

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10481 of 1998

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Lakshman Prasad, son of Parmeshwar Ram, resident of Devi Asthan, Warsaliganj,
P.S. Warsaliganj, District- Nawadah

.... Petitioner/s

Versus

1. The State Bank of India, through its Chairman, Central Office, Madamcama Road, Nirman Point, Mumbai-400005.
2. Chief General Manager, State Bank of India, Central Office, Madamcama Road, Nariman Point, Mumbai
3. General Manager, State Bank of India, Bihar Region, Patna
4. Assistant General Manager, State Bank of India, Zonal Office, Region-III, Patna
5. Branch Manager, State Bank of India, Warsaliganj, District-Nawadah
6. Branch Manager, State Bank of India, Barauni Refinery Branch, P.S. Barauni and District-Begusarai.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pramod Kumar Sinha
With Mr. Arvind Kumar Sharma
For the Respondent/s : Mr. Ajay Kumar Sinha,
Mr. Binod Bihari Sinha & Mrs. Manju Jha

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 11-03-2015

1. The petitioner in the present proceeding under Article 226 of the Constitution of India seeks quashing of an order dated 4.4.1998 (Annexure-4), passed by the Assistant General Manager, State Bank of India, Zonal Office, Region-III, Patna, whereby, he has been dismissed from service, invoking Section 10 (1) (b) (i) of the Banking Regulation Act, 1949 (hereinafter referred to as 1949 Act), with effect from 17.8.1996, on which date the petitioner stood convicted in a criminal trial, for the offences punishable under Sections 324

and 342/34 of the Indian Penal Code.

2. The petitioner was working as Messenger in Barauni Refinery Branch in the District of Begusarai of the State Bank of India. A criminal case was lodged against him by Sushma Devi, the wife of the petitioner, vide Warsaliganj P.S. Case No. 27 of 1994 alleging offences punishable under Sections 307, 342 and 324/34 of the Indian Penal Code. It was alleged that an altercation had taken place between the said Sushma Devi and the petitioner and on the same day while she had gone to her room and was sleeping, the petitioner and her mother sprinkled Kerosene Oil on her and thereafter the petitioner lit fire at the instance of his mother. She rescued herself somehow or the other by jumping into a well. It was also alleged that the accused persons, including this petitioner confined the informant in a room and did not allow any one to see her. The police submitted charge-sheet for the offences punishable under Sections 307, 324 and 342/34 of the Indian Penal Code. Since the petitioner was taken into custody on 10.4.1994, he was put under suspension by the Bank by an order dated 14.5.1994.



3. The Second Assistant Sessions Judge, Nawadah vide his judgment and order dated 17.8.1996 passed in Trial No. 7 of 1994/272 of 1994 convicted the petitioner of the offences punishable under Sections 324 and 342/34 of the Indian Penal Code and sentenced him to imprisonment for the period which he had already spent in jail, which came to be nearly a year and four months. The petitioner thereafter, approached the disciplinary authority i.e. Assistant General Manager, Zonal Office, Region-III, Patna by way of representation dated 26.8.1996 seeking revocation of his suspension on the ground that he was not convicted for the offence under Section 307 of the Indian Penal Code and his conviction under Section 324 of the Indian Penal Code, in the facts and circumstances of the case, could not be treated as conviction of an offence involving moral turpitude. He again filed a representation to the same effect on 8.12.1997. These representations have brought on record as Annexures 2 and 3 of the writ application.

4. The disciplinary authority i.e. the Assistant General Manager, Zonal Office, State Bank of India,

thereafter, passed the following order on 4.4.1998 invoking the provisions of Section 10(1) (b) (i) of the Banking Regulation Act, 1949 which, is under challenge in the present writ application:-

“In view of your conviction under Sections 324 and 342 read with Section 34 of the Indian Penal Code by Hon’ble 2nd Assistant Sessions Judge, Nawada vide his order dated 17.8.1996 in the Sessions Trial No. 7/94/272/94, you are hereby dismissed from the Bank’s service in terms of Section 10(1) (b) (i) of the Banking Regulation Act, 1949 with effect from the date of your conviction i.e. from 17.8.1996.

2. In this connection, the period of your suspension will be treated as period not spent on duty and hence no salary and allowances will be paid to you for such period.

