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A.R. Josri Vs The State Bank of India, New Delhi

Letter Patent Appeal No. 136 of 1977

Court: Delhi High Court

Date of Decision: Feb. 4, 1980

Citation: (1980) 17 DLT 518

Hon'ble Judges: Prakash Narain, J; B.N. Kirpal, J

Bench: Division Bench

Advocate: B.D. Sharma, S.R. Srivastava, Surya Kant and R.P. Kapur, for the Appellant;

Judgement

Prakash Narain, J.

(1) The main question which arises for determination is whether employees of the State Bank of India entitled to involve the principles of natural

justice and claim that reasonable opportunity should be granted to them before their services are terminated by way of punishment. A subsidiary

question that arises is the interpretation to be put on the relevant rules in this case known as the State Bank of India (Sub Accountants and Head

Cashiers) Service Rules.

(2) The appellant was employed by the erstwhile Imperial Bank of India as a Cashier and Teller on December 24, 1951. He was . confirmed in

that post with effect from January 1, 1953. The State Bank of India Act, 1955 was passed by the Parliament with intent. inter alia, to transfer to

the State Bank of India the undertaking of the Imperial Bank of India. The services of the existing officers and employees of the Imperial Bank of

India stood transferred to the State Bank of India. That is how the appellant became an employee of the State Bank of India.

(3) The appellant was promoted to the post of Head Cashier and posted to Dalhousie in August, 1963. In 1967 the Bank authorities found that the

appellant had permitted drawings without adequate stock to two firms. In other words, there was not sufficient security ensured by the appellant

for granting drawing facilities to the said parties. According to the Bank the appellant thus acted beyond the scope of his authority. Accordingly,

the appellant was placed under suspension on March 27, 1967. A charge-sheet was served on him on June 10, 1977. The appellant sought

particulars of grounds which formed the basis of the charges preferred against him by a letter dated June 22, 1967. He also asked for some

documents, including the investigation report leading to the framing of the charges. The Bank authorities supplied particulars of the charges to the

appellant on September 8, 1967 but refused to supply the investigation report on the ground that the same will be made available to him after the

Local Board had considered it to be a fit case for imposing the penalty of ""requiring the employees to resign"" or ""dismissal"" as provided in Rule 39,

clauses (e) and (f) of the relevant Service Rules. The appellant thereupon submitted his reply to the charges on September 19, 1967. He made a

request that he .may he allowed to be personally present at any enquiry that may be held and cross-examine witnesses that may be produced to

substantiate the charges. He also asked for an opportunity to produce defense witnesses. The request of the appellant was turned down by the

Bank authorities on September 29, 1967. He was, however, afforded an opportunity of being heard in person. This opportunity was granted to

him on November 29, 1967. On April 12, 1968 the Bank authorities informed the appellant that it was proposed to inflict the punishment of

dismissal on him under Rule 39(f) of the relevant rules At that point of time a copy of the report dated March 5, 1967. submitted by the

Investigating Officer, Shri M. N. Muttu, together with depositions of witnesses examined by the Investigating Officer was furnished to the

appellant. The appellant submitted his reply to the show cause notice on May 9, 1968. On September 6, 1968 he was dismissed from service.

(4) The appellant thereupon filed Civil Writ Petition No. 838 of 1968 in this court praying that the order of dismissal from service be quashed. He

contended that the Impugned order dated September 6, 1968 was not only passed in violation of the principles of natural justice but in violation of

the relevant service rules.

(5) The learned Single Judge came to the conclusion that the appellant was bound by the terms and conditions of the relevant service rules. He

negatived the submissions that the investigation held behind the back of the appellant and relied upon by the Bank authorities impugned upon the

principles of natural justice. In his very illuminating judgment, Avadh Behari, J. has discussed the concept of ''private'' and ''public'' employment.

After noticing the scope of contract of employment at Common Law and tracing its history from the Roman institution of pater families, he has

gone on to discuss the incidents of public employment. Ho observed that the principles of Public and Administrative Law have aroded the

traditional private Law concept of master and servant a great deal in modern times and referred to a large number of judgments delivered in India

and in England to come to the conclusion that the concept of natural justice may be available in public employment though it is not available in

private employment. The learned Judge did not feel that he was, in any way, bound to apply the principles of natural justice in the case of the

appellant despite the decision of the Supreme Court in Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial

Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, .

