

Prathama Bank, Head Office ... vs Vijay Kumar Goel & Anr on 22 August, 1989

Equivalent citations: 1989 AIR 1977, 1989 SCR (3) 935, AIR 1989 SUPREME COURT 1977, 1989 LAB. I. C. 2016, (1989) 2 LAB LN 726, (1990) BANKJ 57, 1990 UJ(SC) 1 169, (1990) 67 COMCAS 71, (1989) 2 CURLR 504, 1989 SCC (L&S) 664, (1990) 1 UPLBEC 68, 1989 ALL CJ 611, 1989 (4) SCC 441, (1990) 1 BANKCLR 69, (1989) 3 JT 432 (SC)

Author: L.M. Sharma

Bench: L.M. Sharma, Jagdish Saran Verma

PETITIONER:

PRATHAMA BANK, HEAD OFFICE MORADABAD, THROUGH ITS CHAIRMAN

Vs.

RESPONDENT:

VIJAY KUMAR GOEL & ANR.

DATE OF JUDGMENT 22/08/1989

BENCH:

SHARMA, L.M. (J)

BENCH:

SHARMA, L.M. (J)

VERMA, JAGDISH SARAN (J)

CITATION:

1989 AIR 1977	1989 SCR (3) 935
1989 SCC (4) 441	JT 1989 (3) 432
1989 SCALE (2) 350	

ACT:

Regional Rural Banks Act, 1976: Section 3-'Regional Rural Bank'--Whether 'State' within Article 12 of the Constitution.

Constitution of India, 1950: Article 12--'Regional Rural Bank' notified under Section 3, Regional Rural Banks Act 1976 whether 'State'.

U.P. Public Services (Tribunal) Act 1976: Section 2(b)--'Public servant'--Employee of Regional Rural Bank--Whether 'Public' servant'.

HEADNOTE:

The respondent who was an employee of the appellant bank was dismissed from service on the basis of disciplinary proceedings instituted against him. He filed a suit challenging the validity of the disciplinary proceedings on the ground that the inquiry was vitiated by serious violation of principles of natural justice. The trial court decreed the suit. The decree was confirmed by the Additional District Judge in appeal, and by the High Court in second appeal.

Before this Court, the appellant contended that (i) having regard to the nature of relationship of master and servant between the parties, the decree of re-instatement of the respondent was illegal, and the suit as framed was not maintainable because the respondent's remedy was a suit for damages; (ii) alternatively, if the respondent was held to be a public servant so as to enable him to ask for re-instatement in the service, the suit must be dismissed as not maintainable in view of the provisions of the U.P. Public Services (Tribunal) Act, 1976; and (iii) there was no violation of the principles of natural justice.

While confirming the decree with modifications, this Court,

HELD: (1) The High Court was right in holding that as the respondent was not given adequate opportunity to examine the documents, he was handicapped in filing his show cause and defending himself effectively. [938C]

936

(2) The appellant bank is not covered by the definition of 'public servant' in section 2(b) of U.P. Public Services (Tribunal) Act, 1976. It has been constituted in exercise of the power conferred by s. 3 of the Regional Rural Banks Act, 1976, and has been sponsored by the Syndicate Bank, a nationalised Bank. Although fifteen per cent of the total capital of the Bank has been contributed by the State of Uttar Pradesh, it has no controlling power, and none of the conditions mentioned in s. 2(b) of the U.P. Act is satisfied. [939G]

(3) The plaintiff-respondent is not a "public servant" within the limited meaning of the expression used in the U.P. Act and the courts below are right in overruling the defence plea of the bar by the U.P. Act on the jurisdiction of the civil court to entertain the suit. [939H-940A]

The test for determining if an authority fails within the definition of State in Article 12 of the Constitution is whether it is an instrumentality or agency of the Government. The enquiry has to be not as to how the juristic person is born but why it has been brought into existence. It is therefore, immaterial whether the authority is created by a statute or under a statute. [940C]

Ajay Hasia & Ors. v. Khalid Mujib Sheravardi & Ors., [1981] 1 SCC 722, referred to.

