

GAHC010192262013



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1657/2013

GAUTAM ACHARJEE
S/O LT. SHYAMA PRASAD ACHARJEE R/O VILL- MODIBASTI, P.O.
SARADAPALLI, RAJABAZAR, JAIPUR, DIST. HAILAKANDI, ASSAM.

VERSUS

THE UNITED BANK OF INDIA and 3 ORS
REP. BY HAVING ITS REGISTERED OFFICE AT 11, HEMANTA BASU
SARANI, KOLKATA- 700001, REP. BY ITS SENIOR MANAGER, CACHAR
REGIN, SILCHAR.

2:ASSISTANT GENERAL MANAGER
HRD
UNITED BANK OF INDIA HEAD OFFICE AT 11 HEMANTA BASU SARANI
KOLKATA- 700001.

3:THE CHIEF MANAGER
UNITED BANK OF INDIA
HEAD OFFICE AT 11 HEMANTA BASU SARANI
KOLKATA- 700001.

4:THE MANAGER
RAJABAZAR
JAIPUR BRANCH
HAILAKANDI
ASSAM.

5:PUNJAB NATIONAL BANK
REPRESENTED BY ITS MANAGER
RAJABAZAR
JAIPUR BRANCH
HAILAKANDI

ASSAM
PIN-78815

Linked Case : WP(C)/3784/2013

PARESH NAMASUDRA
S/O LT. PULIN CHANDRA NAMASUDRA R/O VILL- CHACHERI
P.O. and P.S. BOKHOLA DIST. CACHAR
ASSAM.

VERSUS

THE UNITED BANK OF INDIA and 3 ORS
REP. BY HAVING ITS REGISTERED OFFICE AT 11
HEMANTA BASU SARANI
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REP. BY ITS SENIOR MANAGER
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2:ASSISTANT GENERAL MANAGER

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4:THEMANAGER

UBI
RAJABAZAR
JAIPUR BRANCH
HAILAKANDI
ASSAM.

5:PUNJAB NATIONAL BANK
REPRESENTED BY ITS MANAGER
RAJABAZAR
JAIPUR BRANCH
HAILAKANDI
ASSAM.

Advocate for the Petitioner : Ms. P. Chakraborty, Advocate
Advocate for the Respondents : Mr. S. Dutta, Senior Advocate,
Mr. Sidhant Dutta, Advocate,

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 18.05.2023

Date of Judgment : 18.05.2023

JUDGMENT AND ORDER (ORAL)

Heard Ms. P. Chakraborty, the learned counsel for the petitioners and Mr. S. Dutta, the learned senior counsel assisted by Mr. Sidhant Dutta, the learned counsel appearing on behalf of the erstwhile United Bank of India, presently known as Punjab National Bank.

2. Both the writ petitions are taken up together for disposal taking into account that the facts involved therein are interlinked and the question of law is paramateria.

3. A perusal of both the writ petitions reveals that 40 numbers of borrowers of United Bank of India, Rajabazar Jaipur Branch had tendered withdrawal slip for withdrawing money from their respective Savings Bank Accounts after credit of the closure proceeds of their related Re-investment Plan. The related Re-investment Plan Savings Bank Accounts (RIP) were opened for Rs.10,000/-and at the time of disbursement of 40 numbers of agricultural loan proposals for Rs.30,690/- each. The said Loan Accounts were closed under the “Agricultural Debt Relief Scheme, 2008” whereby instead of paying the full amount written on the withdrawal slips of the related account holders, Rs.6,000/- each was paid each and the remaining amount was alleged to have been retained and shared amongst the petitioners herein in both the writ petitions along with another.

4. It is further seen from the records that the total aggregate payable amount was Rs.4,61,867/-, out of which Rs.2,40,000/- were paid to the account holders. On the ground that the petitioners in both the writ petitions along with another had

misappropriated the amount of Rs.2,21,867/-; the petitioners in both the petitions were issued charge-sheets.

5. It is relevant to take note of that the petitioner in WP(C) No.1657/2013 was alleged to have misappropriated an amount of Rs.66,557/- whereas the petitioner in WP(C) No.3784/2013 was alleged to have misappropriated an amount of Rs.44,380/-. It was also alleged in the charge-sheet that the petitioner in WP(C) No.1657/2013, upon being detected, deposited an amount of Rs.60,512/-; Rs.512/- and Rs.6,045/- on 04.07.2009; 03.11.2009 and 07.11.2009 respectively. In the same vein, the petitioner in WP(C) No.3784/2013 was also alleged to have deposited/returned the amount of Rs.12,000/-; Rs.28,350/- and Rs.4,030/- on 26.09.2009; 03.11.2009 and 09.11.2009 respectively. Although in the writ petition WP(C) No.1657/2013, the statement of defence has not been enclosed, but from a perusal of the statement of defence of the petitioner in WP(C) No.3784/2013 enclosed as Annexure-5 to the said writ petition, the petitioner had denied that he was involved in any misappropriation of money and that he had returned the said amount. However, the Annexure-I series enclosed to the writ petition in WP(C) No.3784/2013, speaks otherwise.

