

Gopalji Khanna

Vs

Allahabad Bank and others

Civil Appeal No. 3895 of 1996

(S. C. Agrawal, G. T. Nanavati JJ)

27.02.1996

JUDGEMENT

NANAVATI J.

1. Leave granted.

2. The short question that arises for consideration in this appeal is whether the power of review available to the Chairman and Managing Director of the Allahabad Bank under Regulation 18 of the Allahabad Bank Officer Employees' (Discipline and Appeal) Regulations, 1976, could have been exercised by the Executive Director who, in absence of the Chairman and Managing Director, was entrusted with current charge of the duties of offices of the Chairman and Managing Director.

3. The appellant is an employee of the Allahabad Bank. A departmental enquiry was instituted against him for certain acts of misconduct. By an order dated June 30, 1987, the disciplinary authority, by way of penalty, reduced him to a lower stage in the time scale of his pay. As the penalty imposed upon the appellant was found to be inadequate by the Executive Director who was then holding charge of the posts of Chairman and Managing Director, he passed an order dated 30th December, 1987 setting aside the said order of penalty and proposing to impose major penalty of reduction from MMG Scale II to JMG Grade Scale I and to fix his pay in the JMG Scale I at the minimum of that scale. By that order the appellant was called upon to submit his representation as to why the proposed enhanced penalty should not be imposed upon him. After considering the representation made by the appellant the Executive Director by order dated 5-2-1988, imposed penalty of reduction from MMG Scale II to JMG Scale I and fixed the pay of the appellant at the minimum of that scale. The appellant challenged that order by filing a writ petition in the Allahabad High Court. It was dismissed as the High Court did not find any substance in any of the contentions raised before it.

4. Two contentions have been raised before us, Firstly, it was contended that the order enhancing the penalty was passed by Shri Wadhwa in his capacity as the Executive Director and as the Executive Director is not specified in the Regulations as the reviewing authority, the order passed by him should be regarded as null and void. Secondly, and in the alternative, it was contended that under the Regulations, only the Chairman and Managing Director are specified as reviewing authorities and, therefore, Shri Wadhwa who was the Executive Director and was merely holding current charge of duties of the posts of Chairman and Managing Director could not have reviewed the order of penalty passed by the disciplinary authority.

5. Before we consider these contentions it may be stated that till 23-6-1987, Shri R. Srinivasan was

the Chairman and Managing Director of the Allahabad Bank. As he has appointed Chairman and Managing Director of Bank of India, by notification dated 23-6-1987, he was directed to hand over current charge of duties of the post which he was holding to the Executive Director Shri R. L. Wadhwa. Pursuant to the said Notification Shri Srinivasan handed over and Shri Wadhwa took over the charge of the posts of Chairman and Managing Director on 24-6-1987. The resultant position was that thereafter Shri Wadhwa continued to hold substantively the post of Executive Director and at the same time was also holding charge of the offices of the Chairman and Managing Director. Subsequently, on 29th April, 1988, Shri Wadhwa was appointed as Managing Director and also as Chairman of the Bank.

6. In support of his first contention the learned counsel drew our attention to the order-cum-show cause notice dated 30-12-1987, and the impugned order dated 5-2-1988. Both are signed by Shri Wadhwa as Executive Director. However, we find that, in both these orders it is stated that they were being passed by him in terms of Regulation 18. That would mean that while passing those orders, Shri Wadhwa was discharging the functions of Chairman and Managing Director. Shri Wadhwa was only holding charge of the offices of the Chairman and Managing Director and, therefore, he could not have signed those orders as Chairman and Managing Director. Since he was then holding substantively the post of Executive Director he rightly described himself, while signing those orders, as Executive Director. The appellant also understood the show cause notice as one issued by a person discharging the functions of Chairman and Managing Director as can be seen from his representation made pursuant thereto. In it he has referred to Shri Wadhwa as Executive Director and reviewing authority. Therefore, the first contention raised by the learned counsel has to be rejected.

