(1989) 11 KAR CK 0044

In the Karnataka High Court

Case No : Writ Petition No. 9251 of 1980

Y. Diwakar Shetty APPELLANT

Vs

Vijaya Bank RESPONDENT

Date of Decision : 30-11-1989

Acts Referred:
Vijaya Bank Officers (Retirement, Resignation and Termination) Rules — Rule 3

Citation : (1990) 60 FLR 449 : (1990) ILR (Kar) 205 : (1990) 1 KarLJ 159 : (1991) 1 LLJ 242

Hon'ble Judges : Mohan, C.J;Hakeem, J

Bench : Division Bench

Advocate : Mohandas N. Hegde, for the Appellant; S.G. Sundaraswamy, for the Respondent

Final Decision : Allowed

Judgement

Mohan, C.J.—Never in a case our conscience has been so much troubled as in the present. The reason why we are obliged to make this prefatory remark will be obvious as we go on with the judgment.

2. First, to the facts of the case. The appellant was issued a Memorandum of Charge by the respondent - Vijaya Bank (hereinafter referred to as the Bank) on 17th of October, 1977 alleging certain discrepancies against him in that, he had fraudulently withdrawn sums from the accounts of the clients of the Bank. In that charge memorandum, the instances of such irregularities amounting to serious misconduct was levelled against him. He was called upon to submit his explanation within seven days from the date of receipt of the Memorandum. The appellant put forth his explanation on 31st of October, 1977. He contended "I once again regret for some of the irregularities made by me which I have accepted unreserved and I request you to excuse me". After submitting his explanation on 15th November 1977, he wrote to the Bank tendering his resignation and requested that he be relieved from the service of the Bank from the date of the acceptance of the resignation. Notwithstanding that on 28th

October 1978 he would write a letter to the following effect:-

"I admit that the withdrawals made by me were unauthorised as on the date of withdrawals. Hence, I admit the charges levelled against me and request that a lenient view may be taken. I further request that an enquiry need not be conducted against me and that I may be saved from any severe punishment."

3. However, he added "even though I have submitted my resignation letter dated 15th November 1977, I request you to kindly reinstate me in service." On 29th of January, 1979, on a perusal of the explanation submitted by the appellant on 31st October 1977, the Bank proposed to award punishment of stoppage of two increments permanently when they fall due with cumulative effect. That proposal was implemented consequent on the appellant agreeing to the same. This was on 17th August 1979. On 7th February 1979, the appellant accepted the proposed punishment awarded to him and he also stated he does not propose to appeal against the decision of the Bank. While the matter stood thus, on 5th March 1979 further to the Memorandum of Charge dated 17th October 1977, another Memorandum of Charge was issued to the appellant by the respondent-Bank. That contained several instances of the appellant discounting cheques of accommodative nature in favour of third parties and therefore disciplinary action proposed to be taken concerning these irregularities. He was called upon to submit his explanation within seven days from the receipt of the Memorandum. The appellant, in his reply dated 25th March 1979, again inter alia stated "I hereby submit that the minor lapses admitted above may kindly be pardoned." He prayed for a lenient view be taken and punishment be restricted to the stoppage of two increments proposed earlier on 29th of January, 1979. While the disciplinary proceedings had gone upto this stage, an enquiry was conducted on 1st of June, 1979. The Regional Manager, Udupi Branch of the respondent-Bank was constituted as Enquiry Officer. He, on an enquiry, came to the conclusion that all the charges levelled against the appellant stood proved. He concluded that the delinquent-Officer had committed various lapses which are mostly of procedural nature and the same stood proved. He also stated that therefore, it is not established and proved as to whether the delinquent-Officer has derived any personal benefits. It was further stated there was no financial loss to the institution, except a commission of Rs.7.25 less collected in respect of B.A.E.D. 44/77 dated 24th April 1977 in the name of Sri Victor Pais, Clerk. The matter was considered by the Joint General Manager by his Memorandum dated 17th of August, 1979. He proposed the punishment of stoppage of one increment permanently when it falls due with cumulative effect. To this, the appellant writes a reply, since it constitutes interesting reading, we propose to set out the reply in full:

"With reference to the above, I have to inform you that I have nothing to represent in this regard. Further, I request you to kindly pass further orders in this regard at your earliest."

