

CHHEL SINGH
v.
M.G.B. GRAMIN BANK PALI & ORS.
(Civil Appeal No.6018 of 2014)

JULY 07, 2014

[SUDHANSU JYOTI MUKHOPADHAYA AND
V. GOPALA GOWDA, JJ.]

Service Law:

Dismissal - Charge of absence from duty without prior permission - The delinquent took the plea that he was sick during the period - Also produced medical certificate to support his case - In inquiry found guilty and punishment of dismissal from service - Single Judge of High Court held the inquiry vitiated and directed his reinstatement - Division Bench of High Court upheld the finding that inquiry stood vitiated but setting aside order of reinstatement remitted the matter for fresh inquiry - On appeal, held: In the facts of the case, the absence from duty cannot be held to be willful and deliberate - Therefore, the delinquent was wrongly dismissed - There was also no occasion for the Division Bench to direct further inquiry without reinstating the delinquent.

The appellant-employee of the respondent-Bank was charged for absence from duty, without prior permission, for a period of about 10 and ½ months. The appellant took the plea that during that period, he was seriously ill, which was beyond his control and he did not intend to contravene provisions of service regulations. He also submitted medical certificate in support of his case. During inquiry, the appellant submitted a list of seven defence witnesses, but the Inquiry Officer refused to call five witnesses out of the seven. Appellant was found guilty by the Inquiry Officer.

A Disciplinary authority dismissed the appellant from service. The order was confirmed by the appellate authority.

B The appellant challenged the dismissal order in writ petition. Single Judge of High Court held that the entire inquiry stood vitiated having been conducted in violation of principles of natural justice and directed reinstatement of the appellant. In writ appeal, Division Bench of High Court though upheld the finding of the Single Judge that the inquiry stood vitiated, but set aside the order of reinstatement and remitted the matter for fresh inquiry. C Hence, the present appeal.

Allowing the appeal, the Court

D HELD: 1. The order of termination being quashed by the High Court, in absence of any observation and grounds to refuse the reinstatement, the appellant automatically stood reinstated. Without reinstatement in service, the question of further inquiry does not arise. E There was no occasion for the Division Bench of the High Court to direct further inquiry, without reinstatement of appellant. [Para 13] [224-B-C]

F 2. There was no allegation that the appellant's unauthorized absence from duty was willful and deliberate. The Inquiry Officer has also not held that appellant's absence from duty was willful and deliberate. It is neither case of the Disciplinary Authority nor the Inquiry Officer that the medical reports submitted by the appellant were forged or fabricated or obtained for any G consideration though he was not ill during the said period. In absence of such evidence and finding, it was not open to the Inquiry Officer or the Disciplinary Authority to disbelieve the medical certificates issued by the Doctors without any valid reason and on the ground of

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24 days delay. Therefore, the order passed by the Division Bench of the High Court cannot be upheld. [Paras 15 and 16] [226-F-H; 227-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6018 of 2014.

From the Judgment and Order dated 10.05.2012 in SBCWP No. 1702/1995, DBCSA No. 850/2009 of the High Court of Rajasthan at Jodhpur.

Aishwarya Bhati, Capt. Karan Singh Bhati, Ayushi Mittal for the Appellant.

Anil Kumar Sangal, Siddharth Sangal for the Respondents.

The Judgment of the Court was delivered by

SUDHANSU JYOTI MUKHOPADHAYA, J. 1. Leave granted.

2. This appeal is directed against the judgment and order dated 10th May, 2012 passed by the Division Bench of the High Court of Judicature for Rajasthan at Jodhpur whereby the Division Bench allowed the appeal preferred by the respondent-M.G.B. Gramin Bank, Pali (hereinafter referred to as the "Bank") and set aside the order passed by the learned Single Judge.

3. The factual matrix of the case is as follows:

The appellant was working with the respondent-Bank since 17th February, 1984 as Clerk-cum-Cashier. While in service he remained absent from duty from 11th December, 1989 to 24th October, 1990 (approximately 10 and 1/2 months) without obtaining prior permission of the competent authority. For the said reason he was served with a memorandum on 5th October, 1991 alleging contravention of the provisions of the Marwar Gramin Bank (Staff) Service Regulations, 1980, for the

A following charges:

(i) He remained absent from duty from 11th December, 1989 to 24th October, 1990 without obtaining prior permission from the competent authority;

B (ii) He failed to comply with the orders and directions given to him which were the letters issued asking him to join duty;

(iii) He remained absent from duty without any reason.

C (iv) On the day of joining he failed to submit medical certificate and submitted the same after much delay.

D 4. The appellant by his reply dated 23rd November, 1991 disputed the allegations and informed that he was seriously ill between 11th December, 1989 and 24th October, 1990, therefore, the absence was beyond his control; he never intended to contravene any of the provisions of the service regulations. The explanation submitted by the appellant was not
E accepted by the Disciplinary Authority, who decided to inquire into the charges and appointed one Shri P.R. Agarwal as the Inquiry Officer.

