Management of Lakshmi Vilas Bank Ltd. Vs. Appellate Authority Under Section 41(2) of the Tamil Nadu Shops and Establishments Act (Deputy Commissioner of Labour) and anr.

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Court : Chennai

Decided On : Oct-09-2001

Reported in : (2002)IILLJ118Mad

Judge : D. Murugesan, J.

Acts : Tamil Nadu Shops and Establishments Act, 1947 - Sections 41(2); Officers Discipline and Disciplinary Action Regulations, 1987 - Regulations 17, 19 and 23 to 27

Appeal No. : W.P. No. 18459/1994

Appellant : Management of Lakshmi Vilas Bank Ltd.

Respondent : Appellate Authority Under Section 41(2) of the Tamil Nadu Shops and Establishments Act (Deputy Commi

Advocate for Def. : K.S.V. Prasad, Adv.

Advocate for Pet/Ap. : V. Karthic, Adv. for T.S. Gopalan and Co.

Disposition : Petition allowed

Judgement :

D. Murugesan, J.

1. The management of Lakshmi Vilas Bank, Ltd., Karur, is the writ-petitioner. The petitioner has challenged the order of the first respondent, the Appellate Authority under Section 41(2) of the Tamil Nadu Shops and Establishments Act (Deputy Commissioner of Labour), Salem made in TNSI Appeal No. 6 of 1992, dated April 22, 1994.

2. The brief facts leading to the filing of the writ petition are as follows:

The second respondent is a person employed as per the definition of Section 2(12) of the Tamil Nadu Shops and Establishments Act under the writ-petitioner. The second respondent was suspended from services with effect from March 1, 1989, by order dated March 1, 1989 pending departmental enquiry, in regard to as many as eight charges framed under Regulation 17(c) of the Lakshmi Vilas Bank, Ltd. Officers Discipline and Disciplinary Action Regulations, 1987 (hereinafter called the Regulations. An enquiry was instituted into the charges and on the basis of the report of the enquiry officer holding all the charges proved, the second respondent was terminated from services with effect from May 16, 1991. Aggrieved by the said order the second respondent preferred appeal under Regulation 52 of the Regulations on June 12, 1991 and the same was dismissed by order dated July 12, 1991. Aggrieved by the said order, the second respondent filed review petition under Regulation 57 of the Regulations on November 2, 1991, and the same was rejected on December 26, 1991. Aggrieved by the above orders, the second respondent preferred an appeal before the first respondent, the appellate authority constituted under Section 41(2) of the Tamil Nadu Shops and Establishments Act (hereinafter called the Act), the appellate authority found charge Nos. 3 and 8 are proved and charge No. 7 as partly proved and held other charges not proved. However, the appellate authority went into the question of the proved charges and found that those charges would not constitute gross negligence of duty and consequently cannot be treated as major misconduct as contemplated under Regulation 17(c) of the Regulations. Consequently, the

appellate authority found that the proved charges would utmost amount to minor misconduct and the same will attract only minor punishment like warning, censure, withholding of increments or pay up to a maximum of 4 increments with or without cumulative effect, withholding the promotion for a particular period up to a maximum of 4 years, reduction of lower stage, reduction of lower scale, etc., as contemplated under Regulation 20 of the Regulations. Holding so, the appellate authority set aside the order of termination of the second respondent. It is against this order, the petitioner-management has filed the present writ petition.

3. Sri V. Karthic, learned counsel for the petitioner, submitted that when once the appellate authority came to the conclusion that the charge Nos. 3 and 8 are proved and charge No. 7 partly proved, it ought not to have interfered with the order of termination and ought not to have found that the proved charges will not constitute gross negligence of duty and those charges cannot be considered as major misconduct warranting punishment of termination. The learned counsel would further submit that in so far as the third charge is concerned, the second respondent had transgressed his power while granting loan under IRDP Scheme on April 24, 1987 to K.R. Velusamy Gounder for purchase of an oil engine and pipeline and sanctioned a loan of Rs. 11,700 and a subsidy of Rs. 3,900 as against the eligible subsidy of Rs. 2,600. Even as admitted by the second respondent as found in his cross-examination, the subsidy is only in respect of the actual loan amount, and on the contrary the second respondent allowed the subsidy on the basis of Project cost. Therefore, the charge could be considered only as major misconduct as per Regulations 17(d) and 17(e) of the Regulations. Equally charge No. 8 relates to sanction of agricultural loans by the second respondent under his discretionary power to eight persons over and above individual limit and overall limit. The learned counsel submitted that in respect of charge No. 7 which has been held as partly proved, the second respondent extended crop loans aggregating to Rs. 2.35 lakhs indiscriminately ranging from Rs. 5,000 to Rs. 10,000 to 33 parties violating instructions contained in circular No. 3 of 1984, dated February 13, 1984. These charges once proved would be considered a major misconduct warranting a major punishment. The learned counsel would rely upon the judgments of the Supreme Court reported in Disciplinary Authority-cum-Regional Manager and Ors. v. Nikunja Bihari Patnaik, :

