

Burdwan Central Co-Op.Bank Ltd.& Anr vs Asim Chatterjee & Ors on 18 January, 2012

Equivalent citations: 2012 AIR SCW 1496, 2012 (2) SCC 641, 2012 LAB IC 1216, (2012) 2 ESC 261, (2012) 132 FACLR 713, (2012) 1 LAB LN 338, (2012) 3 LAB LN 151, (2012) 2 SCT 279, (2012) 4 SERVLR 805, (2012) 1 SCALE 455, (2012) 1 CALLT 36, (2012) 1 CURLR 391

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Bench: Cyriac Joseph, Altamas Kabir

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 657 OF 2012

(Arising out of SLP(C) No.21192 of 2007)

Burdwan Central Cooperative

Bank Ltd. & Anr.

... Appellants

Vs.

Asim Chatterjee & Ors.

... Respondents

J U D G M E N T

ALTAMAS KABIR, J.

1. Leave granted.

2. The short point for decision in this Appeal is whether an employer can take disciplinary action against an employee in regard to acts purported to have been done by him in his previous employment in an affiliated society.

3. The Respondent No.1 herein was an employee of Raipur Krishi Unnayan Samity (hereinafter referred to as "the Samity"), a cooperative society affiliated to the Burdwan Central Cooperative Bank, the Appellant herein. Under its Recruitment Rules, the Bank was entitled to recruit people from the affiliated societies through a regular recruitment process. In the recruitment process held in 1997, the Bank appointed the Respondent No.1 as a Grade III Staff of the Bank by an appointment letter dated 8th September, 1997. On being offered the said appointment, the Respondent No.1 left the services of the Samity where he was working and joined the Bank pursuant to the appointment letter issued to him.

4. While the Respondent No.1 was serving in the Bank, the Assistant Registrar, Cooperative Societies, Burdwan-I, lodged a complaint with the Bank that during an enquiry conducted by the Registrar of Cooperative Societies, it had transpired that the Respondent No.1 had committed various financial irregularities in maintaining the accounts of the Samity. In view of the above, the Assistant Registrar recommended that action be taken against him.

5. On the basis of the said complaint, the Bank issued a charge-sheet to the Respondent No.1 on 2nd February, 2000. Although, according to the Bank, the said Respondent admitted his guilt in his reply to the charge-sheet, a full-fledged enquiry was held by the Bank by appointing an Enquiry Officer and affording the Respondent No.1 adequate opportunity to defend himself, since according to him, he had been forced to sign a letter of confession. On conclusion of the disciplinary proceedings, the Enquiry Officer found the Respondent No.1 guilty of the charges brought against him. On the basis of the Enquiry Report, the Bank through its Chief Executive Officer, being the Disciplinary Authority of the Respondent No.1, passed an order of dismissal on 8th May, 2000. It appears that neither a copy of the Enquiry Report nor the second show-cause notice was served upon the Respondent No.1.

6. Aggrieved by the order of the Disciplinary Authority, the Respondent No.1 filed a Writ Petition challenging the order of dismissal. The learned Single Judge who heard the matter, allowed the Writ Petition by holding that the dismissal order had been passed by the Bank with the mala fide intention of getting rid of the Respondent No.1. The learned Judge held that the Bank had no authority to proceed against the Respondent No.1 on the allegation of defalcation of the funds of the

Samity at a point of time when he was not an employee of the Bank. In addition, the learned Judge held that the order of the Disciplinary Authority was vitiated as the Respondent No.1 was not served with a copy of the Enquiry Report, nor was any opportunity given to him by way of a second show-cause notice to offer his explanation thereto.

7. The Bank preferred First Misc. Appeal No.301 of 2005 against the aforesaid order, wherein the attention of the Division Bench was drawn to the provisions of the West Bengal Cooperative Rules, 1987, wherein it has been stipulated that any mis-

appropriation of the employer's business or property would come within the mischief of "misconduct". It was urged on behalf of the Bank that since the Samity was affiliated to the Bank, defalcation of the funds of the Samity would attract the definition of "misconduct" and the Respondent No.1 had been rightly proceeded with departmentally. It was, however, admitted before the Division Bench that the Bank had dismissed the Respondent No.1 without affording him an adequate opportunity of explaining his version on the findings of the enquiry by serving him a copy of the Enquiry Report as well as the second show-cause notice.

8. On the submissions made on behalf of the parties, the Division Bench affirmed the view expressed by the learned Single Judge that the Bank could not have proceeded against the Respondent No.1 in respect of an illegality and/or misconduct which had allegedly been committed when he was not an employee of the Bank. Accordingly, without commenting on the findings of the learned Single Judge with regard to the allegations of mala fide and/or biased attitude on the part of the Bank, the Division Bench held that the Bank was not entitled to proceed against the Respondent No.1 in law and disposed of the Appeal accordingly.

9. As indicated hereinbefore, the present Appeal is directed against the said judgment and order of the Calcutta High Court.