6. Be that as it may, separate departmental enquiries were held against the petitioners in both the writ petitions and the enquiry reports so submitted found that all the charges leveled against the petitioners vide the charge-sheets in question were proved. It further appears from the records that pursuant to the submission of the enquiry reports, the petitioners in both the writ petitions were given opportunities to show cause as regards the acceptance of the enquiry reports and the petitioners duly submitted their replies respectively. It further appears that the petitioners in both the writ petitions were imposed the major penalties of “Discharged from service with superannuation benefits, i.e., Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment”. This punishment was so imposed in terms with Clause 6 (d) of the

Biparte Memorandum of Settlement dated 10.04.2002. It further appears from a perusal of the records in WP(C) No.1687/2013 that an Appeal was preferred by the petitioner in the said writ petition before the Appellate Authority and vide an order dated 26.06.2012, the said Appeal was also dismissed by a detailed order thereby affirming the penalties so imposed. However, in the case of the writ petitioner in WP(C) No.3784/2013, it is not clear as to what is the fate of the Appeal so filed by the said petitioner. This Court further enquired with the learned counsel for the petitioner in WP(C) No.3748/2023 as regards the outcome of the said Appeal. The learned counsel for the Petitioner submitted that she has no instructions in that matter.

7. Being aggrieved by the action of the respondent bank in discharging the petitioners by imposing major penalties as already stated herein above, both the writ petitions were filed.

8. It further appears from the records that the respondent bank had filed affidavit-in-opposition in both the writ petitions. From a perusal of the affidavit-in-oppositions so submitted in both the writ petitions, it transpires that the specific stand taken is that both the petitioners have admitted their guilt before the authorities concerned and thereupon on the dates so mentioned in the writ petition had returned the said amounts. However, taking into account that it was a gross misconduct, chargesheets were issued to the respective petitioners.

9. It is the further case of the respondent bank that after following the due process as well as the principles of natural justice, findings of facts have been arrived at that the petitioners in both the writ petitions were guilty of misconduct, and accordingly, taking into account the malafide and fraudulent acts of the petitioners, who were employees of the respondent bank (an organization dealing with public money), the penalty of discharge without affecting the pensionary benefits as entitled under the Rules or Regulations have been imposed upon the petitioners.

10. In the backdrop of the above, let this Court therefore take into consideration the

respective submissions of the parties.

11. The learned counsel for the petitioners in both the writ petitions submitted that the person at whose behest the enquiry was initiated was not examined. The learned counsel for the petitioner further submitted that the recipients of the benefits or for that matter those persons who have been deprived were also not examined, and under such circumstances, the findings arrived at were perverse. The learned counsel for the petitioners further submitted that even assuming for argument's sake without admitting that the petitioners were guilty as charged, then also the punishment of discharge so imposed upon the respective petitioners were disproportionate.

12. On the other hand, the learned senior counsel appearing on behalf of the Respondent bank submitted that the scope of interference under Article 226 of the Constitution on the question of findings of facts arrived at in the Departmental Proceedings is limited and circumscribed. The learned senior counsel submitted that there is a difference as regards the manner of conducting a Departmental Proceedings as well as the criminal trial. The learned senior counsel submitted that while in a criminal trial, the burden of proof against the accused is beyond reasonable doubt, but in the case of Departmental Proceedings, it is preponderance of probability. He further submitted that in Departmental proceedings the strict Rules of the Law of Evidence do not apply as in the case of a criminal trial as a civil suit where the Indian Evidence Act, 1872 applies with all its vigour. The learned senior counsel submitted that the respondent bank is an organization dealing with public money and loss of confidence of the employer is one of the very important aspects which needs to be taken into consideration while considering the interference under Article 226 of the Constitution. The learned senior counsel further submitted that in the instant case, the facts so arrived in the enquiry reports in question would clearly go to show that the petitioners were guilty of misappropriation of money by fraudulent and malafide means, and as such, the respondent bank had rightly imposed the penalty of discharge from service without affecting the pensionary benefits to the

extent the petitioners would be entitled as per the Rules or Regulations. Reference in that regard was made to the judgment of the Supreme Court in the case of *T.N.C.S. Corporation Ltd. & Others vs. K. Meerabai*, reported in (2006) 2 SCC 255; *Avinash Sadashiv Bhosale (Dead) & through LRS vs. Union of India & Others*, reported in (2012) 13 SCC 142; *Narendra Nath Bhalla vs. State of Uttar Pradesh & Others*, reported in (2007) 15 SCC 775 and *State Bank of India vs. Bela Bagchi & Others*, reported in (2005) 7 SCC 435.

