

(2008) 09 CAL CK 0054

Calcutta High Court

Case No: A.S.T. No. 1237 of 2008

Sri Subrata Kumar Choudhury

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision: Sept. 3, 2008

Acts Referred:

- Constitution of India, 1950 - Article 141, 226, 32
- Penal Code, 1860 (IPC) - Section 498A

Citation: (2008) 4 CALLT 183 : (2008) 4 CHN 880 : (2009) 120 FLR 282 : (2009) 2 LLJ 549

Hon'ble Judges: Sailendra Prasad Talukdar, J

Bench: Single Bench

Advocate: Subrata Roy Karmakar, Nanigopal Chakraborty and S.R. Roy Choudhury, for the Appellant; A.K. Routh and S. Pal Choudhury, for the Respondent

Final Decision: Allowed

Judgement

Sailendra Prasad Talukdar, J.

This application under Article 226 of the Constitution is directed against the alleged illegal and arbitrary decision of the respondent authority by way of initiating "de novo" enquiry.

2. The petitioner was appointed as Clerk-cum-Cashier in the State Bank of India as far back as in 1994. He was transferred to local head office at Kolkata in September, 1999. In 2004, he was shifted to Howrah Zonal Office where he was posted as Senior Assistant. The petitioner was promoted to the Junior Management Grade Scale-I w.e.f. 10.11.2006. He was served with a charge sheet dated 24th April, 2006 issued by the respondent No. 2 wherein it was alleged that one Ms. Amrita Mukherjee, Assistant BPMM and GB Zonal Office, Howrah had made allegations against him in her complaint dated 18th February, 2005. The charges against the petitioner are as follows:

Charge No. (i) - It is alleged that Ms. Amrita Mukherjee as well as a number of other colleagues/friends were made to believe that your marriage has taken place and that Ms. Amrita Mukherjee is your wife. A subsequent denial of marriage by you is, in itself, a harassment and cause of distress to Ms. Mukherjee at the work place.

Charge No. (ii) - It is also alleged that you made following derogatory remarks about her which tantamount to sexual harassment. For example:

a) She is available with Sindur of Rupees two.

b) Prostitute.

3. The petitioner was directed to submit an explanation in respect of the said alleged misconduct within a period of 15 days from the date of receipt of the letter. The petitioner submitted his explanation before respondent No. 2 on May 3, 2006. He claimed that the allegations made by Ms. Amrita Mukherjee are wild, fictitious and false. He referred to the fact that he replied to such similar allegations earlier also. The petitioner denied that there had been any marriage between him and the said Amrita Mukherjee. He had no marital relation with Ms. Amrita Mukherjee. He also mentioned that on the basis of a complaint, the police authority started a case u/s 498A of the Indian Penal Code being G.R. Case No. 2103 of 2002. The same is reportedly pending before the learned 5th Court of Judicial Magistrate, Howrah. He further claimed that the trial of the said criminal case has since begun.

4. The petitioner further stated that there could be no occasion for him to cause any harassment or distress to Ms. Amrita Mukherjee. The petitioner emphatically submitted that there could be no basis whatsoever in the claim that the said Ms. Amrita Mukherjee is married to the petitioner. The petitioner further denied to have made any derogatory remarks to her, which could be construed as sexual harassment. Thus, the petitioner claimed that he did not cause any misconduct within the meaning of the provisions of 5(t) of Memorandum of Settlement dated 10.4.2002. He approached the authority concerned for dropping the proposed enquiry and sought to be exonerated from all charges.

5. The petitioner had already filed a suit for declaration and injunction before the learned 2nd Court of Civil Judge (Jr. Divn.) at Howrah being Title Suit No. 196 of 2006 against the said Ms. Amrita Mukherjee, thereby praying for a declaration that there had been no marriage solemnized between him and Ms. Amrita Mukherjee. He also sought for a decree for permanent injunction, thereby restraining her from claiming herself to be the legally married wife of the petitioner.

6. The authority concerned, however, appointed one Sri Anil Kumar Sarkar, Chief Manager (CSC), Region-IV, Zonal Office, Howrah as the Enquiry Officer. The petitioner was informed by letter dated 17.1.2007 that a regular enquiry proceeding would be conducted on charge No. (ii) on 24.1.2007 at 11 a.m. in the office of AGM (DPD) at Local Head Officer, Kolkata. On 24.1.2007, the Presenting Officer placed the

case against the petitioner before the disciplinary authority and the petitioner submitted his defence thereby denying the charges leveled against him. Such departmental proceeding was taken up on various dates. In absence of any intimation regarding the development, the petitioner submitted a representation on 1st January, 2008, thereby seeking information regarding the result of the enquiry. By letter dated 7th January, 2008, he was informed that such proceeding is on. The petitioner, however, could reliably learn that the charge of passing derogatory remarks towards the complainant could not be established. Withdrawal of such result of the enquiry is illegal and contrary to the principles of fair play and natural justice.