7. With respect to the second contention, it was submitted by the learned counsel that the power of review as conferred by Regulation 18. Only the Chairman and Managing Director are specified as reviewing authorities. This statutory power, therefore, can be exercised by Chairman and Managing Director only as they are the named authorities under the statutory provision and cannot be validly delegated to any subordinate authority. Shri Wadhwa, therefore, could not have validly exercised that power. There is no substance in this submission. It is really misconceived. Though the Regulations have been framed in exercise of the powers conferred by Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, by the Board of Directors, they cannot be equated with a statute. What the Board of Directors have done by making those Regulations is to regulate the power of taking disciplinary action against the employees of the bank. Moreover, this is not a case where the power of Chairman or the Managing Director came to be exercised by a subordinate official as a result of delegation of that power. Shri Wadhwa while exercising the power of review was really discharging the functions of Chairman and Managing Director as he was then placed in charge of those offices and was therefore entitled to perform all the duties and functions of those offices. He did not exercise that power on the basis that it was delegated to him. Therefore, the decisions in *Barnard v. National Dock Labour Board*, (1953) 1 All ER 1113, *Krishna Kumar v. Divisional Assistant Electrical Engineer*, (1979) 4 SCC 289 : (AIR 1979 SC 1912) and *Marathwada University v. Seshrao Balwant Rao Chavan*, (1989) 3 SCC 132 : (AIR 1989 SC 1582), relied upon by the learned counsel in support of his contention that statutory power can be exercised by the named authority only and cannot be further delegated require no further consideration. So also, *Ramakant Shripad Sinai Advalpalkar v. Union of India*, 1991 Suppl (2) SCC 733 : (AIR 1991 SC 1145) and *State Haryana v. S. M. Sharma*, 1993 Suppl (3) SCC 252 : (1993 AIR SCW 2160), cited by the learned counsel have no relevance. The question which arose for consideration in those cases was whether an officer who substantively holds a lower post and is asked to discharge the duties of a higher post can be considered as promoted to that higher post.

This Court held that entrustment of current duties charge of a higher post does not amount to promotion and in such cases the person continues to hold his substantive lower post and only discharges the duties of higher post essentially as a stop-gap arrangement.

8. It was next submitted that when a person is entrusted with charge of current duties of a higher post, he can exercise only those powers and perform those functions which are available to the person holding the higher post under executive orders and not those which are conferred by statutory provisions. In support of this submission the learned counsel relied upon the decision of this Court in *Ajaib Singh v. State of Punjab*, (1965) 2 SCR 845 : (AIR 1965 SC 1619). In that case what had happened was that the Additional District Magistrate, Amritsar was invested with powers of a District Magistrate under Section 10(2) of the Code of Criminal Procedure, 1898 and was also put in charge of the office of the District Magistrate Amritsar, who was transferred. No order appointing him as a District Magistrate under Section 10(1) was passed. While in charge of the Office of the District Magistrate, he passed an order of detention under the Defence of India Act and Rules, 1962. That order was challenged on the ground that as the Additional District Magistrate was not appointed as District Magistrate under Section 10(1) he did not have the power to pass a detention order and, therefore, the order passed by him was without any authority of law and liable to be set aside. This Court after considering the relevant provisions of the Defence of India Act and the Rules, drastic nature of the power and the consequences following from it, observed that the power of detention could only be exercised by the State Government or an officer or authority to whom it was delegated and that the said power could be delegated to an officer or authority who was not lower in rank than the District Magistrate. It was then held that even though the Additional District Magistrate was exercising the powers of the District Magistrate on there being a vacancy in the office of the District Magistrate, he was still not the District Magistrate as he was not appointed as such under Section 10(1) of the Code and therefore, he had no power to pass the order of detention. Even though invested with the powers of a District Magistrate he did not become an officer of the rank of a District Magistrate. In this case we are not concerned with such a provision and therefore are not required to consider whether Executive Director of the bank when entrusted with the charge of duties of the offices of Chairman and managing Director became an officer of the rank of Chairman and Managing Director, Moreover the power of the employer to take disciplinary action against the employee including the power to review an order of penalty, has to be distinguished from the statutory power to detain a person. therefore, on the basis of this decision it cannot be held that the Executive Director who was merely entrusted with the charge of duties of the offices of Chairman and Managing Director, could not have exercised the power of reviewing the order of penalty passed by the disciplinary authority.

