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Calcutta High Court

Case No: Writ Petition No. 1546 of 2008

Sri Sushil Kumar Saha	APPELLANT
Vs	
UCO Bank and Others	RESPONDENT

Date of Decision: Nov. 19, 2009

Acts Referred:

- Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 - Section 19
- Constitution of India, 1950 - Article 226

Hon'ble Judges: S.P. Talukdar, J

Bench: Single Bench

Advocate: Ashok Dey, Mr. Kalimuddin Mondal and Mr. Sankar Biswas, for the Appellant; Lakshmi Gupta, Dilip Kundu, S. Ghosh and Smt. Saswati Sengupta, for the Respondent

Final Decision: Dismissed

Judgement

S.P. Talukdar, J.
Challenging initiation of an enquiry proceeding and the orders passed in connection with the same, the petitioner, Sushil Kumar Saha, approached this Court with an application under Article 226 of the Constitution.

2. Grievances of the petitioner, as ventilated, may briefly be stated as follows:

The petitioner was appointed as Field Officer under the respondent/United Commercial Bank on 11th November, 1978. In August, 2005, he was promoted to the post of Deputy Chief Officer of the said bank. On 23rd March, 2006, he was served with a show cause notice issued by the Chief Officer, UCO Bank. He replied to the same on 17th April, 2006. On 15th December, 2006, charge sheet was issued by the Assistant General Manager (Disciplinary Authority), UCO Bank. The petitioner submitted his written statement on 17th January, 2007. On 9th February, 2007, letter intimating initiation of departmental proceeding was issued by the AGM and the notification was issued in that regard. Sri Hazra, Enquiry Officer, issued letter dated 24th February, 2007 fixing the date of hearing

as on 7th of March, 2007. On 28th February, 2007, the Presenting Officer submitted a written brief and this was followed by the petitioner, who submitted such brief to the Enquiry Officer on 29th February, 2007. On 18th March, 2008, letter along with report of enquiry officer was issued by respondent No. 4. The petitioner submitted a representation on 28th March, 2008. Respondent No.4 passed final order on 19th April, 2008 and the same was communicated to the petitioner on 28th May, 2008. The petitioner preferred an appeal on 20th May, 2008. The Appellate Authority disposed of the appeal by order dated 22nd July, 2008 and the same was communicated to the petitioner on 5th August, 2008.

3. The petitioner, by filing such application, challenged the validity of initiation of the disciplinary proceeding and/or issuance of charge sheet and imposition of punishment of dismissal from service by the Assistant General Manager. The petitioner claimed that under the statutory provision, the Assistant General Manager had no power, competence and jurisdiction to issue the charge sheet against the petitioner and to pass a final order of dismissal from service.

4. Learned senior counsel, Mr. Ashok Dey, appearing on behalf of the writ petitioner submitted that since the irregularities were allegedly committed by the petitioner in the advance portfolio during the tenure i.e., 15.10.2001 to 25.8.2005 as Senior Manager of Bansdroni Branch, Kolkata and he was subsequently posted as Deputy Chief Officer (HRD), UCO Bank, Head Office w.e.f. August, 2005 the Assistant General Manager could not have had the authority to issue such charge sheet on 15th December, 2006, while he was already posted and working in the head office as Deputy Chief Officer. It was further submitted by Mr. Dey that the petitioner was promoted and posted to the next higher post on and from August, 2005. As such, the charge levelled against him for the irregularities allegedly committed during the period from 15.10.2001 to 25.8.2005 was impliedly condoned.

5. Referring to the plea as taken in the Affidavit-in-Opposition, Mr. Dey categorically submitted that the circular, as referred to in para 28 of the Affidavit-in■Opposition, cannot have any relevance in the eyes of law nor can it hold the field since statutory rule cannot be supplemented by an executive order.

6. In response to this, Mr. Lakshmi Gupta, appearing as learned counsel for the respondent bank submitted that the grievance relating to the authority of the Assistant General Manager is misconceived and the circular just clarifies the position and deals with the steps required to be taken for expeditious disposal. Mr. Gupta further submitted that question of condonation of earlier lapses or acts of irregularities just could not arise and irregularities were committed after promotion since in August, 2005 he was not promoted at all but it was a mere change of posting.

7. While submitting that the disciplinary authority was formed by violating Regulation 5(1), Mr. Dey invited attention of the Court to the schedule of authorities to institute disciplinary proceedings and impose penalties etc. of UCO Bank Officer Employees" (Discipline &

Appeal) Regulations, 1976 as amended.

8. Mr. Dey submitted that the show cause notice dated 23rd March, 2006 and the charge sheet dated 15th December, 2006 were served upon the petitioner, while it was posted at head office and as such, was under the direct control of the head office. Thus, according to Mr. Dey, the Assistant General Manager could not be the appropriate authority to institute disciplinary proceedings and impose penalties under UCO Bank Officer Employees" (Discipline & Appeal) Regulations, 1976. Mr. Dey then contended that the order of dismissal passed by an authority lower than the prescribed authority is bad in law under Regulation 4 of UCO Bank Officer Employees" (Discipline & Appeal) Regulations, 1976 as amended. It cannot be disputed that the writ petitioner was posted at head office at the time of initiation of the disciplinary proceeding against him.

