

(2010) 12 CAL CK 0031

Calcutta High Court

Case No: A.P.O. No. 309 of 2009 and W.P. No. 226 of 2009

Punjab National Bank and
Others

APPELLANT

Vs

Subhasini Das and Others

RESPONDENT

Date of Decision: Dec. 24, 2010

Acts Referred:

- Constitution of India, 1950 - Article 226
- Punjab National Bank Officer Employees (Discipline and Appeal) Regulations, 1977 - Regulation 4

Citation: (2010) 4 CALLT 491 : (2011) 1 CHN 282 : (2011) 129 FLR 812 : (2011) 3 LLJ 637

Hon'ble Judges: Sambuddha Chakrabarti, J; Bhaskar Bhattacharya, J

Bench: Division Bench

Advocate: Lakshmi Gupta, Biswarup Bhattacharya, Rajshree Kajaria and Sonea Sharma, for the Appellant; S. Deb, for the Respondent

Judgement

Bhaskar Bhattacharya, J.

This Mandamus-Appeal is at the instance of the Punjab National Bank, the employer of the writ-Petitioner, and is directed against the order dated September 22, 2009, passed by a learned Single Judge of this Court, by which His Lordship allowed the writ-application filed by the Respondent No. 1, since deceased, by setting aside the order imposing punishment passed by the Disciplinary Authority and affirmed by the Appellate Authority and the Reviewing Authority. The learned Single Judge directed the employer to reinstate the writ Petitioner with full back wages. The employer-bank was further directed to pay interest @ 12% per annum on the arrears and also the costs of the writ-application which were assessed at 600 G.Ms.

2. Being dissatisfied, the employer has come up with the present mandamus appeal.

3. The following facts emerge out from the materials on record:

a. The writ-Petitioner, a Deputy Manager of the Bank, was posted at the Salt Lake Branch. Due to cardiac ailment, he obtained an appointment for consultation on 2nd February, 2004 with Dr. Purnendu Kumar, attached to the Christian Medical College and Hospital at Vellore. He was granted leave up to 7th February, 2004.

b. The writ-Petitioner was advised to undergo a bye-pass surgery and was further directed by the said Hospital-Authority to deposit a sum of Rs. 1,10,000/- and 12th February, 2004 was the date fixed for admission. On 9th February, 2004, the writ-Petitioner sought for an advance sum of Rs. 1,00,000/- from the bank to meet the said expenditure and also prayed for extension of his leave by 30 days by his aforesaid letter dated 9th February, 2004. Both the prayers were allowed and a sum of Rs. 99,000/- was advanced by the employer which was deposited in a savings account opened by the writ-Petitioner at Vellore and the period of leave was extended by 30 days.

c. The writ-Petitioner developed further complications whereupon the Christian Medical College & Hospital insisted on deposit of a sum of Rs. 1,90,000/- instead of Rs. 1,10,000/- which the writ-Petitioner was not in a position to arrange. The writ-Petitioner, in such circumstances, contacted Shri Satya Sai Institute of Higher Medical Sciences, situated in the State of Andhra Pradesh and on 31st May, 2004 he was directed to take complete rest and to consult a Nephrologist. On 18th March, 2005, a mild renal failure of the writ-Petitioner was diagnosed by the Department of Nephrology, St. John Medical College & Hospital, Bangalore. The aforesaid Hospital by a letter dated 18th March, 2005 addressed to the Cardiologist of the Shri Sathya Sai Hospital indicated that for undergoing cardiac conventional angiogram any bye-pass surgery, the patient had been explained the risk of renal function deterioration post operation and if he decided to undergo surgery, he might be referred back before surgery for preventive advice.

d. In the meantime, the bank had sent letters dated 9th June, 2004, 23rd March, 2005, 26th May, 2005 and 16th June, 2005 to the residence of the writ-Petitioner calling for an explanation for his unauthorized absence and according to the bank, those letters returned undelivered with the endorsements like "not claimed/door closed/left without address" etc.