F 5. During the inquiry the appellant submitted list of seven defence witnesses. However, Inquiry Officer called only two witnesses and refused to call rest of the five witnesses on the ground that the presenting officer of the Bank was ready to answer the questions on behalf of them as may be raised by the appellant. After inquiry the Inquiry Officer submitted report
G dated 3rd January, 1994, rejecting the testimony of two witnesses as "untrustworthy" and held the appellant guilty for the charges.

H 6. The Disciplinary Authority, having gone through the report, issued a show cause notice enclosing the copy of the

inquiry report as to why the appellant should not be punished for the charges mentioned therein. Finally, after hearing the appellant, the Disciplinary Authority held the charges to be proved and removed the appellant from service by order dated 17th October, 1994. The appeal preferred against the order of the removal was dismissed by the Appellate Authority vide order dated 26th December, 1994.

7. The said orders of the Disciplinary Authority and Appellate Authority were challenged by the appellant before the High Court in Writ Petition No.1702/1995. One of the grounds taken was that the entire inquiry stood vitiated having conducted in violation of principles of natural justice. The Inquiry Officer without having any justifiable reason disallowed the prayer of the appellant to summon five important witnesses. The other ground was that the penalty imposed was disproportionate to the gravity of charges.

8. The learned Single Judge by judgment dated 31st March, 2009 allowed the writ petition, quashed the order of removal and directed the respondent to reinstate the appellant in service with all consequential benefits with following observation:

"In the instant case the reason given for not calling the witnesses named by the delinquent employee is absolutely vague and irrelevant. It does not and cannot appeal to the measures and standards of a quasi judicial inquiry that ultimately resulted into removal of the delinquent employee from service. The refusal to call defence witnesses in the manner existing in present case is apparent denial of reasonable opportunity to the charged employee for defending himself. A definite prejudice, therefore, is caused by not calling the witnesses named by the petitioner without examining their relevance and ultimately holding him guilty for the charges in defence of which he indicated his desire to examine those witnesses."

A The Court also observed:

"In the instant matter the inquiry officer simply mentioned that the defence witnesses Kalyan Singh and Ganpat Singh are not trustworthy. No reason is given by the Inquiry Officer to disbelieve those persons. Pertinent to note here that Ganpat Singh as well as Kalyan Singh extensively narrated facts about serious ailment of the petitioner. The Inquiry Officer while disbelieving those persons should have given definite reasons to justify his conclusion. Merely saying that the persons are not found trustworthy, is not at all sufficient. The basic principle is that every person coming forward as a witness in evidence states trust except proved otherwise, therefore, onus was upon the Inquiry Officer to establish by adequate discussion relating to conduct and character of Kalyan Singh and Ganpat Singh to disbelieve them or to say that they were not trustworthy."

9. The aforesaid judgment passed by the learned Single Judge was challenged by the Bank in a writ appeal. The Division Bench though accepted that the Inquiry stood vitiated but set aside the order of reinstatement with following observation:

"Therefore, we are of the consigned opinion that even while the order as passed by the learned Single Judge quashing the orders of the Disciplinary Authority and the Appellate Authority need not be interfered with, the other part of the order calls for interference and it appears in the interest of justice that the matter be restored for reconsideration of, and re-reporting by, the Inquiry Officer after concluding the inquiry proceedings in conformity with the requirements of principles of natural justice.

In view of the above, this appeal succeeds and is allowed in the manner that the order passed by the learned Single Judge insofar quashing of the impugned orders dated 17.08.94 and 26.12.1994 is concerned, the same is

affirmed, but the other part of the order of the learned Single Judge, declaring the petitioner entitled to be reinstated in service with all consequential benefits, is set aside. Instead, we consider it proper and hence order that the report as made by the Inquiry Officer dated 03.01.1994 shall stand annulled and the matter shall stand restored for reconsideration of, and re-reporting by, the Inquiry Officer.

It goes without saying that if the Inquiry Officer who had earlier conducted the inquiry is not available, or for any other sufficient reason, it shall always be permissible for the Disciplinary Authority to appoint any other officer to inquire into the matter. For looking further instructions in the matter, the parties shall stand at noted to appear before the Disciplinary Authority on 18.06.2012."

10. The learned counsel for the appellant while placing reliance on the Inquiry Report and finding of the learned Single Judge submitted that the inquiry was conducted in violation of principle of natural justice and hence the learned Single Judge rightly directed the reinstatement of the appellant. Whereas according to learned counsel for the respondent-Bank, the Division Bench rightly set aside the order of reinstatement and remitted the matter for fresh enquiry.

11. After giving our careful consideration to the facts and circumstances of the case and the submission made by the learned counsel for the parties, we are of the view that the Division Bench was wrong in setting aside the order of reinstatement.

12. The Division Bench has accepted that the inquiry stood vitiated by disallowing the request of the appellant to summon the rest of the five witnesses. For the said reason, the Division Bench has not interfered with such part of the finding and order passed by the learned Single Judge whereby the impugned order of termination dated 17th October, 1994 and the

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A Appellate Authority order dated 26th December, 1994 were quashed.

