V.Ramasamy Vs. the Managing Director,

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Court : Chennai

Decided On : Apr-09-2012

Judge : N. Paul Vasanthakumar, J.

Acts : Indian Penal Code(IPC) - Sections 120-B, 420; Prevention of Corruption Act - Section 13(2), 13(1)(e); Constitution of India - Articles 226

Appeal No. : W.P.No.9315 of 2012 and M.P.No.1 of 2012

Appellant : V.Ramasamy

Respondent : The Managing Director,

Advocate for Def. : Mr.EMS Natarajan, GA, Adv.

Advocate for Pet/Ap. : Mr.Satish Parasaran, Adv

Judgement :

Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the second respondent comprised in his communication dated 17.12.2011 bearing Reg.1/Emp No.53/AA/GAD and quash the same as arbitrary and illegal and consequently directing the second respondent to revoke the suspension of the petitioner as made in the order dated 07.01.2011 bearing Ref.53/2011/GAD-CA issued by the first respondent within a period.

ORDER

1. The prayer in the Writ Petition is to quash the impugned order dated 17.12.2011, passed by the second respondent rejecting the representation of the petitioner to revoke the order of suspension dated 07.01.2011 passed by the first respondent.

2. The case of the petitioner is that the petitioner joined in REPCO Bank on 18.03.1983 as Clerk-cum-Typist. In the year 1993, he was promoted to the post of Officer in Assistant Manager cadre and thereafter, he was promoted as Assistant General Manager in the year 2005 and Deputy General Manager in the year 2006. In the year 2008, the petitioner was promoted as Joint General Manager and posted to the first respondent's Corporate Office, Chennai. In the year 2008, the petitioner was transferred to Regional Office of the first respondent at Coimbatore.

3. According to the petitioner, the performance appraisal of the petitioner was good. However, he was implicated in a criminal case for offence under sections 120-B and 420 IPC read with sections 13(2) and 13(1)(d) of Prevention of Corruption Act, 1988, for the sanction of short term loan of Rs.97 lakhs in favour of one S.Muthiah. Charge sheet was filed in the said criminal case and the same is pending in C.C.No.30 of 2010 before the learned Special Judge for CBI Cases, XI Additional Sessions Judge, Chennai. The petitioner has also filed application to discharge him in the said criminal case which was also dismissed on 22.09.2011.

4. The petitioner was placed under suspension by the order of the Bank dated 07.01.2011 invoking its power under Regulation 12 of REPCO Bank Officers' (Discipline and Appeal) Regulations, 2003, on the ground that he is involved in a criminal case which is under trial. Regulation 12 of the REPCO Bank Officers' (Discipline and Appeal) Regulations, 2003, reads as follows:

"12.SUSPENSIONS:

(1)An Officer may be placed under suspension by the competent authority:

(a)where a disciplinary proceedings against him is contemplated or is pending or (b)where a case against him in respect of any criminal offence is under investigation, inquiry or trial.

(2)An Officer shall be deemed to have been placed under suspension by an order of the competent authority:

(a)With effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding fortyeight hours;

(b)with effect from the date of conviction, if in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding fortyeight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

EXPLANATION: The period of fortyeight hours referred to in Clause(b) of this sub-regulation shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account.

(3)Where a penalty of dismissal, removal and compulsory retirement from service imposed upon an Officer under suspension is set aside in appeal or on review under these regulations and the case is remitted for further inquiry or action or with any directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original orders of dismissal removal or compulsory retirement and shall remain in force until further orders.

(4)Where a penalty of dismissal removal or compulsory retirement from service imposed upon an Officer under suspension is set aside or declared or rendered void in consequence of or by a decision of a court of law, and the disciplinary authority, on consideration of the circumstances of the case, decides to hold further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Officer shall be deemed to have been placed under suspension by the competent authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

(5)(a) An order of suspension made or deemed to have been made under this regulation shall continue to remain in force until it is modified or revoked by the authority competent to do so.

(b) An order of suspension made or deemed to have been made under this regulation may at any time be modified or revoked by the authority which made or is deemed to have made the order."

5. The petitioner filed an application on 12.01.2011 before the Chairman to revoke the order of suspension. The same was rejected on 02.02.2011 stating that the petitioner's request for revocation is not feasible of compliance at this stage.