e. The writ-Petitioner claimed to have a written letter dated 7th June, 2004 to the Chief Manager, Punjab National Bank, under certificate of posting, stating that due to severe illness, he was not in a position to move and had been advised by the doctors to take complete rest for a long time. He, accordingly, prayed for leave of 12 months. The bank authority, however, denied having received such letter.

f. The writ-Petitioner claimed to have by his letter dated 25th March, 2005 prayed for further leave of one year on the basis of medical advice. This letter of the writ-Petitioner finds support from the letter dated 18th March, 2005 addressed by the Department of Nephrology, St. John Medical College & Hospital, Bangalore to

the Cardiologist, Shri Satya Sai Hospital.

g. A charge-sheet dated 9th December, 2005 had been issued by the bank but no show cause notice was served on the writ-Petitioner. An enquiry officer had been appointed by the bank by a letter dated 27th January, 2006. The Enquiry Officer issued a notice dated 22nd February, 2006 but the writ-Petitioner did not appear. The hearing was adjourned till 1st March, 2006 and the writ-Petitioner also did not appear on that date. The next date of hearing was fixed on 10th May, 2006 and on that date, the writ-Petitioner reported to the Branch in order to join his duty and he attended the meeting fixed on 10th May, 2006.

h. The following two allegations were levelled against the writ-Petitioner: "1) the bank has not received any communication from him for extension of his leave and such absence from duty is unauthorized in terms of Bank's Regulation." 2) "Thus Sri Das by submitting a false declaration fraudulently took an advance of Rs. 99,000/- from the branch."

i. 14 different documents were tendered on behalf of the management and 35 documents were submitted by the writ-Petitioner. The Enquiry Officer in his report has recorded that "the prosecution documents were inspected/verified by the CO and he accepted the genuineness of the same". There was, however, no indication in the enquiry report as regards the response of the presenting officer with regard to the documents tendered by the writ-Petitioner which the enquiry officer should have recorded. One Shri Tapas Das (Peon) and Shri Thakur (Clerk-cum-Cashier) were examined as the witnesses of the management but the writ-Petitioner did not examine any witness.

j. Both the charges levelled against the writ-Petitioner were found to have been proved and the Enquiry Officer went one step further than the charges levelled against the writ-Petitioner wherein breach of trust was alleged against him.

k. The disciplinary authority concurred with the finding of the enquiry officer and passed an order of major penalty of compulsory retirement in terms of regulation 4(h) of the Punjab National Bank Officers' Employees (Discipline and Appeal) Regulations, 1977. However, through mistake, the punishment was reported to have been inflicted in terms of 4(h) of the aforesaid regulation because 4(h) prescribes for dismissal.

l. The writ-Petitioner preferred an appeal before the Appellate Authority and the said authority by order dated 9th June, 08 dismissed the appeal thereby affirming the order of the disciplinary authority.

m. The writ-Petitioner, thereafter, preferred a review which was also dismissed by an order dated 23rd July, 2008.

4. Being dissatisfied, the writ-Petitioner came up before the learned Single Judge with an application under Article 226 of the Constitution of India challenging all the

three orders i.e. the orders of the disciplinary authority, the appellate and the reviewing authority.

5. The learned Single Judge by the order impugned in this appeal held that the order imposing major penalty on the basis of finding recorded by the Enquiry Officer was perverse and that even the alleged acts of misconduct were condoned and at the same time the misconduct was not proved and consequently, the learned Single Judge set aside the orders of punishment imposed by all the three authorities, i.e., the original, appellate and the Reviewing authority.

6. After filing of this appeal and during the pendency of the same, the writ-Petitioner, however, had retired and, thereafter, has even died and as such, his heirs and legal representatives have been brought on record as Respondents.

7. After hearing the learned Counsel for the parties and after going through the materials on record including the order impugned wherein the learned Single Judge has discussed the relevant submissions made by the learned Counsel for the parties, we find that the learned Single Judge mainly relied upon a letter written by the Senior Manager to the Chief Manager, Salt Lake Branch of the bank, indicating that the Superior Authority had permitted the Chief Manager to allow the writ-Petitioner to join his duty subject to submission of proper medical certificate and that the period of absence from February, 2004 till the 31st March, 2006 should be treated as an extraordinary leave on loss of pay and the period thereafter might be treated as medical leave subject to the submission of the application and availability of such leave. The authorities have also observed in the said letter that when the operation did not take place, the writ-Petitioner was required to deposit the money with interest. The Chief Manager was directed act accordingly with further note that the aforesaid direction carried the approval of SRM in the file.