and Tara Chand Vyas v. Chairman and Disciplinary Authority and Ors., : to contend that dereliction in the performance of the duty by the officers would amount to catastrophic corruption and the Supreme Court has viewed such action of the offences of the bank very seriously. Hence, the interference of the order of termination by the appellate authority is patently illegal and is liable to be set aside.

4. In reply, Sri K.S.V. Prasad, learned counsel for the second respondent submitted that in respect of charge No. 3, the false certificate allegedly issued to the Block Development Officer stating that the second respondent sanctioned a loan of Rs. 11,700 a subsidy of Rs. 3,900 as against the eligible subsidy of Rs. 2,600 was not produced before the enquiry officer. In the absence of the said certificate, the charge cannot be held to be proved. In so far as the charge Nos. 7 and 8 the learned counsel submitted that the loan granted was subsequently ratified by asking the loanee to make repayment when once the loan granted by the second respondent was ratified, there is no question of misconduct much less a major misconduct on the part of the second respondent. The learned counsel further submitted that when disciplinary proceedings are initiated, the petitioner-management ought to have followed Regulations 23 to 27 of 'the Regulations.' In this case, these regulations have not been followed since even before the explanation is called for, the enquiry officer was appointed and therefore the entire enquiry proceedings are vitiated. The learned counsel would further submit that his request for permission to engage a lawyer was not granted in the enquiry. Hence, the enquiry proceedings are also vitiated on this ground. The request for production of certain documents not complied with and in the absence of compliance of the above request the impugned order suffers from violation of the principles of natural justice. Hence, the learned counsel submitted that since the enquiry proceedings itself is vitiated, the second respondent cannot be proceeded with on the basis of the report of such enquiry and consequently the order of termination is liable to be set aside.

5. I have heard the learned counsel for the petitioner and the second respondent. Before considering the submissions in regard to the charges, findings of the appellate authority and the final order passed thereon, it would be relevant to

consider the preliminary objections raised by the learned counsel for the second respondent. In so far as the rejection of the request of the second respondent to permit and engage a lawyer, it is true that when the second respondent is pitted against a legally trained person in the enquiry proceedings, in order to give a fair and reasonable opportunity to defend his case, he must be given an opportunity to defend his case through a lawyer. The Supreme Court in the judgment reported in Board of Trustees of Port of Bombay v. Dilipkumar Raghavendranath Nadkarni and Ors., : and a Division 'Bench of this Court in the judgment reported in Indian Airlines Corporation (represented by Regional Director) and Anr. v. N. Sundaram 1992 (2) L.L.N. 811, have also held that refusal to permit the delinquent officer to defend through a lawyer is violation of the principles of natural justice which itself should be considered as prejudice. In this case, the chargesheet was issued to the second respondent on May 26, 1989. The second respondent submitted a petition to the petitioner-management for permission to engage an advocate to defend him. The management rejected the said request on the ground that the circumstances warrant no assistance of an advocate, as the second respondent was not pitted against either a lawyer or a legally trained person. Aggrieved by the said order the second respondent filed a civil suit in O.S. No. 31 of 1990 before the District Munsif, Kangeyam. The said suit was dismissed on September 17, 1990 for default on the part of the second respondent. Even though the second respondent has chosen to challenge the same by way of filing a suit, he did not prosecute the suit hopefully as he may not succeed in the suit as the order on his request for engaging a lawyer was with reasons. Even though he was given sufficient opportunity, he did not participate in the enquiry. After the enquiry report was submitted the order of termination was passed based upon the report of the enquiry officer. The second respondent also canvassed the said point before the appellate authority, who considered the same as formal that though the second respondent was given sufficient opportunity to participate in the enquiry, he did not make use of the same. After the dismissal of the suit on September 17, 1990, the enquiry was posted to December 3, 1990. At request of the second respondent the same was adjourned to February 25, 1991 on the ground that the second respondent had filed an application before the civil Court for stay of the decree: dismissing the suit in O.S. No. 31 of 1990, dated September 17, 1990. On that

