

THE STATE OF WEST BENGAL AND OTHERS

v.

SK. NAZRUL ISLAM

(Civil Appeal No. 8638 of 2011)

OCTOBER 13, 2011

[R. V. RAVEENDRAN AND A.K. PATNAIK, JJ.]

*Service law: Appointment – Post of constable – Name of respondent found place in the provisional select list – He appeared before the Medical Board and was found medically fit – He was supplied verification roll for verification of his antecedents in which he was required to state whether he was ever arrested, detained or convicted which he answered in the negative – On enquiry, authorities found that he was involved in a criminal case involving offences u/ss.148/323/380/448/427/506, IPC and in that case, charge sheet was also filed in the court and he had surrendered there and was granted bail – Considering the same, the authorities did not appoint him as constable on the ground of concealment – OA filed by respondent dismissed – High Court allowed his writ petition and held that authorities were not entitled to withhold the offer of appointment to the respondent and directed the authorities to issue the letter of appointment – However High Court observed that the appointment would be subject to decision in the pending criminal case – On appeal, held: The High Court could not issue mandamus to the authorities to appoint the respondent as constable – Authorities entrusted with the responsibility of appointing constables were under duty to verify the antecedents of a candidate to find out whether he is suitable for the post of constable and so long as the candidate was not acquitted in a criminal case of the charges u/ss.148/323/380/448/427/506, IPC, he could not possibly be held to be suitable for appointment to the post of constable – Order of the High Court is set aside – Constitution of India, 1950 – Articles 226, 227.*

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8638 of 2011.

From the Judgment and Order dated 14.09.2010 of the High Court of Calcutta in WPST No. 1911 of 2008.

B Chanchal K. Ganguly and Abhijit Sengupta for the Appellants.

Ranjan Mukherjee, Mangaljit Mukherjee and Sarla Chandra for the Respondent.

The Order of the Court was delivered by

C A. K. PATNAIK, J. 1. Leave granted.

2. This is an appeal against the order dated 14.09.2010 of the Division Bench of the Calcutta High Court in W.P.S.T. No.1911 of 2008.

D 3. The facts very briefly are that on 26.07.2007 the Police  
E Directorate of West Bengal notified recruitment of Constables  
F in the West Bengal Police from Howrah District. The name of  
G the respondent was sponsored by the Employment Exchange,  
H Uluberia, Howrah, for recruitment as Constable and on  
17.09.2007 the provisional select list was notified in which the  
respondent's name found place at serial no.76. The respondent  
appeared before the Medical Board and was found medically  
fit. On 28.09.2007, the respondent was supplied a Verification  
Roll for verification of his antecedents and the respondent filled  
the Verification Roll and submitted the same to the Reserve  
Officer, Howrah, on 29.09.2007. The Verification Roll of the  
respondent was sent to the District Intelligence Branch, Howrah,  
on 08.10.2007. In the course of enquiry, it came to light that he  
was involved in a criminal case involving offences under  
Sections 148/323/380/448/427/506, IPC, in Bagnan PS Case  
No.97 of 2007 and after investigation, the charge-sheet had  
already been filed in the Court of the Additional Chief Judicial  
Magistrate, Uluberia, Howrah, and that the respondent had  
surrendered before the Court and had been granted bail. All  
these facts, however, had been concealed in column no.13 of  
the Verification Roll submitted by the respondent in which he

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was required to state whether he was ever arrested, detained or convicted. The authorities, therefore, did not appoint the respondent as a Constable. A

4. Aggrieved, the respondent filed O.A.No.2500 of 2008 before the West Bengal Administrative Tribunal for a direction upon the authorities to issue appointment letter in his favour, but by order dated 25.07.2008 the Tribunal declined to grant any relief to the respondent. The order of the Tribunal was challenged by the respondent before the High Court and in the impugned order, the High Court held that the authorities were not entitled to withhold the offer of appointment to the respondent and directed the authorities to issue the letter of appointment in favour of the respondent without any further delay. The High Court, however, observed in the impugned order that the appointment of the respondent to the post of Constable will abide by the final decision of the pending criminal case. B  
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5. We have heard learned counsel for the parties and we fail to appreciate how when a criminal case under Sections 148/323/380/448/427/506, IPC, against the respondent was pending in the Court of the Additional Chief Judicial Magistrate, Uluberia, Howrah, any *mandamus* could have been issued by the High Court to the authorities to appoint the respondent as a Constable. Surely, the authorities entrusted with the responsibility of appointing constables were under duty to verify the antecedents of a candidate to find out whether he is suitable for the post of constable and so long as the candidate has not been acquitted in the criminal case of the charges under Sections 148/323/380/448/427/506, IPC, he cannot possibly be held to be suitable for appointment to the post of Constable. E  
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6. We, therefore, allow the appeal, set aside the impugned order of the High Court and dismiss the Writ Petition under Articles 226/227 of the Constitution filed by the respondent in the High Court. There shall be no order as to costs. G

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Appeal allowed.