8. It further appears from the order impugned that the learned Single Judge recorded that the documents tendered on behalf of the writ-Petitioner in the enquiry proceeding were mostly not considered and that there was no justification of disbelieving the contents of the letters written under certificate of posting when nobody on behalf of the bank was examined to deny that any such letter was received by the bank. His Lordship further indicated that there was no question of alleging fraud when such charge was not levelled against the writ-Petitioner and at the same time, the writ-Petitioner had no intention of receiving the money by deceiving the authority and it also appeared that half of the amount had also been realized by the bank and such fact was not considered by the Enquiry Officer.

9. After going through the aforesaid materials on record, we are of the view that after the letter dated May 9, 2006 issued by the Senior Manager condoning the absence of the writ-Petitioner by treating it as an extra-ordinary leave on loss of pay and the subsequent period on the basis of medical leave, there was no justification of continuing with the disciplinary proceeding based on the allegation of absence

without taking any leave. Similarly, it has been well established from the papers submitted by the writ-Petitioner during enquiry which were not at all considered by the Enquiry Officer that during the entire period of absence, he was in the different cities in South India for his treatment in different hospitals. It has also been well established that he could not undergo operation because of the additional charge claimed by the Christian Medical College and Hospital Authority at Vellore demanding further amount which the writ-Petitioner was not in a position to pay. Therefore, the writ-Petitioner could not be indicted by bringing a charge of deceiving the employer with the false plea of treatment by taking advance amount.

10. We, therefore, find that the conclusions recorded by all the three authorities were based on non-consideration of the documents filed by the writ-Petitioner. In the ordinary circumstances, there was scope of argument on behalf of the bank that the matter should be remanded for reconsideration of all those documents but having regard to fact that the writ-Petitioner had retired and, thereafter, even died, there is no scope of such submission in this appeal at this stage.

11. We, therefore, find no reason to interfere with the findings recorded by the learned Single Judge regarding the conclusion on the charges levelled against the writ-Petitioner.

12. As regards the direction for payment of back arrears with full salary, we, however, find substance in the contention of Mr. Gupta, the learned senior advocate appearing on behalf of the bank, that the employer by the letter dated May 9, 2006 having sanctioned extra ordinary leave from February, 2004 till 31st March, 2006 without any pay, and the writ-Petitioner himself having relied upon such letter, for the aforesaid period, there was no justification of passing direction of payment of full wages. In our opinion, the contents of the letter dated May 9, 2006 should be given effect to subject to the availability of medical leave and other leave for the period from April 1, 2006 and the writ-Petitioner will not be entitled to any salary for the period on extra ordinary leave granted as appearing in the letter dated May 9, 2006.

13. We are told that during the pendency of this appeal on the application for stay filed by the bank, a sum of Rs. 1,00,000/- has been paid to the writ-Petitioner. The said amount should be adjusted from the dues payable to the writ-Petitioner. We do not find any reason to interfere with the rate of interest and the costs imposed by the learned Single Judge.

14. Let the entire dues calculated on the basis of this order be handed over to the heirs and legal representatives of the deceased employee by dividing the amount equally among them and by issuing separate cheques in their names at the addresses as given in the cause title of this appeal by registered post with acknowledgement cards. The same should be issued by two months from today.

15. The appeal is thus disposed of with the aforesaid observations. The order impugned is modified to the extent indicated above.

16. In the facts and circumstances, there will be, however, no order as to costs.

(Later)

17. After this order is passed, Mr. Bhattacharya, learned Counsel appearing on behalf of the Appellants, prays for stay of operation of our aforesaid order. In view of the fact that we have given two months time for implementation of our order, there is no necessity of passing further stay order.

18. Let photostat certified copy, however, be given to the parties on the day of reopening.

I agree.

Sambuddha Chakrabarti, J.