

A CHAIRMAN, GANGA YAMUNA GRAMIN
BANK & ORS.

V.

DEVI SAHAI

Civil Appeal No. 940 Of 2009

B FEBRUARY 12, 2009

[S.B. SINHA AND DR. MUKUNDAKAM SHARMA, JJ.]

Service Law – Disciplinary inquiry – On charges of misconduct – Employee did not participate in the inquiry – Was dismissed by employer-Regional Rural Bank – Dismissal challenged inter alia on ground that the disciplinary procedure laid down in the guidelines issued by NABARD was not followed by employer-bank – High Court held that NABARD guidelines were mandatory in character and non-compliance thereof had resulted in rendering the order of dismissal void – Propriety of – Held: Not proper – NABARD guidelines were issued only for guidance of Regional Rural Banks and were not mandatory in character – In any event, the employee was not prejudiced by reason of non-compliance thereof – Matter remitted to High Court for consideration of other contentions raised by the employee – Regional Rural Banks Act, 1976 – s.30.

Appellant-employer is a bank constituted and incorporated under the Regional Rural Banks Act, 1976. Respondent-employee was dismissed from service on charges of misconduct. He purportedly had not participated in the disciplinary inquiry proceedings.

Respondent challenged the dismissal on ground that the disciplinary procedure laid down in the guidelines issued by the National Bank for Agricultural and Rural Development (NABARD) was not followed by the Appellant.

In appeal to this Court, it was contended that the

High Court, by the impugned judgment, committed a serious error in holding that the guidelines issued by NABARD were mandatory in character and non-compliance thereof had resulted in rendering the order of dismissal void.

Allowing the appeal, the Court

HELD: 1. Appellant has been constituted under the Regional Rural Banks Act, 1976. Regulations framed by it subject to the compliance of the statutory mandate contained in Section 30 of the Act have statutory force. The provisions of the Act and the Service Regulations made by the appellant, therefore, form self-contained Code. At the point of time when NABARD issued guidelines, it had nothing to do with the functionings of the Regional Rural Banks. [Para 9] [146-C, D, E]

2. Act No.1 of 1988, in terms whereof the 'National Bank' was defined and in terms whereof instead of consulting the Reserve Bank of India for the purpose of making regulation in terms of Section 30 of the Act, NABARD was required to be consulted, came into force only with effect from 28.9.1988. Again, the guidelines issued by NABARD laying down the procedure to be adopted for disciplinary action in Regional Rural Banks were made part of the Regulations. Even after coming into force of Act No.1 of 1988, regulations were not amended. The respondent does not enjoy any status. The service conditions of employees of Regional Rural Banks are not protected in terms of Article 311(2) of the Constitution. The validity or otherwise of the regulations framed by appellant is not in question. In any event, respondent did not participate in the inquiry. [Paras 9, 10, 11] [146-D, E, F, G, H; 147-A]

3. The respondent does not show how he was prejudiced. He was supplied with a copy of the report of the Inquiry Officer. He even did not submit any reply thereto. Notices had not only been published asking the respon-

- A dent to take part in the disciplinary proceedings but also chance after chance had been given to him to respond to the report of the Inquiry Officer. The NABARD guidelines having been issued only for the guidance of the Regional Rural Banks, the same was not mandatory in character and in any event respondent was not prejudiced by reason of non-compliance thereof. [Para 11] [147-C, D, E]

Bank of India vs. Apurba Kumar Saha (1994) 2 SCC 615 – relied on.

- C 4. The High Court committed a serious error in passing the impugned judgment. It is set aside accordingly. However, as it is stated that the respondent had raised several other contentions before the High Court, the matter is remanded to the High court for consideration of all other contentions raised by the respondent. In the facts and circumstances of the case, as the disciplinary proceeding against the respondent had been initiated long time back, the High Court is requested to consider the desirability of disposing of the matter at the earliest possible opportunity. [Para 12] [148-C, D]

Case Law Reference

(1994) 2 SCC 615 relied on Para 11

- F CIVILAPPELLATE JURISDICTION : Civil Appeal No. 940 of 2009

From the Judgement and Order dated 30.12.2003 & 01.03.2006 of the High Court of Uttaranchal at Nainital in W. P. No. 1628 of 2002 & R.A. No. 75 of 2004

- G Sanjay Kumar, Ms. Arti Singh, for the Appellant.

