

Central Provident Fund Commissioner and Others

Vs

Ashok Dubey and Others

Civil Appeal No. 5284 of 1992

(CJI L.M. Sharma, S. Mohan, S.P. Bharucha JJ)

08.12.1992

JUDGEMENT

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MOHAN, J.:-

1. Leave granted.

2. This appeal by special leave is directed against the judgment and order dated 12-9-91 of the High Court of Patna in C.W.J.C. 3050 of 1991.

3. The short facts leading to this appeal are as follows :

The respondent, Shri Ashok Dubey was an Officer in Canara Bank. He was one of the candidate recommended by the Union Public Service Commission by its letter dated 20th June, 1990 for the post of Assistant Provident Fund Commissioner in the Employees Provident Fund Organisation. The scale of pay was Rs. 2200-4000. On 25th of June, 1990 an offer of appointment was made setting out the terms and conditions of appointment. He was called upon to communicate his acceptance within 15 days from the date of receipt of the offer of appointment. It was accepted by the respondent on 5th of July, 1990. On 11-7-90, the respondent requested the Provident Fund Department for extension of his joining for 3 months. This was because he had to give 3 months' notice to the Bank where he was working, from which service he had to be relieved after acceptance of his resignation. He also requested that, should be Provident Fund Department so desire he could be allowed to join and the respondent would persuade the Bank to waive the stipulated period of notice of 3 months.

4. On 25-6-90, the respondent sent his notice of resignation to the General Manager, Canara Bank. The respondent actually resigned by his letter dated 10th of July, 1990 and stated that it would be effective from 6th of September, 1990. He requested the Bank to issue a No Objection Certificate to enable him to join the post of Assistant Provident Fund Commissioner. On 26th of July, 1990, the Bank enquired of the respondent whether any outstanding liability was due to which he replied in the negative.

5. On 19th July, 1990, the Provident Fund Department (the appellant - herein) requested the Bank to waive the condition of 3 months' notice for resignation since the services of the respondent were urgently required as Assistant Provident Fund Commissioner. The respondent was medically examined and found fit for the post of Assistant Provident Fund Commissioner. A police

verification was made and his antecedents were cleared.

6. While completing the pre-appointment formalities vigilance clearance certificate was called from the Canara Bank. Thereupon, the Bank informed the appellant that some disciplinary proceedings had been initiated against the respondent and were pending against him. Therefore, the Bank was not in a position to accept the resignation of the respondent. As it came to light, the three memoranda of charges had been issued against the respondent and the enquiries were in progress, the offer of appointment was reviewed. On such review, the offer of appointment was cancelled by a letter dated 8/9-4-91.

7. Aggrieved by this cancellation, he moved the High Court of Patna in C.W.J.C. No. 3050 of 1991. Even before the counter affidavit could be filed on behalf of the appellant it was directed by the High Court by the impugned judgment dated 12th September, 1991 that the respondent would be permitted to join the post of Assistant Provident Fund Commissioner since the departmental proceeding was over and there was no financial liability any more to be discharged by him. It was further directed that his resignation submitted to Canara Bank on 25th June, 1990 should be accepted. On such acceptance, the appointment letter shall be issued afresh subject to fulfilling the conditions required for that purpose and the respondent shall fulfil all the requirements which he will be asked to be fulfilled. The Bank was directed to supply such necessary documents which may be required for fulfilling the terms and conditions as envisaged according to the terms of appointment. It is under these circumstances this appeal by special leave has come to be preferred.

8. Learned counsel for the appellant urges the following.

9. The High Court without affording an opportunity to the appellant disposed of the petition on merits. Had only an opportunity to file counter been afforded, it could have been brought to the notice of the High Court that because of the pendency of disciplinary proceedings the resignation of the respondent was not accepted. It was for this reason the offer of appointment was cancelled. It could have also been brought to the notice of the High Court that the offer of appointment was valid only for a period of 9 months from the date of the offer.

10. Where, in the offer of appointment dated 25th June, 1990, it was made clear that he would be allowed to join only on the production of valid discharge certificate from the present employer; in the absence of any such relief order, the appellant was justified in cancelling the offer of appointment.