7. By letter dated 19th February, 2008, the petitioner was informed by the respondent No. 4 that the competent authority has ordered "de novo enquiry". This was in pursuant to the report of the complaint committee appointed for prevention of sexual harassment at work place. The authority decided to hold a preliminary hearing in the matter on 27th February, 2008. The petitioner by his letter dated 27.2.2008 sought for a copy of such complaint. Respondent No. 4 did not respond to that but issued another letter dated 19.7.2008, thereby requesting the petitioner to attend the preliminary hearing on 25th July, 2008 at 2.30 p.m. On 25th July, 2008, the petitioner submitted a representation seeking to know the reason for starting such a de novo enquiry. Respondent No. 4 did not bother to respond but chose to proceed with such preliminary hearing. Petitioner alleged that proceeding with such preliminary hearing without supplying the documents and without assigning any reason is illegal and in violation of the principles of natural justice. But under threats of respondent No. 4, the petitioner had to participate and answer to the questions made by respondent No. 4.

8. The petitioner received a letter dated 7.8.2008 by fax issued by respondent No. 4 thereby requesting him to attend hearing in connection with the said enquiry on 12.8.2008, 13.8.2008 & 14.8.2004 at 11 a.m. Petitioner further submitted representation but to no avail. Petitioner has been promoted to Junior Management Grade Scale-I w.e.f. 10.11.2006 and the formalities like medical examination etc. have already been completed. But the respondent bank by letter dated 11th January, 2007 debarred the petitioner from getting promotion in view of initiation of such disciplinary proceedings. It was claimed that the relevant rules do not provide the authority with any power to initiate de novo enquiry. The promotion of the petitioner cannot be deferred on the plea of pendency of the disciplinary proceeding. In view of such consistent illegal action of the respondent authorities, the petitioner had to approach this Court for redressal of his grievances.

9. The Enquiry Officer having held that the charges levelled against the petitioner could not be proved, the disciplinary authority was not justified in proceeding with de novo enquiry without assigning any cogent reason. It is contrary to the Memorandum of Settlement.

10. As against this, the respondent authority contested the case on the ground that there could be nothing wrong in initiating de novo enquiry since certain material facts could not be taken into consideration earlier. Referring to the guidelines given by the Hon'ble Supreme Court on sexual harassment at work place, it was contended that the authority concerned could have had hardly any choice in this regard. Since initiation of the first enquiry appeared to be not in tune with the guidelines of the Apex Court, the authority concerned thought it fit to undo the wrong. This prompted such authority to direct de novo enquiry.

11. It appears from the materials available on record that the present petitioner was appointed as Clerk-cum-Cashier w.e.f. 11.4.1994. He was initially on probation for a period of six months. On 24th April, 2006, he was served with a charge sheet. It was alleged that one Ms. Amrita Mukherjee as well as a number of colleagues/friends were made to believe that the marriage between the petitioner and the said Amrita had taken place and that she is his wife. Subsequent denial of the said marriage is, in itself, a harassment and cause of distress to Ms. Mukherjee at the work place.

12. The petitioner was also charged for having made derogatory remarks about her which tantamount to sexual harassment. She allegedly remarked that the said Ms. Mukherjee is "available with sindur of rupees two". Further allegation is that the petitioner referred to her as a "prostitute". The petitioner submitted a detailed explanation. The authority concerned did not choose to proceed with the first charge since proper appreciation of the same is beyond the scope of enquiry. The enquiry in respect of the second charge was held and the said authority submitted its report.

13. The views of the Enquiry Officer are:

It is observed that in the show cause petition Mr. Subrata Choudhury had denied as regards the alleged remarks.

At the time of enquiry Ms. Amrita Mukherjee has deposed that her husband Mr. Subrata Choudhury made derogatory remarks that "she is available with sindur of rupees two and she is wearing sindur of someone else" and "prostitute".

During enquiry, the complainant Ms. Mukherjee also said that such remarks were passed at the main gate of Regional Officer building at about 2-15 p.m. and it was during the month of January, 2005. She did not notice any one around her but she came to know that some of the staff members told about the matter before the Investigating team.

On being asked to name who were present as witness she replied that she did not recollect name of any person as witness.

During enquiry the charge sheeted employee Shri Choudhury also denied the charge against him when he was asked whether he admitted the charge levelled against him.

In terms of the above submission of the charge sheeted employee and proceedings of the hearing held on 24.1.2007 it may be noted that the complainant, Ms. Mukherjee; not only failed to mention the exact date but also failed to mention the name at least one person/staff member who was present there at the material time as witness.

