SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Vijayan Vs. Syndicate Bank

Vijayan Vs. Syndicate Bank

SooperKanoon Citation : sooperkanoon.com/728105

Court : Kerala

Decided On : Sep-27-2001

Reported in : [2000(87)FLR386]

Judge : K.S. Radhakrishnan and; K. Balakrishnan Nair, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 120B, 381, 419, 420, 468, 471 and 477A; Prevention of Corruption Act, 1988 - Sections 13(1) and (2)

Appeal No. : W.A. No. 893 of 2000

Appellant : Vijayan

Respondent : Syndicate Bank

Advocate for Def. : M.P. Ashok Kumar, Adv.

Advocate for Pet/Ap. : N. Nandakumara Menon, Adv.

Disposition : Appeal dismissed

Judgement :

K. Balakrishnan Nair, J.

1. The question raised in this Appeal is whether disciplinary action can be initiated against an employee even after his acquittal by the criminal prosecution was launched. The brief facts leading to the case are the following.

The appellant is an employee of the first respondent Syndicate Bank. He was suspended by the Bank by Ext. P1 order dated 14.7.1992 on allegation of fraud resulting in withdrawal of Rs. 2,90,500/- from the Bank during the period from 14.2.1991 to 18.6.1992. Information was lodged with the police which resulted in the registration of two criminal cases against him. The Central Bureau of Investigation prosecuted him for the offences under Sections 120B, 381, 419, 420, 468, 471 and 477A of the Indian Penal Code and under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. He faced trial in two cases, CC Nos. 8/94 and 9/94 before the C.B.I. Special Judge, Ernakulam. He was acquitted in both the cases by Exts. P3 and P4 judgments. Evidently, the acquitted was not on merits, but in compliance with the directions of the Supreme Court in Raj Deo Sharma v. State of Bihar (JT 1998 (7) SC 1). During the pendency of the criminal cases, the appellant's suspension was revoked by Ext. P2 order. The said order of reinstatement was made without prejudice to the Bank's right to take disciplinary action. After the acquittal in the criminal cases, the Bank served Ext. P5 charge sheet dated 17.6.1999 on the appellant, who thereon requested for time upto 17.7.1999 of submitting his written statement of defence. On 16.7.1999, the appellant filed O.P.No. 17972/1999 seeking to quash Ext. P5 and also for a further direction restraining the respondents from proceeding with the disciplinary action in view of his acquittal. The learned single Judge dismissed the Original Petition by the Judgment under appeal. The aggrieved appellant, therefore, appeals.

2. We heard Mr. Nandakumara Menon, learned counsel for the appellant. He submitted that since the appellant has been acquitted by Exts. P3 and P4 judgments, the initiation of disciplinary proceedings on the same set of facts is impermissible. Special reference was made to Ext. P2 reinstatement order dated 3.2.1998. In the said order it is stated.

'It is also ordered that the suspension as above is revoked without prejudice to the Bank's right to take disciplinary action against him and to award any punishment as deemed fit in the event of the charge are proved in the Court.'

Since no charges are proved, the Bank is precluded from taking any action against the appellant, the counsel emphasises. The decisions relied on by the learned single Judge do not apply to the facts of this case, submits the appellant. We were taken through the provisions of the procedure governing disciplinary action contained in Chapter IX of the Bipartite Settlement. Special reference was made to Clause 19.4 extracted in Ground B of the Writ Petition to say that if at all the bank wanted to take disciplinary action, it should have been initiated within one year of the launching of the prosecution. He also contended that the Bank is estopped by issue estoppel/res judicata. he added that the case is a stale one, as the disciplinary proceedings are launched after the lapse of seven years after the alleged commission of the offence. By the delay, he is seriously prejudiced.

3. Mr. M.P. Ashok Kumar, learned counsel for the Bank relied on Clause 19.3(c) of the Bipartite Settlement which empowers the bank to proceed against a delinquent employee in disciplinary proceedings, even if he is acquitted by the criminal court. Various authorities were cited by both sides in support of their respective contentions.

4. It is common case that the rules of procedure governing disciplinary action against the appellant are those contained in the Bipartite Settlement. The relevant rules are contained in Clauses 19.3 and 19.4 of the Bipartite Settlement. For convenient reference, they are extracted below:

'19.3 (a). When in the opinion of the management an employee has committed an offence, unless he be otherwise prosecuted, the bank may take steps to prosecute him or get him prosecuted and in such a case he may also be suspended.

(b) If he be convicted, he may be dismissed with effect from the date of his conviction or be given any lesser form of punishment as mentioned in Clause 19.6 below:

(c) If he be acquitted, it shall be open to the management to proceed against him under the provisions set out below in Clauses 19.11 and 19.12 infra relating to discharges. However in the event of the management deciding after enquiry not to continue him in service, he shall be liable only for termination of service with three

months pay and allowances in lieu of, notice. And he shall be deemed to have been on duty during the period of suspension, if any, and shall be entitled to the full pay and allowances minus such subsistence allowance as he has drawn and to all other privileges for the period of suspension provided that if he be acquitted by being given the benefit of doubt he may be paid such portion f such pay and allowances as the management may deem proper, and the period of his absence shall not be treated as period spent on duty unless the management so direct.