date also, the second respondent did not appear and was set ex parte and evidence was let in and Exhibits M2 and M25 were marked and the enquiry officer submitted his report on the same day. Even before the appellate authority, both the petitioner-management and the second respondent were given opportunity to let in their evidence on various dates including August 2, 1993, October 21, 1993, November 4, 1993, November 22, 1993, December 9, 1993, December 27, 1993 and February 23, 1994 and the second respondent did not take any steps to disprove the charges much less the above allegation of violation of the principles of natural justice. As could be seen from the facts narrated above, even though sufficient opportunities were given to the second respondent, he did not avail this opportunity both before the enquiry officer and the appellate authority. Having failed to avail such opportunity, it is not open to the second respondent to raise the said point at this stage before this Court. Under the circumstances I do not find any merit in the contention of the learned counsel for the second respondent that the enquiry proceedings are vitiated because the second respondent was not permitted to engage a lawyer to defend his case. Therefore, I reject the said submission.

6. Coming to the submissions as to the non-compliance of the provisions of Regulations 23 to 27 of 'the Regulations', it is the grievance of the second respondent that even before the explanation was offered, an enquiry was ordered. The second respondent was placed under suspension on March 1, 1989 pending enquiry into certain charges. By chargesheet dated May 26, 1989, the second respondent was communicated with eight charges. In the said chargesheet after extracting all the eight charges, it is stated as follows:

'The enquiry on the above charges will be conducted by our officer of the bank, who will advise you the date, time and place of enquiry. You may send your written explanation in your defence to the enquiry officer atleast three days before the date of enquiry. You will be permitted to be defended by a representative of the officer union of which you are a member.

You will be allowed to produce your evidence to examine witnesses in your defence and to cross-examine the witnesses brought by the bank against you at

the enquiry.

Please note that the enquiry may be proceeded ex parte in your absence if you do not appear at the appointed date, time and place of the enquiry.'

7. Chapter III of 'the Regulations' relate to the disciplinary proceedings and imposition of penalties and the relevant regulations are extracted as under:

'Regulation 22: The Chairman or any other authority empowered by him by general or special order may (for the purpose of instituting disciplinary action against an officer of the bank) appoint disciplinary authority and also an appellate authority for the case, as mentioned in the schedule.

Regulation 23: The disciplinary authority shall frame definite and distinct charge or charges against the officer on whom disciplinary action is proposed to be taken and shall serve the charge or charges on the officer concerned and, require him to submit within a specified time a written statement of his defence.

Regulation 24: On receipt of the written. statement of the officer or if no such statement is received within the time specified an enquiry may be held by appointing an enquiry officer for the purpose:

Provided that it may not be necessary to hold an enquiry in case of admission of the charges by the officer and the disciplinary authority may record his findings on each charge on such admission and pass the final order. Regulation 25: The disciplinary authority when it has proposed to hold the enquiry by appointing an enquiry officer shall appoint, by an order, an officer as presenting officer to present on behalf of the management the case in support of the charge or charges,

Regulation 26: The disciplinary authority shall forward to the enquiry officer-

(i) A copy of the charge or charges.

(ii) A copy of the written statement of defence, if any, submitted by the charge-sheeted officer.

(iii) A copy of the order appointing the presenting officer.

Regulation 27: Enquiry officer, may thereafter fix a date, time and place for enquiry and may require by notice the presenting officer and the charge-sheeted officer to be present and remain present during the enquiry and allow the charge-sheeted officer to be defended by the representative of the officers association, called the defence representatives or be defended by a lawyer with the permission of the bank.'