He rather referred to a Bench decision of this court in Ved Prakash Malhotra v. State Bank of India LL.R. (1974) I Del 660(2). The learned

Judge also came to the conclusion that the relevant service rules have not been breached accordingly , taking the view that the appellant was not in

public employment or one under a statute, he held that the appellant had no right to canvas violation of the rules of natural justice.

(6) As noticed earlier, the State Bank of India was constituted by the State Bank of India Act, 1955. It is thus a statutory body. It has framed

various rules pertaining to service of various kinds of officers and employees. The relevant rules in the present case are Rules 39, 40 and 42 of the

State Bank of India (Sub-Accountants and Head Cashiers) Service Rules. Section 43 of the Act gives the power to State Bank to appoint such

number of officers, advisers and employees as it considers necessary or desirable for the efficient performance of its functions and determine the

terms and conditions of their appointment and service. It is in the exercise of this power that the aforesaid rules have been framed. The question

that arises for consideration is whether these rules can be enforced in writ jurisdiction and whether the appellant''s employment is in the nature of

public employment and he can invoke the principles of natural justice. The real point in issue is, to put it in the words of the learned Single Judge,

Is it a pure master and servant case or a case of statutory employment ?

(7) The learned Single Judge on the basis of the decision of the Supreme Court in Calcutta Dock Labour Board Vs. Jaffar Imam and Others, and

other cases has come to the conclusion that the principles of natural justice would be attracted in the case of employment by a statutory body or

authority. In other words, as our learned brother put it, ""It is in statutory employment that the rules of natural justice have a part to play."" It is only

because he found that the appellant''s employment was not statutory that he applied the ordinary principles of master and servant to his case. In our

opinion, the learned Judge went wrong here. The appellant was an erstwhile employee of the Imperial Bank of India and, as a reading of Section 7

of the Act itself shows, he became an employee of the State Bank of India. The power to employ officers and others exercisable by the State

Bank of India is a statutory power. In terms, wherefore, the appellant''s employment was a statutory employment. The rule enunciated in the

aforementioned decision of the Supreme Court or in Vine v. National Dock Labour Board (1957) A.C. 488 (4), is, Therefore, fully attracted.

Where the learned Judge, in our respectful opinion, went wrong was to say that when the Act gives the power to the State Bank to determine the

terms and conditions of appointment and service the common law doctrine is imported into the statute by providing that the Bank shall have

freedom of action in the matter of employment of officers. In our view the learned Judge also did not correctly read the rule enunciated by the

Supreme Court in Sukhdev Singh''s case (supra). Reference to the Bench decision of this court in Ved Prakash Malhotra v. State Bank of India

1974 (1) Del 660 was not relevant in view of the clear pronouncement of the Supreme Court in Sukhdev Singh''s case. We, Therefore, bold that

the appellant was entitled to invoke the principles of natural justice as the manner in which disciplinary proceedings were conducted against him left

much to be desired. He was not given documents at the appropriate stage. Witnesses were examined behind his back. He was not allowed to

cross-examine those witnesses. He was not allowed to produce witnesses in defense. A statutory authority cannot be allowed to act in that

manner.

(8) With regard to the rules on which learned Single Judge had relied, we are of the view that even those rules have nor been followed. It is well-

settled that a statutory authority, once it frames the rules and regulations is as much bound by the same as the employees who subscribe to the

rules. Rule 39 sets out the penalties that may be imposed on an employee of the Bank for acts of misconduct specified in the said rule. Rule 40 lays

down that where the Managing Director in the case of an. employee serving in or under the Central Office or the Secretary and Treasurer in the

case of an employee serving in a circle is satisfied that there is a prima facie case for proceeding against. an employee, he may investigate the case

himself or appoint the Chief Inspector or the Deputy Secretary and Treasurer or any other official to investigate the case and submit an

independent report thereon in writing. Investigation here must be regarded as investigation is consonance with the rules of natural justice.

Investigation cannot be held to be valid investigation if done behind the back of an employee. Sub-rule (2) of Rule 40(2) gives the procedure to be

followed. A loading of the various sub-rules shows that what is contemplated is a fair opportunity to be given to the official charged with

misconduct We cannot read the rules, the way the learned Single Judge has dons, as giving an absolute power to the State Bank to hold

investigation behind the back of an employee. Therefore, we feel that even the rules have not been complied with.

(9) The result is that we accept the appeal and quash the impugned of dismissal. It will, however, be open to the State Bank. to hold a fresh

investigation in accordance with the view expressed by us and then pass such order as it may deem fit in accordance with law. The appellant will

be entitled to his costs. Counsel''s fee Rs. 550.