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STATE BANK OF INDIA

v.

RAM LAL BHASKAR & ANR.

(Civil Appeal No. 2930 of 2009)

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OCTOBER 13, 2011

**[R.V. RAVEENDRAN, A.K. PATNAIK AND H.L.  
GOKHALE, JJ.]**

*Service Law:*

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*State Bank of India Officers' Service Rules, 1992 – r. 19(3) – Disciplinary proceedings – Charge-sheet issued against a Bank Manager alleging various acts of misconduct – Initiation of enquiry – Bank Manager dismissed from service after he had already retired from service – Challenged by the Bank Manager – Order of dismissal upheld by the appellate authority – Writ Petition – Order of dismissal quashed by the High Court – On appeal, held: It cannot be said that the order of dismissal was illegal and without jurisdiction – Under r. 19(3) in case disciplinary proceedings were initiated against an officer before he ceased to be in the Bank's service, the disciplinary proceedings, at the discretion of the Managing Director, could be continued and concluded by the authority concerned as if the officer continued to be in service which is only for the purpose of the continuance and conclusion of such proceedings.*

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*Constitution of India, 1950 – Article 226 – Proceedings under – Power of High Court – Held: High Court does not sit as an appellate authority over the findings of the disciplinary authority – Where the findings of the disciplinary authority are supported by some evidence, the High Court does not re-appreciate the evidence and come to a different and independent finding on the evidence – On facts, the High Court re-appreciated the evidence and arrived at the*

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*conclusion that the Bank Manager was not guilty of any  
misconduct – Thus, the order of the High Court quashing the  
dismissal of the Bank Manager, set aside.* A

**Respondent No.1-Branch Manager of the appellant-  
Bank was served with a charge-sheet dated 22.12.1999  
alleging various acts of misconduct as the Branch  
Manager. An enquiry was conducted and the enquiry  
officer submitted a report dated 28.09.2000 holding that  
four out of the six charges were proved against the  
respondent No.1. On 31.01.2000, respondent No. 1 retired  
from service. Thereafter, the appointing authority on  
consideration of the enquiry report, the records of the  
enquiry and the submissions made by respondent No.1,  
dismissed respondent No. 1 from service by order dated  
15.05.2001. The appellate authority also upheld the order  
of dismissal. Aggrieved, respondent No. 1 filed a writ  
petition. The High Court quashed the order of dismissal  
as the respondent No. 1 had already retired from service,  
and directed the appellant to release his arrears of salary  
as well as the post retirement benefits. Therefore, the  
appellant filed the instant appeal.** B  
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Allowing the appeal, the Court

**HELD: 1.1 In the instant case, the charge-sheet was  
issued on 22.12.1999 when the respondent No.1 was in  
service and there were clear provisions in Rule 19(3) of  
the State Bank of India Officers' Service Rules, 1992, that  
in case disciplinary proceedings under the relevant rules  
of service have been initiated against an officer before he  
ceased to be in the Bank's service by the operation of,  
or by virtue of, any of the rules or the provisions of the  
rules, the disciplinary proceedings may, at the discretion  
of the Managing Director, be continued and concluded  
by the authority by which the proceedings were initiated  
in the manner provided for in the rules as if the officer** F  
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A continues to be in service, so however, that he shall be deemed to be in service only for the purpose of the continuance and conclusion of such proceedings. There is no merit in the contention that the enquiry and the order of dismissal were illegal and without jurisdiction.  
B [Para 6] [1042-E-H; 1043-A-B]

1.2 The enquiry officer found that charges no. 1, 2, 4 and 6 had been proved against the respondent No. 1. While arriving at these findings on the four charges proved against the respondent No. 1, the enquiry officer considered a number of documents and also considered the documents produced on behalf of the respondent No. 1. The findings of the enquiry officer were based on evidence and the appointing authority had agreed with the findings of the enquiry officer. [Para 7] [1043-C-D]