(d) If he prefers an appeal or revision application against him conviction against his conviction and is acquitted, in case he had already been dealt with as above and he applies to the management for reconsideration of his case, the management shall review his case and may either reinstate him or proceed against him under the provisions set below in Clauses 19.11 and 19.12 infra relating to discharge, and the provisions set out above as to pay, allowances and the period of suspension will apply, the period up-to-date for which full pay and allowances have not been drawn being treated as one of suspension. In the event of the management deciding, after enquiry not to continue him in service, the employee shall be liable only for termination with three months pay and allowances in lieu of notice, a directed above.

19.4 If after steps have been taken to prosecute an employee or to get him prosecuted for an offence, he is not ut on trial within a year of the commission of the offence, the management may the deal with him as if he had committed an act of 'gross misconduct'or of 'minor misconduct' (as defined in Clause 19.5 and Clause 19.7) provided that if the Authority which was to start prosecution proceedings refused to do so or come to the conclusion that there is no case for prosecution it shall be open to the management to proceed against the employee under the provisions set out in Clause 19.11 and 19.12 relating to discharge, but he shall be deemed to have been on duty during the period of suspension, if any, and shall be entitled to the full wages and allowances and to all other privileges for such period. In the event of the management deciding, after enquiry, not to continue him in service, he shall be liable only for termination with three months pay and allowances in lieu of notice as provided in Clause 19.3. If within the pendency of proceedings thus instituted he is put on trial such proceedings shall

be stayed pending the completion of the trial, after which the provisions mentioned in Clause 19.3 shall apply.'

5. Clause 19.3 specifically empowers the management to initiate disciplinary proceedings against a delinquent employee who is acquitted by the criminal court. The said power is in no way diluted by the provision contained in Clause 19.4 which enables the management to initiate disciplinary proceedings without waiting for the conclusion of the criminal case. If the trial does not commence within one year of the launching of the prosecution, the management can proceeding against the employee in disciplinary action, in view of Clause 19.4. It does not mean that after one year of the launching of the prosecution and if no trial has commenced, the management should immediately initiate departmental proceedings. It is only an enabling provision which empowers the bank to initiate disciplinary proceedings in the event of delay in the conduct of the criminal prosecution. To put it tersely, the Bank is not denuded of the power to take disciplinary action, even if the above time limit is over. So, the contention in this regard raised by the appellant fails.

6. The submission made relying on a sentence in Ext. P2 to the effect that the Bank will initiate action if only the appellant is punished by the criminal court, is also not tenable. A sentence used by the Deputy General Manger, the author of Ext. P2, cannot bind the Bank, as the statement made by him is ultra vires and without authority. The criminal court evidently has not entered a finding that the appellant is not guilty of the charges. Nor, has he been acquitted honorably. Only on a technical ground that the trial did not commence within a time frame, he has been acquitted. The appellant's contention that the Bank should keep its hands off him in view of the acquittal, is therefore devoid of any merit.

7. Now it is settled law that albiet on same set of facts, criminal case and disciplinary proceedings operate on different plains. While the purpose of the first is to punish the guilty, the second is meant to 'keep the administrative machinery unsullied by getting rid of bad elements'. Power of disciplinary action is wielded to ensure the maintenance of purity and morale of the administration. So, even after acquittal on technical grounds by a criminal court, the delinquent employee can be proceeded against in departmental proceedings. The decisions of this court in

Spadigam v. State of Kerala (1970 KLT 1047), K Babu v. Union Bank of India (1986 KLT 706), Bhimsen v. Bank of India (1995 (2) KLT SN 73) and Sr. Supdt. of Post Office v. Gopalan (1999 (2) KLJ SN 14) support this legal position. The Supreme Court in Nelson Motis v. Union of India (1992 (4) SCC 711) has held as follows:

'So far the first point is concerned, namely whether the disciplinary proceedings could have been continued in the face of the acquittal of the appellant in the criminal case, the plea has no substance whatsoever and does not merit a detailed consideration. The nature and scope and a criminal case are very different from those of a departmental disciplinary proceeding and an order of acquittal, therefore, cannot conclude the department proceeding.'

Again, the Supreme Court in Union of India v. Bihari Lal Sithana (1997 (4) SCC 383) has reiterated that the acquittal by a criminal court will to preclude the competent authority from deciding to take disciplinary action against the delinquent employee.

8. The contention of the appellant that the Bank should have initiated the disciplinary proceedings within one year of the launching of the prosecution and the delay is causing serious prejudice to him, is contention on the merit of the disciplinary proceedings. All such contentions available to him are kept open and he may urge them before the disciplinary authority.

9. In view of the above, the appeal lacks merit and the same is dismissed. No costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com