

Baroda Uttar Pradesh Gramin Bank & Others

v.

Ashok Kumar Srivastava & Another

(Supreme Court Of India)

HON'BLE MR. JUSTICE T.S. THAKUR HON'BLE MR. JUSTICE GYAN SUDHA MISRA

Civil Appeal No. 1880 Of 2009 | 16-02-2012

1. This appeal by special leave arises out of a judgment and order dated 08.02.2006 passed by the High Court of Judicature at Allahabad whereby Writ Petition No. 3192 of 1990 filed by respondent No.1, challenging the termination of his services was allowed in part and the appellant bank directed to reinstate the respondent with 50% back wages for the period he remained out of employment. The High Court has at the same time left it open to the competent authority in the appellant bank to impose upon the respondent an appropriate minor penalty except dismissal, removal or reduction in rank.

2. We have heard learned counsel for the appellants and the respondent no. 1, who appeared in person. The facts giving rise to the order of termination of the services of the respondent and the filing of the writ petition by respondent no. 1 in the High Court, have been set out at considerable length by the High Court in the judgment impugned before us. We, therefore, do not consider it necessary to recapitulate the same over again. Suffice it to say that respondent no. 1 was working as a Branch Manager in the appellant bank and was during the relevant period posted at Samrauta Branch in the district Raebareli, Uttar Pradesh. He was served with a charge-sheet accusing him of misconduct on two counts. Firstly, it was alleged that while working at Raebareli Kshetriya Gramin Branch of the Bank, he had sanctioned loans to persons, who were not residents of the command area of the Branch. The second charge levelled against respondent no. 1 was that he had made a temporary withdrawal of a sum Rs.22,000/- by operating a fictitious bank account and re-deposited the said money after using the same for two weeks. A departmental enquiry held the respondent guilty of both the charges and culminated in an order of dismissal of the respondent from service.

3. Aggrieved, respondent no. 1 appealed to the appellate authority, who affirmed the said order. Respondent no. 1 then challenged the order of termination as upheld by the appellate authority, before the High Court of Judicature at Allahabad in Writ Petition No. 3192 of 1990. A learned Single Judge of the High Court allowed the writ petition filed by respondent no. 1 with a direction that he shall be reinstated in service with 50% back wages for the period he remained out of employment. The High Court, however, left it open to the appellant bank to pass a fresh order imposing a suitable penalty upon respondent no.

1, short of, dismissal, removal or reduction in rank. The High Court was of the view that the appellate authority had not properly considered the appeal filed by respondent no. 1 nor passed a reasoned order upholding the termination and that the case of the respondent no. 1 had not been appropriately examined by the authorities. The High Court also relied upon an affidavit filed by the former Chairman of the appellant bank stating, inter alia, that he had given an assurance to respondent no. 1 that only a minor penalty shall be imposed upon him if he accepted his guilt. The High Court considered these circumstances sufficient to direct re-instatement of respondent no. 1 with back wages, for, in the opinion of the High Court the punishment of dismissal from service was too harsh a punishment having regard to the gravity of the charges levelled against respondent no. 1.

4. We do not find any perversity in the view taken by the High Court. The order passed by the appellate authority is a non-speaking order of dismissal of the appeal unsupported by any reasons. Although learned counsel for the appellant bank sought to place on record the reasoned order also, we do not think it is possible to do so at this stage. This will amount to allowing the appellant bank to fill up the lacuna in the order under challenge. If a reasoned order had indeed been passed it should have been placed on record before the High Court at the time of filing of the writ petition which had remained pending for about six years or so. That apart, the affidavit filed by the Chairman of the Bank stating that he had in principle taken a decision to award a minor penalty to the respondent no. 1 but before he could do so he was transferred thereby changing the entire perspective on the subject is also a matter for that deserved consideration. Respondent no. 1 appears to have suffered only because of perceptual difference between the two Chairmen, one succeeding the other, as to the nature of the misconduct and the penalty that the delinquent deserved.

5. Be that as it may, the High Court has in its discretion interfered with the order of dismissal for good reasons and directed re-instatement of respondent no. 1. We find no reason to interfere with that order.

6. Learned counsel for the appellants then argued that since respondent no. 1 has been out of employment for a considerable period and since upon his reinstatement pursuant to the order passed by the High Court he would draw a handsome monthly salary of Rs. 45,000/- approximately. The direction regarding payment of arrears could be modified if not deleted completely. He submitted on instructions that if the directions issued by the High Court were to be implemented, not only shall respondent no. 1 be reinstated in service but a sum of Rs. 22 lakhs shall become payable to him towards back wages. He urged that keeping in view the fact that the appellant bank was a rural bank which had limited resources, this court could modify the order of the High Court regarding back wages. Respondent no. 1, left it to the discretion of Court to determine the amount payable to him towards back wages.

7. In the totality of the attendant circumstances we are of the view that the ends of justice would be sufficiently served if we modify the direction of the High Court regarding payment of back wages shall stand modified to the extent that instead of 50% of back wages for the period he remained out of employment, respondent no. 1 Ashok Kumar Srivastava shall be paid an amount of Rs.10,00,000/- (rupees ten lakhs) in full and final settlement of the claim for such wages. Learned counsel for the appellant bank assures us that respondent no. 1 shall be reinstated within a period of four weeks from today and the amount of back wages awarded by this court shall also be paid within that period. The statement made by learned counsel for the appellant bank is recorded. It goes without saying that the liberty given by the High Court to the appellant to impose a minor penalty against the respondent no. 1 is affirmed, but since the respondent no. 1 is being reinstated, he shall be given continuity of service.

8. The appeal is disposed of with the above observations leaving the parties to bear their own costs.