9. In *Hari Chand Agrawal v. The Batala Engineering Co. Ltd.*, AIR 1969 SC 483, also a question had arisen whether the Additional District Magistrate who was entrusted with all the powers of the District Magistrate under Section 10(2) of the Code of Criminal Procedure could have exercised the power delegated by the Central Government to the District Magistrate to requisition the property under Section 29 of the Defence of India Act, 1962. This Court held as under :- (Paras 9 and 7 of AIR)

"The powers of requisitioning are of a very drastic nature and involve the fundamental rights in respect of property guaranteed under Article 19(1) (f) of the Constitution. The Central Government while making the delegation of its power under Section 29 of the Act must ordinarily be presumed to be fully conscious of this aspect of the matter and it is for that reason that an officer or authority of the high status of a District Magistrate in the district was empowered to exercise that power.

The scheme of Section 10 of the Code leaves no room for doubt that the District Magistrate and the Additional District Magistrate are two and distinct authorities and even though the latter may be empowered under sub-section (2) to exercise all or any of the powers of a District Magistrate but by no stretch of reasoning can an Additional District Magistrate be called the District Magistrate which are the words employed in sub-section (1) of Section 10."

10. This decision, therefore, does not support the contention raised on behalf of the appellant.

11. In State of Madhya Pradesh v. Shri Sheo Narayan Yadav, (AIR 1979 SC 979), this Court was required to interpret Rule 3(b) framed under the Madhya Pradesh Local Authorities School Teachers (Absorption in Government Service) Act, 1963 which read as follows : (at p. 980 of AIR).

"3(b) - For absorption on the post of Head Master/Principal of a High/Higher Secondary School, the person concerned should possess the post-graduate degree and should have worked on the post for a minimum period of 7 years in the same institution and should have 10 years' teaching experience in any recognised institution of Madhya Pradesh."

12. It was contended by the respondent that working on the post for a minimum period of 7 years would for the purpose of computation of 7 years include service even as incharge Head Master/Principal or officiating service in the post. On the other hand it was contended by the state that the teacher claiming to be absorbed as Head Master/Principal should have worked as a confirmed Head Master/Principal in a substantive post for the full period of 7 years. This court held that the period during which the teacher had worked as incharge Head Master/Principal ought to have been taken into account by the State Government for computing the period of 7 years. It is difficult to appreciate how this decision can lend any support to the contention raised on behalf of the appellant. On the contrary this Court has observed therein that the confirmed holder of a substantive post would be discharging the functions attached to the post and when some one is placed in that very post in an officiating capacity or directed to hold charge of the post, he would be required to perform the duties and discharge the functions of the post rendering identical service. In paragraph 10 of the judgment it is further observed as under :- (AIR 1979 SC 979 at p. 981)

"It may be that the confirmed holder of the post may be away and not in a position to discharge the duties and some one may be appointed in an officiating capacity or may be directed to hold charge but nonetheless such holder of the post will have to perform duties and discharge functions attached to the post."

13. After considering the above decisions and Regulations 2(n) and 18, we are of the opinion that as the Executive Director Shri Wadhwa was entrusted with the charge of the offices of Chairman and Managing Director he became entitled to exercise all the executive powers, perform duties and discharge functions attached to those offices and, therefore, the order of penalty passed by him was legal and valid.

14. This appeal, therefore, fails and is dismissed. No order as to costs. Appeal dismissed.