Anand Prakash Srivastava, Manoj K. Mishra, Sanjay Visen, for the Respondent

- H The Judgement of the Court was delivered by

S.B. SINHA, J.

A

1. Leave granted.

2. Appellant is a bank constituted and incorporated under the Regional Rural Banks Act, 1976 (for short, "the Act"). Section 30 thereof provides for a regulation making power.

B

On or about 13.5.1980, the Government of India circulated the model (staff service) regulations for the officers/employees of the Regional Rural Bank for adoption/approval by their respective Board of Directors. The Board of Directors of the Appellant- Bank in exercise of its powers conferred upon it under Section 30 of the Act after consultation with the State Bank of India (sponsor bank) and Reserve Bank of India and with the previous sanction of the Central Government framed regulations known as "Ganga Yamuna Gramin Bank Staff Service Regulations, 1985" laying down the terms and conditions of service of its employees. Some of the relevant provisions of the said Regulations are as under:

C

D

"10.(2)(a) The Bank may terminate the services of an

(i) Officer after giving him three month's notice of emolument in lieu thereof.

E

(ii) Employee after giving him one month's notice or emoluments in lieu thereof.

(30)(1) PENALTIES—

F

Without prejudice to the provisions of other regulations, an officer or employee who commits a breach of these regulations or who displays negligence, inefficiency or indolence, or who knowingly does anything detrimental to the interests of the Bank or in conflict with its instructions or who commits a breach of discipline or is guilty of any other act of misconduct shall be liable to the following penalties—

G

(a) reprimand;

H

- A (b) delay or stoppage of increments or promotion;
- (c) degradation to a lower post or grade to a lower stage in his incremental scale;
- (d) recovery from pay of the whole or part of any pecuniary loss caused to the Bank by the officer or employee;
- B (e) Removal from service which shall not be a disqualification for future employment;
- (f) Dismissal.

C (2) No officer or employee shall be subjected to the penalties referred to in clause (b), (c), (d), (e) or (f) of sub-regulation (1) except by an order in writing signed by the Chairman and no such order shall be passed without the charge being formulated in writing and given to the said officer or employee so that he shall have reasonable opportunity to answer them in writing or in person, as he prefers and in the latter case his defence shall be taken down in writing as read to him.

D

E

Provided that requirements of this sub-regulation may be waived. If the facts on the basis of which action is to be taken have been established in the court of law or court martial where the officer or employee has absconded or where it is for any reason impracticable to communicate with him or where there is difficulty in observing them and the requirements can be waived and the reasons for so doing shall be recorded in writing.”

F

G 3. The Act was amended by Act No. 1 of 1988 which came into force with effect from 28.9.1988 in terms whereof 'National Bank' was defined in Section 2(ca), to mean:

H “(ca) “National Bank” means the National Bank for Agriculture and Rural Development established under

Section 3 of the National Bank for Agriculture and Rural Development Act, 1981." A

4. However, even prior thereto 'National Bank for Agricultural and Rural Development (NABARD)' being the National Bank, which although had nothing to do with statutory functioning of the Regional Rural Banks, allegedly, on requests made by Board of Directors of several regional banks issued guidelines, stating: B

"We have been receiving a number of references from Chairmen of RRBs requesting us for guidance on disciplinary procedure to be adopted by RRBs for disciplinary action against their staff. In order to meet the demands of the Chairman of RRBs, we have prepared a set of guidelines on the above subject with the help of our Legal Department and representative of some sponsor banks/RRBs. A copy of the manual is enclosed for your guidance." C D

Relevant portion of the said guidelines are as follows:

".....The penalty prescribed in sub-regulation (1) can be imposed only after following the procedure as laid down in the regulation strictly in accordance with the principles of natural justice. Broadly stated in a case of disciplinary action, those principles require that: E

- i) there is good and sufficient reason for formulating the charges; F
- ii) The charge-sheeted official knows precisely what the charges are against him and the grounds on which these have been based;
- iii) the employee is given reasonable opportunity to show cause against the penalty prescribed to be imposed on him." G

5. Indisputably, on or about 6.8.1996, an explanation was sought for from the respondent for alleged acts of misconduct H

A committed by him. He submitted his reply to the show cause
notice but the same was not found satisfactory by the compe-
tent authority. On or about 25.2.1997, a charge-sheet was
issued to him. An Inquiry Officer was appointed to conduct a de-
partmental inquiry. In spite of several notices/advertisements
B published in the newspaper, respondent did not attend the de-
partmental inquiry. The Inquiry Officer conducted the inquiry ex
parte and submitted his report holding the charges as proved.
The Disciplinary Authority by its letter dated 18.6.1998 forwarded
the report of the Inquiry officer to the respondent and called upon
C him to submit his comments, if any, within one week from the
date of receipt of that letter. As the respondent did not do so
within that time, he was granted another opportunity by letters
dated 11.07.1998 and 29.07.2008. The Disciplinary Authority
thereafter imposed a penalty of dismissal upon him by order
dated 28.9.1998.
D

Some of the charges held proved against the respondent
are as under:-

- E
- F
- G
- H
- i) Respondent sanctioned a demand loan for himself,
from time to time – without obtaining sanction,
contrary to the rules of the Bank. Thus misusing his
powers as Branch Manager for his personal interest;
 - ii) To achieve the target of the Branch, he started making
window dressing by first crediting and later debiting
the amount, of the account holders, without their
request;
 - iii) Bank amount was misutilized. He received the cash
amount, but did not deposit the same, instead he
purchased NSC in his name, and thereafter took
demand loan against the said NSC.
 - iv) He left the cash, under the custody of a clerk/cashier;
he entrusted the master key to the said clerk, thereby
failing to discharge his duties.

- v) He left the place of his duty without permission of the competent authority. A
- vi) He sanctioned crop loan to 16 debtors, however did not allow them to withdraw the amount till closure of financial year, to achieve the target. B
- vii) Complaint was received that he was demanding bribe. B
- viii) Complaint was also made that he fraudulently withdrew an amount from the saving account of a customer. C

6. An appeal was preferred thereagainst. In the said Memo of Appeal, no plea was raised by him that a second show cause notice was required to be issued. He also did not make any reference to the NABARD guidelines; he also did not say that any prejudice has been caused to him. D

On or about 8.7.1999, the Appellate Authority dismissed the said appeal. He filed a writ petition thereagainst. However, in the meanwhile, he filed a review petition against the order of the Appellate Authority. By an order dated 17.7.2001, the writ petition was dismissed in view of the pendency of the review petition. By an order dated 21.8.2001, the review petition was dismissed. He filed another writ petition on 14.11.2002 for quashing the order of dismissal dated 28.9.1998 passed by the Disciplinary Authority as also the order dated 8.7.1999 passed by the Appellate Authority, which by reason of the impugned judgment and order dated 30.12.2003 was allowed. A review petition filed by the appellant – Bank thereagainst has been dismissed by an order dated 1.3.2006. E F

Appellant is, thus, before us. G

7. Mr. Sanjay Kapur, learned counsel appearing on behalf of the appellant would contend that the High Court committed a serious error in passing the impugned judgment in holding that the guidelines issued by NABARD were mandatory in charac- H

A ter and non-compliance thereof had resulted in rendering the order of dismissal void.

B 8. Mr. Anand Prakash Srivastava, learned counsel appearing on behalf of the respondent, on the other hand, would not only support the impugned judgment but also contend that the procedure laid down in the said guidelines have been followed in the cases of the other employees and, thus, there was absolutely no reason as to why the same could not be implemented in the case of the appellant.

