

K. Krishna Bhat Vs. Syndicate Bank and Another

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Court : Karnataka

Decided On : Oct-12-2011

Judge : V.G. Sabhahit & S.N. Satyanarayana

Appeal No. : WRIT APPEAL No. 805 OF 2006 (L-TER)

Appellant : K. Krishna Bhat

Respondent : Syndicate Bank and Another

Advocate for Pet/Ap. : For the Appellant: Subba Rao, Sr. Counsel For M/S. Subba Rao and Co., Advocates. For the Respondents: R1, Pradeep Sawkar For M/S. Sundaraswamy Ramdas and Anand, Advocates.

Judgement :

(Prayer: This Writ Appeal Is Filed U/S 4 Of The Karnataka High Court Act Praying To Set Aside The Order Passed In The Writ Petition No.294/2000 Dated 02/12/2005.)

SABHAHIT, J.

1. This appeal is filed by the petitioner in W.P. No.294/2000 being aggrieved by the order dt.2.12.2005, wherein the Writ Petition filed by the appellant herein has been disposed of by declining to interfere with the impugned order dt.1.6.1999 passed by the Central Government Industrial Tribunal-cum Labour Court, Bangalore in Central Reference No.126 of 1997 holding that the domestic inquiry

was valid.

2. The material facts leading up to this appeal are as follows:

The petitioner/appellant herein was working as a Special Assistant in the employment of the respondent - Bank. He was served with articles of charge, accusing that he was guilty of misconduct as he had resorted to misappropriation of the Bank's funds and fabrication of records which amounted to misconduct, for the period from 8.11.1985 to 7.5.1992. 23 charges were framed against the petitioner. Charge Nos. 1 to 11 and 21 and 23 pertain to misappropriation of the amount in his own S.B.Account by encashing the withdrawal slip without there being any amount in his account and not making entry in the daily ledger in that behalf. The other charges pertain to withdrawing the amount from the accounts of the customers and misappropriating the said amount.

3. Petitioner was served with articles of charge and he submitted the explanation to the articles of charge as per Annexure 'F' to the Writ Petition stating that he had committed certain mistakes which were unintentional and that withdrawal from the account of the customers/staff account were with their due permission/authorization and that there was no financial loss to the bank on account of these mistakes. As to the discounting of cheques, he got the same done in anticipation of certain credits to his S.B.account at Janata Co-operative Bank, Udupi and since the credits were not forthcoming cheques were dishonored after it was discounted. He had put in an unblemished service of 26 years and served at various branches of the bank to the best of his ability and to the satisfaction of his superiors.

4. Being not satisfied with the explanation offered by the petitioner, disciplinary enquiry was held, wherein sufficient opportunity was afforded to the petitioner to substantiate his contention and evidence was lead on behalf of the Management. Petitioner examined one customer and did not led any other evidence in support of his contention. The enquiry officer submitted the report that the charge against the petitioner had been proved which was accepted by the disciplinary authority and order of dismissal was passed on 13.01.1994 and the same was challenged in appeal which was with no success as the appeal was dismissed on 14.05.1994,

confirming the punishment of dismissal. Being aggrieved by the same, the Staff Association of the respondent - Bank submitted a petition on 19.09.1994 to the Conciliation Officer, which failed. Thereafter, Reference was made to the Central Government Industrial Tribunal-cum-Labour Court, Bangalore and the Labour Court after holding detailed enquiry, by order dt.1.6.1999 held that the charges against the writ petitioner had been proved and the order of dismissal was justified and rejected the Reference holding that the management of the respondent - Bank is justified in dismissing the workman/appellant herein from service w.e.f. 10.02.1994 and answered the reference accordingly.

5. Being aggrieved by the said judgment and award passed by the Presiding Officer, Central Government Industrial Tribunal-cum Labour Court, Bangalore, dt. 29.9.1999 petitioner/appellant herein filed W.P.No.294/2000 contending that the enquiry had not been held in accordance with law. Sufficient opportunity was not granted to the petitioner to examine the customer and there was no misappropriation of the amount and that the departmental enquiry was not made in accordance with law. Further, the Central Government Industrial Tribunal-cum Labour Court was not justified in confirming the order of dismissal. The petition was resisted and the learned Single Judge after considering the contention of the counsel appearing for the parties and scrutinizing the material on record by order dt.2.12.2005 confirmed the impugned order and dismissed the Writ Petition. However, since at that juncture it was submitted by the learned counsel appearing for the petitioner that notwithstanding the dismissal from service, petitioner is entitled to certain amounts like provident fund, etc., and he prayed for a direction to the respondents to disburse the same to the petitioner and the learned Single Judge directed the respondent to examine the monetary claims of the petitioner in accordance with law and disburse them, if he is otherwise entitled to receive the same and if they are not yet disbursed. In view of the further submission, the learned Single Judge passed the following order after dismissal of the Writ Petition:

