Regional Manager, Bank Of Baroda vs The Presiding Officer, Central Govt. ... on 28 January, 1999

Equivalent citations: AIR1999SC912, [1999(82)FLR42], JT1999(1)SC241, (1999)IILLJ148SC, 1999(1)SCALE211, (1999)2SCC247, 2000(1)SLJ113(SC), 1999(1)UJ575(SC), AIR 1999 SUPREME COURT 912, 1999 AIR SCW 474, 1999 LAB. I. C. 1102, 1999 ALL. L. J. 673, (1999) 1 JT 241 (SC), 2000 (1) SERVLJ 113 SC, 1999 (1) ADSC 437, 1999 (2) SCC 247, 1999 (1) JT 241, 1999 (1) UJ (SC) 575, 1999 (3) SRJ 43, (1999) 1 SERVLR 618, (1999) 1 SCT 855, (1999) 2 BANKLJ 1, (1999) 94 FJR 361, (1999) 2 BANKCLR 8, (1999) 1 CURLR 709, (1999) 1 LAB LN 1042, (1999) 1 SCALE 211, (1999) 1 ESC 556, (1999) 1 SUPREME 265, (1999) 82 FACLR 621, (1999) 1 LABLJ 656, 1999 LABLR 247, 1999 SCC (L&S) 546

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Bench: S.B. Majmudar, S.N. Phukan

ORDER

S.B. Majmudar, J.

1. In this appeal by special leave the appellant-Bank has brought in challenge the judgment and order rendered by learned Single Judge of the High Court of Judicature at Allahabad dismissing the appellant's writ petition against an order passed by the Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, ordering reinstatement of the respondent No. 2 (hereinafter to be referred to as the respondent) with continuity of service but without back wages.

2. A few facts leading to this appeal deserve to be noted at the outset for highlighting the grievance of the appellant-management in the present proceedings.

3. The respondent-workman was selected for the post of Cash Collector which was a clerical post in a Branch of the appellant-Bank at Rampur, U.P, on 13.6.1977. This appointment was given to the respondent in the light of his application dated 20-5-1977. In the application form at Column 27 a query was mentioned to be answered by the applicant as to whether the applicant has ever been prosecuted at any time. The respondent replied to the said query in the negative. While giving joining report in the prescribed form at Column 27 the respondent gave the same answer. It subsequently transpired that a First Information Report was already lodged against the respondent

for an offence under Section 307 of the Indian Penal Code along with two other accused persons on 10.4.1976at P.S. PremNagar, Bareilly on the basis of which after investigation a charge-sheet was submitted against him. Later on, a judicial Magistrate had directed committal of the respondent and other two persons to the CourtofSessionfortrialon15-12-1976.lt is the case of the appellant-Bank that when the respondent applied for service on 20-5-1977 and gave a reply to query at Column 27 he was already committed to the Court of Session for trial and that he suppressed these facts and he gave a false reply that the was not prosecuted at any time. It is the further case of the appellant that the Sessions Court by its judgment and order dated 20-2-1979 convicted the respondent and sentenced him to undergo rigorous imprisonment for three years. After the said conviction was obtained by the prosecution against the respondent, the appellant-management gave a show cause notice to the respondent on 26-2-1980 wherein it was mentioned that in Column 27 of the application form the respondent had answered the question regarding his ever been prosecuted in the negative and it was brought to the notice of the Management that the said reply was false inasmuch as on 20-5-1977 - the date on which he applied for the post of Cash Collector, prosecution under Section 307 of the Indian Penal Code was pending against him in the Court of Additional Sessions Judge, VIIIth Court, Bareilly and by his order dated 19/20-2-1979, Additional Sessions Judge convicted him for the said offence and that it was clear from the said facts that he concealed about the prosecution pending against him with the intention to secure employment in the Bank and with full knowledge that had he disclosed the true facts, the Bank would not have appointed him on the post of Cash Collector. He was therefore, called upon to show cause within 15 days from the date of receipt of the said notice why his services should not be terminated forthwith as he had obtained employment in the Bank by making a false representation as aforesaid.

4. The respondent replied to the said show cause notice and amongst other submitted that the prosecution trial's first date was 8-6-1978 and that on 20-5-1977 when he applied for the post of Cash Collector, prosecution proceedings against him were not initiated, hence he had replied to the query at Column 27 accordingly. That he was later on prosecuted and convicted by Sessions Court on 20-2-1979 and he further submitted that he had kept the Management informed with all development and stages of the case from time to time. It was his contention that accordingly, he had correctly answered column 27 under reference and the allegation of concealment was not correct.

