

The Management Of State Bank Of India vs Smita Sharad Deshmukh & Anr on 1 March, 2017

Equivalent citations: AIR 2017 SC 1191, 2017 (4) SCC 75, 2017 LAB. I. C. 1422, 2017 (3) ABR 63, 2017 AJR 781, (2017) 153 FACLR 108, (2017) 1 CURLR 926, (2017) 2 SCT 70, (2017) 2 PAT LJR 196, (2017) 3 KCCR 261, (2017) 3 ANDHLD 60, (2017) 2 JCR 155 (SC), (2017) 3 ESC 447, (2017) 2 LAB LN 1, (2017) 3 ALLMR 456 (SC), (2017) 1 ORISSA LR 976, (2017) 2 JLJR 131, (2017) 3 SCALE 291, (2017) 3 SERVLR 632, (2017) 2 SERVLJ 279, AIR 2017 SC (CIV) 1150, (2017) 2 CAL HN 65, 2017 (11) ADJ 34 NOC, AIR 2017 SUPREME COURT 1191, 2017 (3) AJR 781 AIR 2017 SC (CIVIL) 1150, AIR 2017 SC (CIVIL) 1150

Bench: A.M. Khanwilkar, Kurian Joseph

REPORTABLE

SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3423 OF 2017
(Arising out of S.L.P.(Civil) No. 33070/2013)

THE MANAGEMENT OF STATE BANK OF INDIA ... APPELLANT (S)

VERSUS

SMITA SHARAD DESHMUKH AND ANOTHER ... RESPONDENT (S)

J U D G M E N T

KURIAN, J.:

Leave granted.

The appellant (hereinafter referred to as “the Management”) is aggrieved by the impugned judgment of the High Court whereby the first respondent (hereinafter referred to as “the employee”) was directed to be reinstated in service with 50 per cent back wages, reversing the order passed by the Industrial Tribunal-cum-Labour Court. The employee, while working with the Management, submitted a certificate purportedly issued by the Indian Institute of Bankers claiming that she had passed the CAIIB Part-II Examination, and on that basis, started drawing additional monetary benefits. The Disciplinary Authority, based on the finding in a domestic enquiry that the certificate was a forged one, dismissed her from service on 01.08.2003. The punishment was upheld by the Appellate Authority vide order dated 10.06.2006. The Industrial Tribunal-cum-Labour Court declined to grant any relief. However, the High Court ordered reinstatement with 50 per cent back wages, and thus aggrieved, the Management has filed the appeal.

The only ground on which the High Court interfered with the award was that the Management had not established, by leading evidence, that the employee was aware of the fact that the certificate produced before the Management was forged. To quote from impugned judgment:

“6. The question, therefore, before the Enquiry Officer was whether the petitioner knew at the time of submission of the forged document that it was forged one. The Presenting Officer in the domestic enquiry did not lead any evidence to prove the knowledge and it appears that everyone went on presuming that the petitioner knew about the forgery since prior to its production before the employer. Due to the fact that she produced it on the employer’s record and that she received monetary benefits because of such production, every one believed that she ought to know that it was a forgery. This conclusion of the Enquiry Officer is grossly incorrect because it is based on guess work. He could have said that there is strong doubt in his mind that the petitioner knew before hand that the certificate was a forgery. But, he ought to have asked the Presenting Officer to lead further evidence to prove that the petitioner knew that the document she produced was forgery. Neither the Presenting Officer realised this gross lacuna in their case. On the basis of this guess and doubt, the enquiry officer held the petitioner guilty of misconduct. This, in my view was grossly incorrect decision.” We find it difficult to appreciate the strange stand taken by the High Court. The Labour Court had clearly analysed the entire evidence and had come to the conclusion that the employee was fully aware of the forgery. The Tribunal took note of the fact that she had produced a copy of the postal receipt of dispatching the certificate from the Institute of Bankers in her evidence but failed to explain the source of the postal receipt. It also took note of the fact that the alleged certificate of having passed the examination is dated 04.09.2000. If that be so, there was no occasion for asking for any re-verification of the marks by filing an application dated 08.09.2000. Still further, the Court extensively referred to the reply furnished by the Institute of Bankers and came to the conclusion that the certificate was a forged one. To quote from paragraph- 10 of the award dated 30.08.2011 passed by the Industrial Tribunal-cum-

Labour Court:

“10.The workman has claimed that she received the pass certificates from the Indian Institute of Bankers by registered speed post in her home address and filed the same before the authority. In support of her claim, she filed an envelope to show that the certificate in question was sent to her in the said envelope by the Indian Institute of Bankers. However, from by merely filing of the envelope, it cannot be held that the certificate in question was sent by the Institute in question to the workman in the said envelope. Moreover, there are other suspicious circumstances which create doubt regarding the said claim of the workman. If the certificate was actually sent in the said envelope by the Indian Institute of Bankers by registered speed post from Mumbai to the workman in her home address, then the receipt granted by the post office for sending the envelope by registered speed post must have been granted to the institute and the institute should have in possession of the same in the office, to keep account of the same, but the workman has also filed the zerox copy of the receipt alongwith of the envelope, to show the date of dispatch of the envelope, but she did not say how she was in possession of the said postal receipt. It is also pleaded by the workman in the statement of claim that she failed in part II of CAIIB examination and applied for verification of marks visiting in person to CAIIB office at Mumbai and on verification and revaluation, she was declared pass. In the statement of claim she had not mentioned the date of her visit to CAIIB office. However, she has filed the zerox copy of the letter, Exhibit W-17 to show that she applied for revaluation of her answer paper and the said letter shows that it was submitted on 18.9.2000. However, Exhibit W-15, filed by the workman shows that by letter dated 4.9.2000, she was intimated by the Indian Institute of Bankers that she had completed the Associate examination of the Institute and is entitled to receive the relevant certificate. If the workman had received the intimation of completion of the examination, then there was no question of her applying for revaluation of the examination paper and if she had failed in the examination and she approached the Institute for revaluation of her answer paper on 18.09.2000, then there was no question of the Institute intimating her by letter dated 04.09.2000 regarding her completion of the examination and issuance of the certificate. So it is clear from the materials produced by the parties in the departmental proceedings that the workman knowingly produced the pass certificate of part II CAIIB examination, which was a fabricated one, for monetary gain on ongoing basis and the findings of the enquiry officer are based on the materials on record and are not perverse.....” The evidence led by the employee, as rightly appreciated by the Industrial Tribunal, would clearly show that she had the knowledge that the document she produced was a forged one. Therefore, there was no requirement on the part of the Management to establish whether she had known, at the time of submission of the document, that it was a forged one.