9. According to Mr. Dey, the Schedule, as referred to earlier, makes the Deputy General Manager (Personnel) as the Disciplinary Authority, the General Manager (Personnel) as the Appellate Authority and the Executive Director as Reviewing Authority.

10. In response to this, Mr. Lakshmi Gupta, appearing as learned counsel for the respondent bank, submitted that Regulation 3(g) clearly mentions that "Disciplinary Authority" means the authority specified in the Schedule which is competent to impose on an officer employee any of the penalties specified in Regulation 4. Regulation 3(p) indicates that "Schedule" means the Schedule appended to these regulations.

11. Mr. Gupta refers to Regulation 5, which deals with the authority to institute disciplinary proceedings and impose penalties. The same reads:

"5. Authority to institute disciplinary proceedings and impose penalties :

(1) The Managing Director or the Executive Director or any other authority empowered by either of them by general or special order may institute or direct the Disciplinary Authority to institute disciplinary proceedings against an officer employee of the bank.

(2) The Disciplinary Authority may himself institute disciplinary proceedings.

(3) The Disciplinary Authority or any authority higher than it, may impose any of the penalties specified in regulation 4 on any officer employee."

12. On behalf of the writ petitioner, it was submitted by Mr. Dey that the Regulation was framed by virtue of the powers conferred by section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. The Board of Directors of UCO Bank consulted with the Reserve Bank and with the previous sanction of the Central Government made the service Regulations. Such service Regulations are statutory in nature. Mr. Dey contended that if the authority intends to amend, change and/or modify any of the service Regulations, then such amendment has to be carried out in accordance with the provisions conferred u/s 19 of the said Banking Companies

(Acquisition and Transfer of Undertakings) Act, 1970. It was emphatically mentioned that such statutory provisions cannot be amended by an administrative order or by an executive instruction. Mr. Dey, thus, contended that there was such an amendment to Regulation 18 and the schedule to the UCO Bank Officer Employees" (Discipline and Appeal) Regulations, 1976 and copy of the said amendment was duly circulated to the branch offices. Mr. Dey then submitted that the acts of irregularities allegedly committed by the writ petitioner were during the period from 15th of October, 2001 to 23rd August, 2005. The writ petitioner was then functioning as the Senior Manager of Bansdroni Branch, Kolkata. There were seven serious charges against the writ petitioner. It was also alleged that the writ petitioner displayed deliberate indifference to bank"s interest and exposed the bank to financial loss of Rs. 598.07 lakhs (approximately) as most of the accounts as referred to in the charges turned potential NPA/NPA. Mr. Dey then submitted that this statement of allegations was communicated by the Assistant General Manager as Disciplinary Authority by letter dated 15th December, 2006. But at the relevant time, the writ petitioner was posted as Deputy Chief Officer, H.R. Department in the head office of the bank.

13. Referring to the schedule of the Regulations, as mentioned earlier, Mr. Dey submitted that the Assistant General Manager did not have the authority/competence to initiate such disciplinary proceeding against the writ petitioner who at the relevant time was posted in the head office. It was further contended that the Deputy General Manager could initiate such disciplinary proceeding. It seems to be the stand of the writ petitioner that the initial vice persists and a proceeding initiated in an illegal manner cannot be allowed to be sustained.

14. On the other hand, Mr. Gupta submitted that annexure-"R-2" at page 32 of the Affidavit-in-Opposition and the circulars enclosed would clearly reflect that the Assistant General Manager was the appropriate Disciplinary Authority within the meaning of the First part of Regulation 5(1) since the allegations in the charge sheet are all in respect of the occurrence at Bansdroni Branch of the bank where the petitioner at the relevant time of occurrence was posted as Senior Manager. Mr. Gupta further submitted that the circular does not pretend to amend the Discipline and Appeal Regulations, but that it is based on the proper exercise of power by the Managing Director as per Regulation 5(1) as communicated by the General Manager.

15. The materials available on record clearly reveal that as per Regulation 5(1), the Managing Director or the Executive Director may empower some other person to be the Disciplinary Authority. Such power is specifically conceived in Regulation 5(1) for which only an administrative order is called for. Mr. Gupta seems to be perfectly justified in submitting that amendment of Regulation is not at all necessary. Inviting attention of the Court to the annexure-"R-2" at page 32 of the Affidavit-in-Opposition, Mr. Gupta submitted that the authority concerned precisely did so. There can be no reason for construing the circular being annexure-"R-2" to the Affidavit-in-Opposition as an amendment. It was rather an act reflecting authorisation by the competent authority.