3. Please acknowledge receipt thereof.”

5. Mr. Pramod Kumar Sinha, learned counsel appearing on behalf of the petitioner has assailed the impugned order dated 4.4.1998 on following grounds:-

(i) The petitioner’s conviction under Sections 324 and 342/34 of the Indian Penal Code is not covered by Section 10 (1) (b) (i) of the Banking Regulation Act, 1949 as the offences do not involve moral turpitude.

(ii) He has secondly, submitted that the impugned order dated 4.4.1998 does not reflect application of

mind by the disciplinary authority to the effect that the offence under which the petitioner stood convicted involved moral turpitude, so as to attract provisions of Section 10(1) (b) (i) of the Act.

(iii) He has lastly submitted that it was mandatory for the disciplinary authority to have issued show cause notice to the petitioner proposing action under Section 10(1) (b) (i) of the Act in compliance of the principles of natural justice. This having not been done, the order is vitiated.

6. Mr. Pramod Kumar Sinha, learned counsel for the petitioner in support of his submission that offence under Section 324 and 342 of the Indian Penal Code does not involve moral turpitude has relied upon Supreme court decision in case of *Pawan Kumar Vs. State of Haryana* (AIR 1996 SC 330).

7. He has also placed reliance upon a decision of the Punjab and Haryana High Court reported in *AIR 1994 P&H 242(Kuldeep Singh Vs. State of Punjab)* in support of his submission that the offence under which the petitioner

was convicted does not involve moral turpitude.

8. The judgment of the trial Court by which the petitioner has been convicted and sentenced to imprisonment has been brought on record as Annexure-1 to the writ application. Referring to the said judgment, Mr. Pramod Kumar Sinha, learned counsel for the petitioner has asserted that the occurrence was a result of petty dispute between the petitioner and the informant which ultimately resulted into altercation between them in which the informant sustained certain injuries.

9. Relying upon the judgments of Supreme Court in case of *Pawan Kumar Vs. State of Haryana* and that of *Punjab and Haryana High Court in case of Kuldeep Singh Vs. State of Punjab (supra)*, he has submitted that even the conduct of the petitioner which has been found to be proved cannot be said to be a base, depraved, wicked or wild act so as to constitute moral turpitude within the meaning of Section 10(1) (b) (i) of the Act. He has emphasized, while making his submission that before taking any action under Section 10(1)(b) (i) of the Act, it was incumbent upon



disciplinary authority to have considered the entire judgment of the trial Court before reaching to a conclusion that the offences for which the petitioner was convicted involved “moral turpitude”. He has submitted that such consideration by the disciplinary authority cannot be presumed, rather it must be reflected in the order itself. Absence of such consideration in the impugned order, according to him, vitiates the order, being unreasonable or non-speaking. He has, as noted above, also emphasized that dismissal of the petitioner from service by invoking Section 10(1) (b) (i) of the Act had adverse civil consequence upon the petitioner and before taking such action, it was imperative for the disciplinary authority to have asked a show cause from the petitioner and seek his response to the proposed action. He contends that had such opportunity been given to the petitioner, the petitioner, could have explained to the disciplinary authority that the offence for which he was convicted did not involve moral turpitude or at least the petitioner would have had such opportunity to explain this before the disciplinary authority. Such opportunity having

been denied to the petitioner, the order is bad for violation of principles of natural justice, Mr. Pramod Kumar Sinha contends.

10. Mr. Ajay Kumar Sinha, learned counsel appearing on behalf of the Respondent State Bank of India, on the other hand, has submitted in reply that the offence for which the petitioner has been convicted cannot be said to be not involving "moral turpitude". He has contended, relying upon a Supreme Court decision reported in *(2010) 8 SCC 573 (Sushil Kumar Singhal Vs. Punjab National Bank)* that the conduct of the petitioner leading to his conviction involves moral turpitude so as to attract Section 10(1)(b) (i) of the Banking Regulation Act, 1949. He has also submitted that the order dated 4.4.1998 which is impugned in the present application was passed after the petitioner had submitted his representations on 26.8.1996 and 8.12.1997 seeking revocation of the order of suspension. According to him, the disciplinary authority took into account and referred to in his order dated 4.4.1998 that petitioner stood convicted for the offences punishable under Sections 324 and 342/34 of the Indian Penal



