

J. and K. Bank

Vs.

B. R. Gupta

Civil Appeal No. 3333 of 1992

(L. M. Sharma, S. Mohan, N. Venkatachala JJ)

18.08.1992

JUDGMENT

1. Heard the learned counsel for the parties. Special leave is granted.
2. The appeal arises out of a disciplinary proceeding against the respondent, who was the Chief Manager of the Divisional Office of the appellant Bank at Delhi. After holding an enquiry, he was dismissed from service. He challenged the order by a writ petition in the Delhi High Court which was allowed by a learned single Judge. The order was confirmed, on appeal, by a Division Bench of the Court. Inter alia it was contended on behalf of the appellant-Bank that since the same is neither State nor a State instrumentality, the respondent's writ petition in the High Court was not maintainable. The plea has been negatived.
3. The High Court has held that adequate opportunity to defend himself was not given to the respondent, nor was he supplied with a copy of the enquiry report in time, so that he could have submitted his show cause in pursuance of the second notice. Relying upon the judgment of this Court in *Union of India v. Mohd. Ramzan Khan* (1991) 1 SCC 588: (AIR 1991 SC 471), the High Court quashed the order of dismissal of the respondent and directed his reinstatement with consequential benefits and costs without even permitting the appellant either to proceed with the Enquiry after giving the respondent a fresh opportunity or to hold a fresh inquiry. The matter was thus closed finally in favour of the respondent.
4. The learned counsel for the appellant has seriously challenged the finding of the High Court on the maintainability of the writ petition. It is contended that since the appellant-Bank is not an agency of the State an application under Art. 226 of the Constitution was not competent. Reliance has been placed on the decision in *Jagdish Chander Gupta v. Jammu and Kashmir Bank Ltd.*, AIR 1986 J & K 1. In the course of his argument, the learned counsel for the appellant stated that if this question be left open to be reargued in an appropriate case later, the appellant would be willing to ignore the disciplinary proceeding from the stage after the second notice was served on the respondent. In other words, a fresh opportunity shall be given to the respondent to file his show cause in pursuance of the second notice and the matter shall be considered afresh on merits. The learned counsel for the respondent has, after some hesitation, accepted the offer on the further condition that the respondent would be allowed to raise the other questions which he had pressed before the High Court challenging the validity of the proceeding at the earlier stage also, and the competent authority is directed to deal with them by a reasoned order if an order of punishment be proposed to be passed against him (respondent). The counsel for the appellant has no objection to this condition. We consider the course suggested on behalf of the parties to be reasonable.

5. The learned counsel for the respondent has also urged that he should be immediately reinstated in service and the consequential monetary benefits should be paid to him without delay. On behalf of the appellant it has been stated that the respondent has already withdrawn a sum of Rs. 20,000/- out of the total amount of Rs. 67,415/- deposited in the Delhi High Court and the Bank agrees that the remaining amount of Rs. 47,415/- may also be allowed to be withdrawn by the respondent at this stage subject to the final adjustment on the termination of the disciplinary proceeding. The respondent accepts this offer but wants the payment to be made through a bank draft. We do not see any objection to this.

6. Accordingly we set aside both the judgments of the learned single Judge and the Division Bench of the High Court and direct the appellant to proceed with the disciplinary proceeding from the stage immediately after the service of the second notice in November, 1986. It is open to the respondent to file his show cause within six weeks from today. The appellant shall pass final orders in the disciplinary proceeding latest by the 31st December, 1992 and in case the respondent is again punished, the objections raised by him in his aforesaid second show cause shall have to be dealt with and separate findings shall be recorded by the authority concerned on each point raised. The appellant shall also hand over to the respondent a bank demand draft for Rs.47,415/- within a fortnight from today, but the latter shall not be entitled to join his post in the Bank and shall not insist on discharging his functions. He shall be deemed to continue under suspension till the conclusion of the departmental disciplinary proceeding or 31st December, 1992, whichever may be earlier. We make it clear that the question as to whether the appellant-Bank is a State instrumentality or not is left open to be decided later if such an occasion arises. The appeal is accordingly disposed of. There will be no order as to costs.

Order accordingly.

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