(a) Notwithstanding his dismissal from service, the petitioner is entitled to get certain amounts like Provident Funds, etc., and he prays for a direction to the respondents to disburse the same. I would direct the respondent to examine the

monetary claims of the petitioner in accordance with law and thereafter disburse the same to him, if he is otherwise entitled to receive them and if they are not yet disbursed.

(b) Sri Subramanya Bhat submits that the petitioner be given the discharge in lieu of dismissal as was done in the case of SYNDICATE BANK vs. THE ASST. STATE SECRETARY (unreported order dt.27.5.2005 passed in W.P. NO.17534 of 1999 (L-RES) by this Court. Having held that the facts of the said case and the instant case are not identical, it is not proper for me to give a positive direction to the respondent to scale down the punishment from dismissal to discharge. However, I reserve the liberty to the petitioner to give a representation to the respondent for considering his case for discharge. If such a representation is made, the respondent shall consider the same in accordance with law and its regulations and this liberty is being reserved and observation is being made, as I am persuaded by Sri Bhat that the petitioner is a senior citizen with nobody whatsoever on whom he can fall back. If he makes such a representation, the same shall be considered as expeditiously as possible and in any case within an outer limit of six months from the date of the receipt of representation.”

6. Being aggrieved by the order of the learned Single Judge dismissing the Writ Petition declining to interfere with the judgment and award passed by the Industrial Tribunal, impugned in the Writ Petition this appeal is filed by the unsuccessful writ petitioner.

7. We have heard the learned senior counsel appearing for the appellant and the learned counsel appearing for respondent - bank.

8. Learned senior counsel appearing for the appellant submitted that the Labour Court has proceeded on the basis that the workman has admitted the charge framed against him and the explanation submitted as per Annexure 'F' to the Writ Petition would not amount to any admission of the charges which only explains the charges. Further, he has taken us through the relevant Rules to be followed while conducting an enquiry in respect of the charges of gross misconduct dealt with under clause 19 and submitted that no sufficient opportunity had been granted to the petitioner to substantiate his contention and though he has examined one

customer, his prayer for examining other customers was not granted. Therefore, the order is passed in gross violation of principles of natural justice.

9. Learned senior counsel further submitted that even assuming that the question of fact about the proof of charge has been answered correctly, the order of dismissal passed against the petitioner who was on the verge of retirement when the charges were framed, is disproportionate and shocks the conscience of the Court and submitted that the unblemished service rendered by the petitioner prior to the period for which charges were framed regarding the misconduct, the size of his family, the hardship to which he would be put and also the fact that no loss is caused to the bank and the charges are not grave in nature and transactions are authorized by customers, it was only some mistake in making entries and therefore, the order of punishment of dismissal may be reduced to one of discharge. So that the petitioner would be entitled to pensionary benefits, if he is entitled to. In support of his contention he has relied upon the decision of the learned Single Judge of this Court in W.P. No.17534/1999 dt.27.5.2005, wherein the workman had admitted the charge against him regarding misappropriation of a sum of Rs.8,700/- and only prayed for a lenient punishment. The learned Single Judge having regard to the facts of the case and also having regard to the fact that the petitioner had pleaded guilty of the charge framed against him, did not contest and there was no enquiry and there was no misappropriation of the amount belonging to the bank or the customer, has reduced the punishment of dismissal to one of discharge. Learned senior counsel submitted that a lenient view may be taken regarding the punishment to be imposed upon the petitioner. He has relied upon the decision of the Hon'ble Supreme Court in the case of *RANJIT THAKUR vs. UNION OF INDIA AND OTHERS* reported in (1987) 4 SCC 611, wherein the Hon'ble Supreme Court has stated that the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review and all the factors pertaining to the mitigating facts of punishment should be taken into account. In the said case the Hon'ble Supreme Court was considering the case, wherein court martial was imposed rigorous imprisonment for one year and it was also ordered that the petitioner would not be entitled to

continue in service.