16. There can be no justification for attempting to read something more than what meets the eyes.

17. Mr. Dey deriving support from the decision in the case between P.D. Aggarwal and Others Vs. State of U.P. and Others, , submitted that an office memorandum being an administrative order or instruction cannot supersede or amend statutory rules of service.

18. I do not think that there is any scope for any controversy in that regard. It seems to be the settled position of law that the statutory rule cannot be supplemented by an executive order. [Ref: Feroz Ahmad Vs. Delhi Development Authority and Others,].

19. In the present case, there has been no attempt to amend the Regulation by such circular dated 11th of August, 2004. The said circular dated 11th August, 2004 is in the nature of certain guidelines issued out of anxiety for expeditious disposal of the disciplinary action cases. It is most welcome and that too, in the larger interest of the society. By no stretch of imagination, it could be said to be an amendment of the Regulation. Annexure-"R-2" at page 32 of the Affidavit-in-Opposition, thus, in no way sought to amend the Regulations. But it could very well be in the nature of an administrative direction or executive instruction so as to justify initiation of the disciplinary proceeding in the present case by the Assistant General Manager. Thus, anxiety of Mr. Dey that what could be the top management committee, assuming there is any, and what is its role or authority, need not be answered. The circular, under reference, certainly cannot supersede, amend and modify the statutory rules or regulations. It cannot be said to have any approval of the Government. But the fact remains that it was not intended to be an amendment nor did such communication dated 11th August, 2004 (annexure-"R-2") to the A/O attempted to supersede, amend or modify the Regulations.

20. Mr. Dey, learned senior counsel for the writ petitioner, submitted that even after the said period from 15th of October, 2001 to 23rd August, 2005, the writ petitioner was given promotion and this could very well imply condonation of any alleged act of irregularity.

21. Mr. Dey, in this context, sought to rely upon the Division Bench decision of this Court in the case between Mrinal Kanti Chakraborty Vs. State of West Bengal and Others, . Their Lordships in the said case observed:

It is also well settled principle that after the promotions are given no departmental proceeding could be initiated on the basis omission or commission or materials which relate to periods prior to the granting of such promotions inasmuch as promotion once given on consideration of the entire records amounts to giving a clean chit and after promotion is granted disciplinary authority is estopped from issuing any charge sheet in respect of the allegations pertaining to the period prior to promotion. In the instant case two extensions of service were granted considering the fact that appellant petitioner"s service was satisfactory and it was in the interest of the Bank such extensions were found necessary. We are of the view that initiating a departmental proceeding when few days

left for expiry of the extended period of service is not bona fide and/or done in good faith and could not be continued even after final retirement.

22. In response to this, Mr. Gupta, on behalf of the respondent bank, submitted that there could be no implied condonation. According to him, what is important is detection of the acts of irregularities. An irregularity may remain undetected over a protracted period of time.

23. An employer may very well grant promotion during the said period. This, under no circumstances, leads to the presumption that the authority concerned by giving promotion has condoned the acts of irregularity.

24. It may be a common experience that a corrupt person conceals the benefit of such corrupt practice successfully over a period of time. This is exposed at a subsequent stage. Can it be said that the authority concerned cannot take any action on its basis?

25. There is force in the submission made by Mr. Gupta on behalf of the respondent bank that where irregularities were detected after promotion, no presumption of condonation of past lapses can be claimed. In the present case, such irregularities were detected in early part of 2006 whereas the petitioner was given promotion as far back as on 17th July, 2001. It was promoted to the MMG Scale III on the said date.

26. In this context, reference was made to the decision of the Apex Court in the case between Union Bank of India Vs. Vishwa Mohan, . The Apex Court in the said case further observed that "it needs to be emphasized that in the banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the bank officer. If this is not observed, the confidence of the public/depositors would be impaired....."

27. Mr. Dey on behalf of the petitioner sought to derive inspiration from the decision of the Division Bench of this Court in the case between L.W. Middleton Vs. Harry Playfair, in support of his contention that employer keeping an employee in service after discovering him to be guilty of misconduct cannot afterwards dismiss him.

The Court further observed:

"If a master on discovering that his servant has been guilty of misconduct which would justify a dismissal, yet elects to continue him in his service, he cannot at any subsequent time dismiss him on account of that which he has waived or condoned."

28. But the specific stand of the respondent bank in this case is that promotion was given to the writ petitioner before discovery of the allegations and accusation for which disciplinary proceeding was subsequently initiated.

29. Thus, considering all such facts and circumstances, this Court does not find much merit in the grievances, as ventilated. It may be mentioned that at the time of hearing of the case, no other point was urged by either of the parties.

30. The writ application being W.P. No. 1546 of 2008 fails and be dismissed. Interim order, if any, stands vacated.

31. There is no order as to costs.

Xerox certified copy of the judgment be supplied to the parties, if applied for, as expeditiously as possible.