A note was put up by the Chief Executive Officer for placing the matter before the Board of Directors. He was of the view that having regard to the proof of charges against the appellant, the Bank having lost its confidence in his reliability and integrity, he should cease to be in the service of the Bank. Therefore he suggested that the appellant be discharged from Bank''s service by paying him three months'' salary in lieu of the notice in accordance with the Service Rule No. 111 of the revised Chapter on "Retirement, Resignation and Termination" as communicated in the Bank''s Circular No. 4/76. He also suggested a proposed resolution. Whereupon, the Board at its Meeting dated 12th April 1980, took for consideration the subject listed in the agenda as No. C-24 namely, to approve the discharge of Sri Y. Diwakar Shetty, former Branch Manager, Mani Branch presently under suspension, from the service of the Bank. The decision was to the following effect:-

"Decision: The Board perused the Memorandum dated 29th February 1980 placed by the CEO proposing termination of Sri. Y. Diwakar Shetty, former Manager of the Bank''s branch at Mani from the services of the bank and resolved that the services of the said Officer be and are hereby terminated and that 3 months'' salary in lieu of notice be paid to him by the Bank in accordance with Service Rules of the Bank.

Sd/- V. Ramanathan, Secretary"

As a sequel to this, the impugned order came to be passed by the institution of Vijaya Bank on 14th of May, 1980. How the institution has come at this stage, we have got to observe in about pausing because on 15th of April, 1980, Vijaya Bank stood nationalised. It was this order which was challenged in Writ Petition No. 9251 of 1980, before our learned Brother Justice Doddakale Gowda. As we see from the order, two grounds were raised before him:

(1) The power exercised under Rule 3 of the Rules governing the service of Officers (Retirement, Resignation and Termination) . was illegal and void since such a power was arbitrary and unguided.

(2) On the contrary, if the termination was punitive in character, the Joint General Manager alone was competent to take action and the Board had no authority.

Both these contentions were held to be untenable by the learned Judge. As a result, he dismissed the writ petition. It is under these circumstances, the writ appeal has come to be filed.

4. The learned Counsel for the appellant, without raising this paint in the Memorandum of Appeal, prayed for a relief to raise this question of law. That being as follows :-

The appellant was issued a show cause notice on 29th January 1979 proposing stoppage of increment. Even after the enquiry was conducted on 1st June 1979 and findings were rendered on 15th June 1979 by show-cause notice dated 17th August 1979 what was proposed was only the stoppage of one increment. It was that case, the appellant was called upon to meet. Without he being made aware at any point of time, to meet a case of discharge of his services or termination of services, suddenly he is visited with the impugned order dated 14th of May, 1980 without even a formal show-cause notice. Therefore, this is totally opposed to all accepted principles of natural justice. The next submission of the learned Counsel for the appellant is, even assuming without admitting for a moment, that no notice be given for passing the order of termination, there is not even a communication in the impugned order as to how such a conclusion has come to be arrived at by the Board and whether it had accepted the findings of the enquiry authority. On the contrary, it is merely resort to Rule 3 as though it is a case of termination simpliciter. If such an interpretation is to be, it ignored the various disciplinary proceedings that had taken place. Therefore, the impugned order suffers from the vice of non-application of mind as well.

5. No doubt, these points have not been specifically urged. Nevertheless since the facts are before this Court and what is sought to be argued are purely questions of law on the admitted facts, in the interest of justice, the appellant may be permitted to raise these points.

6. Mr. S. Sundaraswamy, learned Counsel appearing for the Bank stated, as the Rule then stood, there was no necessity on the part of the Bank to issue a show-cause notice in relation to punishment.

7. Secondly, whatever may be the language in which the impugned order of termination of the appellant''s services is couched, one must have regard to the substance of the matter rather than form. Where, therefore, there was a disciplinary enquiry and as a sequel to that, the appellant''s service came to be terminated, merely quoting of wrong provision would not render the order bad. As a matter of fact, when the entire note prepared by the Chief Executive Officer was before the Board, it must be deemed it was that which weighed with the Board in arriving at the decision of termination of services. Therefore, no exception, could be taken to the ultimate order of termination of services.

8. We have set-out the facts in some length in order to show how the Bank at every point of time had committed mistakes. Rather this is a case of mistake after mistake. The proceedings bristle with infirmities. We are even tempted to quote John Dryden "errors like straw flow on the surface." Why we are constrained to make all these remarks will be evident when we go to the relief part of it.

