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(2009) 12 MAD CK 0129

Madras High Court

Case No: Writ Petition No. 12266 of 2000

M. Krishnasamy	APPELLANT
Vs	
The General Manager and The Deputy General Manager, Syndicate Bank	RESPONDENT

Date of Decision: Dec. 15, 2009

Acts Referred:

- Constitution of India, 1950 - Article 226
- Syndicate Bank Officer Employees (Conduct) Regulations, 1976 - Regulation 24, 3(1)

Hon'ble Judges: K.K. Sasidharan, J

Bench: Single Bench

Advocate: P. Arumuga Rajan, for the Appellant; Karthik, for T.S. Gopalan and Co., for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K.K. Sasidharan, J.
The petitioner challenges the disciplinary proceedings initiated against him and culminated in his termination as per proceedings dated 27.1.1999 as confirmed by the appellate proceedings dated 17.2.2000 on the file of the first respondent.

The Factual Matrix:

2. The petitioner was appointed as a Farm Representative in Syndicate Bank on 1.4.1980. The post was later re-designated as Rural Development Officer. In the year 1990, he was promoted to the post of Manager. His service throughout was blemish-less. Subsequently in the year 1994, he was posted in Namakkal Branch. He was against posting there as the said place happened to be his native place.

3. The petitioner was later transferred to the branch at Karur and while he was working there he received a proceeding dated 30.11.1998 from the second respondent placing him under suspension pending initiation of disciplinary proceedings on account of certain irregularities alleged to have been committed during his functioning at Namakkal. It was followed by a charge sheet dated 1.2.1989.

4. The petitioner was accused of sanctioning an overdraft facility to M/s. K.S.N. Sago Factory without proper appraisal and without obtaining confidential opinion from the existing bankers as well as discounting two cheques in favour of two parties. The petitioner submitted his explanation to the charges on 21.2.1999. However the second respondent decided to proceed further and appointed an enquiry officer.

5. Before the enquiry officer, the management examined two witnesses and produced nine documents. The enquiry officer submitted a report on 4.9.1999 holding that Article of Charge No. 1 except irregularity Nos. 5 and 6 and Article of charge Nos. 2 and 3 were proved.

6. The second respondent issued a second show cause notice on 7.10.1999 enclosing a copy of the enquriy report and called upon the petitioner to offer his reply. The petitioner submitted his objections to the second show cause notice. The second respondent passed an order of termination on 27.11.1999. The said order was challenged before the first respondent. However the first respondent by way of a brief order dismissed the appeal on 17.2.2000. Accordingly the petitioner is before this Court.

Counter:

7. The second respondent has filed a counter in reply to the allegations and averments as contained in the affidavit filed in support of the writ petition. According to the second respondent, the charges were grave in nature and the punishment imposed was in proportionate to the gravity of the charges. During the enquiry it was found that the petitioner violated the guidelines jeopardizing the interest of the bank and exposed the bank"s funds to serious risk. Therefore it cannot be said that there was no materials before the enquiry officer to come to a definite finding that the charges were proved.

Submissions:

8. The learned Counsel for the petitioner contended that the materials produced before the management was not sufficient to come to a definite conclusion that the petitioner was involved in a serious misconduct. The learned Counsel took me through the pleadings no evidence as well as documents to substantiate his contention that there was no basis for the charges levelled against the petitioner. According to the learned Counsel there was no loss to the bank and the alleged apprehension alone was taken as the basis for the enquiry proceedings and to punish the petitioner.

9. The learned Counsel for the bank supported the impugned order. According to the learned Counsel in matters relating to bank, the concern is one of integrity and honesty and the question of loss is immaterial. According to the learned Counsel the charges levelled against the petitioner were very serious in nature and it shows that the petitioner was not safeguarding the interest of the bank. Therefore the bank was well within its powers to order an enquiry and to take ultimate decision to remove him from service on the basis of the enquiry report.