10. In response to the arguments of the learned counsel appearing for the appellant learned counsel appearing for the respondent submitted that the appellant has been found guilty of 23 charges framed against him which are grave in nature. He has misappropriated the amount in his own S.B.account by encashing the withdrawal slip without there being any amount in his account and not making entry in the daily ledger in the behalf. He has also misappropriated the amount of the customer by withdrawing the amount from their account. He has discounted the cheque in his account and thereafter the cheque was dishonoured and amount had to be deducted from his S.B. account as he had discounted the cheque which was dishonoured. Further, the appellant was discharging the duties in trust as he was Special Assistant working as Officer, passing cheques, he had abused his power. Customers keep the deposit in the bank with full trust that the amount in their account would not be misappropriated and would be taken care of and interest on their deposits would be given by the bank. Therefore, the order of dismissal passed by the disciplinary authority confirmed in appeal and the Central Government Industrial Tribunal cum-Labour Court and the learned Single Judge is justified. So far as the modification of the sentence from dismissal to discharge, liberty has been reserved to the appellant to give representation and no representation has been given. If representation is given, same shall be considered as per the order of the learned Single Judge, impugned in this appeal as the bank has not filed appeal against the said order.

11. We have given careful consideration to the contention of the learned counsel appearing for the parties and scrutinized the material on record.

12. The material on record would clearly show that the fact the appellant was working as Special Assistant and was incharge of passing the cheques, is not in dispute. The charges lodged against the appellant have been held to be proved by the enquiry authority, disciplinary authority and he Central Government Industrial Tribunal-cum Labour Court, Bangalore.

13. The material on record would further show that the petitioner/appellant herein being a responsible officer who was incharge of passing the cheques, has

withdrawn the amount from his own account when there was no sufficient funds, did not make entry in the daily ledger in that behalf. He discounted the cheques and credited to his bank account and thereafter the said cheque was dishonoured and he has also drawn amount from the S.B.account of the customers and misappropriated the same. Wherefore, the charges framed against the appellant are grave in nature and the concurrent finding that the charge against the appellant has been proved, is justified. The defence of the appellant in response to the articles of charge would also show that he has admitted withdrawal of the amount from his account and withdrawal of the amount from S.B. account of the customers with authorization of the customers. Though the appellant has examined one customer who is land lady of the premises in which the appellant is residing on rent, no other customer has been examined though sufficient opportunity was afforded and even otherwise the evidence of the said witness would not prove that there was any letter of authorization or any instrument or any cheque issued for withdrawing the amount form her account at the time when the amount was withdrawn by the appellant as per the charges. So far as withdrawal of the amount from his own account when there was no sufficient fund without showing the same in the daily ledger has not at all been explained. Wherefore, all the charges against the appellant has been proved and there is no merit in the contention of the learned senior counsel appearing for the appellant that no sufficient opportunity was afforded to the appellant to substantiate his contention in the departmental enquiry or before the Central Government Industrial Tribunal-cum-Labour Court, Bangalore. So far as the sentence, the learned senior counsel submits that mere fact that charges have been proved would not by itself lead to passing of the order of dismissal and all the facts and circumstances which was mitigating, should be taken into account as the number of years of service rendered by the petitioner/appellant herein, size of his family and there were no charges prior to serving of the charge sheet which is challenged in the Writ Petition and in this appeal and also the fact that no loss would be caused to the bank. In support of his contention he has relied upon the decision n W.P.No.17534/1999, wherein this Court by order dt.27th May 2005 having regard to the facts of the said case has modified the order of dismissal to one of discharge. We do not wish to express any opinion on the merits of the said

submission in view of the liberty that has been given by the learned Single Judge to the appellant to make a representation to reduce the sentence in the light of the judgment of this Court in W.P.No.17534/99 dt.27.5.2005 which is relied upon by the learned senior counsel while arguing the case on merits a any finding as to whether the said decision would be applicable to the facts of this case or not would foreclose the appellant's right of consideration of his case for modification of sentence in the representation to be made by him before the first respondent - Bank and it is open to the appellant to urge all contentions before the respondent - Bank in view of the liberty reserved by the learned Single Judge. Accordingly, we hold that the appeal is devoid of merit and pass the following.

ORDER

Writ Appeal is dismissed. The order dt.2.12.2005 passed in W.P.No.294 of 2000 is confirmed. However, it is open to the appellant to work out his remedy in view of the liberty granted to him by filing necessary representation which shall be considered as per the order of the learned Single Judge within the time granted by the learned Single Judge, after receipt of the representation.

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