

Krishna Mohan Mookherjee vs Secretary And Treasurer, State Bank Of ... on 20 January, 1983

Equivalent citations: AIR1983SC324, 1983LABLC307, (1983)ILLJ228SC, 1983(1)SCALE33, (1984)1SCC191, AIR 1983 SUPREME COURT 324, 1984 (1) SCC 191, 1983 LAB. I. C. 307, 1983 UJ (SC) 415, 1984 SCC (L&S) 108, (1983) 1 LABLJ 228, (1982) 2 ANDH LT 45, (1983) 1 LAB LN 322, (1983) 46 FACLR 297, (1983) 1 SERVLR 792

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Bench: A.N.Sen, R.S. Pathak

JUDGMENT

Amarendra Nath Sen, J.

1. The validity of an order dated 31st December, 1962 passed by the State Bank of India dismissing the appellant from service is questioned by the appellant in this appeal filed with special leave granted by this Court.

2. In March, 1948 the appellant was appointed as a clerk in the Head Office of the Imperial Bank of India. The State Bank of India was constituted in 1955 by the State Bank of India Act (Act No. 23 of 1955) to take up the undertaking of the Imperial Bank of India and the entire undertaking of Imperial Bank of India vested in the State Bank of India by virtue of the provisions contained in the said Act. Under Section 7 of the State Bank of India Act, 1955 the appellant's services were transferred to State Bank of India (hereinafter referred to as the Bank). In February 1961 the appellant was transferred to Dinhata Pay Office of the Bank in the District of Coochbehar. In December, 1961 the appellant was served with a show cause notice on a charge of misappropriation of a sum of Rs. 2339.63 belonging to the Bank. On the 23rd February, 1962 the Staff Superintendent of the Bank caused a charge-sheet to be served on the appellant. On the 19th February, 1962 the appellant replied to the said charge-sheet. An enquiry officer was duly appointed to enquire into the charges against the appellant. The Enquiry Officer on the conclusion of the enquiry made a report holding the appellant guilty. Thereafter in July, 1962 the appellant was served with another notice asking him to show cause against the proposed punishment of his dismissal from service. On the 21st of November, 1962 the appellant submitted his representation to the second show cause notice against the proposed punishment. The appellant was also given an opportunity to make an oral representation, On the 31st December, 1962 the appellant was dismissed from service.

3. On the 11th April, 1963, the appellant filed a writ petition under Article 226 of the Constitution of India in the High Court at Calcutta challenging the order of his dismissal from service. In the writ petition filed by the appellant two principal contentions were raised. The first contention urged was that there had been violation of the principles of natural justice in the matter of enquiry proceedings, and the second contention was that the officer who had dismissed him from service was not competent to dismiss him.

4. The writ petition came to be heard before a learned single judge of the High Court. The learned Single Judge negatived the contention of the appellant that there has been any denial of reasonable opportunity to the appellant in the matter of the enquiry. The learned Single Judge, however, accepted the contention that the appellant was not dismissed by the competent authority and the order of dismissal of the appellant was, therefore, invalid. In that view of the matter, the learned Single Judge by his judgment and order dated 8.2.1967 quashed the order of dismissal and made the rule obtained by the appellant absolute.

5. It may be noticed that the appellant had been dismissed from service by the Staff Superintendent who had signed the letter of dismissal.

6. Against the judgment and order passed by the learned Single Judge, the Bank preferred an appeal in the High Court. A division Bench of the High Court by its judgment and order dated 13th June, 1975 allowed the appeal, holding that the dismissal of the appellant was by appropriate authority. The division Bench also held that there had been no violation of the principles of natural justice and the appellant had been afforded full opportunity of defending himself in the enquiry proceeding and also in the matter of making his representation in the second show cause notice.

7. Aggrieved by the judgment and order passed by the division Bench of the High Court, the appellant filed a special leave petition in this Court on the 12th February, 1979 and this Court by its order dated 23rd November, 1981 granted special leave to the appellant to file his appeal in this Court after condoning the delay in filing the appeal.

8. Before us in this appeal the same two contentions which were urged in the High Court, have been raised on behalf of the appellant.

9. The first contention of Mr. Gupta on behalf of the appellant is that in the enquiry proceeding and also in the matter of making his representation against the proposed order of his dismissal, the appellant had been denied reasonable; opportunity and there had been a violation of the principles of natural justice.