D 1.3 In a proceeding under Article 226 of the Constitution, the High Court does not sit as an appellate authority over the findings of the disciplinary authority and so long as the findings of the disciplinary authority are supported by some evidence, the High Court does not re-appreciate the evidence and come to a different and independent finding on the evidence. Yet by the impugned judgment the High Court re-appreciated the evidence and arrived at the conclusion that the findings recorded by the enquiry officer are not substantiated by any material on record and the allegations leveled against the respondent No.1 do not constitute any misconduct. Therefore, the impugned order of the High Court is set aside. [Paras 8 and 9] [1044-A-C]

G *UCO Bank and Anr. v. Rajinder Lal Capoor* (2007) 6 SCC 694; 2007(7) SCR 543; *State of Andhra Pradesh and Ors. v. Sree Rama Rao* AIR 1963 SC 1723; 1964 SCR 25 – referred to.

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**Case Law Reference:**

<b>2007 (7) SCR 543</b>	<b>Referred to</b>	<b>Para 6</b>
<b>1964 SCR 25</b>	<b>Referred to</b>	<b>Para 7</b>

**CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2930 of 2009.**

From the Judgment and Order dated 12.04.2006 of the Division Bench of the High Court of Judicature at Allahabad in Civil Misc. Petition No. 8415 of 2003.

Amarendra Sharan, Anil Kumar Sangal and D.P. Mohanty for the Appellant.

M.A. Krishna Moorthy for the Respondents.

The Judgement of the Court was delivered by

**A. K. PATNAIK, J. 1.** This is an appeal against the order dated 12.04.2006 of the Division Bench of the Allahabad High Court in Civil Miscellaneous Writ Petition No. 8415 of 2003.

2. The facts very briefly are that the respondent no.1 worked as a Branch Manager of the appellant-Bank at Sirsaganj Branch. He was served with a charge-sheet dated 22.12.1999 alleging various acts of misconduct as the Branch Manager of Sirsaganj Branch. Thereafter, an enquiry was conducted and the enquiry officer submitted a report dated 28.09.2000 holding that four out of the six charges were proved against the respondent no.1. The charges No.1, 2, 4 and 6 which were proved against the respondent no.1 in the enquiry are as follows:

<b>"Sl.No.</b>	<b>CHARGES</b>
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| 1. | He authorized opening of a Savings Bank Account No.18776 on 31st March 1999 in the name of "Trailokya Bauddha Mahasanga Sahayake Gane" |
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A a religious body at he Sirsaganj Branch without completing the formalities connected with opening of new accounts of such societies.

B 2. He debited Savings Bank Account No.18776 of "Trailokya Bauddha Mahasanga Sahayaka Gane" with Rs.one lac on 04.08.1999 on forged signatures of the depositor and credited the amount to his Savings Bank Account No.101/18360 at the Branch. The debit and credit vouchers have been passed by him.

C 4. Zonal Office vide S.L. No.P&C/483 dated 08.12.1998 advised the Branch regarding posting of Field Officer/Manager (Agri) at the Branch and handing over the relative charge to the concerned persons. He intentionally did not make arrangements for handing over the charge of Field Officer/Manager (Agri) to the concerned officers despite Zonal instructions.

E Further, the loan applications received at the Branch were sanctioned by him without the recommendations of Field Officer/Manager (Agri).

F 6. He claimed false T.A. Bill viz. Rs.150/-for going to various villages on 15.05.1999 as included in his monthly Bill for Rs.1,275/- for the month of May 1999 and at the same time, also claimed Rs.275/- as TA Bill for 15.05.1999 for visiting Zonal Office, Agra thus he lodged false Bill for his official work."

G A copy of the enquiry report was served on the respondent no.1 and the respondent no.1 was given an opportunity to submit his representation against the findings of the enquiry officer. The appointing authority then considered the enquiry report and the records of the enquiry and the submissions made by the respondent no.1 and imposed the penalty of dismissal from

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service by order dated 15.05.2001. The respondent no.1 filed an appeal against the order of the appointing authority, but the appellate authority dismissed the appeal by order dated 09.03.2002. The respondent no.1 filed a Review Petition, but the reviewing committee also dismissed the Review Petition by order dated 20.12.2002.

3. Aggrieved, the respondent no.1 filed Civil Miscellaneous Writ Petition No. 8415 of 2003 and the High Court, after hearing the learned counsel for the parties, allowed the Writ Petition and quashed the order of dismissal passed by the appointing authority as well as the order passed by the appellate authority and, as the respondent no.1 had already retired from service, directed the appellant to release his arrears of salary as well as the post retirement benefits.

