
Shamsher Singh Vs General Manager (Personnel), Punjab and Sindh Bank and Others

Civil Misc. Writ Petition No. 14446 of 1996

Court: Allahabad High Court

Date of Decision: Aug. 21, 2015

Acts Referred:

Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 - Section 19

Citation: (2015) 10 ADJ 572 : (2016) 114 ALR 91 : (2015) 6 AWC 6451

Hon'ble Judges: Arun Tandon and Bharat Bhushan, JJ.

Bench: Division Bench

Advocate: S.K. Gaur and K.K. Arora, for the Appellant; Kushal Kant, Nagendra Kumar Mishra, K.N. Kesari, R.N. Kesri and S.C., for the Respondent

Final Decision: Dismissed

Judgement

1. Heard Shri S.K. Gaur, counsel for the petitioner and Shri R.N. Kesari, counsel for the respondent Bank. Petitioner before this Court, Shamsher

Singh, was employed as Branch Manager, Punjab and Sind Bank (nationalised Bank). He was proceeded with departmentally resulting in an order

of the disciplinary authority i.e. Zonal Manager dated 20.3.1994 where-under he was dismissed from service.

2. Not being satisfied, the petitioner filed an appeal before the next higher authority which was partly allowed by the Deputy General Manager

(Personnel) vide order dated 3.5.1995. The penalty of dismissal from service was substituted by an order of compulsory retirement. A review

application was filed by the petitioner before the General Manager which came to be dismissed by General Manager (Personnel) vide order dated

30.6.1996.

3. Against the aforesaid three orders, petitioner has preferred Civil Misc. Writ Petition No. 14446 of 1996. The connected Writ Petition No.

37230 of 1998 has been filed by the same petitioner for a writ of mandamus commanding the respondent Bank authorities to provide pensionary

benefits to the petitioner consequent to the order of punishment of compulsory retirement.

4. The writ petitions came to be decided under a common judgment and order of the High Court dated 13.12.2000. The Division Bench of the

High Court held that in accordance with the provision of Punjab and Sind Bank Officer Employees" (Discipline and Appeal) Regulations, 1981

(herein after referred to as the Regulations, 1981), the disciplinary authority in respect of officers like the petitioner who were members of Junior

Management Grade (Scale-I) was the Deputy General Manager (Personnel) and the Appellate Authority was the General Manager/Deputy

General Manager, as per the schedule of the Regulations.

5. The Division Bench, therefore, held that since the punishment order had been passed by the Zonal Officer, it was an order made by an

incompetent authority. Similarly the order passed by the Appellate Authority i.e. Deputy General Manager was by an incompetent officer. The writ

Court, therefore, held that both the orders of punishment made by the disciplinary authority as modified by the Appellate Authority cannot be

legally sustained for want of authority. The Writ Petition No. 14446 of 1996 was allowed and the order of punishment was set aside. It was

directed that the petitioner would be deemed to have continued in service and entitled to all consequential benefits.

6. So far as the connected writ petitions is concerned, it was held that issues raised therein have lost all efficacy in view of the first petition being

allowed. Review application filed by the Bank was also dismissed.

7. The employer bank, not being satisfied with the order of the High Court filed Special Leave to Appeal before the Supreme Court which was

converted into Civil Appeal No. 7089-91 of 2002. The bank contended before the Apex Court that the Regulations, 1981 had since been

amended and the disciplinary authority as well as Appellate Authority had been substituted under the amendments which aspect of the matter has

not been considered by the High Court. It was also brought to the notice of the Apex Court that a Review Application was filed bringing on record

the said fact to the notice of the High Court but the High Court has refused to entertain the review application.

8. The Apex Court, after taking note of what has been recorded above, came to a conclusion that the order of the High Court refusing to entertain

the review application and recall its earlier was not justified.

9. The Apex Court held that writ petition was liable to be heard afresh on the basis of the amended Regulations. The bank was, however, directed

to pay a sum of Rs. 5000/- as cost to the employee. The appeals were disposed of with the aforesaid directions.

10. Accordingly, the writ petitions have been listed before us for hearing afresh.

11. Counsel for the respondent Bank referred to the counter-affidavit which was filed in the present petition on 2.1.2001 alongwith recall

application wherein the amendments made in the Regulations, 1981 were brought on record before the High Court.

12. According to the counsel for the Bank under the amended Regulations enforced with the consent/concurrence of the Reserve Bank of India

and the Union of India, substituted the disciplinary authority in respect of the employees belonging to the cadre of Junior Manager Cadre (Scale-I)

as the Zonal Head in place of Deputy General Manager (Personnel) and also substituted the First Appellate Authority as Deputy General Manager

(Personnel). It is, therefore, contended before us that the order made by the Zonal Manager who is the Zonal Head in his capacity as the

disciplinary authority was well within his competence.

13. Counsel for the petitioner in reply however submitted that the documents which have been brought on record before this Court dated

13.4.1998 said to be the amendment is only an internal circular. The service condition of the employees of the nationalized Bank are required to be

framed under Section 19 of the Banking Companies (Acquisition and Transfer etc.) Act, 1980 in consultation of the Reserve Bank of India and the

Central Government which has not been done. Lastly, it is submitted that in view of Section 19 of the Act, 1980 the Regulations are required to be

published in the official gazette before they can be enforced. Since publication had not been taken place in any official gazette, therefore, the order

passed by both the authorities are wholly without jurisdiction.

14. We have heard learned counsel for the parties and have gone through the records of the present writ petition.

15. We may first deal with the issue with regards to the publication of the amendments made in the Regulations, 1981 in official gazette. The

provision for publication of Regulations drawn under Section 19 being published in official gazette had been introduced by amendment in the Act,

1980 vide Act No. 66 of 1988 w.e.f. 30.12.1986. Prior to the said date there was no provision for publication of the Regulations in the official

gazette. In the facts of this case amended regulation were introduced on 13.4.1988 i.e. prior to the amending Act 66 of 1988. The amendment in

Section 19 is only prospective in nature. The objection taken, therefore, does not stand the test of scrutiny.

16. So far as the issue of consultation with the Reserve Bank of India and prior approval of the Central Government is concerned, we find that the

Circular dated 13.4.1988 specifically record that in the amendments in the Regulations, 1980 are being made in consultation with the Reserve

Bank of India and with the previous sanction of the Central Government.

17. There is little or no reason for us to disbelieve the facts so disclosed in the circular of the Punjab and Sind Bank which has been issued by the

Head Office, New Delhi.

18. In the aforesaid circumstances, we have no hesitation to record that on the date the order of punishment dated 20.3.1994 was made by Zonal

Manager, the amended regulation had come into force and he was competent to act as the disciplinary authority.

19. Similarly we find that the order passed in the appeal by the Deputy General Manager is also by a competent authority as per the amended

provisions of Regulations, 1980 as noticed above. We, therefore, hold that both the orders have been made by the competent authority. There is

no lack of jurisdiction.

20. No other ground has been pressed before us for challenging the order of both the authorities concerned.

21. Counsel for the petitioner has however placed reliance upon the judgment of the Apex Court in the case of Rajendra Agricultural University

Vs. Ashok Kumar Prasad and Others, and in the case of Collector of Central Excise Vs. New Tobacco Co. Etc. Etc., , in support of his plea that

it is only the competent authority which has the jurisdiction to pass the order of punishment. There is no issue with regards to the legal proposition

so laid down. The cases relied upon by the counsel for the petitioner are clearly distinguishable in the facts of the present case.

22. Writ petition lacks merit and is accordingly dismissed. Interim order, if any, stands discharged.