10. We do not propose to deal with this aspect at any great length, as both the learned single Judge and the Division Bench have On a consideration of the facts and circumstances of this case come to the conclusion that in the instant case, there has been no violation of the principles of natural justice and the appellant did have a reasonable opportunity to defend himself to make his representation.

11 The law with regard to the applicability of the principles of natural justice is well-settled. We may, however, point out that the appellant in his representation dated 12.12.1962 clearly acknowledged and admitted that the appellant had been afforded full opportunity and all the points raised by him had been complied with. It may also be noted that the further prayer of the appellant to make an oral representation after his representation in writing, was also allowed by the Bank and the appellant was also given an oral hearing.

12. We shall now, Proceed to consider the other contention raised on behalf of the appellant that the order of dismissal must be held to be invalid and illegal inasmuch as the said order had not been passed by the appropriate authority. It is to be noticed that the order of dismissal was passed by the Staff Superintendent who held the rank of a General Manager of the Bank.

13. The learned Trial Judge has proceeded to hold that in view of Regulation 50 of Schedule II and Section 22 of the Imperial Bank of India Act (Act XLVI of 1920) the dismissal of the employee could only be ordered by the Central Board or by Local Board. He was of the view that the Amending Act of 1955 retained the said Regulation 50 of the Imperial Bank Act in the State Bank of India Act itself and in that view of the matter, the employee could be dismissed only in accordance with the provisions of the said Regulation.

14. The appellate Bench of the High Court has rightly pointed out that the learned Single Judge failed to note that by the next Amending Act 58 of 1960, the said Regulation 50 on which the learned Single Judge had relied was expressly repealed.

15. As by the Amending Act of 1960, Regulation 50 on which the learned Single Judge had relied had been repealed, no reliance could be placed on the said Regulation in deciding the question as to who is the authority competent to dismiss the employee.

16. It may be noticed that the averments in the petition with regard to the grievance of the appellant that his order of dismissal was not passed by a competent authority are indeed very vague. The learned single Judge while dealing with this aspect has observed-"It must be said that this averment is cryptic to the extent of being misleading " Notwithstanding the aforesaid view of the learned Single Judge the learned Judge held that the order of dismissal was illegal inasmuch as the same had not been passed by the competent authority relying on Regulation 50. We have earlier noticed that the said Regulation stands repealed and was not there at the material time.

17. The Appellate Court in its judgement has also noted that in the absence of proper averments in the writ petition, the Bank had been prevented from placing before the Court all relevant materials. The materials on record indicate that there was a memorandum dated Calcutta 4th July, 1962 regarding disciplinary action and the said memorandum is in the following terms :

MEMORANDUM To : The Agents of | From : State Bank of India, Staff Section All
Bengal Circle | Calcutta July 4, 1962 Asar 13 1884 Branches | (Saka)
Staff-Miscellaneous The Industrial Disputes (Banking Companies), Decision Act 1955
DISCIPLINARY ACTION With reference to our Circular Memorandum B. No. Ill of

1962, it has been decided that for the time being Shri S.K. Dutta, Superintendent, Staff Section at this office, be appointed as the authority empowered to take disciplinary action and pass the original orders imposing punishment and that he be deemed to be a manager of the Bank for the purpose of passing original order to discharge in respect of all employees at Branches (including sub-offices, if any, under their control) in this circle. Please, therefore, immediately arrange for the display of a fresh notice on the Notice Board at your office and at each of the sub-offices, if any, under your control, on the lines of the attached specimen.

(Ram Rakha) Deputy Secretary & Treasurer The materials on record further indicate that on the basis of the said memorandum, the following notice has been published by the Bank :

NOTICE

1. In supersession of the Notice dated the...and in terms of paragraph 521 (12) of the Modified Sastry Award, it is notified, for the information of the Staff that Sri S.K. Dutta, Superintendent,. Staff Section, Calcutta, Local Head Office, for the time being, is appointed as the authority empowered to take disciplinary action and pass the original orders imposing punishment in respect of employees of the Branch or its sub-offices. He is also to be deemed to be a Manager of the Bank for the purpose of passing original orders of discharge in respect of the employees in question.

2. Shri Ram Rakha, Deputy Secretary and Treasurer Calcutta, for the time being will continue to be the Appellate Authority.

By Order Seal of the State Bank of India B.K. Sacker Staff Section. Secretary & Treasurer.

It is significant to note that in the writ petition the validity of the memorandum or the notice or the nomination made has not been questioned.