Analysis:

10. The petitioner was working in the branch at Namakkal from 5.5.1994 to 27.6.1996. The petitioner is also a native of the said District. The charges framed against the petitioner reads thus:

Articles of Charge No. I

That Sri. M.Krishnasamy was functioning as Manager at Namakkal branch during the period between 5.5.1994 and 27.6.1996 and while functioning in his position as such, he sanctioned/released an overdraft facility of Rs. 16.00 lakhs to M/s. K.S.N.Sago Factory by misusing his official position without proper pre-sanction appraisal, obtaining confidential opinion from the existing bankers of the prospective borrower and their associate concerns and ensuring and utilisation as appended herebelow:

By extending the above credit facility he unduly accommodated the borrower and exposed bank''s funds to the extent of Rs. 16.00 lakhs to the risk of financial loss.

By his aove acts, Sri. M.Krishnasamy failed to discharge his duties with utmost integrity and honesty and exhibited conduct unbecoming of the status of a Bank Officer and thus contravened Regulation No. 3(1) read with Regulation No. 24 of Syndicate Bank Officer Employees (Conduct) Regulation, 1976.

Articles of Charge No. II:

That further, Sri. M.Krishnasamy misused his official position and authorised discounting of two cheques for Rs. 45,500/- and Rs. 30,000/- to Sri. A.Palanivel and Sri. A.N.Pandian on 18.4.1998 and 9.5.1998 respectively to accommodate the parties/his relatives which were returned unpaid.

By his above acts, Sri. M.Krishnasamy failed to discharge his duties with utmost integrity and honesty and exhibited conduct unbecoming of the status of a bank officer and thus, contravened Regulation No. 3(1) (read with Regulation No. 24) of Syndicate Bank Officer Employees'' (Conduct) Regulations 1976.

Articles of Charge No. III:

That also on 28.2.1998, Sri. M.Krishnasamy fraudulently authorized a debit of Rs. 31,772/- to UCB account without any valid information or advise about the realisation of an outstation cheque for Rs. 31,772/- sent for collection and cusd credit of the proceeds to Current Account of M/s. Vel Tech Auto Wheel, whose proprietor Sri K.Arunachalam is reported to be his relative. Thereby he misused his official position and unduly accommodated Sri. K.Arunachalam at the cost of the Bank.

By his above acts Sri M.Krishasamy failed to discharge his duties with utmost integrity and honesty and exhibited conduct unbecoming of the status of a Bank Officer and thus, contravened Regulation No. 3(1) read with Regulation No. 24 of Syndicate Bank Officer Employees'' (Conduct) Regulations 1976.

11. The first charge relates to sanctioning over draft facility of Rs. 16 lakhs to M/s. K.S.N. Sago Factory without obtaining confidential opinion from the existing bankers of the prospective borrowers and their associate concerns and ensuring the end utilisation of money. The unit was purchased by the borrower on 25.6.1997. The proposal was made in 1998 and the amount was also paid. The enquiry officer found that usual procedures were not followed in the matter of granting over draft facility. It is true that the borrower has submitted SSI Registration Certificate. However the other necessary certificates and documents were not collected from the borrower. It is also found that the party was permitted to withdraw the amount on thirteen occasions. The enquiry officer found that no attempt was made by the petitioner to verify as to whether the amount was utilised for the purpose for which the loan was taken. The enquiry officer also found that a cheque for a sum of Rs. 7 lakhs was issued in the name of Mr. T.V. Venkatesan. The said Venkatesan was none other than the Collection Clerk of the said Factory. The amount was utilised to discharge the financial obligation of Sri. S.P.Sengottuvelu, Proprietor of the factory. Another cheque issued for a sum of Rs. 3 lakhs in the name of K.Murugesan was encashed on the very same day. The said Murugesan was none other than the Manager of M/s. K.S.N.Sago Factory during the relevant point of time. Therefore it is clear that the petitioner has not exercised his banking function effectively and the amount was allowed to be used for a different purpose.

