

(2002) 11 CAL CK 0018

Calcutta High Court

Case No: Writ Petition No. 2674 (W) of 2002

Bidyut Kumar Roy

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: Nov. 27, 2002

Acts Referred:

- Banking Regulation Act, 1949 - Section 2, 5
- Constitution of India, 1950 - Article 12, 14, 311

Citation: (2002) 2 ILR (Cal) 514

Hon'ble Judges: Amitava Lala, J

Bench: Single Bench

Advocate: Kalyan Kr. Bandopadhyay and Debabrata Saba Roy, for the Appellant; P.C. Bhattacharya, for Bank, Milon Ch. Bhattacharyee and Tapabrata Chakraborty for State, for the Respondent

Final Decision: Dismissed

Judgement

Amijava Lala, J.

The Petitioner has claimed to be an employee under the Kalna Central Co-operative Bank Limited. Such Kalna Central Co-operative Bank was merged with the Burdwan Central Bank Limited in the year 1973 and consequently, the Petitioner became an employee of such Bank. According to the Petitioner, he has been working under the category of Supervisor and the duty of the Supervisor i.e. a field staff is to distribute the agricultural loans in the field outside the Bank office and also to make recovery of such loans from the loaners/agriculturists. By way of transfer, he joined to the Ukhra Branch on July 13, 1978 as a Bank assistant and took over the charge as an Officer-in-charge with effect from April 27, 1979. He also worked in the post of Officer-in-charge till December 20, 1988 and he handed over such charge to the incoming Branch Manager and started work at the said Branch as an Assistant Accountant from December 20, 1988 to January 16, 1989. Thereafter, he was transferred to Monteswar Branch of the said Bank as an Officer-in-charge and again

he was transferred to Kalna Branch on January 19, 1990. While he was posted at Monteswar Branch, he was served with a preliminary charge-sheet. In the said charge-sheet, several charges were made against him and the Deputy Manager of the said Bank was appointed as an Enquiry Officer. Subsequently, he submitted that such preliminary charge-sheet was a show-cause notice under which the enquiry officer was appointed who was directed to enquire into the preliminary charges and he framed a final charge against the Petitioner. According to him, the reason for holding enquiry regarding preliminary charge was as to whether a disciplinary proceeding would be initiated against the delinquent or not. But whenever an enquiry officer has already been appointed, it has to be construed that there is a pre-determination of the case on the part of the management as against the delinquent in framing the charges. The enquiry officer wanted to know as to whether the Petitioner has any defence against the charges and he fixed a date for personal hearing. In compliance with the same, the Petitioner appeared before the enquiry officer and gave early replies denying all the charges. Additionally, he wrote a reply to the charges. He also wrote to the Bank for early realisation of the amount on which the dispute arose and to hand over to the management of the Bank. However, nothing else was done as against such preliminary charges even to the extent of framing of final charges. In the meantime, the Petitioner was transferred to Kalna Branch of the said Bank on promotion as Grade-II A Officer. The Chief executive Officer of the said Bank served an order upon the Petitioner in the nature of show-cause as to why a disciplinary action would not be taken as against the Petitioner in terms of the provisions of Rule 30(3) of Ch. IX of the Service Rules for the employees of the Burdwan Central Co-operative Bank Limited. Again, an enquiry officer was appointed against the charge-sheet. However, a show-cause notice was issued to the Petitioner by the enquiry officer stating therein that as to why no "disciplinary action" would be taken against him. The Petitioner duly appeared before the enquiry officer and answered few oral questions put to him. Thereafter, the enquiry officer informed the Petitioner that further enquiry would be made at Ukhra Branch and advised the Petitioner to be present before the enquiry officer, the said Enquiry Officer was withdrawn by the Chief Executive Officer for some unknown reason and further ordered that a Sub-Inspector of Police, Central Bureau of Investigation would be appointed as a Presenting Officer. The Petitioner had no knowledge about the appointment of such Presenting Officer prior to August 10, 1990. According to the Petitioner, excepting the departmental staff, no one can be present in the case of dispute in between the employer and employees. The appointment of a staff of the Central Bureau of Investigation is not permissible under the Acts and Rules. The Petitioner appeared before the enquiry officer and recorded his attendance. But excepting the recording of attendance, nothing else was done in the enquiry till August 23, 1990. The Petitioner appeared on August 24, 1990 and recorded similar attendance. Against this background although no enquiry was conducted by the enquiry officer

excepting the formalities but with an utter surprise, on October 19, 1990, the Petitioner received a letter from the Chief Executive Officer directing him to appear before the Board of Directors. Accordingly, he appeared but no meeting of the Board of Directors was held there to the knowledge of the Petitioner during the long period of waiting pursuant to such direction. As a result whereof he left the place in the late after-noon but by a letter dated October 29, 1990, the Chief Executive Officer of the said Bank dismissed the Petitioner from service of the said Bank from the after-noon of the same date, it was handed over to the Petitioner at 2.00 p.m. on the same date while the Petitioner was working at Kalna Branch. Upon perusing such order it has been observed that the charges framed against the Petitioner were proved to be in violation of the Rules made for the Bank. The Petitioner worked for the Bank which has been wholly established on the basis of the report of the enquiry officer. According to the Petitioner, such action is illegal, arbitrary and mala fide. No enquiry was held. No witness was examined in presence of the Petitioner. No opportunity was given to cross-examine the witnesses. No scope was given for submission as against the enquiry report. No copy of the enquiry report was served upon him. Therefore, the action which has been taken by the Respondents-authorities frivolously, can be struck down by the writ court particularly when it is in violation of the Co-operative Rules.