18. Though no statutory regulation regarding the authority competent to pass an order of dismissal could be pointed out but reliance was placed on Regulation 50, which we have earlier noticed, stands repealed, we may refer in this connection to Regulation 55 which reads as follows :

(1) Save as provided in Sub-regulation (2), and as may be directed by the Central Board, a Local Board may exercise all the powers of the State Bank in respect of the staff serving the areas in its jurisdiction.

(2)(a) The initial appointment and promotions to various categories of employees in the Bank shall be made

(i) in the case of officers and employees starting on a pay lower than the starting pay in the scale applicable for the time being to Officers Grade II, by such authorities in

the State Bank as may be specified, where the appointment or promotion is for service in the Circle, by the Chief General Manager concerned, and where the appointment or promotion is for service in or under Central Office, by the Managing Director.

(ii) in the case of Officers Grade II and Grade I and of other employees to whom the Rules of service applicable to Officers Grade II or Grade I generally apply with or without modification by the Chief General Manager concerned or the Managing Director according as the appointments or promotion is for service in Circle or in or under Central Office

(iii) in the case of Staff Officers of various grades and other employees to whom the Rules of Service applicable to Staff Officers generally apply with or without modification by the Managing Director;

(iv) in the case of Senior Staff Appointments and of employees to whom Rules of Service applicable to Senior Staff Appointments generally apply with or without modifications, by the Executive Committee;

Such Officers or employees shall not be dismissed from service of the State Bank by an authority lower than the appointing authority.

(b) The salary and other emoluments to be granted to Officers and other employees with a starting pay equivalent to or higher than the starting pay in the scale applicable for the time being to Officers Grade II, shall be as laid down in Rules of Service approved by the Central Board and, where no such rules have been laid down, as fixed by the Executive Committee.

(c) * * *

(d) The power to grant pensions to officers and other employees leaving the service of the State Bank, other than pensions provided for under the rules of the pension funds respectively applicable to them, shall be reserved to the Central Board.

(e) The grant of gratuities or other financial assistance, either temporary or permanent, to widows, children or other dependents of deceased officers or other employees shall be made by the Executive Committee of the Central Board except where the grant of any such gratuity or financial assistance is authorised by any general direction given by the Central Board.

19. From the averments made in the petition and from the materials on record, it does not become possible for us to come to any conclusion whether regulation 55 has at all any application to the instant case.

20. Even if we proceed on the basis that Regulation 55 has any bearing on the question of dismissal of the appellant, we cannot in the facts and circumstances of the case hold that there has been any

breach of the said regulation. Regulation 55 (1) lays down (hat save as provided in Sub-regulation (2) and as may be directed by Central Board, a local Board may exercise all the powers of the State Bank in respect of the staff serving in the areas in its jurisdiction. There is nothing to indicate that the memorandum and the notice which we have earlier quoted did not come into existence as a result of a decision of the Local Board as directed by the Central Board or under the directions of the Central Board. There is also nothing to indicate that the appellant had been dismissed from service by an authority lower than the appointing authority. The order of dismissal has been communicated by the Superintendent Staff Section who held the rank of General Manager who was duly authorised by the memorandum dated 4th July, 1982 to take disciplinary action and pass orders imposing punishment against the appellant. It is also to be noticed that the appellant at no stage had raised any objection to the disciplinary proceedings against him initiated by the Superintendent and the punishment imposed on him by the Superintendent by virtue of the authority conferred on him by the said memorandum which we have earlier set out. It may also be pointed out that there are no proper averments in the petition filed by the appellant and indeed there are no materials to indicate that there has been any breach of Regulation 55 even if we assumed that the said regulation had any application. In the absence of a statutory regulation, dismissal of an employee becomes entirely a managerial function.

21. Para 521(12) of the Sastry Award, binding on the parties, requires that the person who could pass an order of punishment, should be notified. In compliance with the said requirement, the necessary notification had been made in the instant case and it may be pointed out once again that no objection had ever been taken to the nomination notified. We must, therefore, hold that in the instant case there is no substance in the contention of the appellant that the appellant had been dismissed by a person not competent to pass the order of dismissal.

22. In this view of the matter, it does not really become necessary for us to consider the further argument of the learned Counsel for the Bank that even if it could be said that the order of dismissal had not been passed by the competent authority, the order would result only in wrongful dismissal of the employee giving rise to a claim for damages, but could not be interfered with in a writ petition.

23. In the result the appeal fails. In the facts and circumstances of this case, we do not propose to make any order as to costs. We therefore, dismiss the appeal with no order as to costs.