10A. For issuing an order of appointment vigilance clearance and integrity certificate are absolutely necessary. Therefore, the High Court was wrong in allowing the respondent to join the post during the pendency of disciplinary proceedings. In the absence of non-availability of integrity certificate the appellant was well within his jurisdiction to cancel the offer of appointment. By a letter dated 12th of September, 1990 the respondent was categorically informed that unless and until the outcome of the final decision pending against him was known the appellant could not issue the order of appointment irrespective of his claim that the charges are trivial or frivolous.

11. When the candidature of the respondent was recommended by the Union Public Service Commission it was subject to ensuring compliance of the availability of the vigilance clearance and integrity certificate and proper relief order from the present employer. These formalities have not been complied with at all. Therefore, the order of the High Court is wholly unsupportable in law and it requires to be interfered with.

12. In opposition to this, learned counsel for the respondent would urge that where the appellant did not file any counter despite ample opportunity afforded he cannot make a grievance now.

13. The order passed by the High Court is just and proper because the departmental proceedings which were of minor nature had come to an end. Where by a letter dated 28th of August, 1990 it was stated by the appellant that the appointment of the respondent will be withheld till final decision is taken by disciplinary authority of the Bank, the Department was precluded from cancelling the appointment after the finalisation of the disciplinary proceedings.

14. The respondent was never informed that the offer of appointment was valid only for 9 months.

15. The present employer of the respondent had issued a No Objection Certificate on 7th of October, 1991. This certificate was sufficient evidence of the integrity of the respondent. Hence, there was no impediment in appointing the respondent. Therefore, looked at from any point of view, no exception could be taken to the order of the High Court.

16. We will now proceed to consider the correctness of the above submissions made on the respective sides.

17. A list of 70 candidates was recommended by the Union Public Service Commission for appointment to the post of Assistant Provident Fund Commissioner (Grade I) in Employees Provident Fund Organisation. The respondent was admittedly one of the candidates so recommended. He was offered, by a memorandum dated 25th of June, 1990 a temporary post of Assistant Provident Fund Commissioner (Grade I) In the Employees Provident Fund Organisation, a statutory body under the administrative control of Ministry of Labour, in the scale of pay of Rs. 2200-75-2800-EB-100-4000. The terms of appointment inter alia stated that the candidate would be allowed to join the post only on production of a valid discharge certificate from the present employer. This offer of appointment was accepted by the respondent on 5th of July, 1990. Thereafter, he wrote to the appellant that since he was working in Canara Bank he had to resign his post from the Bank; 3 months' notice period would be required for acceptance of resignation. It was further stated by him that he had already sent a notice to the Bank to accept his resignation with effect from 6th September, 1990. Further, it was added that should his services be required even earlier, the appellant might take up the matter with the controlling authority to have this 3 months' period waived.

18. The appellant wrote to Canara Bank on 19th of July, 1990 requesting the Bank to forward the personal file of the respondent containing medical fitness certificate, police verification certificate and performance assessment report in order to enable the appellant to issue the order of appointment for the post for which he had been selected. The respondent wanted to know as to what had happened to the issue of appointment order. The appellant informed on 11th August, 1990 that his integrity certificate from the Bank was awaited but in the mean-while he was directed to contact the office of the appellant at Patna for medical examination by the Medical Board. On 12th September, 1990, again the Bank was reminded to take early action as to the acceptance of the resignation of the respondent which was getting delayed due to the pendency of disciplinary proceedings against him and a final decision may be taken at the earliest.

19. While forwarding the copy of that letter the respondent was specifically informed that unless and until the outcome of the final decision was taken by Canara Bank on the disciplinary proceedings pending against him it was not possible for the appellant to issue the order of

appointment irrespective of his claim that the charges were trivial or frivolous.

20. On 28th of August, 1990, the appellant informed the Union Public Service Commission that because of the pendency of vigilance proceedings against the respondent and the non-issue of vigilance clearance and integrity certificate by the Head Office of Canara Bank at Bangalore, it had been decided to withhold the appointment of the individual till final conclusion of the decision being taken by the disciplinary authority.