10. Mr. Tarun Kumar Ray, learned senior advocate appearing for the Appellant-Bank, urged that the Respondent No.1 had not been prejudiced in any way on account of non-supply of the report of the Enquiry Officer or in the absence of a second show-

cause notice, as was earlier envisaged under Article 311(2) of the Constitution prior to its amendment by the 42nd Constitutional Amendment Act, 1976. Mr. Ray submitted that as had been held by this Court in *Managing Director, E.C.I.L. vs. B. Karunakar* [(1993) 4 SCC 727], the order of reinstatement for non-furnishing of Enquiry Report to the concerned employee would depend on the extent of prejudice caused to him and could not be ordered as a matter of course. It was, however, mentioned that a copy of the Enquiry Report, if not served earlier, should be provided to the employee before arguments were allowed to be advanced and thereafter the court should apply its judicial mind before setting aside the punishment on a finding that prejudice has been caused to the concerned employee. The Court held further that this was the minimum compliance of the rules of natural justice while awarding major penalties.

11. In support of his contention that even though the Respondent No.1 was not under the administrative control of the Appellant when the alleged irregularity was perpetrated, the Appellant-Bank was still entitled to commence disciplinary proceedings against him, Mr. Ray referred to the decision of this Court in *S. Govinda Menon vs. Union of India* [(1967) 2 SCR 566]. In the said decision this Court had held that even if an employee was not subject to the administrative control of the Government when he was functioning as Commissioner, his acts or omissions as Commissioner could form the subject matter of disciplinary proceedings, provided the act or omission reflected on his reputation for integrity or devotion to duty as a member of the service.

12. Mr. Ray urged that in the instant case there was no prejudice caused to the Respondent No.1 either by the non-service of the report of the Enquiry Officer or by the non-issuance of a second show-cause notice, which merited interference by the High Court with the decision to terminate the services of Respondent No.1. Mr. Ray submitted that in *B. Karunakar's case* (supra) it had been held that the failure to provide the Enquiry Report was not fatal to the disciplinary proceedings which could be re-commenced from the stage prior to arguments, after supply of a copy of the Enquiry Officer's report which resulted in the termination of the services of the Respondent No.1. Mr. Ray further submitted that since no prejudice had been caused to the Respondent, in the above-mentioned circumstances the decision of the High Court to set aside the said Respondent's order of termination was not warranted in law and the judgments of both the learned Single Judge and the Division Bench were, therefore, liable to be set aside.

13. On the other hand, Mr. Gupta appearing for the Respondent No. 1 submitted that the learned Single Judge had rightly arrived at the conclusion that the dismissal of the Respondent No.1 was tainted with malafides on the part of the Bank to get rid of him. Mr. Gupta also contended that the High Court had rightly held that the dismissal of the Respondent on the basis of an allegation of defalcation of the funds of the Samity, when he was not even an employee of the Bank, was wholly without jurisdiction, as he was not answerable to the Bank for whatever allegations that may have been made against him in his previous employment under the Raipur Krishi Unnayan Samity, which was a co-operative society affiliated to the Appellant-

Bank. Mr. Gupta further submitted that in the absence of employer-employee relationship at the time when the alleged defalcation is said to have been committed, the Appellant co-operative Bank ought not to have proceeded against the Respondent No.1 in disciplinary proceedings, and, thereafter, dismissed him from service. Mr. Gupta submitted that the order of the learned Single Judge, as well as that of the Division Bench, was based on a correct appreciation of the law and did not merit interference in the appeal.

14. Having carefully considered the submissions made on behalf of the respective parties and having regard to the fact that the Respondent No.1 was an employee of the Samity, which was a cooperative society affiliated to the Appellant Cooperative Bank herein, there was a link between the previous employment of the Respondent No.1 and his subsequent appointment under the Appellant-Bank.

It has to be kept in mind that under its Recruitment Rules, the Appellant-Bank was entitled to recruit people from the affiliated societies through a regular recruitment process.

Accordingly, even though the Respondent No.1 was employed by a different Cooperative Society, the same had a link with the Appellant-Cooperative Bank on the basis whereof the Respondent No.1 was appointed by the Appellant-Bank on 8th September, 1997.

15. There is no denial of the fact that the Respondent No.1 came to be appointed by the Appellant-Bank on a temporary basis as a Grade-III employee in the quota reserved for the employees of Primary Cooperative Societies affiliated to the District Central Cooperative Bank in terms of Rule 69(2)(b) of the West Bengal Co-operative Societies Rules, 1987. The provisions of Rule 69(2)(b) of the 1987 Rules, which are relevant in this case, provides as follows :

"69. Minimum paid staff to be employed by a co-operative society, their respective essential qualifications and procedure of their employment and the conditions of their service -

(1) xxx xxx xxx xxx

(2) The posts shall be filled up in the
following manner :-

(a) ;

(b) not more than twenty-five percent of

the sanctioned posts in the establishment of an apex or central society shall be filled up by promotion of fit and suitable employees of the societies affiliated to it;