8. As per Regulation 23, the disciplinary authority shall frame definite and distinct charges against the officer on whom disciplinary action is proposed to be taken and shall serve the charge or charges on the officer requiring him to submit written statement of his defence. As per Regulation 24, only after the receipt of the written statement of the defence from the officer, if filed, within the given time, an enquiry may be held by appointing an enquiry officer for the purpose of holding the enquiry. As per Regulation 25, when it is proposed to hold the enquiry by appointing an enquiry officer, an officer as presenting officer to present on behalf of the management, in support of the charges has to be appointed. Thereafter, disciplinary authority shall forward to the enquiry officer a copy of the charges, written statement of defence, if any and a copy of the order appointing, the presenting officer. Thereafter only, the enquiry officer may fix the date, time and place for enquiry. In this case, as could be seen from the chargesheet, an enquiry officer was appointed even before the explanation is received from the second respondent. It is also stated in the chargesheet that in the absence of the second respondent not appearing on the appointed date, time and place of the enquiry, the enquiry will be proceeded ex parte. In view of the above settled procedure to be adopted by the petitioner in the disciplinary proceedings and in view of the admitted position that even before the receipt of written statement of defence, an enquiry officer was appointed, it is to be now seen as to whether non-compliance of Regulation 22 to 27 vitiates the enquiry proceedings and the consequential order of termination. Regulation 23 to 27 relate to the procedure to be followed by the petitioner herein initiating the disciplinary proceedings. When non-compliance of regulation is pleaded before this Court, the second respondent apart from pleading non-compliance should also satisfy this Court as to the prejudice caused to him in non-compliance of the regulations. As discussed in the earlier paragraphs, the second respondent was issued with chargesheet on May 26,

1989. After the learned District Munsif, Kangeyam, dismissed the suit filed by the second respondent in O. S. No. 31 of 1990 for default on the part of the second respondent an enquiry notice was issued to the second respondent calling upon him to appear before the enquiry officer on February 26, 1991. The second respondent did not appear before the enquiry officer and he did not avail the opportunity and allowed the enquiry to be proceeded ex parte. Even when the second respondent preferred appeal before the first respondent, he was given opportunity to defend his case on more than 10 hearings. The second respondent neither raised the issue of non-compliance of Regulation 23 to 27 in the enquiry proceedings when he presented the appeal before the first respondent nor advanced any argument before the appellate authority on this point. The said point has been raised only at the time of hearing of the writ petition.

9. On the above factual background, it is to be now considered as to whether any prejudice is caused to the second respondent when the writ petitioner appointed the enquiry officer even before the second respondent submitted his written statement of defence. When the chargesheet was issued and the enquiry was directed to be held, this second respondent did not avail the opportunity and submit his written statement of defence. He did not also question the enquiry proceedings for non-compliance of the procedure contemplated under Regulations 23 to 27 either before the enquiry officer or before the appellate authority, and has raised the point for the first time, at the stage of hearing of the writ petition, that too in the writ petition filed at the instance of the petitioner/ management. The directions of the petitioner/ management to hold the enquiry against the second respondent along with the chargesheet, in my considered view, did not result in any prejudice to the second respondent as the second respondent was given fullest opportunity both by the enquiry officer and by the appellate authority to put forth his defence, and having failed to avail those opportunities, it is not open to the second respondent to raise a new plea before this Court, especially when such plea does not result in any prejudice to the second respondent. Hence, I reject the submissions of the learned counsel for the second respondent that the non-compliance of the procedure contemplated under Regulations 23 to 27 would vitiate the enquiry proceedings. For the same reason, the contention of the learned counsel for the second respondent that the enquiry proceedings are vitiated on the

ground of violation of principles of natural justice also cannot be accepted.

