections 302, 34, 323 and 324 IPC and consequently dismissed from service. On appeal, the High Court set aside the conviction under Sections 302, 34 and 324 IPC, but upheld the conviction u/s

323 and released him on probation. Under such circumstances, the authority's refusal to reinstate the employee was held by the Supreme Court to be not invalid, though the Court converted the punishment of dismissal into removal from service. In that case it was contended on behalf of the employee that since he was acquitted of the charge for the offence under Sections 302 and 324 IPC and he having been released on probation for the offence u/s 323, it could not be said that there was any impediment in his way for reinstatement and, therefore, the view of the authorities and the High Court was not valid in law. The Supreme Court rejected the contention and following the decision in that Shankar Dass's case (supra), the Court held that the authorities are entitled to consider on the facts in each case whether the appellant therein could be reinstated into the service. The Court also took note of the fact that the conviction in that case was on the ground of the participation of the appellant before the Supreme Court in causing the death of and causing injury to one person and that though he was acquitted of the offence of murder, he being a police constable at the relevant time and being the member of a disciplined force, he was not expected to participate in the commission of a crime; instead, he was expected to prevent the commission. The Supreme Court, following the decision in Bakshi Ram's case (supra) where the Supreme Court considered the effect of Section 12 of the Probation of Offenders Act and the power to remove a public servant from service on the ground of his conviction in a criminal offence involving moral turpitude, though he was released on probation, held that Section 12, though gives a right to the delinquent, does not wipe out the offence and it would be a disqualification attached to the conviction and the authorities would be entitled to take that factor into consideration in imposing the punishment of removal from service. In conclusion, the Supreme Court held in Karan Singh's case that the petitioner being the member of a discipline force, the authorities were justified in rejecting his reinstatement. However, the Court converted the penalty of dismissal into one of removal from service. In Bakshi's case (supra) rendered by a Bench of two Judges, the Supreme Court had the occasion to consider the meaning and effect of the expression "shall not suffer disqualification, if any, attaching to a conviction of an offence under such law." The Supreme Court held that it does not bar infliction of a departmental punishment for misconduct which led to a person's conviction and that the Court, while invoking the provisions of Sections 3 or 4 of the Probation of Offenders Act, does not deal with the conviction, but only deals with the sentence which the offender has to undergo. Instead of sentencing the offender, the Court releases him on probation for good conduct, in which case, the conviction remains untouched and the stigma of conviction is not obliterated.

17. In the context, we may also beneficially refer to paragraph six of the decision in Challappan's case (supra) :

"6. A close analysis of the facts of the case of each of the respondents would doubtless reveal that the points involved in the three cases are almost identical, though the grounds on which the respective High Court have proceeded may be

slightly different. Mr. S.N. Prasad appearing for the appellants in all the three cases raised three points before us:

(1) That Section 12 of the Probation of Offenders Act contemplates an automatic disqualification attached to the conviction and not an obliteration of the misconduct of the accused so as to debar the disciplinary Authority from imposing penalties under the Rules against an employee who has been convicted for misconduct.

(2) Rule 14 of the Railway Servants (Discipline and Appeal) rules, 1962, is in terms similar to Proviso (a) to Article 311(2) of the Constitution confers power on the appointing authority to pass an order of dismissal against an employee who is found guilty of a criminal offence without giving any further notice to the delinquent employee. Further Rule 14 does not in terms contemplates that the appointing authority will consider the penalty after either hearing the accused or after ordering special inquiry.

(3) That in the absence of any provision similar to Rule 14 of the Government is entitled, in the exercise of its excessive power, to terminate the services of the employee who has been convicted of a criminal charge without any further departmental inquiry."

18. The crux of the argument of Mr. Nandakumara Menon is that the allegations levelled against the appellant are not involving moral turpitude and, more over, in view of the provision contained in Section 12 of the Probation of Offenders Act, it should be deemed that there is no conviction at all. The authorities cited and relied on by the learned counsel for the respondent, however, have consistently held that Section 12 of the Probation of Offenders Act does not preclude the department from taking disciplinary action for the misconduct leading to the offence and to the conviction of the employee as per law and that the said section is not intended to exonerate the person from departmental punishment and, therefore, the question of reinstatement into the service from which he was removed in view of his conviction does not arise. That seem to be obvious from the terminology of Section 12 of the Probation of Offenders Act, The decision referred to above and cited by the learned counsel for the respondent Bank on this aspect speaks with one voice. The same view has been expressed by the Madras High Court in the decision reported in *R. Kumaraswami Iyer v. Commissioner Municipal Council Thiruvannamalai* LJ (1956) 2 Mad 562 and *Embaru v. Chairman, Madras Port Trust* (1963 I LLJ 49) (Mad.) by the Andhra Pradesh High Court in the decision in *A. Satyanarayana Murthy v. Zonal Manager, LIC* AIR 1959 AP 37 and by the Madhya Pradesh High Court in *Prem Kumar Vs. Union of India (UOI) and Others*, .

19. In the instant case, the appellant was found guilty of the offence punishable u/s 498A of IPC and convicted and sentenced to suffer rigorous imprisonment for two years and to pay a fine of Rs. 5000/-, which was confirmed by the Sessions Court. The High Court, though found that the appellant was guilty of acts of

cruelty both in the legal and physical sense, set aside the sentence and directed the Court below to consider whether it was not in the fitness of thing to release him on probation of good conduct. Section 498A deals with cruelty by husband or his relatives and the word "cruelty" has been explained to mean any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property of valuable security or is on account of failure by her or any person related to her to meet such demand. The said section has been enacted by the Criminal Law (Second Amendment) Act, 1983 with effect from December 25, 1983 in order to combat the menace of dowry deaths. The statement of objects and reasons for enacting Act 46 of 1983 read as under:

"The increasing number of Dowry deaths is a matter of serious concern. The extent of the evil has been commented upon by the Joint Committee of the Houses to examine the work of the Dowry Prohibition Act, 1961. Cases of cruelty by the husband and relatives of the husband which culminate in suicide by, or murder of the helpless woman concerned, constitute only a small fraction of the cases involving such cruelty. It is therefore, proposed to amend the Indian Penal Code, the Code of Criminal Procedure, and the Indian Evidence Act suitably to deal effectively not only with cases of dowry death but also cases of cruelty to married women by their-in-laws."

The said provision reflects the anxiety to extend protection to the weaker spouse. Traditionally in any society, a woman is subjected to the whims and fancies of man, especially when it relates to the relationship of husband and wife. Cruelty u/s 498A IPC also means willful conduct which postulate such treatment as to cause reasonable apprehension in the mind of the wife that her living with the husband will be harmful and injurious to her life. Courts have held that the act of turning the wife out from the matrimonial home which compels her to live at her parents' house, is an act of cruelty punishable u/s 498A of IPC.

20. In this case, the appellant has been convicted of an offence punishable u/s 498A IPC, which has been confirmed by the Sessions Court. Though the High Court set aside the sentence and directed the Court below to consider whether it was not in the fitness of things to release him on probation of good conduct, the finding of guilty and conviction remained untouched. In the circumstances, the appellant's release on probation of good conduct under the Probation of Offenders Act cannot be taken to preclude the department from taking departmental action for the misconduct leading to the offence and his conviction, as per law. It has been so held consistently by the Supreme Court in the various decisions cited and relied on by counsel for the respondent Bank. In the circumstances, the challenge of the appellant against Ext P8 order discharging the appellant from service cannot stand.

21. In the result, the Writ Appeals fails and is hereby dismissed confirming the

judgment of the learned single Judge. In the circumstances of the case, we make no order as to costs.