(5) An examination of the relevant circumstances in regard to the appellant Bank leads to the irresistible conclusion that it is an instrumentality of the Central

Government. By establishing the Rural Banks the Central Government acts in discharge of its obligations under Articles 38 and 48 of Part IV of the Constitution through them. [940G, 942C]

(6) The provisions of the Regional Rural Banks Act, 1976 do not leave any room for doubt that the Regional Rural Banks are under deep and pervasive control of the Central Government and have been established as its instrumentality and, are, therefore, 'State' within Article 12 of the Constitution. [943A]

(7) There is no merit in the argument that the Courts cannot force the services of the respondent on the appellant bank by passing a decree for his re-instatement in service and all that can be done is to grant a relief by way of compensation in a properly constituted suit. [943B]

Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly, [1986] 3 SCC 156, referred to.
937

(8) In the instant case, the departmental proceeding against the respondent from 5.7.1983 onwards is quashed and the decree for the plaintiff's re-instatement in service with consequential benefits is confirmed, subject to the modification that if the Bank authorities be of the view that in spite of the delay of several years the inquiry ought to be completed, it will be open to them to proceed with it and to take further steps in the proceeding from the stage where it stood on 5.7.1983, in accordance with the directions of the Court in this judgment. [943F-G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3091 of 1985.

From the Judgment and Order dated 30.11.84 of the Allahabad High Court in S.A. No. 1137 of 1984.

Kapil Sibal, (N.P.), Mr. Rajiv Dhawan, R.K. Gupta, H. Sharma and Ms. Indu Sharma for the Appellant. Satish Chandra, M.C. Goel, K.P. Singh and N.N. Sharma for the Respondents.

The Judgment of the Court was delivered by SHARMA, J. The main question before us is whether a Regional Rural Bank established by a notification under s. 3 of the Regional Rural Banks Act, 1976 is "State" for the purposes of Part III of the Constitution of India. This appeal by special leave arises out of a suit by the respondent no. 1, an employee of the appellant Bank, challenging the validity of a disciplinary proceeding against him and order of his dismissal from service passed therein. The trial court decreed the suit and the decree was confirmed by the Additional District Judge in appeal and by the High Court in second appeal.

2. The facts briefly stated, omitting the details which are not relevant for the purpose of this judgment, are in a short compass. The respondent no. 1 was, in 1981, served with a lengthy charge-sheet containing many accusations, some of them being serious, and he was called upon to file his show cause. A large number of documents were mentioned in the charge-sheet and the respondent demanded copies thereof for the purpose of filing his reply. According to the appellant several opportunities were given to the respondent to inspect the documents (excepting a few in respect of which privilege was claimed), but the respondent did not avail of them with the object of protracting and frustrating the inquiry. According to the High Court, the opportunity given by the appellant was not adequate. Due to certain circumstances the inquiry could not make any progress for sometime. A new inquiry officer entrusted with the proceeding took up the matter on 5.7. 1983, when the respondent no. 1 contended that he must be given an adequate opportunity of examining the relevant documents for facilitating him to file his written statement. There is serious controversy between the parties as to the interpretation of the conduct of the delinquent servant and the approach adopted by the inquiry officer on the 5th of July and the subsequent dates, but we do not consider it necessary to deal with this aspect in detail as we agree with the view of the High Court that as the respondent was not given adequate opportunity to examine the documents, he was handicapped in filing his show cause and defending himself effectively.

3. The suit was filed by the respondent immediately after the order dated 5th July, 1983 was passed. The disciplinary proceeding, however, proceeded ex parte and ultimately the respondent was dismissed from service. By an amendment of the plaint, the respondent was allowed to challenge the dismissal order also.

4. The respondent has asserted that it was the vindictive attitude of the Bank authorities which led to the initiation of the disciplinary proceeding against him and the order of his suspension, and the inquiry have been vitiated by serious violation of principles of natural justice. Besides denying these allegations, the appellant Bank contended that having regard to the nature of relationship of master and servant between the parties, the decree for re-instatement of the respondent was illegal and the suit as framed was not maintainable. Even assuming that the respondent proves his case on merits, his remedy would be a suit for damages. Alternatively, if the respondent is held to be a public servant so as to enable him to ask for re-instatement in the service, the suit must be dismissed as not maintainable in view of the provisions of the U.P. Public Services (Tribunal) Act, 1976. There has also been a stout denial of the allegations relating to violation of principles of natural justice.

5. Both the learned advocates representing the parties invited us to go deeply into the facts, but we have declined to do so, as all the three courts below have considered the matter in great detail and we agree with the High Court that the inquiry officer should have given adequate opportunity to the respondent to examine the relevant documents for the purpose of preparing his reply. Not having done so, the further orders in the proceeding must be held to be vitiated. We, however, do not agree with the contention of Mr. Satish Chandra, the learned counsel for the respondent, that the entire proceeding from its very inception is fit to be quashed as illegal.