(c) ;

(d) ;

(e) "

16. In keeping with the above, the Appellant-Bank appointed the Respondent No.1 against the quota reserved for the employees of Primary Cooperative Societies affiliated to the Respondent-Bank in terms of Rule 69(2)(b) of the 1987 Rules. Mr. Ray appears to be correct in his contention that in view of the above link between the Primary Cooperative Society and the Appellant-Bank, even though the Respondent No.1 was not under the administrative control of the Appellant-Bank when he allegedly committed various financial irregularities, the Appellant-Bank was still entitled to commence disciplinary proceedings against him in view of his past conduct. The decision of this Court in *S. Govinda Menon's case* (supra), cited by Mr. Ray, also has a direct bearing on the facts of this case, where, although the Respondent No.1 was not under the administrative control of the Appellant-Bank, prior to his service with the Bank, his previous conduct was a blot on his integrity and devotion to duty as a member of the service. Since no prejudice had been caused to the Respondent No.1 by the non-

supply of the Enquiry Officer's report or the second show-cause notice under Article 311(2) of the Constitution, the Respondent No.1 had little scope to contend that the principles of natural justice had been violated which had vitiated the proceedings.

17. However, there is one aspect of the matter which cannot be ignored. In *B. Karunakar's case* (supra), despite holding that non-supply of a copy of the report of the Inquiry Officer to the employee facing a disciplinary proceeding, amounts to denial of natural justice, in the later part of the judgment it was observed that whether in fact, prejudice has been caused to the employee on account of non-furnishing of a copy of the inquiry report has to be considered in the facts of each case. It was observed that where the furnishing of the inquiry report would not make any difference to the ultimate outcome of the matter, it would be a perversion of justice to allow the concerned employee to resume his duties and to get all consequential benefits. It was also observed that in the event the Inquiry Officer's report had not been furnished to the employee in the disciplinary proceedings, a copy of the same should be made available to him to enable him to explain as to what prejudice had been caused to him on account of non-supply of the report. It was held that the order of punishment should not be set aside mechanically on the ground that the copy of the inquiry report had not been supplied to the employee. This is, in fact, a case where the order of punishment had been passed against the Respondent No.1 on allegations of financial irregularity. Such an allegation would require serious consideration as to whether the services of an employee against whom such allegations have been raised should be retained in the service of the Bank. Since a Bank acts in a fiduciary capacity in regard to people's investments, the very legitimacy of the banking system depends on the complete integrity of its employees. As indicated hereinbefore, there is a live-link between the Respondent No.1's performance as an employee of the Samity, which was affiliated to the Bank, and if the Bank was of the view that his services could not be retained on account of his previous misdemeanor, it is then that the second part of *B. Karunakar's case* (supra) becomes attracted and it becomes necessary for the court to examine whether any prejudice has been caused to the employee or not before punishment is awarded to him. It is not as if the Bank with an ulterior motive or a hidden agenda dismissed the Respondent No.1 from service, in fact, he was selected and appointed in the Appellant-Bank on account of his merit and performance at the

time of interview. It cannot be said that the Bank harboured any ill-feeling towards the Respondent No.1 which ultimately resulted in the order of dismissal passed on 8th May, 2010. We, therefore, repeat that since no prejudice has been caused to the Respondent No.1 by the non-supply of the Inquiry Officer's report, the said Respondent had little scope to contend that the disciplinary proceedings had been vitiated on account of such non-supply.

18. In the above circumstances, we cannot agree with the view taken by the learned Single Judge, as affirmed by the Division Bench of the High Court, that the Appellant-Bank had no jurisdiction to proceed against the Respondent No.1 by way of disciplinary proceedings in regard to the allegations of defalcation made against him while he was employed under the Co-operative Samity which was an affiliate of the Appellant-Bank. The other decision cited by Mr. Ray in S. Govinda Menon's case (supra) also makes it abundantly clear that even though the Respondent No.1 may not have been under the direct administrative control of the Bank at the relevant point of time when the defalcation is alleged to have taken place, on account of the affiliation of the Samity with the Bank under the provisions of the West Bengal Co-operative Societies Rules, 1987, the Appellant-Bank had jurisdiction over the Respondent No.1 after he joined the employment of the Appellant-Bank. In the instant case, since the question of integrity in managing the accounts of the Samity is in question, it was but natural for the Bank to proceed departmentally against the Respondent No.1 after coming to learn of the allegations which have been made against him.

19. In our view, both the learned Single Judge and the Division Bench of the High Court were not justified in interfering with the action taken by the disciplinary authorities of the Bank and their findings are liable to be set aside. The appeal, therefore, succeeds and is allowed. The orders of the learned Single Judge and the Division Bench of the High Court, are set aside. The decision taken by the Bank in dismissing the Respondent No.1 from service is restored.

20. There will be no order as to costs.

.....J. (ALTAMAS KABIR)J. (CYRIAC JOSEPH) New Delhi Dated: 18.01.2012