In view of the above and in absence of any witness it is clear that the Presenting Officer has failed to prove the charge of passing derogatory remarks towards the complainant, Ms. Amrita Mukherjee by the charge sheeted employee, Shri Subrata Choudhury.

Thus, the charge No. (ii) (a) and (b) cannot be treated as proved.

14. It appears that the competent authority ordered for de novo enquiry by the complaint committee appointed for prevention of sexual harassment at work place. Petitioner came to know about it from the correspondence dated 19.2.2008 made by the Chairperson, Committee to prevent Sexual Harassment at work place, Local Head Office, Kolkata. Petitioner by letter dated 27th February, 2008 approached the said Chairperson to provide him with copy of the complaint as well as other materials. There is nothing to indicate that such letter of the petitioner was given the care and attention it deserved. On 19th July, 2008, the petitioner was intimated that a preliminary hearing would be made for the enquiry. The petitioner by letter dated 25th July, 2008 sought for reconsideration of the matter. The petitioner being left with no choice appeared before the Enquiry Committee. As it appears from the copy of the proceeding as reflected from pages 54, 55 of the writ application that the charges against the petitioner virtually remain the same. It cannot be denied that the petitioner was given proper opportunity to get himself represented by a defence counsel. The petitioner, however, by his letter dated 9th August, 2008 approached the Chairperson of the said Committee for prevention of sexual harassment at work place and intimated that the departmental enquiry over the self-same allegations has been concluded. The writ petitioner by his letter dated 9th August, 2008 sought for a copy of the said report. In the circumstances, the petitioner sought for withdrawal or recalling of the decision to go ahead with de novo enquiry.

15. To his utter shock and surprise, the petitioner was informed by a communication dated 11th January, 2007 that in terms of the extant debarment policy of award staff, he is debarred from promotion for a period of not exceeding three years reckoned from the date of charge sheet i.e. 24th April, 2006. He was thus considered ineligible for promotion w.e.f. 10th November, 2006. Learned Counsel for the petitioner categorically mentioned that there could be no scope for initiation of de novo enquiry on the self-same charge-particularly when the enquiry, which was first initiated was concluded and the petitioner was found "not guilty".

16. Attention of the Court was invited to the order dated 26.4.2004 passed by the Apex Court in the case of Medha Kotwal Lele and Ors. v. Union of India and Ors. in W.P. (Cri) No. 173-177/1999. The relevant observation of the Apex Court in the said order is:

Complaints Committee as envisaged by the Supreme Court in its judgment in Vishaka's Case 1997 (b) SCC 241 at 253. will be deemed to be an inquiry authority for the purpose of Central Civil Services (Conduct) Rules, 1964 (hereinafter called CCS Rules) and the report of the complaint Committee shall be deemed to be an inquiry report under the CCS rules. Thereafter the disciplinary authority will act on the report in accordance with the rules.

17. Learned Counsel for the petitioner relying upon the Division Bench judgment of this Court in the case The Calcutta Municipal Corporation and Ors. v. Dr. S. Wajid Ali and Anr. as reported in 1992 (2) CLJ 232, submitted when the enquiry officer reports that accusation against the delinquent employee could not be proved, remitting the matter back is permissible only when the enquiry has been completed without giving opportunity to the delinquent employee to defend or when enquiry has been made violating the principles of natural justice. Here that question quite obviously was not raised by the learned Counsel for the petitioner. In fact, such an argument would have been self-injurious since the enquiry concluded with the finding that the charges could not be proved.

18. Attention of the Court was invited to the decision in the case of [K.R. Deb Vs. The Collector of Central Excise, Shillong](#), in support of the contention that "if there is some defect in the inquiry conducted by the Inquiry Officer, the Disciplinary Authority can direct the Inquiry Officer to conduct further inquiries in respect of that matter but it cannot direct a fresh inquiry to be conducted by some other Officer."

19. In course of submission, learned Counsel for the parties referred to the gender inequality prevalent in our society. In fact, gender discrimination is a serious challenge to the society. It is not a local, regional or national problem. It is universal and consequently, its inevitable consequences are matter of great concern. We cannot afford to ignore that women practically constitute half of the world population but 70 % of the world's poor are women.

20. A survey conducted more than a decade back revealed that 60% of the work is done by women but they only get 10% of the income. It was painfully found that only 1% of the world's property is in the names of the women. Women face discrimination and marginalisation in subtle as well as flagrant ways. They do not share equally in the fruits of production. Gender disparities and unacceptable inequalities persist in all countries. There is hardly any place in our society, any sphere of our activity - where men and women enjoy complete equality. We have failed to "look at the world through women's eyes". This being a matter of utmost importance, various organizations, both at national and international level, took up

the job of minimizing such inequality in every possible way. Better late than never. Our laws and judicial system certainly did not fail to respond to the challenge.