9. It is common knowledge that Bank is an institution where confidence and integrity alone shall count. These are the basis on which the entire banking operation takes place. Here is an Officer who tried to defraud that confidence or shake the very confidence by his various acts of misconduct. He offered to resign on 15th November 1977. The Bank is silent. Again the appellant admits the charge. Then again, the opportunities not ceased as to terminate the service on that admission. More so, when he prayed that no enquiry should be conducted,

strangely the Joint General Manager proposes the stoppage of two increments. For our part, we should say, it passes our comprehension as to how such a punishment came to be proposed and more so, that was implemented on 17th August 1979. If the matter had stood at this stage atleast one could understand. But on 5th March 1979, further charges are framed about the discounting of cheques of accommodative nature and the payments made in respect of stale and post-dated cheques etc. These, we consider, are serious enough to warrant dismissal. Strangely, after an enquiry conducted on 1st June 1979, the findings are rendered on 15th July 1979. The charges had been proved. Even then, what is proposed is the stoppage of one increment permanently by the Joint General Manager. We are obliged to repeat that remark. This again passes our comprehension, as to how and why the Joint General Manager was so solicitous to the delinquent-Officer. All that we may say is, there is something more than that meets the eye. No wonder, under these circumstances, the appellant would say that this order of stoppage of one increment be passed at the earliest. After all this, the Bank wakes up like a Rip Van Winkle. May be, perhaps some Officer was atleast conscious of his duties. Therefore, the Chief Executive Officer put up a detailed note proposing termination, as he understood the law. He proposed discharge of appellant from the service by paying three months'' salary in-lieu-of notice in accordance with Rule-3 of the revised Chapter "on Retirement, Resignation and Termination." Whether it is correct or not, we would not go into it. Then ultimately comes the impugned order passed by the institution. The reason why we say this is the Bank had committed repeated mistakes. Having regard to the serious misconduct, the correct punishment that could be inflicted would be termination of services. That of course, dawned on the Bank lately. Even then can we not expect the Bank to issue show-cause notice as to why the services of the appellant should not be discharged. It is already seen that show-cause notice only related to stoppage of one increment. Rightly therefore it is contended on behalf of the appellant before us, it was that case in relation to the punishment of stoppage of increment, the appellant was called upon to meet. Where, therefore, without any notice, without the appellant being aware, like a bolt from the blue, the older dated 14th of May, 1980 comes to be passed. We have not the slightest hesitation in holding that it is in clear violation of the elementary principle of natural justice namely ''audi atteram partem.'' Thus, we are left with no other option but to set aside this order of discharge. We may, at this suite remark, Mr. Sundaraswamy, learned Counsel appearing for the Bank, does not even for a moment contend that the order of termination is not punitive in character having regard to the antecedent enquiry by way of disciplinary action.

10. Should we proceed on that basis we find it hard as to how resort is to be had by the Bank to Service Rule 3. Whatever it may be, it is punitive in character. However, the learned Counsel for the respondent Bank would state that the Board considered the findings of the Enquiry Officer and then decided to terminate the services. We are unable to persuade ourselves to this conclusion.

The order dated 14th of May, 1980 does not even make an oblique reference to the findings of the Enquiry Officer. As a matter of fact, the Chief Executive Officer himself would not say accepting the charges of Enquiry Authority, the appellant must be dismissed from service. He has only proposed discharge from service under Rule 3. It had been blindly accepted by the Board of Directors. We take it this is hardly the way the banking institution could ever be run. When there are solicitors at its elbow, why such a gross mistake had come to be committed is entirely for the Bank to explain. Because of these mistakes, we have weighed and re-weighed the matter in coming to the conclusion and setting aside the order of termination. That too in favour of a person who certainly cannot by any sense be considered to be a proper Officer of the Bank. We have no other option but to allow the appeal. To this situation, it is the -''Bank which had contributed and it has in fact fed the canon of the appellant. It was this which made us to remark in the opening part of the Judgment - "Never was our conscience troubled so much as in this case."

11. In coming to the relief, it is well settled in law, the issuance of certiorari would remove offending order. Therefore, the order of termination has to be set-aside. However, we afford liberty to the Bank to take such further action by issue of proper notice as may be warranted or as may be deemed fit by the Bank.

12. We make the Rule nisi absolute. It is as though the appellant is restored to the services. Fortunately for the Bank, the learned Counsel for the appellant Mr. Mohandas N. Hegde fairly agreed that the appellant would forego one half of his salary. We record his submission and hold that the appellant would be entitled to only one half of the salary, in other words, half of all that, had he earned if he had been in continuous service.

13. Writ Appeal allowed. No costs.