Code and after having found that the conduct of the petitioner leading to his conviction involved moral turpitude, invoked Clause 10(1) (b) (i) of the Act. He has contended that even if it has not been specifically mentioned in the impugned order that the conduct of the petitioner leading to his conviction involved moral turpitude, no de facto prejudice can be said to have been caused to the petitioner since the conduct of the petitioner ex facie, involves moral turpitude, there being finding of the trial Court that he voluntarily caused hurt by dangerous weapon/means upon his wife Sushma Devi. He has submitted that conduct of the petitioner cannot be said to be not involving more turpitude. He has placed reliance upon a Supreme Court decision reported in (2010) 5 SCC 349 (*Union of India and others vs. Alok Kumar*) in support of his submission that no de facto prejudice could be said to have been caused to the petitioner, in the facts and circumstances of the case. Repelling the ground taken by the petitioner of violation of principles of natural justice for challenging the order dated 4.4.1998, Mr. Ajay Kumar Sinha has contended that there is no such



pleading in the writ application and again applying the doctrine of de facto prejudice, learned counsel for the Bank has submitted that the petitioner's representations were there before the authorities wherein, he had sought for revocation of the order of suspension and therefore, no prejudice can be said to have been caused to the petitioner.

11. Before I consider rival submissions made on behalf of the parties, I consider it appropriate to refer to the relevant statutory provisions from the Banking Regulations Act, 1949 and the Indian Penal Code.

12. The petitioner has been convicted for the offences punishable under Sections 324 and 342/34 of the Indian Penal Code. Sections 324 and 342 of the Indian Penal Code reads thus:-

“324. Voluntarily causing hurt by dangerous weapons or means.- Whoever, except in the case provided for by Section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either

description for a term which may extend to three years, or with fine, or with both.

“342.- Punishment for wrongful confinement.- Whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.”

13. Banking Regulation Act, 1949 covers the law relating to Banking. Section 10 of the Act prescribes for prohibition of employment of managing agents and restrictions on certain forms of employment. Section 10 (1) (b) (i) of the Act reads thus:-

“10 (1) No banking company ---
 (a) * * *
 (b) shall employ or continue the employment of any person-
 (i) who is, or at any time has been, adjudicated insolvent, or has suspended payment or has compounded with his creditors, or who is, or has been, convicted by a criminal court of an offence involving moral turpitude”.

14. Evidently, Section prohibits a banking company from employing or continued the employment of any person who is or at any time has been convicted by a criminal Court of an offence involving moral turpitude. A plain interpretation of Section 10(1) (b)(i) of the Act would be

that a banking company shall not continue with the employment of a person in the Bank once he is found to have been convicted of an offence involving moral turpitude.

15. The question as to whether the offence for which the petitioner stood convicted can be said to be involving moral turpitude or not will have to be considered with reference to the decisions of the Courts as relied upon on behalf of the petitioner and the respondents.

16. In case of Pawan Kumar Vs. State of Haryana (supra), the employee Pawan Kumar was convicted of an offence punishable under Section 294 of the Indian Penal Code who had entered upon a plea of guilt and he was ordered to pay a fine of Rs.20/-. The Supreme Court in that case had prepared list of offences involving moral turpitude which list did not include Section 294 of the Indian Penal Code. In the background of those facts, the Supreme Court had allowed the appeal of said Pawan Kumar. The Supreme Court decision in case of Pawan Kumar Vs. State of Haryana (supra) relied upon by the learned counsel for the petitioner has no application in the facts and circumstances of the case.

17. Much emphasis has been put on a Division Bench judgment of Punjab and Haryana High Court in case of Kuldeep Singh Vs. State of Punjab (supra) by the learned counsel for the petitioner. The High Court dealt with the said phrase, "moral turpitude" in paragraph 13 held as follows:-

"13. Whether an offence involves moral delinquency is a question of fact depending on the public morals of the time; common sense of community and context and purpose for which the character of offence to be determined. In common parlance 'moral turpitude' means baseness of character. Concise Oxford Dictionary defines 'moral'- 'concerned with goodness or badness of character or disposition or with distinction between right and wrong..... virtuous in general conduct....'. "Turpitude' means "baseness, depravity, wickedness". Thus any act which is contrary to good morals from society's point of view will come within the ambit of 'moral turpitude'. Dealing with the term 'moral turpitude' this Court in case reported as Durga Singh Vs. State of Punjab, AIR 1957 Punjab 97, held as under:-

"The term "moral turpitude" is rather vague one and it may have different meanings in different contexts. The term has generally been taken to mean to be a conduct contrary to justice, honesty, modesty or good morals and contrary to what a man owes to a fellowman or to society in general. It has never been held that gravity of punishment is to be considered in determining whether the misconduct involves moral turpitude or not".



