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(2013) 136 FLR 560

Calcutta High Court

Case No: C.W.J. A.S.W.P. No. 3151 (W) of 2007

Prasanta Kumar Maity	APPELLANT
Vs	
State of West Bengal and Others	RESPONDENT

Date of Decision: Oct. 19, 2012

Acts Referred:
Constitution of India, 1950 â€" Article 12

Citation: (2013) 136 FLR 560

Hon'ble Judges: Joymalya Bagchi, J

Bench: Single Bench

Advocate: Soumen Kumar Dutta, for the Appellant; S.B. Bhunia and Ashim Kr. Roy, for the Respondent

Final Decision: Dismissed

Judgement

Joymalya Bagchi, J

1. The writ petitioner has challenged the impugned resolution dated 15.10.2006 of the respondent Co-operative Bank affirming the order of

dismissal of the petitioner by the disciplinary authority, that is the Board of Directors of the respondent Co-operative Bank dated 22.10.1999.

The facts of the case are as follows:

The petitioner was posted at Mongalamaro branch of the Co-operative Bank and the in the course of his employment he took a gold loan for a

sum of Rs. 2750/- on 3rd August, 1994 by pledging some gold ornaments against receipt No. 022545 it was alleged that he tampered with the

packet containing the pledged articles and replaced the said ornaments by fake brass/aluminium guilted ornaments. The petitioner took another

gold loan for a sum of Rs. 4200/- by pledging gold ornaments which it was alleged that he had already taken back on 15th May, 1994.

The petitioner was charged for committing gross misconduct under the relevant Service Rules which as follows:

(i) Under Rule 22 (o): You committed fraud and dishonesty in connection with the business of the Bank.

(ii) Under Rule 22 (r): You acted in the manner prejudicial to the interest of the Bank.

(iii) Under Rule 22 (v): You committed the act of defrauding the Bank which amounts to criminal offence involving moral turpitude.

2. Before the enquiry committee the petitioner admitted his guilt. The enquiry committee on the basis of such admission of guilt and other evidence

on record came to a finding against him in respect of the charges and recommended termination from service. The Board of Directors of the

respondent-bank being the disciplinary authority of the respondent-bank accepted the enquiry report and by its resolution dated 5th June, 1999

called upon the petitioner to show cause why he shall not be dismissed from service.

3. In his reply, dated 28th July, 1999 to such show-cause notice, the petitioner again reiterated his admission of guilt and begged for mercy. The

reply of the petitioner dated 28th July, 1999 was considered by the Board of Directors on 15th October, 1999 and such representation was

rejected and the Board decided to impose the penalty of dismissal from service upon him which was duly communicated to him by letter dated

22nd October, 1999.

4. On 23rd February, 2000 the petitioner made a representation to the Chairman of the respondent-Bank and again reiterated his admission of

guilt and prayed for forgiveness. Thereafter, he moved a writ petition being W.P. No. 17181 (W) of 2000 before this Court challenging the order

dated 22nd October, 1999 dismissing him from service.

5. A learned Single Judge of this Court by order dated 28.3.2006 directed the appellate authority to dispose of the appeal preferred by the

petitioner in accordance with law within a time frame.

6. Pursuant to such order passed by this Court, the General Body of the respondent Bank by a resolution dated 15.10.2006 taken in its Special

General Meeting approved the order of dismissal of the petitioner.

7. Challenging such appellate order dated 15.10.2006, the petitioner has again approached this Court.

Mr. Soumen Dutta, learned advocate appearing for the petitioner assailed the order of dismissal on the following points:--

Firstly, he submitted that the admission of guilt was not a voluntary one and the petitioner was subjected to undue influence and/or inducement

before the enquiry committee to admit his guilt and therefore the same ought not to have been relied on. Secondly, he also submitted that the

enquiry was not conducted according to the statutory rules. Finally, he argued that the enquiry report was not supplied to him before the hearing on

the second show-cause notice for imposing the penalty of dismissal from service and hence, the entire proceeding and the consequential imposition

of penalty of dismissal from service stood vitiated.

8. Mr. Bhunia, learned Senior Advocate appearing for the respondent-Bank took a preliminary objection that the respondent-bank not being a

State under Article 12 is not amenable to the Writ Jurisdiction of this Court. He further submitted that the petitioner not only admitted his guilt

before the enquiry report but also reiterated the same before the disciplinary committee in his letter dated 28th July, 1999 as well as in his

representation dated 23.2.2000 before the Chairman of the respondent-Bank.

9. Mr. Bhunia further submitted that the copy of the enquiry report had been annexed to the affidavit-in-opposition filed by the respondent-bank in

the earlier writ petition being W.P. No. 17181 (W) of 2000 and the same was served upon the petitioner prior to the order passed by the

appellate authority and the petitioner cannot be said to be prejudiced by non-supply thereof.