3. Mr. Kalyan Kumar Bandopadhyay, learned Counsel appearing in support of the Petitioner, contended before this Court that when the Central Bureau of Investigation (C.B.I.) has entrusted with the work of the disciplinary proceeding, the original proceeding was vitiated. From the purported finding of the enquiry officer I have come to know that he has drawn his inference by holding that "Had Sri Roy followed all the norms relating to opening of accounts, withdrawal, cheque discounting, payment to L.I.C. account holders, such acts could not have occurred. Such acts could not have occurred with tacit approval, consent and connivance of Sri Roy who-must have ulterior motive behind the whole affairs. The acts of Sri Roy constitutes gross violation of the Service Rules of the Bank and as such he is required to be dealt in accordingly. Since the terms of reference to me do not contain any clause relating to recommendation to the management, I refrain from giving the same and conclude that the charges have been proved without any semblance of doubt.

4. However, in the earlier, occasion, the writ jurisdiction was invoked when the Chairman of the Burdwan Central Co-operative Bank Limited was directed to consider the representation of the Petitioner in an erstwhile writ petition being CO. 1991 1345 (W)(Bidyut Roy v. State of West Bengal and Ors.). In compliance of such order, the Chairman of the Bank considered the matter and passed a departmental order which was also a part and parcel of the writ petition.

5. Mr. Bandopadhyay, learned Counsel appearing for the Petitioner, cited two important judgments before this Court. The first judgment Anil Kumar Vs. Presiding

Officer and Others, and the second judgment B.C. Basak v. Industrial Development Bank of India and Ors. 1988 (2) C.H.N. 287.

6. By citing the first judgment, he contended that a disciplinary enquiry is to be a quasi-judicial enquiry held according to the principles of natural justice and the enquiry officer has a duty to act judicially. Where a disciplinary enquiry affects the livelihood and is likely to cast a stigma and it has to be held in accordance with the principles of natural justice. The minimum expectation is that the report must be a reasoned one. It cannot be an *ipse dixit* of the enquiry officer. The Court then may not enter into the adequacy or sufficiency of evidence. But where the evidence is annexed to an order-sheet and no correlation is established between the two, in the application of mind, it is not an enquiry report at all.

7. By citing the second judgment, he contended before this Court that the delinquents in a departmental enquiry were not expected to be nor were they normally conscious of and conversant with their statutory rights and consequently, they might not be knowing that they might have objected to the presence of an outsider. But then whether any objection was raised or not about the presence of an outsider that has to be adjudged. Justice must not only be done but it must appear to have been done had to be followed in all judicial and quasi judicial proceedings. In that context the Division Bench held that the presence of an officer of C.B.I, during the entire proceeding, and, as the records indicate, to assist the enquiring officer and presenting officer in case of need clearly violate the basic norms of a disciplinary proceeding.

8. On the other hand, Mr. Milon Ch. Bhattacherjee, learned Counsel appearing for the State either jointly with others or separately raised certain objections before this Court. According to him, the case of the Petitioner is not governed by the service rules. The Cooperative Society is not a State. The dispute, if any, is in the nature of Industrial Dispute. The employee is, at best, entitled to the damage arisen out of the contract. The jurisdiction of the Court applies if the case of the Petitioner comes under four corners of the Article 14 of the Constitution of India. Article 311 of the Constitution of India speaks about dismissal, removal or reduction to rank of persons-employees in civil capacities under the Union or a State. Since the Bank is not a State, no dispute can be adjudicated by the writ Court under such circumstances. Alternative and efficacious forum is available. Therefore, this Court may not be inclined to entertain the writ petition at all.

9. I find from Rule 108 of the West Bengal Co-operative Rules, 1987, that certain conditions of service are incorporated under such Rule. Therefore, the same has become a part and parcel of the service condition.

10. A well celebrated Division Bench judgment of this Court Arjed A.H. Gazi v. State of West Bengal 1990 (2) C.L.J. 456 was also considered by this Court. The said judgment speaks about the amenability of the service dispute in between a citizen

and a Co-operative Society by the writ jurisdiction. The Division Bench held that if the nature of the dispute falls under the category of conditions of service under Rule 108 of the West Bengal Co-operative Rules, 1987, the dispute can be resolved by the writ Court in spite of the facts that no writ is otherwise entertainable as against any Co-operative Society. However, learned Counsel appearing for the Respondents has drawn my attention to the distinguished feature of such judgment. Such distinguished feature is that the writ court entertained such writ petition when found that the conditions of service of the Petitioner was not controlled by the terms of contract between the parties but by the statutory rules. In the instant case, the dispute is controlled by the conditions of service. Therefore, no writ lies against them.