21. Justice V.R. Krishan Iyer observed that "social justice is the human essence of the Indian Constitution. One facet of it is gender justice which is a composite concept. Gender justice is no mystique; it is the human right of woman, to enjoy equality with man, the uninhibited and free opportunity to be herself and to unfold her full faculties, eliminating from the social milieu all sex prejudices, sex bans, sex servitude.... Law, if it speaks the truth, must heed this cry for sex justice, real in life, not only in printed pages. For law is what law does."

22. Rabindranath Tagore in a conversation about "the function of women's shakti in society" observed that "women are objects of lust not to the brave, but to the cowards amongst men. And it is these cowards who degrade women to the level of their low desires."

23. Bertrand Russell in his essay "The Liberation of Women" observed that "the emancipation of women is part of the democratic movements; it begins with the French Revolution, which, as we have already seen, altered the laws of inheritance in a sense favourable to daughters...."

John Stuart Mill's "Subjection of Women" is a very persuasive and well-reasoned book, which had a great influence upon the more thoughtful members of the generation immediately following his own....

24. In course of submission, reference was made to the decision in the case of [Vishaka and others Vs. State of Rajasthan and Others](#), . Relying upon the same, it was submitted that the Apex Court felt that there could be no reason why the international conventions and the norms cannot be used for construing the fundamental rights expressly guaranteed in the Constitution of India which embody the basic concept of gender equality in all spheres of human activity.

25. The Apex Court in the said case observed that "in view of the above, and the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at work places, we lay down the guidelines and norms specified hereinafter for due observance at all work places or other institutions, until a legislation is enacted for the purpose. This is done in exercise of the power available under Article 32 of the Constitution for enforcement of the fundamental rights and it is further emphasized that this would be treated as the law declared by this Court under Article 141 of the Constitution...."

26. Attention of the Court was invited to one of those guidelines relating to "disciplinary action". The Apex Court observed that "where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those

rules."

27. Learned counsel for the petitioner in this context mentioned that the relevant service rules provide the authorities with the power to take care of such alleged misconduct in employment. Disciplinary proceeding was accordingly initiated and it was done in accordance with the rules/regulations. The fact that the enquiry authority found the petitioner not guilty of the charges is significant enough and, according to learned Counsel for the authority, it cannot be lost sight of. It was emphatically submitted that the authority concerned in such backdrop was neither permitted nor justified in initiating a "de novo enquiry".

28. There is no doubt that the Apex Court in the case of Vishaka (supra) also referred to "complaint mechanism". It was held that "whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints."

29. It was submitted on behalf of the respondent bank that the authority concerned was under constitutional obligation to take such direction of the Apex Court into consideration and that prompted it to initiate such do novo enquiry. Learned Counsel for the respondent bank sought to clarify this by mentioning that this was done in order to comply with the directions given by the Apex Court in letter and spirit.

30. Question that naturally arises as to whether the authority concerned can at all be permitted to go ahead with the said "de novo enquiry", when the earlier enquiry ended with the finding that the charges could be treated as "not proved".

31. The stand taken by the learned Counsel for the authorities in the factual backdrop of the present case seems to be quite strange. The direction of the Apex Court, as referred to earlier, is clear and unambiguous. There can hardly be any justification in attempting to read something more than what meets the eyes. When there are specified provisions in the relevant disciplinary rules; the disciplinary action is very well expected to be taken up following the said rules. Even if there is no such rule, the authority concerned cannot afford to remain indifferent to any act, which may even remotely amount to sexual harassment at work place. "Complaint mechanism" is independent of "disciplinary action". Even if the relevant service rules do not indicate that the alleged misconduct on the part of an officer/employee amounts to a misconduct of sexual harassment at work place, the authority concerned is required to take note of the said complaint mechanism and take appropriate action. But by no stretch of imagination, it can be interpreted in a manner, which would justify initiation of a second enquiry over the self-same allegations when the first enquiry concluded with the finding of "not guilty".

32. It follows from the aforesaid discussion that the grievances, as ventilated on behalf of the writ petitioner, just cannot be brushed aside under the carpet. Since, there was an enquiry over the allegations made against the writ petitioner and that was in accordance with the relevant provisions of service rules, the fact that it had ended in his favour would not justify initiation of a "de novo enquiry".

33. As indicated earlier, since finding is in favour of the petitioner, there could be no question of any allegation of violation of the principles of natural justice in holding of such first enquiry and as such, very little justification for a "de novo enquiry".

34. So far the action initiated by the authority concerned on the basis of any finding of the "complaint mechanism" is concerned, the same may take its own course but certainly not at the cost of the relevant service rules.

35. Accordingly, the present application being A.S.T. No. 1237 of 2008 succeeds and be allowed. The order directing initiation of the de novo enquiry is accordingly quashed. This, however, does not prevent the authority concerned from taking appropriate action of course in accordance with the rules.

36. There is no order as to costs.

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