4. Learned counsel for the appellant submitted that there were charges of grave misconduct against the respondent no.1 and four of the six charges had been proved in the enquiry. He submitted that the findings of the enquiry officer on the four charges proved against the respondent no.1 were based on relevant material and these findings had also been confirmed by the appellate and reviewing authorities. He submitted that contrary to the settled position of law that the High Court, while exercising its powers of judicial review under Article 226 of the Constitution, should not interfere with the finding in the departmental enquiry so long as it is based on some evidence in the impugned order, the High Court has interfered with findings in the enquiry and has held that the respondent no.1 was not guilty of the charges. By the impugned order, the High Court has also quashed the order of dismissal and has directed release of the arrears of salary and post retirement benefits of the respondent no.1.

5. Learned counsel for the respondent no.1, on the other hand, supported the impugned order of the High Court and submitted that there is no infirmity in the impugned order of the High Court. He further submitted that in any case the

- A respondent no.1 had retired from service on 31.01.2000, and though the charge-sheet was served on him on 22.12.1999 when he was still in service, the enquiry report was served on him by letter dated 28.09.2000 and he was dismissed from service on 15.05.2001 after he had retired from service. He submitted that after the retirement of the respondent no.1, the appellant had no jurisdiction to continue with the enquiry against the respondent no.1. In support of this contention, he cited the decision of this Court in *UCO Bank and Another v. Rajinder Lal Capoor* [(2007) 6 SCC 694].
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- C 6. We have perused the decision of this Court in *UCO Bank and Another v. Rajinder Lal Capoor* (supra) and we find that in the facts of that case the delinquent officer had already superannuated on 01.11.1996 and the charge-sheet was issued after his superannuation on 13.11.1998 and this Court held that the delinquent officer having been allowed to superannuate, the charge-sheet, the enquiry report and the orders of the disciplinary authority and the appellate authority must be held to be illegal and without jurisdiction. In the facts of the present case, on the other hand, we find that the charge-sheet was issued on 22.12.1999 when the respondent no.1 was in service and there were clear provisions in Rule 19(3) of the State Bank of India Officers' Service Rules, 1992, that in case disciplinary proceedings under the relevant rules of service have been initiated against an officer before he ceased to be in the Bank's service by the operation of, or by virtue of, any of the rules or the provisions of the rules, the disciplinary proceedings may, at the discretion of the Managing Director, be continued and concluded by the authority by which the proceedings were initiated in the manner provided for in the rules as if the officer continues to be in service, so however, that he shall be deemed to be in service only for the purpose of the continuance and conclusion of such proceedings. We may mention here that a similar provision was also relied on behalf of UCO Bank in *UCO Bank and Another v. Rajinder Lal Capoor* (supra) in regulation 20(3)(iii) of the UCO Bank
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Officers Employees Service Rules, 1979, but this Court held that the aforesaid regulation could be invoked only when the disciplinary proceedings had been initiated prior to the delinquent officer ceased to be in service. Thus, the aforesaid decision of this Court in *UCO Bank and Another v. Rajinder Lal Capoor* (supra) does not support the respondent no.1 and there is no merit in the contention of the counsel for the respondent no.1 that the enquiry and the order of dismissal were illegal and without jurisdiction.

7. Coming now to the contention of the appellant, we find that the enquiry officer has found that charges no. 1, 2, 4 and 6 had been proved against the respondent no.1. While arriving at these findings on the four charges proved against the respondent no.1, the enquiry officer has considered a number of documents marked as exhibits and has also considered the documents produced on behalf of the respondent no.1 and marked as exhibits. The findings of the enquiry officer were based on evidence and the appointing authority had agreed with the findings of the enquiry officer. This Court has held in *State of Andhra Pradesh and Others v. Sree Rama Rao* (AIR 1963 SC 1723) "The High Court is not constituted in a proceeding under Article 226 of the Constitution a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence."

8. Thus, in a proceeding under Article 226 of the

- A Constitution, the High Court does not sit as an appellate authority over the findings of the disciplinary authority and so long as the findings of the disciplinary authority are supported by some evidence the High Court does not reappreciate the evidence and come to a different and independent finding on the evidence. This position of law has been reiterated in several decisions by this Court which we need not refer to, and yet by the impugned judgment the High Court has re-appreciated the evidence and arrived at the conclusion that the findings recorded by the enquiry officer are not substantiated by any material on record and the allegations leveled against the respondent no.1 do not constitute any misconduct and that the respondent no.1 was not guilty of any misconduct.
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9. We, therefore, set aside the impugned order of the High Court and allow the appeal with no order as to costs.

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N.J.

Appeal allowed.