11. He has further cited a judgment [Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others](#), In para. 10 of the said judgment I find that three Judges" Bench of the Supreme Court held that bye-laws of a Co-operative Society framed in pursuance of the provisions of the Act cannot be held to be a law or to have the force of law. It has no doubt been held that, if a statute gives power to a Government or other, authority to make rules, the rules so framed have the force of statute and are to be deemed to be incorporated as a part of the Statute. That principle, however, does not apply to bye-laws of the Co-operative Society empowered by the Act to make the same. The bye-laws that are contemplated by the Act can be merely govern the internal management, business or administration of a Society. They may be binding between the persons affected by them, but they do not have the force of a Statute. In respect of bye-laws laying down the conditions of service of the employees of a Society, the bye-laws would be binding between the Society and the employees just in the same manner as conditions of service laid down by contract between the parties.

12. He further cited a judgment [Sirsi Municipality by its President Sirsi Vs. Cecelia Kom Francis Tellis](#), where under the five Judges" Bench of the Supreme Court per majority held that the cases of dismissal of a servant fall under three broad heads. The first head relates to relationship of master and servant governed purely by contract, a declaration of unlawful termination would indirectly amount to Specific Performance of Contract of personal service not permissible under the law of Specific Relief Act.

13. The second type of cases of master and servant arises under the Industrial Law. Under that branch of law a servant who is wrongfully dismissed may be reinstated. This is a special provision under Industrial Law. This relief is a departure from the relief~~s~~ available under the Indian Contract Act and the Specific Relief Act which do not provide for reinstatement of a servant.

14. The third category of cases of master and servant arises in regard to the servant in the employment of the State or of other public or local authorities or bodies created under Statute.

15. The termination or dismissal of what is described as a pure contract of master and servant is not declared to be a nullity, however wrongful or illegal it may be. The reason is that dismissal in breach of contract is remedied by damages. In the case of a servant of the State or of local authorities or statutory bodies, Courts have declared in appropriate cases the dismissal to be invalid, if the dismissal is contrary to rules of natural justice or if the dismissal is in violation of the provisions of the Statute. Apart from the intervention of Statute, there would not be a declaration of nullity in the case of termination or dismissal of a servant of the State or of other local authorities or Statutory bodies.

16. The Courts keep the State and the public authorities within the limits of their statutory powers. Where a State or a public authority dismisses an employee in violation of the mandatory procedural requirements or on grounds which are not sanctioned or supported by Statute, the Courts may exercise jurisdiction to declare the act of dismissal to be a nullity. Such implication of public employment is thus distinguished from private employment in pure cases of master and servant.

17. He further cited a judgment [Integrated Rural Development Agency Vs. Ram Pyare Pandey](#), where under the Supreme Court held -that the termination of service by a Registered Society not constituted under the Statute nor owned or controlled by, nor being an instrumentality of the State Government. The relationship between them is purely based on contract between the master and servant and will be governed by such principle but not by this statutory rules.

18. He further cited a judgment [K. Ramraj Vs. Srivilliputhur Co-operative Spinning Mills Ltd.](#), where it was also held by the Madras High Court that the Cooperative Society, not being a statutory body does not come within the expression "other authorities" under Article 12 of the Constitution of India.

19. Lastly, he cited a judgment [Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others](#), where under a Constitution Bench of the Supreme Court as per majority held that if one has a deep and pervasive control of the Government, such organisation should be construed as an authority under the State. It is also considered the monopolistic activities. However, there is no such case available hereunder. In any event, Mr. Bandopadhyay, in reply has taken a plea that the Co-operative Society is not merely a Co-operative Society but a Bank controlled by the Banking Regulations Act, 1949. Sections 2 and 5(c) of the aforesaid rules speak for the same. Therefore, they are discharging monopolistic function, hence, a State.

20. According to me, the explanation as given by Mr. Bandopadhyay, cannot be acceptable by this Court. It is true to say that the Respondent is a Bank but a Cooperative Society is running such Bank. Since the Banking business cannot be permissible without sanction of the Reserve Bank of India and transaction of such Bank controlled by them, it does not necessarily mean that Co-operative Society as

regards the master and servant relationship purely contractual basis will be treated as State. So far as the ratio of a Division Bench judgment Gazi (Supra) concerned it cannot be made applicable in the instant case even if the function of the Respondent-Pank is controlled by the Reserve Bank of India, it has not lost its original character of the Cooperative Society which has every right to make private arrangement for giving an employment. Hence, such service cannot be said to be within the four corners of the public employment. It has to be remembered that the erstwhile writ petition was pending before this Court and when nobody appeared as a routine matter, an order for consideration was passed by this Court which has already been done. But that does not necessarily mean this Court cannot independently adjudge whether the Cooperative Society is State or not and master and servant relationship between employees and employer is governed by the service contract or not.

21. Therefore, the writ petition stands dismissed. Interim orders, if any, stand vacated. There will be no order as to costs.