10. In the case of Arjed Ali Gazi Vs. State of West Bengal, a Division Bench of this Court has held as follows: ""A Co-operative Society formed

by private initiation of its members is not a statutory body or an instrumentality of the State and the decisions in this respect are specific. Ordinarily,

a writ does not lie against a private body but the position will be entirely different if such private body is vested with statutory duties and functions.

For inaction relating to such statutory duties or improper action contrary to statutory provisions, such private body becomes amenable to writ"".

11. Hence, I am of the view that a writ is maintainable against a Co-operative Society though not a ""State"" under Article 12 of the Constitution of

India in the event it is found that the disciplinary proceeding initiated by it against a delinquent employee has been conducted in violation of a

statutory rule or principles of natural justice.

12. With regard to the issue as to the voluntary nature of the admission of guilt by the petitioner, I am of the opinion that the petitioner had not only

admitted his guilt before the enquiry committee but had consistently reiterated the same before the disciplinary authority and also the Chairman of

the respondent Bank. Under such circumstances, it would be wholly unwarranted to hold that such admission of guilt was not voluntary but a

product of undue influence or inducement.

13. The other issue with regard to non-compliance of any alleged statutory rule also appears to be unjustified. The enquiry committee gave

adequate opportunity to the petitioner to represent himself. The petitioner, however, in his representation before the committee unequivocally

admitted his guilt and did not choose to dispute the charges levelled against him. He merely begged for mercy.

14. Under such circumstances, the procedure adopted by the disciplinary authority in the instant case in the face of the unequivocal admission of

guilt of the petitioner cannot be said to be either in violation of principles of natural justice or in derogation of any statutory rule. Mr. Dutta has

failed to indicate to me which statutory provision of law has been violated in the facts of the instant case.

15. Finally, the issue of non-supply of enquiry report in the facts of the case does not appear to have prejudiced the petitioner. The petitioner in

fact was supplied a copy thereof in the course of hearing of the earlier writ petition being W.P. No. 17181 (W) of 2000 thereafter the appellate

authority on 15.10.2006 took its decision to approve the order of dismissal passed by the disciplinary authority. It was open for the petitioner after

receipt of the enquiry report to raise any objection with regard thereto before the appellate authority but he chose not to do so. Furthermore, in the

face of consistent of admission of guilt by the petitioner before the disciplinary authority as well as the appellate authority, I am of the opinion that

non-supply of enquiry report has not prejudiced the petitioner in his defence in the manner whatsoever. In this regard, reference may be made to

the decision of Managing Director, Electronic Corporation of India Vs. B. Karunakar, , wherein the Constitution Bench of the Apex Court, inter

alia, observed as follows:

Hence, in all cases where the Inquiry Officer''s report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and

Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the

Court/Tribunal, and give the employee an opportunity to show, how his or her case was prejudiced because of the non-supply of the report. If

after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the

ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not

mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present.

16. It is therefore clear that mere non-supply of an enquiry report would not ipso-facto render the order of dismissal illegal unless it is

demonstrated that the delinquent employee has been prejudiced thereby. In the facts of the instant case the petitioner was supplied a copy of the

enquiry report in the course of hearing of the earlier petition before this Court and thereafter the appellate authority disposed of his appeal pursuant

to the direction of this Court. The petitioner chose not to raise any objection before the appellate authority with regard to the findings contained in

the enquiry report. That apart, in view of the consistent admission of guilt by the petitioner before the disciplinary authority as well as the appellate

authority, I am of the opinion that the petitioner has not been prejudiced by non-supply of the enquiry report in the matter of his defence in any

manner whatsoever.

17. It may be apposite to rely on a recent decision of the Apex Court, cited on behalf of the respondent, reported in Burdwan Central

Cooperative Bank Ltd. and Another Vs. Asim Chatterjee and Others, wherein the Apex Court refuted the prayer for setting aside an order of

dismissal on the ground of that non-supply of enquiry report had not caused any prejudiced to the delinquent.

18. Similarly, in the instant case there is no allegation of mala fides against the respondent-Bank and the petitioner having consistently admitted his

guilt pertaining to gross misdemeanour on his part and having had the opportunity to assail such enquiry report before the appellate authority (which

he chose not to do), the question of his being prejudiced by non-supply of such enquiry report does not and cannot arise. The petitioner has

committed acts of gross misconduct involving moral turpitude by misusing the trust reposed in him by his employer and such misconduct has

shaken the faith of his employer in him. Any leniency in this regard would also give a wrong signal to the other employees, as has been rightly

observed by the appellate authority. The quantum of punishment, therefore, cannot be said to be disproportionate, arbitrary or unreasonable

necessitating interference in judicial review.

For the aforesaid reasons, I do not find any merit in the instant writ petition and the same is accordingly dismissed.