SUPREME COURT OF INDIA

Sushil Kumar Singhal

Vs.

Regional Manager Punjab National Bank

C.A.No.6423 of 2010

(P.Sathasivam and Dr.B.S.Chauhan JJ.)

10.08.2010

JUDGEMENT

Dr.B.S.Chauhan, J.

1. Leave granted.

2. This appeal has been preferred against the Judgment and Order dated 10.09.2007 passed by High Court of Punjab & Haryana in Civil Writ Petition 14014 of 2007, by which the High Court had dismissed the writ petition for quashing the award dated 3rd January, 2007, passed by the Central Government Industrial Tribunal-cum-Labour Court-II at Chandigarh (hereinafter called as, "Tribunal"), by which the Tribunal had upheld the dismissal of the appellant from service on the ground of conviction of the appellant in criminal case involving moral turpitude.

3. Facts and circumstances giving rise to the present case are that the appellant was appointed as a Peon in the respondent-Bank, Kaithal Branch, on 01.12.1971 and stood confirmed on the said post vide order dated 28.12.1977. The appellant was handed over cash of Rs.5000/-, to deposit the same as dues for the Telephone Bill in the Post Office.

> "However, it was not deposited by the appellant, therefore, the bank lodged FIR No. 171 under Section 409 of Indian Penal Code, 1860 (hereinafter called "lPC") against the appellant, on 27.04.1982, in Police Station, City Kaithal. Appellant was tried for the said offence. After conclusion of trial, the appellant was convicted by the competent Criminal Court vide Judgment and Order dated 28.01.1988. The respondent-Bank issued a Show Cause Notice dated 01.03.1988 to the appellant, proposing dismissal from service and asked the appellant to show cause within a period of seven days. The appellant submitted the reply dated 08.03.1988. However, the respondent-Bank dismissed the appellant from service vide order dated 09.03.1988."

4. Being aggrieved, the appellant raised an industrial dispute under the Industrial Disputes Act, 1947 and the matter was referred to the Tribunal. In the meanwhile, the appeal filed by the appellant against the order of conviction was decided by the appellate Court vide judgment and order dated 29.5.1989. The appellate Court maintained the conviction, but granted him the benefit of probation under The Probation of Offenders Act, 1958 (hereinafter called as, "Act 1958) and released the appellant on probation. The Tribunal made the award dated 03.01.2007, rejecting the claim of the appellant and holding his dismissal from service to be justified and in accordance with law.

5. Being aggrieved, the appellant challenged the said award of the Tribunal by filing the writ petition No. 14014 of 2007, before the High Court. His petition also stood dismissed vide impugned Judgment and order dated 10.09.2007. Hence, this appeal.

6. Sh. Pradeep Gupta, learned counsel appearing for the appellant, has submitted that once the appellant had been granted the benefit of the Act, 1958, the respondent-Bank ought to have considered his case for reinstatement, as the benefit granted by the appellate Court under the provisions of Act, 1958, had taken away "disqualification" by virtue of Section 12 of the Act, 1958. The appeal deserves to be allowed and the Judgment and Order of the High Court as well as the Award of the Tribunal are liable to be set aside.

7. Per contra, Sh. Rajesh Kumar, learned counsel appearing for the respondent-Bank, has vehemently opposed the appeal contending that grant of benefit under the Act, 1958 takes away only the punishment (sentence) and not the factum of conviction, therefore, in case, an employee of the Bank stands convicted in an offence involving moral turpitude, it is permissible for the respondent-Bank to remove him from service. Appeal lacks merit and is liable to be dismissed.

8. We have considered the rival submissions made by the learned counsel for the parties and perused the record. The facts of the case are not in dispute. The Trial Court has convicted the appellant under Section 409 IPC after recording the finding of fact that the appellant had not deposited the telephone bill in spite of receiving a sum of Rs. 5000/- for that purpose on 26.04.1982 and he deposited the said amount with the Bank on 27.07.1982 vide voucher (Exhibit PH).