B 13. The order of termination being quashed by the High Court, in absence of any observation and grounds to refuse the reinstatement, the appellant automatically stood reinstated. Without reinstatement in service, the question of further inquiry does not arise. There was no occasion for the Division Bench of the High Court to direct further inquiry, without reinstatement of appellant.

C 14. The following charges were leveled against the appellant, as mentioned in the inquiry report:

"Charge No.1:

D According to Rule 22(1) of Marwar Gramin Bank Employee Association Rules, 1980 no officer or employee would absent himself without the prior permission from competent authority and in case of disease and accident no one would absent himself without providing medical certificate, but you flouted the instructions of competent authority and without permission you remained absent from 11.12.89 to 24.10.90 and you got the medical certificate issued in connection with your illness you submitted the medical certificate on 20.10.90 with so much of delay.

F Charge No.2:

G According to Rule 22(2) of Marwar Gramin Bank Employee Association Rules, 1980 if any officer or employee remains absent without leave or remains absent after the expiry of leave, (leaving the circumstances which is beyond their control and for that he has to give satisfactory clarification), then he would not be entitled for payment of such absence or the period after the absence and would be liable for such action which would be charged

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CHHEL SINGH v. M.G.B. GRAMIN BANK PALI & ORS. 225
[SUDHANSU JYOTI MUKHOPADHAYA, J.]

by competent authority. But you violated these instructions:

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(D) You remained on medical leave from 11.12.89 to 24.10.90 and you did not submit leave application as per rule.

(E) You had been instructed by the head office by its letter no.K/7901 dated 23.08.90 to present yourself on duty within 7 days and also to give clarification for being absent without leave but you did not submit any reply. Thereafter also, you were again given instruction by head quarter letter no.K/10076 dated 22.9.90 you were instructed to present on duty by 05.10.90 and also to submit the clarification. The said letter was received by you on 4.10.90. Then also you did not send any information to bank about your absence.

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(F) In your clarification you have stated that you could not give information since you were suffering from incurable disease but in medical certificate submitted by you there is no mention of any incurable disease, where it was not possible for you to send the leave information. Thus, you gave wrong information to bank.

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Charge No.3:

You not being seriously ill, produced the evidence of illness from various doctors whereas:

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(A) You travelled during your alleged serious illness. According to medical certificate issued by Dr. S.S. Purohit, Navdeep Hospital Palanpur issued on 25.10.90, you got treatment from him from 13.8.90 to 24.10.90 and rest has been prescribed whereas during that period you were on your permanent residence at Chitalwana. You yourself received the registered letter no.K/1-0078 dated 22.9.90 and K/11211 dated 11.10.90 at Chitalwana.

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- A (B) In the letter K/11211 dated 11.10.90 the instruction given was very clear that join the duty by 27.10.90 and it was stated in that letter that if you do not join the duty then it would be presumed that you are not interested to work in the bank. Then you had shown yourself to be healthy and
- B you joined duty on 25.10.90

Charge No.4:

- C In Circular no.21/78 dated 22.6.78 it has been instructed that the employees on leave on health reason would submit medical certificate while joining on duty. You violated these instructions and did not present the medical certificate while joining duty. You submitted the said certificate on 20.10.90 with delay."

- D 15. From the plain reading of the charges we find that the main allegation is absence from duty from 11.12.89 to 24.10.90 (approximately 10 and ½ months), for which no prior permission was obtained from the competent authority. In his reply, the appellant has taken the plea that he was seriously ill
- E between 11.12.89 and 24.10.90, which was beyond his control; he never intended to contravene any of the provisions of the service regulations. He submitted the copies of medical certificates issued by Doctors in support of his claim after rejoining the post. The medical reports were submitted after about 24 days. There was no allegation that the appellant's
- F unauthorized absence from duty was willful and deliberate. The Inquiry Officer has also not held that appellant's absence from duty was willful and deliberate. It is neither case of the Disciplinary Authority nor the Inquiry Officer that the medical reports submitted by the appellant were forged or fabricated
- G or obtained for any consideration though he was not ill during the said period. In absence of such evidence and finding, it was not open to the Inquiry Officer or the Disciplinary Authority to disbelieve the medical certificates issued by the Doctors without any valid reason and on the ground of 24 days delay.

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CHHEL SINGH v. M.G.B. GRAMIN BANK PALI & ORS. 227
[SUDHANSU JYOTI MUKHOPADHAYA, J.]

16. In view of the observation made above, the order passed by the Division Bench of the High Court cannot be upheld. We, accordingly, set aside the impugned judgment and order dated 10th May, 2012 passed by the Division Bench of the High Court in D.B. Civil Special Appeal (Writ) No. 850 of 2009 and upheld the order passed by the learned Single Judge dated 31st March, 2009 in S.B. Civil Appeal Writ Petition No. 1702 of 1995. The respondents are directed to implement the direction and order dated 31st March, 2009 issued by the learned Single Judge within four weeks from the date of receipt of copy of this judgment.

17. The appeal is allowed with aforesaid observations and directions. No costs.

Kalpna K. Tripathy

Appeal allowed.