5. The appellant thereafter served a second show cause notice on 21-8-1981 and passed the impugned order of termination from service on 18-4-1983. The said order mentioned that his appointment was void ab initio on ground of suppression of relevant facts about his being prosecuted in the Criminal case at the time when he applied for the post in question for service in the Bank and hence his services stood terminated on that count with effect from 22-4-12983 on payment of three months' pay and allowances. It is this order which resulted into raising of an industrial dispute by the respondent and as the conciliation proceedings failed, appropriate Government referred the dispute for adjudication to the Central Government Industrial Tribunal/Labour Court, Kanpur, by order dated 30-11-1988. In the meantime, the respondent had already filed an appeal in the High Court of Judicature at Allahabad against the order of conviction rendered against him by the Court of Session and he was enlarged on bail. Ultimately, his appeal came to be allowed by the High Court on 13.1.1988. It is of course true that the judgment of the High Court recited that the case records of the trial court were burnt and were not available for

consideration. The High Court felt that there was no option left but to acquit the respondent. Be that as it may, the order of acquittal of the respondent became final pursuant to the aforesaid decision of the High Court against which no further appeal appears to have been taken out by the prosecuting agency. So far as the industrial dispute was concerned, it was registered as industrial Dispute No. 164 of 1988 before the Presiding officer, Central Government Industrial Tribunal-curh-Labour Court, Kanpur. After hearing the parties and after considering the evidence led by them, learned Judge of the Labour Court came to the conclusion that the respondent had concealed the material facts while answering query in column 27 of the application form and his defence that he was not knowing English and therefore he had answered in the negative against the said query could not be accepted. It was therefore, held that the concerned workman had made a deliberate false statement in column No. 27 of Ext. M-1 and Ext. M-2 and for which a show cause notice was also given and there was no need to hold regular domestic enquiry in such a case. Principles of natural justice also could not be said to have been violated. Having rendered that finding however in paragraph 12 of the judgment, the Presiding officer of the Labour Court took the view that giving of false statement in the facts of the present case should not be deemed to be such a grave misconduct which may visit him with extreme punishment of termination of services especially in view of the background that he had been fully acquitted by the High Court in the case which had originated from the prosecution. Labour Court then observed that interest of justice would be served if the workman is deprived of all the back wages till the date of reinstatement and the respondent was ordered to be reinstated in service within one month from the date of publication of award.

6. The aforesaid impugned award of the Labour Court resulted in a writ petition by the appellant management before the High Court. Learned single Judge of the High Court took the view that the decision rendered by the Labour court was perfectly justified in the facts of the case and it was not a fit case for the High Court to interfere under Article 226 of the Constitution of India. It is this order of the High Court which has resulted into this appeal on grant of special leave. Earlier, at the stage of issuance of notice, stay of the impugned order was granted and that stay has continued all throughout with the result that the respondent is still not reinstated in service.

7. Learned counsel for the appellant submitted that once the Labour Court has found that the respondent was guilty of suppression of relevant facts and had also snatched an order of appointment which would not have been given to him had he not deliberately concealed the fact about the aforesaid prosecution against him for an offence under Section 307 of the Indian Penal Code, there was no question of awarding him any lesser punishment save and except confirming the order of termination. In this connection, he invited our attention to a decision of this court in the case of Union of India and Ors. v. M. Bhaskaran reported in 1995 Supp. (4) SCC 100 wherein it has been clearly held that when appointment is procured by a workman on the basis of bogus and forged, casual labourers service card it would amount to misrepresentation and fraud on the employer and therefore, it would create no equity in favour of the workman or any estoppel against the employer and for such misconduct termination would be justified and there was no question of holding any domestic enquiry.

8. There could be no dispute on this settled legal position. But the question remains whether on the peculiar facts of this case we may interfere under Article 136 of the Constitution of India in the

present proceedings. Having carefully considered the rival contention canvassed by learned counsel for the appellant and learned senior counsel for the respondent we find that peculiar facts of this case do not require our interference for restoring the termination order which was passed by the Management against the respondent.