10. Coming to the merits of the case, as against eight charges levelled against the second respondent, the appellate authority has found that charge Nos. 3 and 8 have been proved and charge No. 7 has been partly proved. In so far as charge No. 3 is concerned the second respondent has been charged for sanctioning of a loan of Rs. 11,700 with subsidy of Rs. 3900 as against the eligible subsidy of Rs. 2,600. The appellate authority has considered the misconduct of the second respondent as one of minor misconduct. Regulation 17(e) relates to 'gross negligence of duty.' Even though the second respondent has been charged under Regulation 17(e), the misconduct alleged against the second respondent would also fall under Regulation 17(d), which relates to 'doing an act prejudicial to the interests of the bank.' An attempt was made before this Court by the second respondent that the misconduct alleged would be only a minor misconduct, since there was no loss to the bank in granting the subsidy over and above the eligible limits. According to the second respondent, the subsidy is permitted as against the project cost and not against the actual amount of loan advanced. In this context it is to be seen that the second respondent himself has admitted that the subsidy to be allowed only as against the actualamount of loan sanctioned and not as againstthe project cost. When the subsidy is allowedmore than the amount eligible, allowing ofsuch subsidy over and above the eligiblelimits would be definitely doing an actprejudicial to the interest of the bank whichin other words could be termed as 'grossnegligence of duty.' In this context it wouldbe relevant to refer the judgment of theSupreme Court reported in DisciplinaryAuthority-cum-Regional Manager and Ors.v. Nikunja Bihari Patnaik (supra), whereinthe Supreme Court has held that actingbeyond one's authority is a misconduct withinthe meaning of Regulation 24 of the CentralBank of India Officer Employees' (Disciplineand Appeal) Regulations. The Supreme Courthas further held that proof of any loss notnecessarily to be established.

11. In that view of the matter, I do not find any reason in the order of the appellate authority to come to the conclusion that the charge No. 3 does not relate to gross. negligence of duty and could be called as minor misconduct. Similarly, charge No. 7 which has been partly proved relates to sanction of crop loan aggregating to Rs.

2,35,000 ranging from Rs. 5,000 to Rs. 10,000 to 33 individuals against the instructions contained in circular No. 3 of 1984 dated February 13, 1984. The above sanction of loan is not disputed as one contrary to the circular, dated February 13, 1984. However, sanction of loan sought to be justified on the ground that the same has been subsequently ratified. The subsequent ratification by the bank, in my view, will not absolve the second respondent of his misconduct in sanctioning the loan contrary to the circular in force. Even the appellate authority has found that the action of the second respondent resulted in loss to the bank, which would be definitely termed as a major misconduct. On the same reasons, the charge No. 8 has also been held proved wherein the second respondent had sanctioned the loan to as many as eight persons over and above the limits of the loan which could be sanctioned by him. The appellate authority has also found that even though the loan was sanctioned, no action was taken to recover the same from the loanee. However, in respect of this charge also, the appellate authority found that the charges would not constitute, gross negligence of duty and consequently the action of the second respondent would not amount to major misconduct. The above conclusions arrived by the appellate authority are contrary to materials on records and without reference to the seriousness of the charges, which were held to be proved. The appellate authority has miserably failed in terming the major misconduct of the petitioner in respect of charge Nos. 7 and 8 as a minor misconduct since sanctioning of a loan was contrary to the circular, dated February 13, 1984.

12. In this context, it would be also relevant to refer Regulation 19(c), which relates to 'breach of any rule of business or instructions of a superior.' The said regulation of course refers to minor misconduct. The acts of the second respondent in breach of any rule of business or instructions of a superior could be termed as minor misconduct. Charge Nos. 7 and 8 levelled against the second respondent cannot be considered as mere breach of the instructions of a superior in the routine course of administration. The actions of the second respondent in sanctioning the loan to various persons over and above his limits and contrary to the circular No. 3/1984, dated February 13, 1984, cannot be brought under Regulation 19(c) to contend that they are only minor misconducts. By exercising the powers to sanction the loan, the second respondent has acted prejudicially to the interest of

the bank with gross negligence of duty which resulted in loss to the bank as found by the appellate authority himself. As held by the Supreme Court in the judgment cited (supra), even likelihood of loss is sufficient to constitute an act of the officer to be viewed as a major misconduct.

13. Therefore, I do not find any justification in the order of the appellate authority in terming the charge Nos. 3, 7 and 8 as minor misconducts and they do not amount to gross negligence of duty. As discussed above, the charge Nos. 3, 7 and 8 would constitute major misconduct due to gross negligence of duty. Hence, the interference of appellate authority in the order of termination cannot be justified.

14. Accordingly, the impugned order of the first respondent, dated April 22, 1994, setting aside the order of the termination imposed on the second respondent cannot be sustained and the same is hereby set aside. The writ petition is allowed. No costs.