12. The next charge relates to discounting certain cheques. The discounted cheques were returned unpaid by the drawee bank for want of funds. The petitioner appears to have not verified the account of the customer, which contains similar incidents earlier. There were also other acts of discounting cheques which were returned unpaid.

13. The third charge relates to debit of a sum Rs. 31,772/- to UCB account without any information or advise about realisation of the cheque from the Bangalore office. It was done to accommodate a party. The petitioner made a false entry by recording in USB Debit Slip that CDD is realised.

14. The evidence, both oral and documentary produced by the management in this aspect was considered by the enquiry officer. There were other findings recorded by the

enquiry officer in support of his conclusion that the charges framed against the petitioner were proved.

15. The report submitted by the enquiry officer was considered extensively by the disciplinary authority. The disciplinary authority found that the findings recorded by the enquiry officer were on the basis of evidence both oral and documentary and accordingly it was decided to accept the enquiry report. Copy of the enquiry report was given to the petitioner along with second show cause notice. The explanation was once again considered by the disciplinary authority and having found that there was no merits in the defence raised in the explanation, the same was rejected and the punishment of removal from service was imposed.

16. The appellate authority once again considered the charges, report of the enquiry officer and the order passed by the disciplinary authority. The appellate authority scanned the charges one after another and after considering the gravity of charges concurred with the views taken by the disciplinary authority and the appeal was dismissed.

17. The petitioner was an employee of a bank. Therefore he was in a fiduciary position. The petitioner was expected to protect the interest of the bank. It is immaterial as to whether any loss was caused to the bank. It is one of trust. The bank found that the petitioner had not followed the guidelines issued for sanctioning overdraft facilities and also for discounting cheques and the bank was put in a situation of high risk. Therefore it cannot be said that there were no materials before the enquiry officer to substantiate his finding that the charges were proved.

18. This court is concerned only with the decision making process while exercising the power of judicial review. It is not open to this Court to consider the evidence in extenso and to arrive at a finding different from the one rendered by the disciplinary authority. Similarly it is not open to this Court to interfere in punishment. The punishment is essentially a managerial function.

Legal Position:

19. The scope of judicial review by exercising certiorari jurisdiction was considered by the Supreme Court in B.C. Chaturvedi Vs. Union of India and others, , at page 759. The Supreme Court observed that Court/Tribunal cannot interfere with finding of fact based on evidence and substantiate its own independent finding in the place of the finding arrived at by the departmental authorities. The Supreme Court indicated the nature of judicial power thus:

12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the

inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

19. In State of Andhra Pradesh and Others Vs. Chitra Venkata Rao, , the Supreme Court indicated the scope of judicial review in respect of departmental proceedings. It reads thus:

21. The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in State of A.P. v. S. Sree Rama Rao. First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the

very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution.

20. The Supreme Court in Regional Manager, U.P.S.R.T.C., Etawah and Others Vs. Hoti Lal and Another, , considered the misconduct involving the employees of banks and observed thus:

If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable. Judged in that background, conclusions of the Division Bench of the High Court do not appear to be proper. We set aside the same and restore order of the learned Single Judge upholding the order of dismissal.

21. In State Bank of India and Another Vs. Bela Bagchi and Others, , the Supreme Court indicated the requirement of exercising higher standard of honesty and integrity by Bank Officers. The relevant paragraph reads thus:

15. A bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the bank is required to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the bank. As was observed by this Court in Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik, it is no defence available to say that there was no loss or profit which resulted in the case, when the officer/employee acted without authority. The very discipline of an organisation more particularly a bank is dependent upon each of its officers and officers acting and operating within their allotted sphere.

Conclusion:

22. The disciplinary authority on the basis of the enquiry report arrived at a finding that the charges were grave in nature and as such removal from service was the appropriate punishment. The said view was upheld by the appellate authority. The order of the disciplinary authority and the appellate authority contained reasons. Therefore it cannot be said that the finding is perverse or that irrelevant materials were considered for taking a decision. In such circumstances I do not find any reason to disagree with the findings

rendered by the departmental authorities.

23. In the result, the writ petition is dismissed. No costs.