9. The facts which are well established on record and which have weighed with us for coming to the aforesaid conclusion may now be noted. It is true that the respondent made a wrong statement while replying to query No. 27 of the application form that he had not been prosecuted at any time. It is equally true that the Labour Court itself found that giving a false statement should not be deemed to be such a grave misconduct which may be visited with extreme punishment of termination from service. However, it has also to be noted that the appellant-Management while issuing show cause notice for the first time on 26-2-1980 has in terms noted in the said notice that not only the criminal proceedings were pending but had ultimately ended in conviction of the respondent. The appellant itself thought it fit to await the decision of the criminal case before taking any precipitate action against the respondent for his misconduct. Thus, according to the respondent this suppression was not so grave as to immediately require the appellant to remove the respondent from service. On the contrary, in its wisdom, the appellant thought it fit to await the decision of the criminal proceedings. This may be presumably so because the charge against the respondent was that he was alleged to have involved himself in an offence under Section 307 of the Indian Penal Code. It was not an offence involving cheating or misappropriation which would have a direct impact on the decision of the appointing Bank whether to employ such a person at all. We may not delve further into the liberal approach of the appellant itself when it did not think it fit to immediately take action against the respondent but wait till the decision of the criminal case. Be that as it may, once the Sessions Court convicted the respondent, the appellant issued the impugned notice dated 26-2-1980. It can therefore be safely presumed that if the Sessions Court itself had acquitted the respondent, the appellant would not have decided to terminate his services on this ground. So far as the notice dated 26-2-1980 is concerned, in the reply to the said show cause notice filed by the respondent he had mentioned that an appeal was pending in the High Court against the said conviction. In that view of the matter, once the High Court ultimately acquitted the respondent for any reason, with which strictly we are not concerned, the net result follows is by the time the Labour Court decided the matter the respondent was already acquitted and hence there remained no real occasion for the appellant to pursue the termination order. Consequently, that was a sufficient ground for not visiting the respondent with the extreme punishment of termination of service. But even that apart, though the conviction was rendered by the Sessions Court on 20-2-1979, the show cause notice for the first time was issued by the appellant after one year i.e. on 26-2-1980 and thereafter the termination order was passed on 18-4-1983. That itself by the passage of time created a situation wherein the original suppression of involvement of the respondent in the prosecution for an offence under Section 307 of the Indian penal Code did not remain so pernicious a misconduct on his part as to visit him with the grave punishment of termination from service on these peculiar facts of the case and especially when the Labour Court also did not award any back wages to the respondent from 1988 till respondent's reinstatement by its order dated 29-9-1995 and one month thereafter and when the High Court also did not think it fit to interfere under Article 226 of the Constitution of India on the peculiar facts of this case. In our opinion, interest of justice will be served by maintaining the order passed by the Labour Court and as confirmed by the High Court subject to a

slight modification that the respondent may be treated to be fresh recruit from the date when he was exonerated by the High Court i.e. from 13-1-1998 which can be treated as 1-1-1988 for the sake of convenience. It is ordered accordingly. From 1-1-1988 the respondent will be treated to have been reinstated into the services of the Bank on the basis that he will be treated as a fresh recruit from that date and will be entitled to be placed at the bottom of the revised scale of pay for Clerks and will also be entitled to other allowances which were available in the cadre of Clerks in the Bank's service. The respondent will be entitled to back wages with effect from 1-11-1995 i.e. from the date when Labour Court awarded the reinstatement of the respondent. It also directed that the appellant Bank will work out appropriate back wages payable to the respondent from 1-11-1995 in the time scale of Clerks as available from 1-1-1988 treating his services to be continuous from that date and accordingly working out of his salary and emoluments on notional basis with usual increments from 1-1-1997 and actual arrears of pay and other permissible emoluments from 1-11-1995 till reinstatement of the respondent by the appellant. All such arrears will be paid to the respondent within a period of four weeks from 1-3-1999. The respondent who is present before us takes notice of this order and his counsel on his instructions states that the respondent will report for duty pursuant to the present order before the Regional Manager, Bank of Baroda, Northern Zone, Meerut on 1-3-1999. Learned counsel for the appellant agrees to the said course being adopted. The appeal will stand dismissed subject to the aforesaid modifications. I.A. No. 2 for passing order under Section 17-B of the Industrial Disputes Act will not survive in view of the present order. We make it clear this order of ours is rendered on the peculiar facts and circumstances of the case as mentioned earlier and will not be treated as a precedent in future. There would be no order as to costs.