18. Learned counsel has placed reliance upon paragraph 14 and has contended that even an act of murder will not come within the broad concept of 'moral turpitude'. I cannot agree to such submission made on behalf of the petitioner. I do not agree with the observation of the Division Bench of Punjab and Haryana High Court in case of Kuldeep Singh (supra) that even an act of murder will not come within the meaning of "moral turpitude". In my opinion, if a person is convicted for an act of murder, his motive to kill a human being stands established and killing a human being with motive is certainly an act of baseness, depravity and wickedness and such act will fall within the meaning of 'moral turpitude'.

19. The term 'moral turpitude' has been discussed by the Supreme Court in case of Sushil Kumar Singhal vs. Punjab National Bank (supra) with reference to Section 10(1)(b)(i) of the Act. Delving up on the phrase the Supreme Court held in paragraph 25 that moral turpitude would mean anything contrary to honesty or modesty to good moral. It means vileness and depravity. The Apex

Court held that conviction of a person in a crime involving moral turpitude impeaches his credibility, having been found to have been indulged in a shameful, wicked and base activity. Paragraphs 23, 24 and 25 of the Supreme Court decision in case of Sushil Kumar Singhal (supra) are relevant and are being quoted hereinbelow for ready reference:-

“23. “Moral Turpitude” means per Black’s Law Dictionary (8th Edn., 2004):

“Conduct that is contrary to justice, honesty or morality. In the area of legal ethics, offenses involving moral turpitude- such as fraud or breach of trust..... Also termed moral depravity....

‘Moral turpitude means, in general, shameful wickedness- so extreme a departure from ordinary standards of honest, good morals, justice, or ethics as to be shocking to the moral sense of the community. It has also been defined as an act of baseness, vileness, or depravity in the private and social duties which one person owes to another, or to society in general, contrary to the accepted and customary rule of right and duty between people’.”

24. In Pawan Kumar V. State of Haryana 13 this Court has observed as under: (SCC p. 21, para 12)

“12. ‘Moral turpitude’ is an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity.”

The aforesaid judgment in Pawan Kumar 13 has been considered by this Court again in Allahabad Bank V. Deepak Kumar Bhola 14 and placed reliance on Baleshwar Singh v. District Magistrate and Collector 15 wherein it has been held as under :-

“The expression ‘moral turpitude’ is not defined any where. But it means anything done contrary to justice, honesty, modesty or good morals. It implies depravity and wickedness of character or disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but it would be so if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellow men or to the society in general. If therefore the individual charged with a certain conduct owes a duty, either to another individual or to the society in general, to act in a specific manner or not to so act and he still acts contrary to it and does so knowingly, his conduct must be held to be due to vileness and depravity. It will be contrary to accepted customary rule and duty between man and man”.

25. In view of the above, it is evident that moral turpitude means anything contrary to honesty, modesty or good morals. It means vileness and depravity. In fact, the conviction of a person in a crime involving moral turpitude impeaches his credibility as he has been found to have indulged in shameful, wicked and base activities.”



20. In the background of the law laid down by the Supreme court in case of Sushil Kumar Singhal (supra), it has to be considered whether the commission of an offence punishable under Sections 324 and 342/34 of the Indian Penal Code can be said to be involving “moral turpitude’ or not. Section 324 of Indian Penal Code has been quoted hereinabove. Section 324 of the Indian Penal Code contemplates punishment for an act where a person is found to have voluntarily hurt by means of dangerous weapon which is likely to cause death, or by means of fire or any heated substance. In the present case the petitioner has been found to have caused hurt to the informant, his wife. Such conduct of the petitioner, in my opinion, is certainly contrary to honesty, modesty or good morals and involves moral turpitude. The act of the petitioner, in my opinion, can certainly be said to be shameful and so extreme a departure from ordinary standards of honest, good morals, justice, or ethics, as to be shocking to the moral sense of the community (Black’s Law Dictionary (8th Edn., 2004).

21. Having read the trial Court judgment dated

17.8.1996, I have no hesitation in coming to a definite conclusion that the conduct of the petitioner involved moral turpitude so as to attract the provisions 10 (1) (b) (i) of the Banking Regulation Act, 1949.