> “Appellant had also taken away the Bicycle of the Bank. The appellate Court maintained the conviction, however, it granted the appellant the benefit of probation under the Act, 1958.”

9. The sole question involved in this case is whether the benefit granted to the appellant under the provisions of Act, 1958 makes him entitled to reinstatement in service.

> “The issue involved herein is no more res integra.

, this Court held:- "As the appellant has been released on probation, this may not affect his service career in view of Section 12 of the Probation of offenders Act."

10. The said judgment in *Aitha Chander Rao*[1] was *School Education*[2], observing that due to the peculiar circumstances of the case, the benefit of the provisions of 1958 Act had been given to him and as in that case there had been no discussion on the words "disqualification, if any attaching to a conviction of an offence under such law", the said judgment cannot be treated as a binding precedent. This Court interpreted the provisions of Section 12 of the 1958, Act and held as under :- "In our view, Section 12 of the probation of offenders Act would apply only in respect of a disqualification that goes with a conviction under law which provides for the offence and its punishment. That is the plain meaning of the words "disqualification, if any, attaching to a conviction of an offence under such law" therein. Where the law that provides for an offence and its punishment also stipulates a disqualification, a person convicted of the offence but released on probation does not by reason of Section 12, suffers the disqualification. It cannot be held that by reason of Section 12, a conviction for an offence should not be taken into account for the purposes of dismissal of the person convicted from government service."

(Emphasis added).

11. In Divisional Personnel Officer, Southern Railway & observed that the conviction of an accused, or the finding of the Court that he is guilty, does not stand washed away because that is the sine-qua-non for the order of release on probation.

12. The order of release on probation is merely in substitution of the sentence to be imposed by the Court. Thus, the factum of guilt on the criminal charge is not swept away merely by passing the order under the Act, 1958. 39, this Court had held that if a person stands convicted and is given the benefit of the provisions of the 1958, Act, he can be removed from service only on the ground that he stood convicted.

13. But by virtue of the provisions of Section 12 of the 1958, Act, his removal cannot be a "disqualification" for the purposes provided in other Statutes such as the Representation of the People Act, 1950. The same view has *Punjab & Anr.*[3], *and Additional Deputy*[4]. this Court has held that the order of dismissal from service, consequent upon a conviction, is not a disqualification within the meaning of Section 12 of the 1958, Act.

14. The court held as under :- "There are Statutes which provide that the persons, who are convicted for certain offences, shall incur certain disqualification; for example, Chapter III of the Representation of Peoples Act, 1951 entitles 'disqualification' for Membership of Parliament and State Legislatures, and Chapter IV entitles 'disqualification' for voting, contains the provisions which disqualify persons convicted of certain charges from being the Members of Legislatures or from voting at election to the legislature.

15. That is the sense in which the word 'disqualification' is used in Section 12 of the Probation of Offenders Act.....Therefore, it is not possible to accept the reasoning of the High Court that Section 12 of the 1958 Act takes away the effect of conviction for the purpose of service also." this Court has held that the High Court, while deciding a criminal case and giving the benefit of the U.P. First Offenders Probation Act, 1958, or similar enactment, has no competence to issue any direction that the accused shall not suffer any civil consequences. The Court has held as under:

> "We also fail to understand, how the High Court, while deciding a criminal case, can direct that the accused must be deemed to have been in continuous service without break, and, therefore, he should be paid his full pay and dearness allowance during the period of his suspension. This direction and observation is wholly without jurisdiction...."
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> 1612, some part of the Judgment in T.R. Chellappan (supra) was overruled by the Constitution Bench of this Court. But the observations cited hereinbefore were not overruled."