21. Then comes the ultimate letter dated 8/9-4-91 in which the stand of the appellant is reiterated, namely, that Canara Bank, the present employer of the respondent had intimated to the office of the appellant that some disciplinary proceedings have been initiated/ pending against him and hence his resignation had not been accepted. In the previous letter dated 27-2-91 also it had been stated by the Bank that the inquiry in respect of some charge-sheets had not been completed. It is under these circumstances the offer of appointment was cancelled.

22. From the above narration, it is clear that though the respondent was selected and an offer of appointment was made as Assistant Provident Fund Commissioner, because of the failure to obtain a vigilance clearance certificate and the integrity certificate, the appellant was not in a position to issue order of appointment in the absence of a relief order from the employer of the respondent. We are of the view that the High Court had completely misdirected itself in passing the impugned order.

23. Trust and confidence constitute the hallmark of a banking institution. The respondent had been subject to disciplinary proceedings and they were pending at that time. The relief order had not been Issued by the Bank. Hence the impugned order came to be passed. The appellant had every right to do so. In this connection it is worthwhile to remember that in the terms of offer of appointment it was categorically stated that :

"The candidate will be allowed to join the post only on production of valid discharge certificate from the present employer."

24. In the instant case, a valid discharge or relief order had not come from the Bank. Time and again, the respondent was informed of this. We have already seen in the narration of facts that while forwarding a copy of the letter addressed to the Bank dated 12-9-90 the respondent was specifically informed of this. He replied on 16-9-90 that he was taking up the matter for the early acceptance of his resignation from the Bank. Therefore, he was fully aware of the reason for not issuing the order of appointment. Therefore, the High Court was not at all justified in saying that the respondent was never afforded any opportunity before the issue of the cancellation order dated 8/9-4-91. Even assuming that an opportunity is to be afforded, what is the purpose? It was not the case of the respondent that there were no disciplinary proceedings pending against him. His only case was that the charges were trivial or frivolous in nature. Irrespective of the nature of charges the relief order from the Bank was not forthcoming. The vigilance certificate and integrity certificate were not made available by the respondent. Therefore, the appellant could not issue the order of appointment. The matter is simple enough.

25. The second reasoning of the impugned judgment sounds strange, namely, that the departmental proceedings against the respondent had come to an end and there was no financial liability any more to be discharged by him. No doubt the departmental proceedings had come to an end, but of what result? The respondent was awarded the punishment of withholding one increment with cumulative effect as also the recovery of loss caused to the Bank. Though his original punishment was later on

modified as withholding of one increment with cumulative effect and no recovery of loss to be made yet, should the appointment order be issued for a Grade I post for a person who has suffered the penalty from the Bank? That is the most important aspect which has to be borne in mind. Even if the resignation is now accepted or directed to be accepted why should the appellant suffer a person who does not have good antecedents? How then could a fresh appointment letter be issued subject to fulfilling the conditions required for the purpose? Certainly, the requirement in relation to integrity certificate will contain this blot of punishment, namely, withholding of one increment with cumulative effect.

26. Much was made of the fact that on 7th October, 1991 No Objection Certificate was issued. That certificate reads

"This is to certify that Sri Ashok Dubey (43936) Officer, presently working at Customer Service Section, Circle Office, Patna, has been in the services of the Bank since 16-11-1983.

This certificate is issued at the request of the employee for the purpose of joining to the post of Assistant Provident Fund Commissioner in your organisation.

However, his relief will be subject to rules and regulations of the Bank.

Sd/-

For Deputy General Manager"

27. This certificate in our considered opinion does not advance the case of the respondent. Apart from the fact that having been issued at the request of the employee, the relief is stated to be subject to the rules and regulations of the Bank. Hence even on that day the respondent had not been relieved from his former employment. There is still that umbilical cord. Thus, looked at from any point of view the judgment of the High Court is wholly unsupportable in law and betrays a lack of comprehension of the entire factual background. Since we have decided the case on merit we are not going to the other questions whether the appellant had an opportunity to meet the case effectively in the High Court by filing a counter or again whether offer of appointment would enure only for a period of 9 months.

28. In the result, we have no hesitation in setting aside the impugned judgment and allow the appeal. Accordingly the appeal will stand allowed with costs. Appeal allowed.

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