13. I have heard the learned counsel for the parties and perused the materials on records. From a perusal of the materials on record, and more particularly, the enquiry reports, the orders of punishment by the Disciplinary Authority and the order of the Appellate Authority in WP(C) No.3784/2013 would go to show that the fact finding enquiry had come to definite findings that the petitioners respectively were guilty of misappropriation of money of the 40 customers. Though it is the submission of the learned counsel for the petitioners that the money having been returned, there was no loss to the respondent bank, but the fact that the petitioners worked in an organization wherein people deposit their money, an act of misappropriation cannot be allowed to be pardoned on the ground that the amount has been returned. In that regard, this Court finds it relevant to refer to the judgment of the Supreme Court in the case of *Narendra Nath Bhalla* (supra) where the Supreme Court observed that mere repayment would not absolve the employee of the charges of misconduct. Paragraph No.6 of the said judgment is quoted herein below:-

“6. Learned counsel for the appellant also submitted that the appellant has already paid back the money which was held proved against him that he had misappropriated. Mere repayment of money does not absolve him of serious charge of misappropriation. The last submission that the punishment imposed on the appellant is too harsh also does not appeal to us, having regard to the serious nature of charges including the misappropriation of money and issuing a receipt on plain paper and reflecting it in the official record as something else. The decision in *Mehnga Singh v. Inspector General of Police*³ relied on by the learned counsel for the appellant does not help him as that is a case which governs the facts of that case. The other

decision relied on for the same purpose is M.A. Khalsa v. Union of India. Even this decision does not help the appellant in any way as can be seen from the very facts and the opinion expressed therein that the order of dismissal having regard to the serious nature of the charge of misappropriation was felt appropriate. However, the penalty was modified on the peculiar facts of that case. Under these circumstances, we find no merits in this appeal. Consequently, it stands dismissed with no order as to costs.”

14. It is also relevant to take note of that except pointing out that certain evidence was not taken into consideration, nothing could be shown as regards the perversity in the findings of the enquiry reports as well as in the order passed in the appeal. This Court also cannot be unmindful of the fact that the scope of judicial review in matters pertaining to Disciplinary Proceedings is limited and sans any perversity or materials which are extraneous or irrelevant being taken into consideration in coming to the findings, the scope of interference under Article 226 of the Constitution cannot be resorted to.

15. Before further proceedings, this Court find it relevant to deal with the submission that the beneficiaries as well as the complainant were not adduced as witnesses and as such the findings so arrived at are perverse. This submission that looks attractive at the first blush but pales into insignificance in as much as in a departmental proceedings, the Rules of Evidence as mandated under the Indian Evidence Act, 1872 do not apply *stricto sensu*. The questions to be decided in the Departmental Proceedings were whether there was misconduct on the face of the charges levelled against the petitioners and what punishment the Disciplinary Authority are required to be imposed upon the petitioners if the charges are proved. It needs to be kept in mind that in a Departmental Proceedings, the evidence is to be looked into on the basis of preponderance of probability unlike beyond reasonable doubt in the case of a criminal trial. Therefore, the said submission so made by the petitioners do not appeal to this Court for interference on the ground alleged.

16. Now coming to the next aspect of the matter as to whether the punishment so

imposed upon the petitioners in both the writ petitions were disproportionate to the charge leveled against them. It is no longer *res integra* that when charges against misappropriation are proved in a Departmental Enquiry, that too in an establishment like a bank where public deposit money reposing faith in such establishment, it would not be proper on the part of this Court to interfere with the punishment so imposed upon the petitioners, more so, when the respondent bank in view of the conduct of the petitioners have lost their confidence upon the petitioners. In this regard, this Court finds it relevant to refer to the judgment of the Supreme Court in the case of *Bela Bagchi* (supra) which seals the case of the petitioners. Paragraph No.15 of the said judgment is reproduced herein under:-

“15. A bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the bank is required to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the bank. As was observed by this Court in Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik, it is no defence available to say that there was no loss or profit which resulted in the case, when the officer/employee acted without authority. The very discipline of an organisation more particularly a bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. That being so, the plea about absence of loss is also sans substance.”

17. Considering the above, this Court does not find any merit in both the writ petitions for which both the petitions stand dismissed. No costs.

JUDGE

Comparing Assistant