16. *Ram Sajivan & Anr.*[5], this Court explained that the Judgment in Aitha Chander Rao (supra) did not lay down any law as no reason has been assigned in support of the order. Thus, the same remained merely an order purported to have been passed under Article 142 of the Constitution of India. This Court allowed the disciplinary authority to initiate the disciplinary proceedings in accordance with law and pass an appropriate order, in spite of the fact that in the said case, the court, after recording the conviction, had granted benefits of the provisions of the Act, 1958 to the employee.

17. In view of the above, the law on the issue can be summarized to the effect that the conviction of an employee in an offence permits the disciplinary authority to initiate disciplinary proceedings against the employee or to take appropriate steps for his dismissal/removal only on the basis of his conviction. The word `Disqualification' contained in Section 12 of the Act, 1958 refers to a disqualification provided in other Statutes, as explained by this Court in the above referred cases, and the employee cannot claim a right to continue in service merely on the ground that he had been given the benefit of probation under the Act, 1958.

18. Sh. Gupta, learned counsel for the appellant has placed very heavy reliance on the Judgment of this Court in Shankar Dass (supra) and submitted that this Court has held otherwise in that case. We have gone through the entire judgment and found that there is a complete fallacy in the submissions made by Sh. Gupta in this regard. In fact, in that case, this Court came to the conclusion that in spite of the fact that the benefit of the provisions of Act, 1958 had been granted by the Criminal Court, disciplinary proceedings could be initiated against the employee. However, in the facts and circumstances of the case involved therein, the Court asked the Management to reconsider the issue of quantum of punishment. This Court had taken note of the observations made by the Criminal Court while granting the

benefit of the Act, 1958, which are as under :- "Misfortune dogged the accused for about a year.....and it seems that it was under the force of adverse circumstances that he held back the money in question.

> "Shankar Dass is a middle-aged man and it is obvious that it was under compelling circumstances that he could not deposit the money in question in time. He is not a previous convict."
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> The Court also took further note of his other problems as under :- "The appellant was a victim of adverse circumstances; his son died in February, 1962, which was followed by another misfortune; his wife fell down from an upper storey and was seriously injured; it was then the turn of his daughter who fell seriously ill and that illness lasted for eight months."
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> In the aforesaid facts and circumstances, this Court asked the Management to consider whether some other lesser punishment commensurate to the misconduct could be awarded. In fact the punishment of dismissal was found to be disproportionate to the delinquency committed by the appellant therein. Had this Court intended to say that once benefit of the Act, 1958 is extended to a delinquent, his conviction also stands washed off, the court could have directed the Management to re-instate the employee rather than asking to impose a lesser punishment. Thus, the submission so advanced by Shri Gupta is preposterous."

19. This Court reconsidered the said case i.e. *Shankar Dass*[6] and held that the provisions of Article 311(2) of the Constitution of India conferred the power on the Government to dismiss a person on the ground of conduct which has led to his conviction on a criminal charge. It is thus, clear that it was open to the respondent-Bank to initiate the disciplinary proceedings and impose the punishment in view of the provisions of The Banking Regulation Act, 1949 (hereinafter called as, "Act 1949").

20. Section 10(1)(b)(i) of the Act, 1949, reads as under :-

> "No banking company - (a) .....
>
> (b) Shall employ or continue the employment of any person - (i) who is, or at any time has been, adjudicated insolvent, or has suspended payment or has compounded with his creditors, or who is, or has been, convicted by a criminal court of an offence involving moral turpitude."
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> (emphasis supplied) The aforesaid provision makes it clear that the Management is under an obligation to discontinue the services of an employee who is or has been convicted by a Criminal Court for an offence involving moral turpitude."

21. Moral Turpitude means [Per Black's Law Dictionary (8th Edn.,2004)] :- "Conduct that is contrary to justice, honesty, or morality. In the area of legal ethics, offenses involving moral turpitude such as fraud or breach of trust. Also termed moral depravity.

