

(1995) 09 AHC CK 0127

Allahabad High Court

Case No: CM.W.P. No. 37502 of 1993

Dharma veer Singh

APPELLANT

Vs

District Co-operative Bank Ltd.
and Another

RESPONDENT

Date of Decision: Sept. 6, 1995

Acts Referred:

- Penal Code, 1860 (IPC) - Section 120B, 409, 477, 477A

Hon'ble Judges: S.C. Jain, J

Bench: Single Bench

Advocate: H.N. Tripathi, for the Appellant;

Final Decision: Dismissed

Judgement

S.C. Jain, J.

Sri Dharma veer Singh (hereinafter called the Petitioner) was working as a Class-III employee in District Co-operative Bank Ltd. Bijnor since the year 1984. On account of some alleged financial irregularities, he was placed Under suspension on 6.3.1987 and charge-sheet was served upon him on 28.4.97. Thirteen charges were leveled against the Petitioner and departmental proceedings continued. The Petitioner submitted reply on 22.6.1987 against the said charges. Nine charges were found proved against the Petitioner by the Enquiry Officer In his report dated 20.7.1987. Before any final order could be passed on the basis of the enquiry report dated 20.7.1987, the Branch Manager Under whom the Petitioner was working, lodged two first information reports on 4.9.1987 and 22.9.1987 in respect of serious embezzlement charges against the Petitioner which were not mentioned in the first charge-sheet and the same were brought to the notice of the bank authorities. The Board of Directors of the Bank passed resolution for framing additional charges of embezzlement and other financial irregularities and Sri O.P. Sharma, senior Manager was appointed as Enquiry Officer in respect of additional charges. Later on, the said enquiry was conducted by Sri I.P.S. Raja, Senior Manager of the Bank

after the transfer of Sri O.P. Sharma. Sri I.P.S. Raja completed the enquiry and submitted his report to the Bank on 12.2.1994 which was placed by the Secretary to the Board of Directors on 15.3.1994. The Board considered the enquiry report and it was resolved that the Petitioner be served a show cause notice mentioning the facts that why his services be not terminated on the basis of the enquiry report. Despite the receipt of the said show cause notice, the Petitioner did not submit any reply. On 25.4.1995, the Petitioner had personally appeared before the Board of Directors of the Bank, the appointing authority of the Petitioner and requested to grant some more time for submitting his reply and the time was granted to file the reply. It appears that the reply was filed only on 28.7.1995.

2. This writ petition has been filed challenging the suspension order mainly on the ground that though he was suspended on 6.3.1987 but the enquiry has not yet completed and he is under suspension since then which is illegal and against the Provision of U.P. Co operative Society Employees Service Regulations, 1975.

3. Much stress has been laid by learned Counsel for the Petitioner on the point that according to the Regulation 85 (x) of the U.P. Co-operative Society Employees Service Regulations, 1975, the Petitioner cannot be continued suspension for more than six months. The said provision reads as Under:

85 (x) No employee shall ordinarily remain under suspension for more than six months.

4. On the basis of the aforesaid provision, the Petitioner stated that the suspension effected by order dated 6.3.1987 could not be continued for more than six months. He put reliance on a decision of this Court in Lalit Mohan v. Secretary General Manager, District Co-operative Bank reported in 1995 UP UIEC 451 in support of his contention wherein the suspension order which continued for more than six months was quashed.

5. Learned Counsel for the Respondents put much stress on the word ordinarily in the said provision and contended that the said word "ordinarily" empowers the Respondents to continue suspension for more than six months in appropriate circumstances. According to the learned Counsel, there has not been any delay in serving the charge-sheet on the Petitioner after passing the suspension order. The suspension order was passed on 6.3.1987 and charge-sheet was served on 27.4.1987. Full opportunity was granted to the Petitioner to inspect the documents and to file the reply. It is the act and conduct of the Petitioner which has caused the delay in the conclusion of the enquiry proceedings. The enquiry was concluded on the earlier charges as far back as 20.7.1987 but on account of additional charges of embezzlement of Rs. 62,000, further enquiry was to be made and that enquiry has also concluded. It is the Petitioner who is delaying the matter and avoiding to Reply to show cause notice on the point of punishment.

6. In view of the facts and circumstances of the present case, the learned Counsel for the Respondents submitted that it cannot be said that the order of suspension is bad in the eyes of law and against the provisions of 85 (x) Uttar Pradesh Cooperative Society Employees Service Regulations, 1975.

7. After going through the submissions made by the learned Counsel for the parties and on perusal of the record, I find that the suspension order is not liable to be set aside in view of the facts and circumstances of the present case.

8. Regulation 85(x) of Uttar Pradesh Cooperative Society Employees Service Regulations, 1975 reads as Under:

No employee shall "ordinarily" remain under suspension for more than six months.

9. The word ordinarily used in the provision has a significant meaning. This word "ordinarily" has been considered in various statutes and in its implications, it seems that the word "ordinarily" means that unless and until there are special circumstances, no employee shall remain under suspension for the period of more than six months. In view of the facts and circumstances of the present case, there are special circumstances which allow the continuance of the suspension order of the Petitioner beyond the period of six months. There has not been any delay on the part of the Respondents to serve the charge-sheet. Full opportunity was granted to the Petitioner to file the reply and to argue his case. Even after conclusion of the enquiry, as per the law, opportunity was granted to the Petitioner to file the reply on the point of punishment but despite opportunities granted, he did not file any reply. In the decision of this Court, in *Lalit Mohan v. Secretary /General Manager, District Cooperative Bank (supra)*, the facts were different. In that case the charge-sheet was served on the Petitioner very late and in those circumstances, the continuance of the order of suspension was quashed holding it to be illegal. Each and every case has to be decided on the facts and circumstances of that particular case. There are serious allegations of embezzlement of the Government Fund by this Petitioner and that two criminal cases being case Nos. 477/87 and 526/87 Under Sections 409, 477, 477A and 120B.I.P.C. were got registered against him which are still pending. I find no force in the argument advanced by the learned Counsel for the Petitioner for quashing the suspension order though it is more than six months old. Subsistence allowance is being paid to him regularly. The enquiry is completed and only the punishment point remains to be performed by the appointing authority.

10. This writ petition is, therefore, dismissed. It is hoped that disciplinary authority shall take final decision on the enquiry report submitted before it at the earliest, if not already taken.