6. Now remains the issue relating to the-maintainability of the suit. So far the provisions of the U.P. Public Services (Tribunal) Act, 1976 are concerned, they are wholly in-applicable. Section 6 of the

Act bars the jurisdiction of the civil court to entertain a suit against the State of Uttar Pradesh and certain other authorities by a person who is or has been a "public servant" as defined in s. 2(b) of the Act in the following words:

"2. Definitions.--In this Act--

(a)

(b) "public servant" means every person in the service or pay of--

(i) the State Government; or

(ii) a local authority not being a Cantonment Board; or

(iii) any other corporation owned or controlled by the State Government (including any company as defined in Section 3 of the Companies Act, 1956 in which not less than fifty per cent of paid up share capital is held by the State Government) but does not include--

(1) a person in the pay or service of any other company; or (2) (a) a member of the All India Services or other Central Services;"

The appellant Prathama Bank is not covered by the above definition. It was constituted in exercise of power conferred by s. 3 of the Regional Rural Banks Act, 1976. It has been sponsored by the Syndicate Bank, a nationalised bank. Although fifteen per cent of the total capital of the Bank has been contributed by the State of Uttar Pradesh, it has no controlling power, and none of the conditions mentioned in s. 2(b) of the U.P. Act is satisfied. The plaintiff-respondent is, therefore, not a "public servant" within the limited meaning of the expression used in the U.P. Act and the courts below are right in overruling the defence plea of the bar by the U.P. Act.

7. The main point pressed on behalf of the appellant is that the Bank cannot be deemed to be 'State' for the purposes of Part III of the Constitution, and so the decree for re-instatement of the respondent is illegal. The learned counsel cited several decisions in support of his argument, but we do not consider it necessary to refer to all of them in view of the authoritative pronouncements of this Court on this aspect. In *Ajay Hasia and others v. Khalid Mujib Shervardi and others*, [1981] 1 SCC 722, it was held by a Constitution Bench that the test for determining if an authority falls within the definition of State in Article 12 of the Constitution is whether it is an instrumentality or agency of the Government. The enquiry has to be not as to how the juristic person is born but why it has been brought into existence. It is, therefore, immaterial whether the authority is created by a statute or under a statute. The Court after examining the Memorandum of Association and the Rules in that case held the Society which was registered under the Jammu & Kashmir Registration of Societies Act to be an 'authority' within the meaning of Article 12. It was pointed out that the composition of the Society was dominated by the representatives appointed by the Central Government and the Governments of several States with the approval of the Central Government;

the cost of meeting the expenses came from the Central Government and the Government of Jammu & Kashmir; the rules to be made by the Society were required to have the prior approval of the two Governments; the accounts had to be submitted to the two Governments for their scrutiny; the Society was to comply with the directions of the State Government with the approval of the Central Government; and the control of the State and the Central Government was thus deep and pervasive. Reference was also made to the provisions in regard to the appointment and removal of the members of the Society and to the constitution and powers of the Board of Governors. An examination of the relevant circumstances in regard to the appellant Bank in the light of this decision leads to the irresistible conclusion that it is an instrumentality of the Central Government. As has been stated earlier, the Bank was established under the provisions of the Regional Rural Banks act, 1976. The preamble of the Act which is mentioned below clearly indicates that the Regional Rural Banks are established to discharge the duties which are basically the responsibility of a welfare State.

"An Act to provide for the incorporation, regulation and winding up of Regional Rural Banks with a view to developing the rural economy by providing, for the purpose of development of agriculture, trade, commerce, industry and other productive activities in the rural areas, credit and other facilities, particularly to the small and marginal farmers, agricultural labourers, artisans and small entrepreneurs, and for matters connected therewith and incidental thereto."

Section 3 says that if requested by a Sponsor Bank, the Central Government may establish a Regional Rural Bank in the manner provided therein. The Sponsor Bank in the present case was a nationalised bank, which has been held to be under the control of the Central Government and, therefore, covered by the definition in Article 12 of the Constitution. The share capital of a Rural Bank is to be subscribed by the Sponsor Bank which has the further duty of training the personnel of the Rural Bank and providing managerial and financial assistance during the initial stage. The duration of such period can be extended by the Central Government. The Central Government is also vested with power to increase or reduce the authorised capital in consultation with the Reserve Bank and the Sponsor Bank. The burden to subscribe to the capital issued by the Rural Bank is divided--amongst the Central Government, Sponsor Bank and the State Government, their respective shares being fifty per cent, thirty five per cent and fifteen percent. The general superintendence, direction and management of the affairs of the Rural Bank vest in a Board of Directors which is constituted of two Directors to be nominated by the Central Government, one Director to be nominated by the Reserve Bank from amongst one of its Officers, one Director to be nominated by the National Bank from amongst one of its Officers, two Directors to be nominated by the Sponsor Bank from amongst its Officers and the remaining two Directors to be nominated by the State Government from its Officers. In view of the relationship with and control of the Central Government on the Reserve Bank, National Bank and the Sponsor Bank, the Central Government gets an effective control over the Rural Bank. The head office of the Rural Bank is to be located according to the directions of the Central Government. The remunerations of the Officers and other employees of the Rural Bank are to be fixed by the Central Government as indicated in s. 17. Without attempting to exhaustively deal with the functions of a Rural Bank, s. 18(2) mentions the following types of business within its duty:

"18.(1).....

(2).....

(a) the granting of loans and ad-

vances, particularly to small and marginal farmers and agricultural labourers, whether individually or in groups, and to co-operative societies, including agricultural marketing societies, agricultural processing societies, co-operative farming societies, primary agri- cultural credit societies or farmers' service societies, for agricultural purposes or agri- cultural operations or for other purposes connected therewith;

(b) the granting of loans and ad-

vances, particularly to artisans, small enter- preneurs and persons of small means engaged in trade, commerce or industry or other produc- tive activities, within the notified area in relation to the Regional Rural Bank."

It is manifest that by establishing the Rural Banks the Central Government acts in discharge of its obligations under Articles 38 and 48 of Part IV of the Constitution through them. To ensure that the object of establishing Rural Banks is fully achieved, sub-section (2) of s. 20 of the Act has brought both the houses of the Parliament also in the picture in the following words:

"(2) The Central Government shall cause every auditor's report and report on the working and activities of each Regional Rural Bank to be laid, as soon as may be after they are re-

ceived, before each House of Parliament."

By s. 24-A the Sponsor Bank is required to periodically monitor the progress of the Rural Banks and to take connect- ed steps, and to cause inspection, internal audit et cetera made. The rule making power dealt with in s. 29 is vested in the Central Government and the power of the Central Government to give directions is mentioned in s. 24, quoted below:

"24(1) A Regional Rural Bank shall, in the discharge of its functions, be guided by such directions in regard to matters of policy involving public interest as the Central Government may, after consultation with the Reserve Bank, give.

(2) If any question arises as to whether any such direction relates to a matter of policy involving public interest, the decision of the Central Government thereon shall be final."

The provisions of the Act do not leave any room for doubt that the Regional Rural Banks are under deep and pervasive control of the Central Government and have been established as its

instrumentality and, are, therefore, 'State' within Article 12 of the Constitution.

8. The learned counsel contended that even if the appellant Bank is considered to be State, the courts cannot force the services of the respondent on it by passing a decree for his re-instatement in service. All that can be done is to grant a relief of way of compensation in a properly constituted suit. We do not find any merit in the argument. The learned counsel relied on the following observations in paragraph 103 of the judgment in Central Inland Water Transport Corporation Ltd. and another v. Brojo Nath Ganguly and another reported in, [1986] 3 SCC at page 156:

"The contesting respondents could, therefore, have filed a civil suit for a declaration that the termination of their service was contrary to law on the ground that the said Rule 9(i) was void. In such a suit, however, they would have got a declaration and possibly damages for wrongful termination of service but the civil court could not have ordered reinstatement as it would have amounted to granting specific performance of a contract of personal service. As the Corporation is "the State", they, therefore, adopted the far more efficacious remedy of filing a writ petition under Article 226 of the Constitution".

Far from helping the appellant, the observations clarify the correct position which is just contrary to the argument of the learned counsel.

9. In the result, the departmental proceeding against the respondent from 5.7.1983 onwards is quashed and the decree for the plaintiffs reinstatement in service with consequential benefits is confirmed. If the Bank authorities be of the view that in spite of the delay of several years the inquiry ought to be completed, it will be open to them to proceed with it and to take further steps in the proceeding from the stage where it stood on 5.7. 1983, but they should indicate their intention to do so to the respondent and also serve copies of the relevant document on him. If they are of the view that any particular document is confidential in nature and a copy thereof cannot be handed over to the respondent they may so indicate in writing to the respondent and it will be open to the inquiry officer to examine whether the denial of such a copy would amount to violation of principles of natural justice. The Bank shall also permit the respondent to join his post and receive his other benefits before he is called upon to file a show cause. Subject to the modifications as indicated the decree under appeal is affirmed. The parties are directed to bear their own costs of this Court. R.S.S.