22. A plea has been taken on behalf of the petitioner that the impugned order ought to have reflected application of mind by the competent authority to the effect that the petitioner's conduct involved moral turpitude and in the absence of any reason or discussion to this effect in the impugned order, the order vitiates.

23. I do not feel convinced with the said submission and I am inclined to accept the contention in this regard on behalf of the respondent Bank while relying upon Supreme Court decision in case of *Union of India and others vs. Alok Kumar reported in (2010) 5 SCC 349*. Mr. Ajay Kumar Sinha, learned counsel for the Bank appears to be right in his submission that no de facto prejudice can be said to have been caused to the petitioner even if it is held that such discussion should have been there in the impugned order itself. Paragraph 85 of the said judgment is relevant and is being

quoted hereinbelow:-

“85. The doctrine of de facto prejudice has been applied both in English as well as in Indian Law. To frustrate departmental enquiries on a hyper technical approach has not found favour with the Courts in the recent times. In *S.I. Kapoor V. Jagmohan* 15 a three-judge Bench of this Court while following the principle in *Ridge V. Baldwin* 16 stated that if upon admitted or indisputable facts only one conclusion was possible, then in such a case that principle of natural justice was in itself prejudice would not apply. Thus, every case would have to be examined on its own merits and keeping in view the statutory rules applying to such departmental proceedings. The Court in *S.I. Kapoor* 15 held as under: (SCC p.392., para 18)

“18. In *Ridge V. Baldwin* 16 (AC 40 at p.68: All ER at p.73), one of the arguments was that even if the appellant had been heard by the Watch committee nothing that he could have said could have made any difference. The House of Lords observed at (p.68):

‘It may be convenient at this point to deal with an argument that, even if as a general rule a watch committee must hear a constable in his own defence before dismissing him, this case was so clear that nothing that the appellant could have said could have made any difference. It is at least very doubtful whether that could be accepted as an excuse. But even if it could, the watch committee would, in my view, fail on the facts. It may well be that no reasonable body of men could have

reinstated the appellant. But as between the other two courses open to the watch committee the case is not so clear. Certainly on the facts, as we know them, the watch committee could reasonably have decided to forfeit the appellant's pension rights, but I could not hold that they would have acted wrongly or wholly unreasonably if they had in the exercise of their discretion decided to take a more lenient course."

24. In paragraph 89 the Supreme Court held thus:-

"89. The well-established canons controlling the field of bias in service jurisprudence can reasonably be extended to the element of prejudice as well in such matters. Prejudice de facto should not be based on a mere apprehension or even on a reasonable suspicion. It is important that the element of prejudice should exist as a matter of fact or there should be such definite inference of likelihood or prejudice flowing from such default which relates to statutory violations. It will not be permissible to set aside the departmental enquiries in any of these classes merely on the basis of apprehended prejudice."

(emphasis supplied)

25. Having considered the judgment of the Supreme Court in case of Union of India Vs. Alok Kumar (supra), I find that no prejudice thus, exists as a matter of fact, in the present case because of absence of reasons in the impugned

order as to how the conduct of the petitioner involved moral turpitude.

26. I do not find much substance in the submission made on behalf of the petitioner, in facts and circumstances of the case, that before issuance of the impugned order dated 4.4.1998, the petitioner should have been given an opportunity to explain that his conduct leading to his conviction under Sections 324 and 342/34 of the Indian Penal Code did not involve moral turpitude. The Bank, by operation of Section 10(1)(b)(i) of the Banking Regulation Act, 1949 was precluded from taking work from the petitioner once he was convicted for a criminal offence, involving moral turpitude by a criminal Court.

27. I am also of the view that even that would have a mere formality in the facts and circumstances of the case and on such ground the order of the disciplinary authority need not be interfered with, in the facts and circumstances of the case.

28. I, therefore, find no merit in the application. This application is accordingly, dismissed.

29. However, before I part with I must observe that the impugned order dismissing the petitioner from service invoking Section 10(1)(b)(i) of the Act was passed on 4.4.1998 with effect from 17.8.1996 i.e. the date of conviction. Dismissal of an employee from retrospective date is impermissible in law. I, therefore, observe that the petitioner shall be treated to have been dismissed with effect from 4.4.1998. Accordingly, the Bank will consider the petitioner's claim if any for the period 17.8.1996 up to the date 4.4.1998 during which he was admittedly under suspension.

30. This application is dismissed but with the observations as above.

(Chakradhari Sharan Singh, J)

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