22. Moral turpitude means, in general, shameful wickedness- so extreme a departure from ordinary standards of honest, good morals, justice, or ethics as to be shocking to the moral sense of the community. It has also been defined as an act of baseness, vileness, or depravity in the private and social duties which one person owes to another, or to society in general, contrary to the accepted and customary rule of right and duty between people."

> "SC 3300, this Court has observed as under:- "`Moral turpitude' is an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity."

23. The aforesaid judgment in Pawan Kumar (supra) has been considered by this Court again in *Allahabad Bank & Collector*[7], wherein it has been held as under:-

> "The expression `moral turpitude' is not defined anywhere. But it means anything done contrary to justice, honesty, modesty or good morals. It implies depravity and wickedness of character or disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but it would be so if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellow men or to the society in general. If therefore the individual charged with a certain conduct owes a duty, either to another individual or to the society in general, to act in a specific manner or not to so act and he still acts contrary to it and does so knowingly, his conduct must be held to be due to vileness and depravity. It will be contrary to accepted customary rule and duty between man and man."

24. In view of the above, it is evident that moral turpitude means anything contrary to honesty, modesty or good morals.

> "It means vileness and depravity. In fact, the conviction of a person in a crime involving moral turpitude impeaches his credibility as he has been found to have indulged in shameful, wicked, and base activities."

25. Undoubtedly, the embezzlement of Rs.5000/- by the appellant, for which he had been convicted, was an offence involving moral turpitude. The Statutory provisions of the Act, 1949, provide that the Management shall not permit any person convicted for an offence involving moral turpitude to continue in employment.

26. Court after placing reliance on large number of its earlier judgments held as under :- "No Court has competence to issue a direction contrary to law nor the Court can direct an authority to act in contravention of the statutory provisions.

> "The courts are meant to enforce the rule of law and not to pass the orders or directions which are contrary to what has been injuncted by law."
>
> Thus, in such a fact-situation, it is not permissible for this Court to issue any direction as had been issued in the case of Shankar Dass (supra)."

27. In view of the above, we reach the conclusion that once a Criminal Court grants a delinquent employee the benefit of Act, 1958, its order does not have any bearing so far as the service of such employee is concerned. The word "disqualification" in Section 12 of the Act, 1958 provides that such a person shall not stand disqualified for the purposes of other Acts like the Representation of the People Act, 1950 etc.

> "The conviction in a criminal case is one part of the case and release on probation is another. Therefore, grant of benefit of the provisions of Act, 1958, only enables the delinquent not to undergo the sentence on showing his good conduct during the period of probation. In case, after being released, the delinquent commits another offence, benefit of Act, 1958 gets terminated and the delinquent can be made liable to undergo the sentence. Therefore, in case of an employee who stands convicted for an offence involving moral turpitude, it is his misconduct that leads to his dismissal."

28. Undoubtedly, the appellant was convicted by the Criminal Court for having committed the offence under Section 409 IPC and was awarded two years' sentence. The appellate court granted him the benefit of Act, 1958. The Tribunal rejected his claim for re-instatement and other benefits taking note of the fact that appellant was given an opportunity by the Management to show cause as to why he should not be dismissed from service. The appellant submitted his reply to the said show cause notice. The Management passed the order of dismissal in view of the provisions of the Act, 1949. The Tribunal also took into consideration the contents of the Bi-Partite Settlement applicable in the case and rejected the appellant's claim. The High Court considered appellant's grievance elaborately as is evident from the impugned judgment. We could not persuade ourselves, in the aforesaid fact-situation, that any other view could also be possible.

29. In view of the above, we find no force in the appeal and it is accordingly dismissed. No order as to costs.

[1]*1981 (Suppl.) SCC 17*
[2]*(1998) 2 SCC 383*
[3]*(1996) 7 SCC 748*
[4]*(1997) 11 SCC 571*
[5]*(2007) 9 SCC 86*
[6]*(1986) Supp. SCC 566*
[7]*AIR 1959 All. 71*