

(1998) 10 KL CK 0004
In the High Court Of Kerala
Case No : O.P. No. 494 of 1997

Vincent Varghese

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 06-10-1998

Acts Referred:

Banking Regulation Act, 1949 — Section 10(1)(B), 19, 19(1)(B)
Penal Code, 1860 (IPC) — Section 498A
Probation of Offenders Act, 1958 — Section 4(1)

Citation : (1999) 1 LLJ 1302

Hon'ble Judges : K.A. Abdul Gafoor, J

Bench : Single Bench

Advocate : K. Ramakumar and K.R. Balasubramaniam, for the Appellant; P.G.P. Panicker, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Abdul Gafoor, J.—The petitioner has approached this Court challenging Ext.P8 and seeking a declaration that he is entitled to be reinstated in service with all consequential benefits. He also seeks a direction for reinstatement. Exst. P8 is an order passed in an appeal filed by the petitioner against Ext.P6, whereby the petitioner was discharged from service on the reason that he had committed an offence involving moral turpitude. That order is confirmed by Ext.P8 dismissing the appeal of the petitioner. It is in the above circumstances that he has approached this Court.

2. It is an admitted fact that the petitioner had been prosecuted for commission of offence u/s 498-A and that he had been convicted for imprisonment as well as for punishment of fine. That punishment was upheld by the appellate Court. In revision, this Court also upheld the conviction but he was given the benefit of Section 4(1) of the Probation of Offenders Act, 1958. Though the conviction was upheld, he did not undergo the imprisonment. On the ground that the offence in which the petitioner was found guilty by a criminal Court was one involving moral

turpitude, departmental proceedings were initiated against the petitioner which finally resulted in Ext.P6 order of the disciplinary authority discharging the petitioner from service. That order was challenged by the petitioner in O.P. 14480/1995. That was disposed of relegating the petitioner to the appellate remedy available to him. Accordingly, petitioner resorted to that appellate remedy and his appeal was dismissed as per Ext. P8.

3. It is contended by the counsel for the petitioner that as the petitioner had never undergone imprisonment and this Court had granted the benefit of Section 4(1) of the Probation of Offenders Act, his case ought to have been considered with due advertance to that aspect and the maximum penalty of discharge from service ought not have been imposed and that would not have been confirmed by the appellate authority. In that respect there was no application of mind by either of the authorities. It is submitted that merely because there was a conviction in respect of an offence involving moral turpitude, the order of the disciplinary authority need not result always in dismissal. This aspect also was not considered by the disciplinary authority as well as the appellate authority. The appellate authority also took note of certain facts and the details which had not been considered by the disciplinary authority and that too relating to a subsequent event which resulted in acquittal of the petitioner in another case.

4. Section 10(1)(B)(i) of the Banking Regulation Act, 1949 reads as follows:

"In terms of this provision, a person who had been convicted for an offence involving moral turpitude cannot be continued in the service of the bank".

Therefore, if the offence for which the petitioner had been convicted, is one which involves moral turpitude, there arises no consideration of imposing any penalty lesser than sending out the petitioner from service. So, the only issue is whether an offence under Sec. 498-A involves moral turpitude. Section 498-A IPC reads as follows:

"498A. Husband or relative of husband of a woman subjecting her to cruelty.-Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine".

5. It is clear from the reading of the said Section itself, so far as a civilized society is concerned the offence under the said Section involves moral turpitude. The expression "moral turpitude" has been elaborately explained in Baleshwar Singh Vs. District Magistrate and Collector, Banaras and Others, as follows:

"The expression" moral turpitude" is not defined anywhere. But it means anything done contrary to justice, honesty, modesty or good morals. It implies depravity and wickedness of character or disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but it would be so if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellow men or to

the society in general. If therefore, the individual charged with a certain conduct owes a duty, either to another individual or to the society in general, to act in a specific manner or not to so act and he still acts contrary to it and does so knowingly, his conduct must be held to be due to vileness and depravity. It will be contrary to accepted customary rule and duty between man and man".

It has also been held in *Pawan Kumar Vs. State of Haryana and another*, as follows:

"Moral turpitude" is an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity".

In *Allahabad Bank and Another Vs. Deepak Kumar Bhola*, referring these two decisions, the Supreme Court held that,

"What is an offence involving "moral turpitude" must depend upon the facts of 2 each case".

Thus, it is clear that the offence u/s 498-A if established certainly 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.

6. Benefit u/s 4(1) of the Probation of Offenders Act if extended to an accused to escape from the sentence of imprisonment will not wipe away the guilt established on him. It has been held by the Supreme Court as per the decision reported in *Harichand v. Director of School Education* (1998) II LLJ 831 (SC) that a Government servant cannot escape from dismissal from service on the basis of the conviction on the reason that he had been released on the basis of Section 4(1) of the Probation of Offenders Act. Naturally, the revisional order enabling release of the petitioner on such basis cannot be said to be a ground to impose any lesser penalty than that of sending him away. Out of the several modes of such sending away, the simplest form of discharge is imposed upon the petitioner by the disciplinary authority as well as by the appellate authority.

7. It is true that the appellate authority has adverted to certain other details which according to him "further amplifies that the employee has accepted depravity and wickedness" that too with reference to a criminal case which had been subsequently charged, but resulted in conviction. But, that cannot influence the appellate authority in the matter of determination of the punishment to be imposed on the petitioner. 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 the service. Thus, challenge against Ext.P8 on that ground also fails. The petitioner is not entitled for a direction for reinstatement.

O.P. fails. Dismissed. No costs.