6. Learned counsel for the petitioner contended that the Bank has not exercised its discretion and it has acted only under the dictate of the CBI. Therefore, the orders dated 07.01.2011 and 17.12.2011 are not proper.

7. In the representation submitted before the Appellate Authority on 12.01.2011 which is filed in the typed set of papers, the petitioner has not stated that the suspension order was passed by the first respondent under the dictate of the CBI. Before this Court, for the first time, it is stated that the suspension order was passed under the dictate of the CBI. Hence, the said contention cannot be accepted.

8. The power of the Bank to place the petitioner under suspension by invoking Regulation 12 of the REPCO Bank Officers' (Discipline and Appeal) Regulations, 2003, is not questioned. The said regulation states that an Officer may be placed under suspension when investigation/inquiry or trial is pending against him in respect of criminal case. In the case on hand, a criminal case is pending against the petitioner in C.C.No.30 of 2010 on the file of the learned Special Judge for CBI Cases and the discharge petition filed by the petitioner was also dismissed on 22.08.2011.

9. The Supreme Court in the case of Allahabad Bank and another vs. Deepak Kumar Bhola reported in 1997 (4) SCC 1, upheld the order of suspension of a bank employee, who was facing a criminal offence involving in moral turpitude. In

the said judgment, the order of the High Court, Allahabad, quashing the order of suspension was set aside and the appeal filed by the bank was allowed.

10. The Supreme Court in the decision in Surain Singh v. State of Punjab reported in 2009 (1) Supreme 458 held that corruption in the administration has hampered the development of the Nation and the persons, who involved in the corruption cases, should be dealt with firmly and the persons indulging in corruption practices cannot be allowed to be in public employment to maintain purity of administration, as such attitude will definitely affect public interest. In paragraph No.7, it is held thus:-

"7. Day in and day out the gigantic problem of corruption in the public servants is on the increase. Large scale corruption retards the nation-building activities and everyone has to suffer on that count. Corruption is corroding like cancerous lymph nodes, the vital veins of the body politics, social fabric of efficiency in the public service and moralizing the honest officers. The efficiency in public service would improve only when the public servant devotes his sincere attention and does the duty diligently, truthfully, honestly and devotes himself assiduously to the performance of the duties of his post. [See: Swatantar Singh v. State of Haryana 1997 (4) SCC 14 and State of M.P. v. Shambhu Dayal Nagar 2002 (1) SCC 1."

The Supreme Court in the decisions in R.P.Kapoor v. Union of India reported in AIR 1964 SC 7871; Balwantray Ratilal Patel v. State of Maharastra reported in AIR 1968 SC 800; A.K.K.Nambiar v. Union of India reported in 1969 (3) SCC 864; V.P.Gidroniya v. State of Madhya Pradesh reported in 1970 (1) SCC 362; Ministry of Home Affairs v. Tarak Nath Ghosh reported in 1971 (1) SCC 734; Government of Andhra Pradesh v. V.Sivaraman reported in 1990 (3) SCC 57; Uttar Pradesh Rajya Krishi Utpadan Manti Samiti Parishad v. Sanjiv Rajah reported in 1993 (2) LLN 11; State of Orissa v. Bimal Kumar Mohanty reported in 1994 (1) LLN 889; State of Madhya Pradesh v. Ram Singh reported in 2000 (5) SCC 88; State Bank of India v. Rattan Singh reported in 2000 (10) SCC 396; K.C.Sareen v. CBI reported in 2001 (6) SCC 584; Union of India v. Rajiv Kumar reported in 2003 (6) SCC 516, categorically held that a person involved in a criminal case, particularly in corruption case, can be placed under suspension till he is exonerated and he can claim only subsistence allowance.

11. In the case on hand, the petitioner was suspended from service for his involvement in the criminal case. When a criminal case is under trial after charge sheet is filed against the petitioner and the suspension order having been passed in exercise of powers conferred under Regulation 12 of REPCO Bank Officers' (Discipline and Appeal) Regulations, 2003, and the bank having exercised its discretion not to revoke the suspension order, no exception could be taken to interfere in the order of suspension passed against the petitioner before the trial in the criminal case is over. If the petitioner is inclined to expedite the criminal case, it is open to him to plead the CBI Court to dispose of the case early.

12. There is no merit in the Writ Petition and the Writ Petition is dismissed in limini. No costs. Consequently, the connected miscellaneous petition is closed.