C 9. Indisputably, Appellant has been constituted under the Act. It has a regulation making power. Regulations framed by it subject to the compliance of the statutory mandate contained in Section 30 of the Act have statutory force. The provisions of the Act and the Service Regulations made by the appellant, therefore, form self-contained Code. Indisputably, at a point of time when NABARD issued guidelines, it had nothing to do with the functionings of the Regional Rural Banks. Act No.1 of 1988, in terms whereof the 'National Bank' was defined and in terms whereof instead of consulting the Reserve Bank of India for the purpose of making regulation in terms of Section 30 of the Act, D NABARD was required to be consulted, came into force only E with effect from 28.9.1988.

F 10. Concededly again, the guidelines issued by NABARD laying down the procedure to be adopted for disciplinary action in Regional Rural Banks were made part of the Regulations. Even after coming into force of Act No.1 of 1988, regulations were not amended. Issuance of second show cause notice for the purpose of obtaining the views of delinquent officer in regard to quantum of punishment is not a part of the common law principles of natural justice. Such a provision could be laid down by reason of a statute. The respondent does not enjoy any status. The service conditions of employees of Regional Rural Banks are not protected in terms of Article 311(2) of the Constitution of India. G

H 11. The validity or otherwise of the regulations framed by

appellant is not in question. In any event, respondent did not participate in the inquiry. A

The learned counsel, however, submitted that a situation was created by transferring the respondent to Uttar Kashi as a result whereof he could not participate in the inquiry. It is stated before us that such a contention has been raised in the writ petition. A copy of the writ petition has not been placed before us. We are not aware as to whether such a contention has been raised in the writ petition as from the perusal of the order passed by the High court it does not appear that such a contention had been raised. In any event, respondent does not show how he was prejudiced. He was supplied with a copy of the report of the Inquiry Officer. He even did not submit any reply thereto. As indicated hereinbefore, notices had not only been published asking the respondent to take part in the disciplinary proceedings but also chance after chance had been given to him to respond to the report of the Inquiry Officer. We, therefore, are of the opinion that the NABARD guidelines having been issued only for the guidance of the Regional Rural Banks, the same was not mandatory in character and in any event respondent was not prejudiced by reason of non-compliance thereof. E

In Bank of India vs. Apurba Kumar Saha [(1994) 2 SCC 615], this Court opined as under:

"4. Having regard to the arguments addressed by learned Counsel on both sides we have gone through the papers and seen that the High Court's view that there was violation of principles of natural justice, in conducting the disciplinary proceedings against the respondent, was wholly unjustified. The records of the disciplinary proceedings show that the respondent had avoided filing of the written explanation for the charges of misconduct levelled against him and also had for no valid reason refused to participate in the disciplinary proceedings. A Bank employee who had refused to avail of the opportunities provided to him in a disciplinary proceeding of defending himself against the H

A charges of misconduct involving his integrity and
dishonesty, cannot be permitted to complain later that he
had been denied a reasonable opportunity of defending
himself of the charges levelled against him and the
disciplinary proceeding conducted against him by the
B Bank-employer had resulted in violation of principles of
natural justice of fair hearing.”

12. We, therefore, are of the opinion that the High Court
committed a serious error in passing the impugned judgment. It
is set aside accordingly. However, as it is stated before us that
C the respondent had raised several other contentions before the
High Court, we remand the matter to the High court for consid-
eration of all other contentions raised by the respondent. In the
facts and circumstances of the case, as the disciplinary pro-
ceeding against the respondent had been initiated long time
D back, we would request the High Court to consider the desir-
ability of disposing of the matter at the earliest possible oppor-
tunity and preferably within six months from the date of commu-
nication of this Court's order.

E 13. The appeal is allowed with the aforementioned direc-
tions. However, in the facts and circumstances of the case, there
shall be no order as to costs.

B.B.B.

Appeal allowed.