It is a well-settled principle that the High Court will not re-appreciate the evidence but will only see whether there is evidence in support of the impugned conclusion. The court has to take the evidence as it stands and its only limited jurisdiction is to examine, whether on the evidence, the conclusion could have been arrived at. (See -

Union of India v. H.C. Goel[1]) .

In the case of Bank of India and another v. Degala Suryanarayana[2], after referring to H.C. Goel case (supra), this Court held at paragraph-11 :-

“11. Strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings. The court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in a case of mala fides or perversity i.e. where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding. The court cannot embark upon reappreciating the evidence or weighing the same like an appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained. ...” We do not think it necessary to refer to any other judgments on the same point, since the same principle has been only followed and reiterated in all those decisions.

In the case before us, it is an admitted position that the certificate produced by the employee is a forged one. It has been categorically found by the Industrial Tribunal, on the basis of evidence, that the employee was fully aware of the fact that the document was a forged one. In such circumstances, there is no basis at all for the stand taken by the High Court that the Management did not establish that the employee had knowledge about the certificate being a forged one.

Despite the factual and legal position as above, we had made one more attempt for the verification of the certificate from the Institute of Bankers. Thus, on 08.08.2016, this Court passed the following order:

“The Deputy Director (Examinations) of The Indian Institute of Bankers shall inform this Court as to whether the candidate Mrs. S. S. Deshmukh (Membership No. 5880536) had actually applied for revaluation of Part II of CAIIB Examination in the year 2000 and what is the action taken on that application and also whether the action thus taken, was informed to Mrs. Deshmukh.

Needless to say that in the report, it would be made clear that whether Mrs. Deshmukh had actually passed in the revaluation.

The report shall be submitted to the Registrar of this Court within four weeks from today.

The Registry shall communicate a copy of this order to the Deputy Director, Indian Institute of Bankers forthwith.

In addition, a copy of this order be given Dasti to the parties for communication.

Post on 21.09.2016.” The Institute has, by its letter dated 03.09.2016, informed this Court that:

“Ref : IIBF/CO/EXAM/4832/2016 3rd September, 2016 The Registrar Supreme Court of India, Tilak Marg, New Delhi-110 201 (India) Sir, In the matter of – The Management of State Bank of India v/s Smita Sharad Deshmukh & Another.

This has reference to order date the 8th August, 2016 by the Hon’ble Court in the captioned matter interalia seeking details from the Institute as to whether the candidate Mrs. S.S. Deshmukh (Membership No. 5880536) had actually applied for revaluation of part II of CAIIB Examination.

In this connection this is to inform that Mrs. Deshmukh had appeared for following 2 subjects in May/June 2000 Examination conducted by the Institute and has secured the marks shown against each of the subjects.

1. Practice & Law of Banking – 45 Marks

2. Indian Economics Problem – 23 Marks This is to inform further that the Institute has provision only for verification of marks and no request was received from Mrs. Deshmukh for verification of marks in connection with above said examination.

Thanking you, Yours faithfully, (Joint Director) Examination” Despite the clear position as above, the employee filed a response on 13.01.2017 reiterating that she had “... actually applied for revaluation of Part II of CAIIB Examination in the year 2000 ...”. A copy of the application also was produced along with reply as Annexure-R1. It is a handwritten letter by the Management-Bank to the Institute of Bankers on 08.09.2000 but enclosing a draft dated 14.09.2000. There is also an alleged endorsement of receipt of the letter by the Institute on 18.09.2000 on hand delivery. It may be noted that the forged certificate of pass in the examination and the memorandum accompanying it are dated 04.09.2000. One wonders as to what was the need for revaluation once a candidate had been declared successful on 04.09.2000, leave alone the anachronistic error on the dates on the application and the draft! We reluctantly refrain from making any further observations in this regard.

Though learned counsel for the employee made a persuasive attempt for modification of punishment on the ground of disproportionality, in view of the conduct of the employee which we have referred to above, we are not inclined to take a different view from that taken by the Disciplinary Authority, Appellate Authority and the Industrial Tribunal-cum-Labour Court.

The impugned judgment of the High Court is set aside and the appeal is allowed. However, we make it clear that there shall be no recovery of the wages and benefits already paid to her.

There shall be no order as to costs.

.....J. (KURIAN JOSEPH)J. (A.M. KHANWILKAR) NEW DELHI;

MARCH 1, 2017.

[1] (1964) 4 SCR 718

[2] (1999) 5 SCC 762